



Update on the Tobacco Master Settlement Agreement

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OFFICE OF THE INDIANA ATTORNEY GENERAL

JUNE 25, 2019

History of the MSA



Mississippi - 1994

IN THE CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI

MIKE MOORE,
ATTORNEY GENERAL
ex rel.,
STATE OF MISSISSIPPI,
Plaintiff,

v.

THE AMERICAN
TOBACCO COMPANY;
AMERICAN BRANDS, INC.;
R.J. REYNOLDS
TOBACCO COMPANY;
RJR NABISCO, INC.;
BATUS CORPORATION;
BROWN & WILLIAMSON
TOBACCO CORPORATION;
PHILIP MORRIS COMPANIES,
INC.; PHILIP MORRIS
INCORPORATED
(PHILIP MORRIS U.S.A.);
LIGGETT GROUP, INC.;
LIGGETT & MYERS, INC.;
BROOKE GROUP, LIMITED;
LOEWS CORPORATION;
LORILLARD CORPORATION;
THE COUNCIL FOR TOBACCO
RESEARCH - U.S.A. INC.
(SUCCESSOR TO TOBACCO
INSTITUTE RESEARCH
COMMITTEE); THE TOBACCO
INSTITUTE, INC.;
HILL & KNOWLTON, INC.;
CORR-WILLIAMS TOBACCO
COMPANY; GENERIC PRODUCTS CORPORATION;
LAUREL
CIGAR & TOBACCO
COMPANY, INC.; LONG
WHOLESALE, INCORPORATED;
THE LEWIS BEAR COMPANY;
WIGLEY AND CULP, INC.
OF GULFPORT, MISSISSIPPI;
"A" THROUGH "Z" ENTITIES
(M.R.C.P. 9(b) DEFENDANTS),
Defendants.

COMPLAINT

Introduction

1. Mike Moore is the duly elected and present Attorney General of the State of Mississippi and,

according to law and equity, he brings this action on behalf of the Plaintiff, the State of Mississippi ("the State"). Under the Mississippi Constitution of 1890 and other positive law of the State of Mississippi, including Mississippi's common law and including, among other laws, Chapter 13, Medical Assistance for the Aged; Medicaid, 43-13-1 through 43-1-145, Miss. Code Ann. (1972), the State is responsible for the health, safety and welfare of its citizens, and the Attorney General has the duty to protect the interest of the general public.

2. For many years, the State has suffered harm and has incurred significant expenses associated with the provision of necessary health care and other such necessary assistance under various State programs to certain eligible citizens numbering in the thousands who suffer, or who have suffered, from tobacco-related injuries, diseases or sickness. This civil action is founded on principles of equity and is brought under Mississippi law to avoid a multiplicity of lawsuits in recovering such damages, and for such other relief as equitably may be obtained, for the harm thus unjustly, intentionally and wrongfully done and continuing to be done to the State and to its citizens by the various defendants, who have been and continue to be unjustly enriched thereby at the expense of the State.

3. The defendants are a cartel who promote, market, distribute and sell cigarettes, and/or materially assist others in so doing, to citizens in Jackson County, Mississippi, and elsewhere throughout the State, and have done so for many years. Under various State programs, the State pays out large sums of money for the provision of necessary health care and other such necessary assistance to eligible citizens in Jackson County, Mississippi, who have been and are now being treated in the Singing River Hospital in Jackson County, Mississippi, and elsewhere throughout the State, for the treatment of tobacco-induced disease, injury and sickness, and the state has done so for many years. Thus, venue is proper in the Chancery Court of Jackson County, Mississippi.

4. The defendants are certain cigarette manufacturers and distributors and/or certain of trade organizations, public relations firms, law firms, other such entities, with names both known and unknown, that, at all pertinent times, manufactured, designed, promoted, marketed, packaged, distributed, and/or placed into the stream of commerce into the State numerous brands of cigarettes, which are unreasonably dangerous and hazardous to the course of business, materially participating in and/or assisted other in so doing.

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The New York Times

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May 24, 1994

Mississippi Seeks Damages From Tobacco Companies

By MICHAEL JANOWSKY,

WASHINGTON, May 23—

Mississippi today became the first state to demand that cigarette makers bear the health care costs of smoking.

The state sued the tobacco industry, seeking reimbursement for the cost of medical programs, including Medicaid, that support victims of smoking-related illnesses.

"This lawsuit is premised on a simple notion: you caused the health crisis; you pay for it," Mike Moore, the Mississippi Attorney General, said in announcing the lawsuit. "The free ride is over. It's time these billionaire tobacco companies start paying what they rightfully owe to Mississippi taxpayers. It's time they quit hooking our young people on nicotine delivered through the dirty needle of cigarettes and other tobacco products."

