

1999 DRAFTING REQUEST

Bill

Received: **01/8/99**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Rosenzweig (608) 266-2512**

By/Representing: **Gene**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies: **DAK, MGG, RNK, TAY**

Pre Topic:

No specific pre topic given

Topic:

Model legislation under tobacco settlement

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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~~Not Needed~~
sent
07-21-99
Requested
By RPN

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(Ed Hughes (DOJ))
(Dick Sweet (Leg. Council))

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FE Sent For:

CMM
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3/22
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By/Representing: Gene

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Drafter: nelsorp1

May Contact: Ed Hughes, DOS
4-9481

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies: DAK, MGG, RNK, TAY
KMG

Topic:

Model legislation under tobacco settlement

Instructions:

See Attached

*Case 1979 upon ved
2/29 Rosenzweig*

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Drafter: ~~yacketa~~ ←

May Contact: Ed Hughes DOS
4-9487

Alt. Drafters: nelsorp1

Subject: Courts - miscellaneous
Health - miscellaneous

Extra Copies: DAK

Topic:

Model legislation under tobacco settlement

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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*Do not
submit*

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5004
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1661/P1

RPN.....

cmf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{generally} relating to: an agreement between the state and tobacco product
2 manufacturers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.10 of the statutes is created to read:

4 **895.10 Tobacco product agreement.** (1) DEFINITIONS. In this section:

5 (a) "Adjusted for inflation" means increased in accordance with the formula for
6 an inflation adjustment in exhibit C of the master settlement agreement.

7 (b) "Affiliate" means a person who directly or indirectly owns or controls, is
8 owned or controlled by or is under common ownership or control with, another
9 person. In this paragraph, "owns", "owned" and "ownership" means ownership of an
10 equity interest, or the equivalent of an equity interest, of ~~ten percent~~ ^{10%} or more.

1 (c) "Allocable share" means (insert AS)

***NOTE: I recreated the definitions given in the master settlement, because that document is not easily available to the public. However, some of these definitions are extremely long, complicated and difficult to understand.

2 (d) 1. "Cigarette" means any product that contains nicotine, is intended to be
3 burned or heated under ordinary conditions of use, and consists ~~of~~^{of} or contains any
4 of the following:

5 a. Any roll of tobacco wrapped in paper or in any substance not containing
6 tobacco.

7 b. Tobacco, in any form, that is functional in the product, which, because of its
8 appearance, the type of tobacco used in the filler, or its packaging and labeling, is
9 likely to be offered to, or purchased by, consumers as a cigarette.

10 c. Any roll of tobacco wrapped in any substance containing tobacco which,
11 because of its appearance, the type of tobacco used in the filler, or its packaging and
12 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described

13 in ~~and~~^{and} this subdivision

14 2. The term "cigarette" includes "roll-your-own" tobacco which, because of its
15 appearance, type, packaging or labeling is suitable for use and likely to be offered to,
16 or purchased by, consumers as tobacco for making cigarettes. For purposes of this
17 paragraph, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual
18 cigarette.

19 (e) "Consent decree" means the decree signed by ~~the state of Wisconsin~~^{this state} in the
20 case, in county circuit court, dated , 1998.

21 (f) "Master settlement agreement" means the settlement agreement and
22 related documents entered into on 1998, by this state and the leading ~~United~~
23 ~~States~~^{U.S.} tobacco product manufacturers.

delete space

of

this state

U.S.

****NOTE: Because many references in this bill are to the agreement, which is not readily available, perhaps additional language should be added in the statutes requiring the department of justice or some other agency to place a copy of the agreement in at least one public place in every area of the state, such as a public library, the clerk of circuit court or the county clerk or the county law library. In addition, the revisor of statutes should be required to publish the agreement in the administrative register, to give official notice to the public of its contents.

1 (g) "Original participating manufacturers" means (insert OPM)

****NOTE: Although this definition is not included in list of definitions in the model statute, it is referred to in the definition of "tobacco product manufacturer", so I added it to the draft.

2 (h) 1. "Participating manufacturer" means (insert PM)

3 (i) "Qualified escrow fund" means an escrow arrangement with a federally or
4 state chartered financial institution having no affiliation with any tobacco product
5 manufacturer and having assets of at least \$1,000,000,000 where the arrangement
6 requires ~~that~~ the financial institution hold the escrowed funds' principal for the
7 benefit of releasing parties and prohibits the tobacco product manufacturer placing
8 the funds into escrow from using, accessing or directing the use of the funds' principal
9 except as is consistent with sub.

10 (j) "Released claims" means (insert RC)

11 (k) "Releasing parties" means (insert RP)

12 (L) "Settling state" means (insert SS)

13 (m) "Tobacco products" means cigarettes and smokeless tobacco products.

****NOTE: This definition, taken from the master settlement agreement, is circular. It defines the term using the same term. Instead, the definition should read something like, "Cigarettes and smokeless products made from the leaves of the cultivated plant, genus Nicotiana, of the nightshade family"

14 (n) 1. "Tobacco product manufacturer" means an entity that after the effective
15 date of this paragraph... [revisor inserts date], directly, and not exclusively through
16 any affiliate, meets any of the following criteria:

insert colon

1 a. Manufactures cigarettes anywhere that the manufacturer intends to be sold
 2 in the United States, including cigarettes intended to be sold in the United States
 3 through an importer, except where the importer is an original participating
 4 manufacturer that will be responsible for the payments under the master settlement
 5 agreement with respect to those cigarettes as a result of the provisions of subsection
 6 II (mm) of the master settlement agreement and that pays taxes specified in
 7 subsection II (z) of the master settlement agreement, and provided that the
 8 manufacturer of the cigarettes does not market or advertise those cigarettes in the
 9 United States.

* ****NOTE: I do not understand what this long, convoluted sentence means. I also
 do not understand how the references to subsections II (mm) and (z) can confer duties
 on the manufacturers, because those subsections are definitions, which should do
 nothing more than define terms.

10 b. Is the first purchaser anywhere for resale in the United States of cigarettes
 11 manufactured anywhere that the manufacturer did not intend to be sold in the
 12 United States.

13 c. Becomes a successor of an entity described in subd. ^{1.} ~~mm~~ a. or b. ✓

14 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
 15 product manufacturer unless the affiliate ~~mm~~ meets one of the criteria in subd. 1. ✓

16 (o) "Tobacco-related organizations" means the Council for Tobacco
 17 Research-U.S.A., Inc., The Tobacco Institute, Inc., the Center for Indoor Air
 18 Research, Inc. and the successors, if any, of The Tobacco Institute, Inc. or the Center
 19 for Indoor Air Research, Inc.

20 (p) "Units sold" means the number of individual cigarettes sold in this state by
 21 the applicable tobacco product manufacturer, whether directly or through a
 22 distributor, retailer or similar intermediary, during the year in question, as
 23 measured by the excises taxes collected by this state on packs or "roll your own"

1 tobacco containers bearing the excise tax stamp of this state. The department of
2 revenue shall promulgate the regulations necessary to ascertain the amount of
3 Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer for
4 each year.

5 (2) REQUIREMENTS. (a) Any tobacco product manufacturer selling cigarettes to
6 consumers within this state, whether directly or through a distributor, retailer or
7 similar intermediary, after the effective date of this subsection... [revisor inserts
8 date] shall do one of the following:

9 1. Become a participating manufacturer of the master settlement agreement
10 and generally perform its financial obligations under the master settlement
11 agreement.

12 2. Place into a qualified escrow fund by April 15 of the year following the listed
13 year the following amounts, as those amounts are adjusted for inflation:

14 a. For 1999: \$.0094241 per unit sold after the effective date of this
15 subdivision... [revisor inserts date].

16 b. For 2000: \$.0104712 per unit sold after the effective date of this
17 subdivision... [revisor inserts date].

18 c. For each of 2001 and 2002: \$.0136125 per unit sold after the effective date of
19 this subdivision... [revisor inserts date].

20 d. For each of 2003 through 2006: \$.0167539 per unit sold after the effective
21 date of this subdivision... [revisor inserts date].

22 e. For 2007 and each year thereafter: \$.0188482 per unit sold after the effective
23 date of this subdivision... [revisor inserts date].

24 ~~*** Note: The introduction says the manufacturer must~~
25 (b) A tobacco product manufacturer that places money into a qualified escrow
fund under par. (a) shall receive the interest or other appreciation on that money as

do either 1. or 2. Is that correct in the model legislation?

1 earned. The money shall be released from the qualified escrow fund only under one
2 of the following circumstances:

****NOTE: The term "funds" was used in this paragraph to refer both to the escrow
and the money put into escrow, so I used the word "money" instead of "funds" to
distinguish between the two.

3 1. To pay a judgment or settlement on any released claim brought against the
4 (insert J)

5 (c) 1. Each tobacco product manufacturer that elects to place money into a
6 qualified escrow fund under par. (a) 2. shall annually certify to the attorney general
7 that the tobacco product manufacturer has placed the money into the qualified
8 escrow fund in compliance with par. (a) 2. The attorney general may bring a civil
9 action on behalf of the state against any tobacco product manufacturer that fails to
10 place into the qualified escrow fund the money required under par. (a) 2.

****NOTE: The first sentence merely requires an annual certification of compliance
with the subsection, but I think the intent is to be in compliance with the requirement
to place the money in the escrow fund. I rewrote the language accordingly. In addition,
the language does not say when the annual certification should begin. Perhaps "on the
first day of June and annually thereafter" or something similar would be more concise.

11 2. Any tobacco product manufacturer that fails in any year to place into a
12 qualified escrow fund the money required under par. (a) shall, within 15 days, place
13 sufficient money into a qualified escrow fund to bring the tobacco product
14 manufacturer into compliance with par. (a) 2. The court, upon a finding of a violation
15 of this subdivision, may impose a civil penalty in an amount not to exceed ^{5%} five percent
16 of the amount improperly withheld from escrow per day of the violation and in a total
17 amount not to exceed ^{1%} 100 percent of the original amount improperly withheld from
18 a qualified escrow fund.

****NOTE: The model act requires placing sufficient money into escrow "within 15
days". Within 15 days of what? Fifteen days after the AG brings a lawsuit? Fifteen days
after the court finds a failure to place the money in escrow?

1 3. Any tobacco product manufacturer that knowingly fails in any year to place
 2 into a qualified escrow fund the money required under par. (a) 2. shall, within 15
 3 days, place sufficient money into a qualified escrow fund to bring the tobacco product
 4 manufacturer into compliance with par. (a) 2. The court, upon a finding of a knowing
 5 violation of this subdivision, may impose a civil penalty in an amount not to exceed
 6 ~~fifteen percent~~^{15%} of the amount improperly withheld from escrow per day of the
 7 violation and in a total amount not to exceed 300~~percent~~[%] of the original amount
 8 improperly withheld from a qualified escrow fund.

9 4. Any tobacco product manufacturer that knowingly fails in any year to place
 10 into a qualified escrow fund the money required under par. (a) 2. for the second time
 11 shall be prohibited from selling cigarettes to consumers within this state directly or
 12 through a distributor, retailer or similar intermediary for a period not to exceed 2
 13 years.

****NOTE: Although this language is difficult to understand, I think the intent of this paragraph is to allow the AG to bring an action against a tobacco manufacturer for failure to put the proper money in escrow. If the court finds that the AG is right, the court can order the manufacturer to: 1. If not knowingly failing to pay, to pay the money into escrow within 15 days of the court order and pay a penalty of 5-100~~percent~~[%]. 2. If knowingly failing to pay, to pay the money into escrow within 15 days of the court order and pay a penalty of 15-300~~percent~~[%]. 3. If knowingly failing to pay for a second (or subsequent?) time, stop selling cigarettes for up to 2 years. What about paying the money owed into escrow for a second violation? I would prefer to rewrite this paragraph so it says what I think it means to say.

14 5. Each failure to make the annual deposit required under par. (a) 2. shall
 15 constitute a separate violation.

16 **SECTION 2. Nonstatutory provisions.**

17 (1) COPIES OF THE MASTER SETTLEMENT AGREEMENT. The department of justice
 18 shall provide at least one copy of the master settlement agreement to the largest
 19 public library in each county in the state that is not a law library and to each law
 20 library in this state if that public library or law library does not have a copy of that

1 master settlement agreement. "Master settlement agreement" means the
2 settlement agreement and related documents entered into on , 1998 by this state and
3 the leading ~~United States~~ tobacco product manufacturers.

4 (1) ADMINISTRATIVE REGISTER. The revisor of statutes shall, within 60 days after
5 the effective date of this subsection, publish a copy of the master settlement
6 agreement in the Wisconsin Administrative Register. "Master settlement
7 agreement" means the settlement agreement and related documents entered into on

8 , 1998, by this state and the leading ~~United States~~ tobacco product manufacturers.

9

(END)

U.S.

insert AS

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the implementation of tobacco-related health measures and the payments to be made by the Participating Manufacturers, the release and discharge of all claims by the Settling States, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Settling States and the Participating Manufacturers, acting by and through their authorized agents, memorialize and agree as follows:

II. DEFINITIONS

(a) "Account" has the meaning given in the Escrow Agreement.

(b) "Adult" means any person or persons who are not Underage.

(c) "Adult-Only Facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under state law, or by checking the identification of any person appearing to be under the age of 27) that no Underage person is present. A facility or restricted area need not be permanently restricted to Adults in order to constitute an Adult-Only Facility, provided that the operator ensures or has a reasonable basis to believe that no Underage person is present during the event or time period in question.

(d) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(e) "Agreement" means this Master Settlement Agreement, together with the exhibits hereto, as it may be amended pursuant to subsection XVIII(j).

of the master settlement agreement

no 9

Wisconsin

Wisconsin's

~~Allocable Share~~ means the percentage set forth for ~~the State in question~~ as listed in Exhibit A ~~hereby~~ without regard to any subsequent alteration or modification of ~~such State's~~ percentage share agreed to by or among any States ~~for~~, solely for the purpose of calculating payments under subsection IX(c)(2) (and corresponding payments under subsection IX(i)) the percentage disclosed for ~~the State~~ ~~in question pursuant to~~ subsection IX(c)(2)(A) prior to June 30, 1999, without regard to any subsequent alteration or modification of ~~such State's~~ percentage share agreed to by or among any States.

Wisconsin under

Wisconsin's

(END OF INSERT)

(g) "Allocated Payment" means a particular Settling State's Allocable Share of the sum of all of the payments to be made by the Original Participating Manufacturers in the year in question pursuant to subsections IX(c)(1) and IX(c)(2), as such payments have been adjusted, reduced and allocated pursuant to clause "First" through the first sentence of clause "Fifth" of subsection IX(j), but before application of the other offsets and adjustments described in clauses "Sixth" through "Thirteenth" of subsection IX(j).

(x) "Inflation Adjustment" means an adjustment in accordance with the formulas for inflation adjustments set forth in Exhibit C.

(y) "Litigating Releasing Parties Offset" means the offset described in subsection XII(b).

Insert OP11

(z) "Market Share" means a Tobacco Product Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during the applicable calendar year, as measured by excise taxes collected by the federal government and, in the case of sales in Puerto Rico, arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the definition and determination of "Market Share" with respect to calculations under subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette; for purposes of the definition and determination of "Market Share" with respect to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(aa) "MSA Execution Date" means November 23, 1998.

(bb) "NAAG" means the National Association of Attorneys General, or its successor organization that is directed by the Attorneys General to perform certain functions under this Agreement.

(cc) "Non-Participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(dd) "Non-Settling States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by the aggregate Allocable Shares of those States that are not Settling States on the date 15 days before such payment is due.

(ee) "Notice Parties" means each Participating Manufacturer, each Settling State, the Escrow Agent, the Independent Auditor and NAAG.

(ff) "NPM Adjustment" means the adjustment specified in subsection IX(d).

the master settlement agreement

(gg) "NPM Adjustment Percentage" means the percentage determined pursuant to subsection IX(d).

~~(hh) "Original Participating Manufacturer" means the following:~~ Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company, and the respective successors of each of the foregoing. Except as expressly provided in ~~the~~ ~~agreement~~ once an entity becomes an Original Participating Manufacturer, such entity shall permanently retain the status of Original Participating Manufacturer.

(END OF INSERT)

(ii) "Outdoor Advertising" means (1) billboards, (2) signs and placards in arenas, stadiums, shopping

Insert PM

November 23, 1996

malls and Video Game Arcades (whether any of the foregoing are open air or enclosed) (but not including any such sign or placard located in an Adult-Only Facility), and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward. Provided, however, that the term "Outdoor Advertising" does not mean (1) an advertisement on the outside of a Tobacco Product manufacturing facility; (2) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed (A) on the outside of any retail establishment that sells Tobacco Products (other than solely through a vending machine), (B) outside (but on the property of) any such establishment, or (C) on the inside surface of a window facing outward in any such establishment; (3) an advertisement inside a retail establishment that sells Tobacco Products (other than solely through a vending machine) that is not placed on the inside surface of a window facing outward; or (4) an outdoor advertisement at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event).

the master settlement agreement

~~Original Participating Manufacturer~~ means a Tobacco Product Manufacturer that is or becomes a signatory to ~~this Agreement~~ provided that ~~in~~ in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, ~~such~~ Tobacco Product Manufacturer is bound by ~~the Agreement~~ and the Consent Decree for, in any Settling State that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree in all Settling States in which ~~this Agreement~~ and the Consent Decree binds Original Participating Manufacturers, provided, however, that ~~the~~ Tobacco Product Manufacturer need only become bound by the Consent Decree in those Settling States in which the Settling State has filed a Released Claim against ~~it~~ in the case of a Tobacco Product Manufacturer that signs ~~this Agreement~~ after ~~the~~ Execution Date, ~~such~~ Tobacco Product Manufacturer, within a reasonable period of time after signing ~~this Agreement~~, makes any payments (including interest ~~thereon~~ at the Prime Rate) that it would have been obligated to make in the intervening period had it been a signatory as of ~~the~~ Execution Date. "Participating Manufacturer" shall also include the successor of a Participating Manufacturer. Except as expressly provided in ~~this Agreement~~, once an entity becomes a Participating Manufacturer, ~~an~~ entity shall permanently retain the status of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments of Cigarettes in or to the fifty United States, the District of Columbia and Puerto Rico to Management Science Associates, Inc. for a successor entity ~~as set forth in subsection (kk)~~. Solely for purposes of calculations pursuant to ~~subsection IX(d)~~ (sub) a Tobacco Product Manufacturer that is not a signatory to ~~this Agreement~~ shall be deemed to be a Participating Manufacturer* if the Original Participating Manufacturers unanimously consent in writing.

the tobacco product manufacturer. PP B.

of the master settlement agreement

(kk) "Previously Settled States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by 12.4500000%, in the case of payments due in or prior to 2007; 12.2373756%, in the case of payments due after 2007 but before 2018; and 11.0666667%, in the case of payments due in or after 2018.

(END OF INSERT)

(ll) "Prime Rate" shall mean the prime rate as published from time to time by the Wall Street Journal

Insert RC

(mm) "Relative Market Share" means an Original Participating Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers during the calendar year immediately preceding the year in which the payment at issue is due (regardless of when such payment is made), as measured by the Original Participating Manufacturers' reports of shipments of Cigarettes to Management Science Associates, Inc. (or a successor entity acceptable to both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question). A Cigarette shipped by more than one Participating Manufacturer shall be deemed to have been shipped solely by the first Participating Manufacturer to do so. For purposes of the definition and determination of "Relative Market Share," 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

X (nn) "Released Claims" means:

1. for past conduct, acts or omissions, including any damages incurred in the future arising from ~~such~~ past conduct, acts or omissions, those Claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, the exposure to, or research, statements, or warnings regarding, Tobacco Products, including ~~the~~ the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could be or could have been asserted now or in the future in those actions or in any comparable action in federal, state or local court brought by a Settling State or a Releasing Party, whether or not such Settling State or Releasing Party has brought such action, except for claims not asserted in the actions identified in Exhibit D for outstanding liability under existing licensing or similar fee laws or existing tax laws, but not excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party with respect to ~~such~~ Tobacco-Related Organizations, which claims are covered by the release and covenants set forth in ~~the~~ *the master settlement agreement.*

of the master settlement agreement

2. for future conduct, acts or omissions, only those monetary Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future Claims for reimbursement of health care costs allegedly associated with the use of or exposure to Tobacco Products.

END OF INSERT

(oo) "Released Parties" means all Participating Manufacturers and their past, present and future Affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Provided, however, that "Released Parties" does not include any person or entity (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time after the MSA Execution Date, unless such person or entity becomes a Participating Manufacturer.

Affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Provided, however, that "Released Parties" does not include any person or entity (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time after the MSA Execution Date, unless such person or entity becomes a Participating Manufacturer.

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~~Released Parties~~ each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions

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and divisions, and also means, to the full extent of the power of the signatories ~~to~~ to release past, present and future claims, the following: any Settling State's subdivisions ~~including but not limited to~~ municipalities, counties, ~~villages~~, unincorporated districts and hospital districts, public entities, public instrumentalities and public educational institutions ~~and~~ persons ~~or entities~~ acting in a ~~variety of~~ sovereign, quasi-sovereign, private attorney general, ~~or~~ taxpayer, or any other capacity, whether or not any of them participate in this settlement, to the extent that any such person ~~entity~~ is seeking relief on behalf of or generally applicable to the general public in ~~that~~ Settling State or the people of the State, as opposed solely to private or individual relief for separate and distinct injuries, or ~~to the extent that any such entity, as opposed to an individual, is seeking recovery of health care expenses, other than premium or capitation payments for the benefit of present or retired state employees, paid or reimbursed, directly or indirectly, by a Settling State.~~

(END OF INSERT RP)

November 23, 1998 ~~Settling State~~ means any State that signs ~~the Agreement~~ on or before ~~the MSA Execution Date~~. ~~Provided, however, that~~ the term "Settling State" ~~shall~~ not include ~~the States of Mississippi, Florida, Texas and Minnesota~~ and ~~any State as to which the Agreement has been terminated.~~

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(rr) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas.

(ss) "State-Specific Finality" means, with respect to the Settling State in question:

- (1) this Agreement and the Consent Decree have been approved and entered by the Court as to all Original Participating Manufacturers, or, in the event of an appeal from or review of a decision of the Court to withhold its approval and entry of this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review;
- (2) entry by the Court has been made of an order dismissing with prejudice all claims against Released Parties in the action as provided herein; and
- (3) the time for appeal or to seek review of or permission to appeal ("Appeal") from the approval and entry as described in subsection (1)(A) hereof and entry of such order described in subsection (1)(B) hereof has expired; or, in the event of an Appeal from such approval and entry, the Appeal has been dismissed, or the approval and entry

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for each of 2001 and 2002: \$.0136125 per unit sold after the date of enactment of this Act;

for each of 2003 through 2006: \$.0167539 per unit sold after the date of enactment of this Act;

for each of 2007 and each year thereafter: \$.0188482 per unit sold after the date of enactment of this Act.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

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~~(A) to pay a judgment or settlement or any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State, the funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.~~

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2. to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement as determined pursuant to ~~section IX(i)(2)~~ ^{under subsection} IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in ~~section IX(i)(3)~~ ^{subsection} IX(i)(3) of that Agreement other than the Inflation Adjustment, had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

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3. to the extent not released from escrow under ~~subparagraph (A) or (B)~~ ^{the} funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into the escrow fund.

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(END OF INSERT)

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General or other State official that it is in

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National Conference of State Legislatures

SUMMARY OF THE ATTORNEYS GENERAL MASTER TOBACCO SETTLEMENT AGREEMENT

December 1998

Prepared by: Joy Johnson Wilson, Director, AFI Health Committee

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INTRODUCTION

→ On November 23, 1998 the Attorneys General and other representatives of 46 states, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam and the District of Columbia signed an agreement with the five largest tobacco manufacturers (Brown & Williamson Tobacco corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers), ending a four-year legal battle between the states and the industry that began in 1994 when Mississippi became the first state to file suit. Four states (Florida, Minnesota, Mississippi and Texas) had previously settled with tobacco manufacturers for \$40 billion. The Liggett Group, the last tobacco manufacturer to sign on, was released from previous settlements it had reached with a number of states and will not have to contribute to the settlement fund unless the its sales rise more than 25 percent over current levels. This will be highly unlikely since immediately after signing the settlement agreement the company sold three of its major brands, representing 14 percent of its sales, to Phillip Morris Incorporated.

The agreement settles all antitrust, consumer protection, common law negligence, statutory, common law and equitable claims for monetary, restitutionary, equitable and injunctive relief alleged by any of the settling states with respect to the year of payment or earlier years and cannot be modified in any way unless all the parties agree to the modification. The signing of the settlement agreement is just the beginning of the rest of this story about tobacco, youth access and health.

Over the next 25 years, states will receive over \$206 billion from the settlement, but funds will not be available to states until June 2000. Under the provisions of the agreement, states must begin implementation of the settlement agreement immediately. States that had suits pending are required to begin actions to settle the suits and to get the consent decree implementing the settlement agreement filed by December 11, 1998. The other states must file the necessary paperwork by December 23, 1998. This begins the process of obtaining State Specific Finality, the trigger for access to the state funds. Over the next several months, state courts will be reviewing the consent decrees and addressing any challenges to the implementation of the settlement in the state. The most immediate task for state legislatures is the consideration and enactment of the "model statute" included in the settlement agreement. This model statute is designed to provide a level playing field between participating and non-participating tobacco manufacturers. **Failure to enact the model statute will result in a significant reduction in a state's allotment.** In addition, state legislatures will most certainly discuss how and where to spend the tobacco settlement funds. Finally, the tobacco settlement leaves plenty of room for additional state legislation regarding youth access and environmental smoking. The settlement establishes eight areas of state legislation/regulation that the industry is prohibited from lobbying against.

Federal legislation is not required to implement the settlement agreement, however; **federal legislation is needed to prevent the federal government from staking claim to more than half of the state's tobacco settlement dollars.** The U.S. Department of Health and Human Services (HHS) believes that it is authorized and obligated, under existing Medicaid law, Section 1903(d) of the Social Security Act (See **Appendix F** for additional detail), to collect its share of any settlement funds attributable to Medicaid. Under this provision, recoveries made on behalf of Medicaid clients are shared with the federal government based on the federal Medicaid match in the state. In November 1997, HHS voluntarily suspended recoupment activities pending the outcome of federal tobacco legislation. At this writing, that suspension is still in force, but could be revoked at any time. Successfully resolving this issue will clearly be a major priority in Washington, D.C. for state governments.



The Tobacco Settlement at a Glance

Public Health/Youth Access

- Prohibits youth targeting in advertising, marketing and promotions by:
- Banning cartoon characters in advertising
- Restricting brand-name sponsorships of events with significant youth audiences
- Banning outdoor advertising
- Banning youth access to free samples
- Setting minimum cigarette package size at 20 (sunsets 12/31/01)
- Creates a National Foundation (\$250 million over next 10 years) and a Public Education Fund (\$1.45

billion between 2000-2003).

Changing Corporate Culture

- Requires the industry to make a commitment to reducing youth access and consumption
- Disband tobacco trade associations
- Restricts industry lobbying
- Opens industry records and research to the public

Enforcement

- Provides court jurisdiction for implementation and enforcement
- Establishes a state enforcement fund (\$50 million one-time payment)

Attorney Fees (Funded separately from the \$206 billion in payments to states)

- Requires the industry to reimburse states for attorney fees (reimbursement will be based on the market rate in each state).
- Requires the industry to pay for outside counsel hired by the states.
- The settlement agreements does not effect contracts states have with outside counsel, but permits states to seek reimbursement from the settlement if the state has paid the fees of an outside counsel and the outside counsel fails to pursue either a liquidated fee agreement or arbitration, through the settlement.
- Outside counsel can either negotiate a liquidated fee agreement or go through arbitration.
- The liquidated fee agreements will be paid from a \$1.25 billion pool over a four-year period.
- The industry will pay whatever the arbiters award, but payments will be subject to a \$500 million per year cash flow cap.

Financial Provisions

- States will receive over \$206 billion over 25 years.
- Up-front payments - \$12.742 billion
- Annual Payments, beginning April 15, 2000 - \$183.177 billion through 2025
- Strategic Contribution Fund, 2008-2017 - \$8.61 billion
- National Foundation (\$250 million over next 10 years)
- Public Education Fund (at least \$1.45 billion 2000-2003)
- State Enforcement Fund (\$50 million, one-time payment)
- National Association of Attorneys General (\$1.5 billion over next 10 years)

Source: National Association of Attorneys General



Frequently Asked Questions

1. **Who are the parties to the Tobacco Settlement?** The parties to the settlement include 46 states (Florida, Minnesota, Mississippi, and Texas had previously settled with the tobacco manufacturers), Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands and the District of Columbia, Brown & Williamson Tobacco corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers.
2. **What is the effective date of the tobacco settlement?** The parties signed the Master Settlement Agreement (MSA) on Monday, November 23, 1998, the Master Settlement Agreement Execution Date. States that sued the tobacco manufacturers must go to state court and file a motion for the approval of the settlement agreement by December 11, 1998. States that had not filed a suit, must go to state court to file suit and to make a motion to approve the settlement agreement by December 23, 1998. The effective dates for the non-economic provisions of the MSA vary, but many are related to the MSA Execution date (e.g. 60 days after the MSA Execution date). There are two important effective dates related to the economic provisions of the MSA: the **State Specific Finality Date** and the **Final Approval Date**. The State Specific Finality Date is the date when a state court gives final approval to the settlement and the consent decree. The Final Approval Date is the earlier of June 30, 2000 or the date when 80 percent of the states have obtained State Specific Finality and those states represent 80% of the payments.
3. **When do the settlement funds become available to the states?** No funds can be dispersed to the states until Final Approval is attained. If the requisite number of states have not reached State Specific Finality **before** June 30, 2000, the funds will become available to all states that have reached State Specific Finality on June 30, 2000. ***If a state fails to obtain State Specific Finality by December 31, 2001, its participation in the settlement is terminated.***
4. **I understand that tobacco manufacturers will begin making payments in December 1998. Where will these funds go if they are not available to states until June 30, 2000?** The payments made by the tobacco manufacturers will be deposited into an escrow account. When a state obtains State Specific Finality, the funds that are to be allotted to that state will be moved from the general escrow account into a state specific escrow account, where the funds will accrue interest and will become available to the state on the Final Approval date.
5. **What must states do to attain State Specific Finality?** States must get the settlement approved by a state court. This includes approval of the consent decree. In addition, all opportunities for appeal of the approval must have expired, so that the court's approval is final.
6. **What will state legislatures need to do to implement the tobacco settlement agreement?** State legislatures will need to enact the model statute included in the Master Settlement Agreement (See question #12), regarding the treatment of non-participating manufacturers, before the state begins receiving its allotment from the settlement. In addition, if there is any question about the legislative appropriation of the settlement funds, legislatures may want to enact laws to clarify the treatment of the funds under state law. The settlement agreement is silent on that issue. Finally, the legislature should probably review the state's consent decree, the document that implements the settlement agreement in the state.
7. **What is the purpose of the model statute included in the Master Settlement Agreement? What happens if my state fails to enact the statute?** The model statute creates a reserve fund for non-participating manufacturers to pay future claims, establishing a level playing field between participating and non-participating manufacturers. ***The model act (See Appendix B – NCSL Summary of the Tobacco Settlement) must be enacted by states exactly as it is drafted in the MSA (Exhibit T) and as a stand-alone piece of legislation or the state must enact a "qualifying statute," as determined by a firm jointly retained by the settling states and the original participating manufacturers. The ruling of the firm is final. A "qualifying statute" is defined in the MSA as a settling state's statute, regulation, law and/or rule (applicable everywhere the state has authority to legislate) that***

- effectively and fully neutralizes the cost disadvantages that the participating manufacturers experience (as opposed to the non-participating manufacturers) experience as a result of the MSA. *If a state fails to enact the model statute or if a state enacts the model and a court subsequently overturns it, the state allotment will be reduced by no more than 65 percent.*
8. **When the Final Approval Date arrives and the funds become available to the states, who controls the funds?** The Master Settlement Agreement is silent on the matter; therefore the general belief is that the funds will be appropriated according to state law.
 9. **How are the amounts each state will receive determined? Are the state allotments listed in the Master Settlement Agreement the actual amounts each state will receive?** The state allotments were established by a formula developed by the Attorneys General. These allotments are subject to a number of adjustments, reductions and offsets. In addition, the federal government is laying claim to more than half the settlement dollars. The exact amount a state will receive is the net of the listed allocation minus any adjustments, reductions and offsets and may also be subject to recoupment of any settlement funds attributable to Medicaid.
 10. **What is the basis of the federal claim on state tobacco settlement funds?** The U.S. Department of Health and Human Services (DHHS) contends that existing Medicaid law (Section 1903(d) of the Social Security Act) compels it to recover its share (federal Medicaid matching percentage) of third party payments, collected by states on behalf of Medicaid clients, and argues further that state tobacco settlement funds are third-party recoveries under the provisions of the Medicaid statute (See **Appendix F** for additional details). DHHS has "recouped" some funds from states that reached an earlier settlement agreement with the Liggett Group, but temporarily suspended the collection of state tobacco settlement funds pending comprehensive federal tobacco legislation. *An amendment to the Medicaid statute that would exempt tobacco settlement funds from recoupment must be enacted to prevent the seizure of state tobacco settlement funds when they become available to states in 2000.*
 11. **Does the Master Settlement Agreement restrict or earmark the settlement funds?** No. States will determine how the funds will be spent.
 12. **If the federal government adopts an excise tax on tobacco products, will my state receive less money from the tobacco settlement?** Maybe. Under the provisions of the settlement, if the federal government enacts a tax or fee on tobacco products, and uses the proceeds to provide either unrestricted funds to states or funds earmarked for health care or tobacco-related health care, these funds would be subtracted from the state allotment on a dollar-for-dollar basis. The **federal legislation offset** would not apply if the funds were earmarked for assistance to tobacco growers or impacted communities.
 13. **Aside from determining funding priorities and enactment of the model statute, are there other legislative actions related to the tobacco settlement state legislators might consider?** Yes. The settlement agreement prohibits the sale and manufacture of cigarettes in packages of less than 20 cigarettes. This prohibition sunsets December 31, 2001. The settlement agreement also prohibits tobacco manufacturers from opposing state legislation prohibiting the sale and manufacture of these small cigarette packages. If a state wants to continue the ban, considered a key provision to discourage youth access to cigarettes, state legislation would be required. In addition, the settlement agreement identifies areas of state legislation, law and administrative rule related to youth access to tobacco products, that the tobacco industry is prohibited from opposing. That list provides a starting point for considering future legislation. Finally, there is a wide range of youth access issues that are not addressed in the settlement agreement that could be the subject of state legislative initiatives.



SUMMARY OF THE MASTER SETTLEMENT AGREEMENT

(The primary source of the information in this summary is the *Master Settlement Agreement*, as posted to the website of the National Association of Attorneys General at <http://www.naag.org/settle.htm>) ←

EFFECTIVE DATES

- **Master Settlement Agreement (MSA) Execution Date**
- The date when the Attorneys General and the tobacco manufacturers sign the Master Settlement Agreement (MSA).
- The MSA was signed by representatives of 46 states, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam, the District of Columbia, the Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers, on **November 23, 1998**.
- Various provisions of the settlement are triggered by this date.
- **State Specific Finality Date**
- **State Specific Finality** occurs when a state court approves the settlement and the consent decree. **This must be a final approval.** All the time available to appeal the court's decision must have expired, or alternatively, if approval of the settlement is appealed, **state specific finality cannot be attained until a final decision regarding approval of the settlement has been rendered.**
- When state specific finality is attained, the state becomes vested and funds deposited in the MSA escrow account can be transferred to a special account established specifically for the state, within the MSA escrow account.
- The first steps towards State Specific Finality will occur in December 1998, when the states that had suits pending against the industry must file papers to settle the suits by December 11, 1998. States that did not sue the industry must file papers seeking approval of the MSA by December 23, 1998.
- **Final Approval Date**
- The tobacco settlement funds will become available to all states that have attained State Specific Finality on the **Final Approval Date**. This date is the earlier of June 30, 2000, or the date when 80 percent of the settling states attain state specific finality *and* states with 80 percent of the state's financial allocation attain state specific finality.
- **No money will be dispersed to the states until the Final Approval Date.**
- **After June 30, 2000, whether or not 80 percent of the states have attained State Specific Finality and regardless of the percentage of the total allotment these states represent, funds will be available to disperse to a state as soon as state specific finality is attained.**
- **Settlement Termination Date**
- If a state fails to attain State Specific Finality by December 31, 2001, the MSA with respect to that state will be terminated and the state will become a non-settling state.



MARKETING AND ADVERTISING RESTRICTIONS

- **Restrictions on Brand Name Sponsorships**
- Prohibits brand name sponsorship of events with a significant youth audience, or of team sports (football, basketball, baseball, hockey or soccer).
- Prohibits sponsorship of events where the paid participants or contestants are underage.
- Limits tobacco companies to one brand name sponsorship per year, after current contracts (in effect as of August 1, 1998) expire or after three years, whichever comes first.
 - Provides a special exception for the Brown and Williamson Company permitting it to sponsor either the GPC country music festival or the Kool jazz festival (formerly both were annual events), plus one other brand name sponsored event.
- Allows **corporate sponsorship** of athletic, musical, cultural, artistic or social events as long as the corporate name does not include the brand name of a domestic tobacco product.
- Bans the use of tobacco brand names for stadiums and arenas.
- Limits the duration and restricts the placement of advertising for sponsored events.
- **General Advertising and Marketing Restrictions**
- Bans use of **cartoon characters**, but not human subjects (e.g. the Marlboro Man), in the advertising, promotion, packaging or labeling of tobacco products, effective May 22, 1999.
- Bans payments to promote tobacco products in movies, television shows, theater productions or live performances, videos and video games.
- Bans distribution and sale of non-tobacco merchandise with brand-name logos (caps, T-shirts, backpacks, etc.), effective July 1, 1999.
- Prohibits tobacco companies from authorizing third parties to use or advertise brand names.
- Requires tobacco companies to designate a contact in each state that will respond to Attorney General complaints of prohibited third party activity.
- Exempts licensing agreements or contract in existence as of July 1, 1998, but does not permit the licensing agreements or contracts to be extended.
- Bans future cigarette brands from being named after recognized non-tobacco brand or trade names (e.g. Harley Davidson, Yves Saint Laurent, Cartier) or nationally recognized sports teams, entertainment groups or individual celebrities.
- **Restrictions on Outdoor Advertising**
- Bans all transit and outdoor advertising, including: billboards, signs and placards larger than a poster in arenas, stadiums, shopping malls, and video game arcades. [**Note: Poster-sized signs and placards can be placed in arenas, stadiums, shopping malls and video game arcades, but must conform to the overall agreement regarding the targeting of advertising to children.**]
- Tobacco billboards and transit ads must be removed by April 22, 1999.
- **Allows states to substitute, at industry expense and for the duration of billboard lease periods, alternative advertising which discourages youth smoking.**
- Bans tobacco companies from entering into agreements that would prohibit advertising discouraging tobacco use.



YOUTH ACCESS RESTRICTIONS

- After November 23, 1998:
 - Free samples cannot be distributed except in a facility or enclosed area where the operator

- ensures no underage individuals are present.
 - o No gifts can be offered to youth in exchange for the purchase of tobacco products, coupons or proofs of purchase.
- Gifts cannot be distributed through the mail without proof of age (legible driver's license certified to be valid by the gift recipient).
- **Prohibits the manufacture of cigarettes in packages of less than 20 (January 22, 1999 - December 31, 2001) and prohibits the distribution and sale of cigarettes in packages of less than 20 (April 22, 1999 - December 31, 2001). *These provisions sunset, December 31, 2001. After this date, if state legislation prohibiting these practices is not enacted, the tobacco manufacturers may resume the manufacture, distribution and sale of cigarettes in packages of less than 20 cigarettes.***
 - o After January 22, 1999, tobacco companies are prohibited from opposing state legislation that bans the manufacture and sale of cigarette packs containing fewer than 20 cigarettes.
- **Prohibits new challenges by the industry against the enforceability of constitutionality of state and local tobacco control laws, ordinances, and rules enacted prior to June 1, 1998.**
- Specifies that states do not waive any criminal liability based on federal, state, or local law.



SMOKING CESSATION & PREVENTION

- ***The National Foundation and the National Public Education Fund***
- The tobacco industry will contribute \$25 million annually for ten years to support a charitable foundation, established by the Executive Committee of the National Association of Attorneys General (NAAG), that will support the study of programs to reduce teen smoking and substance abuse and the prevention of diseases associated with tobacco use.
- Tobacco industry payments for the Foundation into the Master Settlement Agreement escrow account begin March 31, 1999, **and funds can be allocated to the Foundation when at least one state has attained State Specific Finality.**
- An eleven-member board of directors will govern the foundation. NAAG, the National Conference of State Legislatures (NCSL) and the National Governors' Association (NGA) will each appoint two directors from their membership and the six directors will select the final five members. One of the five directors must have expertise in public health issues; the remaining four must have expertise in public health, medicine or child psychology.
- The Foundation will formally affiliate with an educational or medical institution selected by the board of directors.
- The foundation will:
 - o Carry out a nation wide, sustained advertising and education program to counter youth tobacco use and educate consumers about the cause and prevention of diseases associated with tobacco use.
 - o Develop, disseminate and test the effectiveness of: (1) counter advertising campaigns; (2) of model classroom educational programs, including programs targeting at-risk population; and (3) of criteria for effective cessation programs.
 - o Commission studies, fund research and publish reports on factors that influence youth smoking and substance abuse.
 - o Develop targeted training and information programs for parents.
 - o Maintain a library of foundation studies, reports and publications.

- Track and monitor youth smoking and substance abuse with a focus on reasons for increases or failures to decrease tobacco and substance use rates.
- The foundation is prohibited from engaging in political or lobbying activities.
- A severance clause is included in the Master Settlement Agreement for settling states that are prohibited by state law from entering into the foundation portion of the agreement.
- **The National Public Education Fund**
 - The industry will contribute \$1.45 billion over the next five years to support the National Public Education Fund, established to carry out a national, sustained advertising and education program to counter youth tobacco use and educate consumers about tobacco-related diseases.
 - As long as the participating tobacco manufacturers represent 99.05 percent of the market, the industry will continue to contribute \$300 million annually to the National Public Education Fund.
 - The fund may make grants to states and political subdivisions to carry out the fund's purposes.
 - Grants from the fund will be made by the National Foundation.
 - Outside contributions can be made to the foundation and specifically to the education fund.



ENFORCEMENT/CONSENT DECREES

- **State Specific Finality**
- **State Specific Finality occurs when a state court approves the settlement and the consent decree.** The consent decree will effectively implement the provisions of the settlement in the state. Legal challenges to the consent decree in a state are possible. (See **Attachment A** for a copy of the draft consent decree included as **Exhibit L** in the Master Settlement Agreement.)
- **State Specific Finality cannot be attained until all legal challenges, including appeals to the settlement and the consent decree has been addressed. The court's approval of the settlement and the consent decree must be a final approval.**
- When state specific finality is attained, the state becomes vested and funds deposited in the MSA escrow account can be transferred to a special account, within the MSA escrow account, established specifically for the state.
- **Court Jurisdiction for Implementation and Enforcement**
- Settling states or tobacco companies may apply to the court to enforce or interpret the terms of the agreement, although before applying to the court, a party must give the other parties and NAAG 30-days notice (unless the Attorney General determines there is a public health or safety concern requiring faster action).
- If the court issues an enforcement order enforcing the agreement and a party violates that order, the court may order monetary, civil contempt or criminal sanctions to enforce compliance with the enforcement order.
- Key public health provisions of the MSA agreement are included in consent decrees to be filed in each state.
- Settling states or tobacco companies may apply to the court to enforce the terms of the consent decree.
- A settling state may not seek to enforce the consent decree of another settling state.
- A state is not required to give any prior notice before sending an order to enforce a consent decree from the court, except that a 10-day notice is required if the claimed violation involves targeting youth or making material misrepresentations about tobacco products (unless the Attorney General determines there is a public health or safety concern requiring faster action), or the party has committed a

- substantially similar violation previously.
- If the court finds the consent decree has been violated, the court may award any relief available under the consent decree or the law in the state.
- State Attorneys General may access company documents, records and personnel to enforce the agreement.
- **Implementation and Enforcement Coordination by NAAG**
- NAAG will:
 - Receive \$150,000 annually from December 31, 1998 through December 31, 2007 to coordinate and to facilitate the implementation and enforcement of the agreement on behalf of the attorneys general and the settling states.
 - Monitor potential conflicting court interpretations involving the settlement.
 - Convene two meetings each year and one national conference every three years to evaluate the success of the settlement and to coordinate the Attorneys General efforts.
 - Assist states with inspection and discovery activities that are conducted to enforce the settlement.
- **State Antitrust/Consumer Protection Enforcement Fund**
- The purpose of the Fund is to:
 - enforce and implement the terms of the MSA, by partial payment of the monetary costs of the Independent Auditor as contemplated by the agreement; and
 - provide monetary assistance to the various states' attorneys general, including funds to: (1) investigate and/or litigate suspected violations of the Agreement and/or Consent Decree; (2) investigate and/or litigate suspected violations of state and/or federal antitrust or consumer protection laws with respect to the manufacture, use, marketing and sales of tobacco products; and (3) enforce the "qualifying statute."
- On March 31, 1999, the industry is directed to pay \$50 million to support the fund.



CORPORATE CULTURE AND COMPLIANCE, LOBBYING RESTRICTIONS

- **Requires a Corporate Commitment to Reduce Youth Access and Consumption**
- Beginning May 22, 1999, companies must:
 - Develop and regularly communicate corporate principles that commit to complying with the Master Settlement Agreement and to reducing youth smoking.
 - Designate an executive level manager to identify ways to reduce youth access and consumption of tobacco.
 - Encourage employees to identify additional methods to reduce youth access and youth consumption.
- For the purpose of enforcing the Master Settlement Agreement, antitrust staff for any settling state may inspect and copy all non-privileged, non-work-product records and interview association directors, officer, and employees.
- **Corporate Compliance**
- **Prohibits agreements to suppress research**
 - Prohibits a participating manufacturer from entering into a contract or other arrangement that designed to or has the effect of: limiting competition in the production or distribution of information about the health hazards or other consequences of the use of tobacco products; limiting or

suppressing research into smoking and health; and limiting or suppressing research into the marketing or development of new products.

- **Prohibits material misrepresentations**
 - Prohibits a participating manufacturer from making any material misrepresentation of fact regarding the health consequences of using any tobacco product.
- **Disbands Tobacco Trade Associations**
- Disbands the Council for Tobacco Research, the Tobacco Institute, and the Council for Indoor Air Research.
- Requires all records of these organizations that relate to any lawsuit to be preserved.
- **Regulation and Oversight of New Tobacco Trade Associations**
- The by-laws of any new industry trade association must provide that: (1) the association officers will be appointed by the board; and (2) the officers be employees of the association and cannot be employed by a member company.
- The association's legal counsel must be independent and cannot serve as counsel to member companies.
- Minutes of board of director meetings will be prepared and maintained for at least five years.
- **Lobbying Restrictions and Restrictions on Trade Associations**
- **Imposes Restrictions on Lobbyists**
 - After a state has attained **state specific finality**, tobacco companies will be prohibited from opposing **certain kinds of state or local legislation, laws or administrative rules** (listed below and found in **Exhibit F** of the Master Settlement Agreement) that are intended to limit youth access to and consumption off tobacco products.
- **Protected Legislation, Laws, Administrative Rules (Exhibit F)**

Legislation, Laws or Administrative Rules that:

- Limit youth access to vending machines.
- Include cigars within the definition of tobacco products.
- Enhance enforcement efforts to identify and prosecute violations of laws prohibiting retail sales to youth.
- Encourage or support the use of technology to increase the effectiveness of age-of-purchase laws (e.g. the use of programmable scanners, scanners to read drivers' licenses, or use of other age/ID data banks).
- Limit promotional programs for non-tobacco goods using tobacco products as prizes or give-aways.
- Enforce access restrictions through penalties on youth for possession or use.
- Limit tobacco product advertising in or on school facilities, or the wearing of tobacco logo merchandise in or on school property.
- Limit non-tobacco products that are designed to look like tobacco products, such as bubble gum cigars, candy cigarettes etc.
- Tobacco companies must require their lobbyists to certify, in writing, that they have reviewed and will fully comply with settlement terms including disclosure of financial contributions regarding lobbying activities and new corporate culture principles.
- Requires companies to disclose lobbying costs to the state Attorney General in states without laws regarding financial disclosure of lobbying expenses.
- Prohibits lobbyists from supporting or opposing state, federal or local laws or actions without the authorization of the companies.

- After January 22, 1999, tobacco companies are prohibited from opposing state legislation that bans the manufacture and sale of cigarette packs containing fewer than 20 cigarettes.
- Prohibits the industry from lobbying for the diversion of settlement money to non-tobacco or non-health related uses.



ATTORNEYS' FEES

(Funds for payment of attorney fees are in addition to the \$206 billion in payments to states)

- **Requires Industry to Reimburse States for Attorneys Fees**
- Requires the tobacco companies to state and local governments for all reasonable costs (costs and expenses for which the industry would reimburse their own counsel and agents) and expenses and in-house attorney fees associated with the tobacco industry litigation.
 - Reimbursement will be at the market rate for hourly fees in each state
 - **Reimbursement will occur after a state obtains State Specific Finality.**
- Establishes a \$150 million cap for amounts paid to the settling states, subject to reasonable verification by any requesting company.
- **Requires Industry to Pay Outside Attorney Fees**
- **The industry will pay outside attorney fees after a state has obtained State Specific Finality.**
- **The MSA has no effect on contracts states have made with outside counsel.**
- Two payment methods are available - liquidated fee agreement and arbitration.
 - If a state pays outside counsel and the outside counsel fails to negotiate a liquidated fee agreement or to seek arbitration as provided for under the MSA, the state may seek payment through the same methods as outside counsel.
- **Liquidated Fee Agreement (MSA – Exhibit O)**
 - The Master Settlement Agreement "Exhibit O" is a model state fee payment agreement.
 - Outside counsel may negotiate a liquidated fee agreement with the industry, and if accepted, would be paid from a \$1.25 billion pool of money from the tobacco industry over a four-year period.
 - No payments will be made after the fourth calendar quarter of 2003.
 - If the outside counsel rejects the liquidated fee process or cannot agree to an offer, they can go through arbitration.
- **Arbitration (MSA – Exhibit O, Appendix to Exhibit O)**
 - A three-member arbitration panel will be established with two permanent members and a member from the state represented by the outside counsel.
 - The protocol of panel proceedings is the **Appendix to Exhibit O** of the MSA.
 - The tobacco manufacturers pay for the arbitration panel's time and expenses.
 - Tobacco manufacturers can contest fee award requests.
 - The industry will pay whatever fee arbiters award, but the timing of the payment will be subject to a \$500-million-per-year cash flow cap.



CIVIL LIABILITY RESTRICTIONS

- Prohibits new challenges by the industry against the enforceability of constitutionality of state and local tobacco control laws, ordinances, and rules **enacted prior to June 1, 1998**.
- Requires the industry to dismiss, without fees, all claims against participating states.
- Requires the industry to dismiss pending legal challenges related to underage smoking and environmental tobacco smoke laws.
- Specifies that states expressly do not waive any criminal liability based on federal, state, or local law.
- Settles states' Attorneys General suits, however; individuals will continue to be able to sue.
- If a suit by a political subdivision of a state is successful, the state's allotment will be reduced by the amount of the award or settlement. (See "Litigating Releasing Parties Offset" in the section called "Payment Adjustments, Reductions and Offsets.")
- Settling states cannot waive or release any claims on behalf of Indian tribes.
- **Suits Pending by Political Subdivisions of States (MSA - Exhibit N)**
 - *City of New York, et al. v. The Tobacco Institute, Inc. et al.*, Supreme Court of the State of New York, County of New York, Index No. 406225/96
 - *County of Erie v. The Tobacco Institute, Inc. et al.*, Supreme Court of the State of New York, County of Erie, Index No. 1 1997/359
 - *County of Los Angeles v. R.J. Reynolds Tobacco Co. et al.*, San Diego Superior Court, No. 707651
 - *The People v. Philip Morris, Inc. et al.*, San Francisco Superior Court, No. 980864
 - *County of Cook v. Philip Morris, Inc. et al.*, Circuit Court of Cook County, Ill., No. 97-L-4550

Note: California and New York have agreed to share the proceeds of their settlement funds with their counties. The county suits in those states will be included in the state consent decree implementing the tobacco settlement.



PUBLIC DISCLOSURE

- **Disclosure Regarding Product**
- Prohibits the industry from making any material misrepresentations regarding the health consequences of smoking.
- Prohibits manufacturers from jointly contracting or conspiring to:
 - Limit information about the health hazards from the use of their products;
 - Limit or suppress research into smoking and health; and
 - Limit or suppress research into the marketing or development of new products.
- **Public Access to Tobacco Documents**
- Effective November 23, 1998, tobacco companies will release documents that are under protective orders in state lawsuits and that have no privilege of trade-secret claim.
- Settling states may seek court-approved public release of any documents that have been subject to an order or filing, prior to August 17, 1998, denying privilege, work product or trade secret protection. The industry can contest the action.

- **Website for Industry Documents**
- Requires tobacco manufacturers to open, at their expense, a Website that includes all documents produced in state and other smoking and health-related lawsuits.
- Requires the industry to maintain the site for ten years (through June 30, 2010) in a user-friendly and searchable format (requires an index and other features to improve searchable access).
- Requires the industry to add, at its expense, all documents produced in future civil actions involving smoking and health cases.
- Oversized or multi-media records will not be placed on the Website, but will be made available to the public through the Minnesota depository.
- The industry will provide the National Association of Attorneys General with up to \$100,000 for a computer consultant to review and make recommendations regarding the industry's Website plans.
- The National Association of Attorneys General's consultant can seek input from settling state officials, public health officials and other users of the Website.



TRUST FUND EXPENDITURES

- **General Provisions**
- Tobacco manufacturers will pay \$206 billion over the next 25 years to states in "up-front" and annual payments. Allotments to states will be made based on formulas agreed to by the Attorneys General.
- Payments made by tobacco companies (annual payments, strategic contribution fund, and up-front payments) will be adjusted annually in a number of ways. (See "**Payment Adjustments, Reductions, and Offsets**" for details.)
- No money will be dispersed to the states until "Final Approval" is reached. (See "Effective Dates" for detail)
- **Up-front Payments (\$12.742 billion)**
- Tobacco companies will pay \$2.4 billion annually between 1998 and 2003. A three percent inflation factor is included in the amounts for years 2000 – 2003 (e.g. \$2.4 billion (1998) increased by three percent is \$2.472 billion (1999)). The funds will be allocated as follows:
 - \$2.4 billion in 1998;
 - \$2.472 billion in 2000;
 - \$2.546 billion in 2001;
 - \$2.623 billion in 2002; and
 - \$2.7 billion in 2003.
- The following adjustments, reductions and offsets apply to payments starting in 2000: inflation adjustment; volume adjustment; non-settling states reduction; miscalculated and disputed claims offset. (See "**Payment Adjustments, Reductions and Offsets**" for detail.)
- **Annual Payments (\$183.177 billion)**
- If all states participate in the settlement, annual payments will "ramp-up" beginning with a \$4.5 billion payment on April 15, 1999. The April 15th annual payments will be as follows:
 - \$4.5 billion in 2000;
 - \$5 billion in 2001;
 - \$6.5 billion in each of 2002 and 2003;
 - \$8 billion in each year 2004-2007;
 - \$8.139 billion in annually in 2008-2017 (plus \$861 million annually during the same period to the

- o strategic fund); and
 - o \$9 billion in 2018 and thereafter.
- The following adjustments, reductions and offsets apply to payments starting in 2000: inflation adjustment; volume adjustment; previously settled states reduction (applies to each annual payment below \$8 billion); non-settling states reduction; non-participating manufacturers adjustment; miscalculated and disputed claims offset; federal legislation offset; and the litigation releasing parties offset. (See "**Payment Adjustments, Reductions and Offsets**" for detail.)
- The \$183.177 billion figure reflects payments after the "previously settled states reduction" is applied.
- **Strategic Contribution Fund (\$8.61 billion)**
- On April 15, 2008 and on April 15 each year through 2017, the companies will pay \$861 million into a strategic contribution fund.
- Money from the fund will be allocated to states based on a strategic contribution formula developed by Attorneys General. The allocation formula will reflect the contribution made by states toward resolution of the state lawsuits against tobacco companies.
 - o The formula is to be developed by June 1999.
- The following adjustments, reductions and offsets apply to payments starting in 2000: inflation adjustment; volume adjustment; non-participating manufacturers adjustment; miscalculated and disputed claims offset; federal legislation offset; and the litigation releasing parties offset. (See "**Payment Adjustments, Reductions and Offsets**" for detail.)
- **National Foundation (\$250 million over 10 years)**
- See "Smoking Cessation and Prevention" for details.
- **National Public Education Fund (\$1.45 billion over the next five years)**
- See "Smoking Cessation and Prevention" for details.
- **Attorney General Enforcement Fund (\$50 million – one time payment in 1999)**
- See "State Antitrust/Consumer Protection Enforcement fund" in "Enforcement/Consent Decrees" for details.
- **Payments to the National Association of Attorneys General (\$1.5 million over 10 years)**
- See "Implementation and Enforcement Coordination by NAAG" in "Enforcement/Consent Decrees" for details.



PAYMENT ADJUSTMENTS, REDUCTIONS AND OFFSETS

- **Order of Application Offsets, Reductions and Adjustments**
- Inflation Adjustment
- Volume Adjustment
- Previously Settled States Reduction
- Non-Settling States Reduction
- Non-Participating Manufacturer's Adjustment
- Offset for Miscalculated or Disputed Payments
- Federal Tobacco Legislation Offset
- Litigating Releasing Parties Offset
- **Inflation Adjustment Percentage**
- The settlement payments will be subject to an annual inflation adjustment. The **Inflation Adjustment Percentage** applicable to payments due in the year 2000 will be equal to the greater of 3% or the

Consumer Price Index Percentage (CPI%). [See "Definitions" below, there is an important difference between the Consumer Price Index (CPI) and the CPI%]. The Inflation Adjustment Percentage applicable to payments due in any year after 2000 shall be calculated by applying each year the greater of 3% or the CPI% on the Inflation Adjustment Percentage applicable to payments due in the prior year. (Inflation formula is set forth and described in "Exhibit C" of the MSA.)

- **Definitions**

- **"Consumer Price Index"** - The Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor (or other similar measures agreed to by the Settling States and the Participating Manufacturers).
- The **"Consumer Price Index Percentage (CPI%)"** - The total **percent change** in the Consumer Price Index during the calendar year immediately preceding the year in which the payment in question is due
- For example, if the **Consumer Price Index** for December 1999 (as released in January 2000) is 2% higher than the **Consumer Price Index** for December 1998 (as released in January 1999), then the **CPI%** with respect to a payment due in 2000 would be 2%. The **Inflation Adjustment Percentage** applicable in the year 2000 would be 3%. Continuing the example, if the **CPI%** with respect to a payment due in 2001 is 6%, then the **Inflation Adjustment Percentage** applicable in 2001 would be 9.1800000% (an additional 6% applied on the 3% **Inflation Adjustment Percentage** applicable in 2000), and if the **CPI%** with respect to a payment due in 2002 is 4%, then the Inflation Adjustment Percentage applicable in 2002 would be 13.5472000% (an additional 4% applied on the 9.1800000% Inflation Adjustment Percentage applicable in 2001). (See "**Appendix C**" for additional illustration of how the Inflation Adjustment Percentage is calculated. Also see "**Exhibit C**" of the MSA.)

- **Volume Adjustment**

- An adjustment to settlement payments applied to reflect increases or decreases in tobacco manufacturers operating income from the sales of cigarettes in the United States, Puerto Rico and the District of Columbia. (The volume adjustment formula is established in "**Exhibit E**" of the MSA.)

- **Non-Settling States Reduction**

- Reduces the amounts the tobacco manufacturers must pay by the combined payments due to non-settling states. This reduction does not reduce payments to settling states in any way. The manufacturers are not required to make a payment if the state is a non-settling state 15 days before the payment is due.
- Note: Currently all states are either participating states or are previously settled states. However, should a state fail to obtain state specific finality, it would become a non-settling state.

- **Previously Settled States Adjustment**

- A reduction determined by multiplying the applicable settlement payment by 12.4500000%, in the case of payments due in or prior to 2007; 12.2373756%, in the case of payments due after 2007 but before 2018; and 11.0666667%, in the case of payments due in or after 2018.
- The previously settled states are Florida, Minnesota, Mississippi, and Texas.

- **Offset for Miscalculated or Disputed Payments**

- In cases where a manufacturer makes an underpayment or overpayment, the independent auditor, if notified within four years of the payment due date, is to promptly determine what payment is due to the manufacturer in the case of an overpayment or to the escrow account in cases of underpayment.
- Disputed payments are deposited in a separate account within the escrow account for disputed payments. When final resolution has been reached regarding a disputed payment, the independent auditor directs the funds be deposited in the appropriate account.

- **Non-Participating Manufacturers Adjustment**

- An adjustment to payments made by Participating Manufacturers to address market share losses

attributable to the provisions in the MSA.

- On or before February 2nd of each year when the market share loss exceeds zero, a nationally recognized firm of economic consultants will determine whether the provisions of the MSA played a significant role in the market loss. If the firm determines that the provisions of the MSA were a significant contributing factor to the market loss, the Non-participating Manufacturer Adjustment would be applied.
 - If the aggregate market share of companies participating in the agreement declines by greater than two percent, their annual payment is reduced by three percent for each percent lost over the two percent threshold.
 - If the market share exceeds 16 2/3 percent, a more complicated formula established in the MSA is used to determine the adjustment. (See "**Appendix D**") for detail.)
- States are encouraged to pass the model statute (See "**Appendix B**"), provided in the Master Settlement Agreement (**Exhibit T**). This model law creates a reserve fund from which non-participating manufacturers can pay future claims, establishing a more level playing field between participating and non-participating manufacturers.
 - **The model act must be enacted by states exactly as it is drafted in the MSA and as a stand-alone piece of legislation or the state must enact a "qualifying statute," as determined by a firm jointly retained by the settling states and the original participating manufacturers. The ruling of the firm is final.**
 - A "qualifying statute" is defined in the MSA as a settling state's statute, regulation, law and/or rule (applicable everywhere the state has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the participating manufacturers (as opposed to the non-participating manufacturers) experience as a result of the MSA.
 - Annual payments will be reduced by up to 65 percent in states that *do not enact the model law*.
 - If a court strikes down a state's law, based on the model statute, the state's annual payment would be reduced by no more than 65 percent.
- **Federal Legislation Offset**
- If new federal tobacco related legislation, that requires participating tobacco companies to make payments (*settlement payment, tax or any other means*) to the federal government, is enacted on or before November 30, 2002, and some portion of that money is sent to the settling states either in unrestricted funds or in grants restricted to any form of health care or tobacco-related health care, *those payments may be offset, dollar for dollar, from the annual payments to states.*
 - If the federal funds to states were restricted to assistance to tobacco growers or communities dependent on the production of tobacco or tobacco products, no reductions would be taken.
- **Litigation Releasing Parties Offset**
- In the event a "releasing party" in a settling state pursues a claim against a participating manufacturer and receives a monetary judgement; the funds will be an offset on the affected settling state's payment. A "releasing party" is defined as a Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions. In addition, it includes, to the full extent of the power of the state attorney general, to release past, present and future claims of the following:
 - any Settling State's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public educational institutions; and
 - persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participated in the settlement:
 - to the extent that they are seeking relief on behalf of or generally applicable to the general public

- in a Settling State or the people of the State, as opposed solely to private or individual relief for separate and distinct injuries; or
- o to the extent that they (as opposed to an individual) are seeking recovery of health-care expenses (other than premium or capitation payments for the benefit of present or retired state employees) paid or reimbursed, directly or indirectly, by a settling state.



AGRICULTURE AND RURAL COMMUNITY ASSISTANCE

- The Attorneys General are a separate agreement with the tobacco manufacturers to address the concerns of tobacco growers and impacted communities and are scheduled to report on progress by the end of the year (1998).

Note: The R.J. Reynolds Tobacco Company has ceased participation (12/3/98) in these negotiations and has instead proposed to increase the amount of American grown leaf tobacco next year and to maintain that level over the next ten years. The other participating manufacturers are continuing to discuss a separate settlement agreement.

SMOKELESS TOBACCO SETTLEMENT

- The Attorneys General reached a separate agreement with U.S Tobacco regarding smokeless tobacco products. U.S. Tobacco represents 58 percent of the smokeless tobacco market. The non-economic provisions of the settlement are similar to those established in the tobacco settlement agreement. The economic are very different and establish payments to the National Foundation, but do not provide any additional funds to state governments. Over a span of 10 years, participating smokeless tobacco manufacturers will pay \$400 million into the National Public Education Fund according to a schedule established in the settlement agreement.

MOST FAVORED NATION PROVISIONS

- If tobacco manufacturers enter into an agreement with better overall terms than are provided in the MSA before October 1, 2000, the more generous benefits would apply to all settling states.
- This provision does not apply if such an agreement is reached after the seating of a jury or after a trial has begun.
- If an agreement with more favorable non-economic terms is entered into on or before October 1, 2000, settling states have the option of availing themselves of the benefits.
- If a settling state enters into an agreement with a non-participating manufacturer and the terms are more favorable to the tobacco company, participating companies can benefit, but only within that state.



APPENDIX A - MODEL CONSENT DECREE (MSA - Exhibit L)

EXHIBIT L (Master Settlement Agreement)

MODEL CONSENT DECREE

IN THE [XXXXXX] COURT OF THE STATE OF [XXXXXX]
IN AND FOR THE COUNTY OF [XXXXX]

----- x CAUSE NO. XXXXXX

:
STATE OF [XXXXXXXXXX], :: Plaintiff, :

v. :
[XXXXXX XXXXX XXXX], et al., :
: Defendants. :

CONSENT DECREE AND FINAL JUDGMENT

----- x

WHEREAS, Plaintiff, the State of [name of Settling State], commenced this action on [date], [by and through its Attorney General [name]], pursuant to [her/his/its] common law powers and the provisions of [state and/or federal law];

WHEREAS, the State of [name of Settling State] asserted various claims for monetary, equitable and injunctive relief on behalf of the State of [name of Settling State] against certain tobacco product manufacturers and other defendants;

WHEREAS, Defendants have contested the claims in the State's complaint [and amended complaints, if any] and denied the State's allegations [and asserted affirmative defenses];

WHEREAS, the parties desire to resolve this action in a manner which appropriately addresses the State's public health concerns, while conserving the parties' resources, as well as those of the Court, which would otherwise be expended in litigating a matter of this magnitude; and

WHEREAS, the Court has made no determination of any violation of law, this Consent Decree and Final Judgment being entered prior to the taking of any testimony and without trial or final adjudication of any issue of fact or law;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the Participating Manufacturers. Venue is proper in this [county/district].

II. DEFINITIONS

The definitions set forth in the Agreement (a copy of which is attached hereto) are incorporated herein by reference.

III. APPLICABILITY

A. This Consent Decree and Final Judgment applies only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a violation of this Consent Decree and Final Judgment (or any order issued in connection herewith) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Decree and Final Judgment to do so.

B. This Consent Decree and Final Judgment is not intended to and does not vest standing in any third party with respect to the terms hereof. No portion of this Consent Decree and Final Judgment shall provide any rights to, or be enforceable by, any person or entity other than the State of [name of Settling State] or a Released Party. The State of [name of Settling State] may not assign or otherwise convey any right to enforce any provision of this Consent Decree and Final Judgment.

IV. VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree and Final Judgment is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree and Final Judgment.

V. INJUNCTIVE AND OTHER EQUITABLE RELIEF

Each Participating Manufacturer is permanently enjoined from:

A. Taking any action, directly or indirectly, to target Youth within the State of [name of Settling State] in the advertising, promotion or marketing of Tobacco Products, or taking any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within the State of [name of Settling State].

B. After 180 days after the MSA Execution Date, using or causing to be used within the State of [name of Settling State] any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

C. After 30 days after the MSA Execution Date, making or causing to be made any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop within the State of [name of Settling State] any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any Media; provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults; and (4) actions taken by any Participating Manufacturer in connection with a

Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) and III(c)(2)(B)(i) of the Agreement, and use of a Brand Name to identify a Brand Name Sponsorship permitted by subsection III(c)(2)(B)(ii).

D. Beginning July 1, 1999, marketing, distributing, offering, selling, licensing or causing to be marketed, distributed, offered, sold, or licensed (including, without limitation, by catalogue or direct mail), within the State of [name of Settling State], any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this section shall (1) require any Participating Manufacturer to breach or terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public; or (6) apply to apparel or other merchandise (a) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsection III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise, or (b) used at the site of a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement (during such event) that are not distributed (by sale or otherwise) to any member of the general public.

E. After the MSA Execution Date, distributing or causing to be distributed within the State of [name of Settling State] any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Consent Decree and Final Judgment, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

F. Using or causing to be used as a brand name of any Tobacco Product pursuant to any agreement requiring the payment of money or other valuable consideration, any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this provision, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

G. After 60 days after the MSA Execution Date and through and including December 31, 2001, manufacturing or causing to be manufactured for sale within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco); and, after 150 days after the MSA Execution Date and through and including December 31, 2001, selling or distributing within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-

own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

H. Entering into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in the preceding sentence shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

I. Making any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Provided, however, that nothing in the preceding sentence shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

VI. MISCELLANEOUS PROVISIONS

A. Jurisdiction of this case is retained by the Court for the purposes of implementing and enforcing the Agreement and this Consent Decree and Final Judgment and enabling the continuing proceedings contemplated herein. Whenever possible, the State of [name of Settling State] and the Participating Manufacturers shall seek to resolve any issue that may exist as to compliance with this Consent Decree and Final Judgment by discussion among the appropriate designees named pursuant to subsection XVIII(m) of the Agreement. The State of [name of Settling State] and/or any Participating Manufacturer may apply to the Court at any time for further orders and directions as may be necessary or appropriate for the implementation and enforcement of this Consent Decree and Final Judgment. Provided, however, that with regard to subsections V (A) and V(l) of this Consent Decree and Final Judgment, the Attorney General shall issue a cease and desist demand to the Participating Manufacturer that the Attorney General believes is in violation of either of such sections at least ten Business Days before the Attorney General applies to the Court for an order to enforce such subsections, unless the Attorney General reasonably determines that either a compelling time-sensitive public health and safety concern requires more immediate action or the Court has previously issued an Enforcement Order to the Participating Manufacturer in question for the same or a substantially similar action or activity. For any claimed violation of this Consent Decree and Final Judgment, in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation, the Attorney General shall give good-faith consideration to whether: (1) the Participating Manufacturer that is claimed to have committed the violation has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless that party has been guilty of a pattern of violations of like nature; and (2) a legitimate, good-faith dispute exists as to the meaning of the terms in question of this Consent Decree and Final Judgment. The Court in any case in its discretion may determine not to enter an order for monetary, civil contempt or criminal sanctions.

B. This Consent Decree and Final Judgment is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Consent Decree and Final Judgment; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it in this action, and has stipulated to the entry of this Consent Decree and Final Judgment solely to avoid the further expense, inconvenience, burden and risk of litigation.

C. Except as expressly provided otherwise in the Agreement, this Consent Decree and Final Judgment shall not be modified (by this Court, by any other court or by any other means) unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer irreparable harm from new and unforeseen conditions. Provided, however, that the provisions of sections III, V, VI and VII of this Consent Decree and Final Judgment shall in no event be subject to modification without the consent of the State of [name of Settling State] and all affected Participating Manufacturers. In the event that any of the sections of this Consent Decree and Final Judgment enumerated in the preceding sentence are modified by this Court, by any other court or by any other means without the consent of the State of [name of Settling State] and all affected Participating Manufacturers, then this Consent Decree and Final Judgment shall be void and of no further effect. Changes in the economic conditions of the parties shall not be grounds for modification. It is intended that the Participating Manufacturers will comply with this Consent Decree and Final Judgment as originally entered, even if the Participating Manufacturers' obligations hereunder are greater than those imposed under current or future law (unless compliance with this Consent Decree and Final Judgment would violate such law). A change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of the Participating Manufacturers shall not support modification of this Consent Decree and Final Judgment.

D. In any proceeding which results in a finding that a Participating Manufacturer violated this Consent Decree and Final Judgment, the Participating Manufacturer or Participating Manufacturers found to be in violation shall pay the State's costs and attorneys' fees incurred by the State of [name of Settling State] in such proceeding.

E. The remedies in this Consent Decree and Final Judgment are cumulative and in addition to any other remedies the State of [name of Settling State] may have at law or equity, including but not limited to its rights under the Agreement. Nothing herein shall be construed to prevent the State from bringing an action with respect to conduct not released pursuant to the Agreement, even though that conduct may also violate this Consent Decree and Final Judgment. Nothing in this Consent Decree and Final Judgment is intended to create any right for [name of Settling State] to obtain any Cigarette product formula that it would not otherwise have under applicable law.

F. No party shall be considered the drafter of this Consent Decree and Final Judgment for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. Nothing in this Consent Decree and Final Judgment shall be construed as approval by the State of [name of Settling State] of the Participating Manufacturers' business organizations, operations, acts or practices, and the Participating Manufacturers shall make no representation to the contrary.

G. The settlement negotiations resulting in this Consent Decree and Final Judgment have been undertaken in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Consent Decree and Final Judgment shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Consent Decree and Final Judgment nor any public discussions, public statements or public comments with respect to this Consent Decree and Final Judgment by the State of [name of Settling State] or any Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Consent Decree and Final Judgment.

H. All obligations of the Participating Manufacturers pursuant to this Consent Decree and Final Judgment (including, but not limited to, all payment obligations) are, and shall remain, several and not joint.

I. The provisions of this Consent Decree and Final Judgment are applicable only to actions taken (or omitted to

be taken) within the States. Provided, however, that the preceding sentence shall not be construed as extending the territorial scope of any provision of this Consent Decree and Final Judgment whose scope is otherwise limited by the terms thereof.

J. Nothing in subsection V(A) or V(I) of this Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

K. If the Agreement terminates in this State for any reason, then this Consent Decree and Final Judgment shall be void and of no further effect.

VII. FINAL DISPOSITION

A. The Agreement, the settlement set forth therein, and the establishment of the escrow provided for therein are hereby approved in all respects, and all claims are hereby dismissed with prejudice as provided therein.

B. The Court finds that the person[s] signing the Agreement have full and complete authority to enter into the binding and fully effective settlement of this action as set forth in the Agreement. The Court further finds that entering into this settlement is in the best interests of the State of [name of Settling State].

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED this ____ day of _____, 1998.

Source: *Master Settlement Agreement*, National Association of Attorneys General Website
(<http://www.naag.org/settle.htm>)



APPENDIX B - MODEL STATUTE (MSA - Exhibit T)

MODEL STATUTE - EXHIBIT T

Section __. Findings and Purpose.

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.