The suit, filed in the Chancery Court of Jackson County, names as defendants 13 tobacco companies, as well as wholesalers, trade associations and industry public relations consultants. It follows four class-action lawsuits against the tobacco industry in recent months and mounting anti-smoking pressure in Congress, where a House subcommittee is studying the possibility of regulating tobacco products as drugs. First of Its Kind

But the Mississippi suit is unusual because it is the first initiated by a government on behalf of taxpayers to hold tobacco companies directly accountable for the health consequences of their products. The previous suits were filed by individuals or groups.

With medical costs soaring across the country, other states are likely to watch the Mississippi suit closely. Mr. Moore said in a telephone interview today that he had already had discussions with his Florida counterpart, who is considering a similar suit.

Richard A. Daynard, a law professor and chairman of the Tobacco Products Liability Project at Northeastern University in Boston called the Mississippi suit "a go-ahead sign to attorneys general in other states," adding, "There is nothing peculiar about Mississippi jurisdiction not to bring this kind of action in any other state."

Steven C. Parrish, vice president and chief counsel for Philip Morris, the largest American cigarette company, said that a state would have the same burden of proof as any other plaintiff suing a tobacco company and that that could prove difficult for the state. Through years of litigation, the tobacco industry has never paid anything in a judgment or settlement, chiefly because companies have always been able to show that smoking is a matter of choice. Also, no jury has ever concluded that illnesses are directly caused by smoking.

Brennan Dawson, vice president of the Tobacco Institute, the industry trade association that is also a defendant in the Mississippi suit, said the association had a policy of not commenting on product-liability cases. An Industry Counterattack

With the industry under such wide assault on so many issues, the R. J. Reynolds Tobacco Company's countered today, beginning a national advertising campaign to dispute Government assertions that second-hand smoke is a health hazard. The company ran full-page advertisements in several newspapers, including The New York Times and The Wall Street Journal. It argued that second-hand smoke is too diluted to contribute to any illness.

Philip Morris began a similar campaign last month, focusing on other tobacco issues.

DAMAGES, CIVIL PENALTIES AND RESTITUTION

The PSS

U.S.

Acting Alone, Mississippi Settles Suit

By BARRY MEIER JULY 4, 1997

In a move that could affect the proposed nationwide tobacco settlement, four major cigarette producers agreed yesterday to pay \$1.5 billion over 25 years to resolve a lawsuit over health-care costs linked with smoking.

Yesterday's agreement was the first formal settlement of tobacco companies and any of the 40 states that have filed suits to recover Medicaid money spent on smoking-related health care. Mississippi's case was set to go to trial next week. Similar settlements are expected soon with Florida and Texas, the next states to file suits, several lawyers close to the talks said.

Under yesterday's agreement, Mississippi would inn
million as its share of the industry's initial \$10 billion
of the national \$368.5 billion settlement proposal re
That is a favorable cut for Mississippi, given its size
the lawyers said.

In announcing yesterday's deal in Jackson, Miss., Attorney General of Mississippi, said the resolution Mississippi proceeds from the national agreement broader proposal's fate. That deal, if approved by

Morales obtains \$15.3 billion, marketing restrictions in hi
industry
FOR IMMEDIATE RELEASE
FRIDAY, JANUARY 16, 1998
STATE OF MINN
COUN

**MORALES OBTAINS \$15.3 BILLION, M
SETTLEMENT WITH TOBACCO INDUS**

Deal is Largest in Litigation History

Texas Attorney General Dan Morales on Friday announced the state's lawsuit against the tobacco industry, with payments to children's health care. It is the largest settlement in the history of the state's tobacco litigation.

Payments this year will total more than \$1.2 billion. At least \$1 million for a non-profit foundation that provides grants for a variety of health care services for all Texans. The remainder is designated for children's health care as well as smoking and enforcement programs. The deal also includes additional marketing practices, such as the elimination of all billboard advertising.

"Specifically, more than a million poor children in Texas will receive the care they need.

"The taxpayers of Texas are now fully compensated for the cost of to those afflicted with tobacco-related diseases. The money will be and treatment," he added.

Morales sued the tobacco industry on March 28, 1996, alleging violation of racketeering, mail fraud and conspiracy laws, as well as state consumer liability laws. The State had sought \$8.6 billion in compensatory damages.

The agreement requires the tobacco defendants to pay \$428 million to the Texas Foundation for Children and Public Health, a non-profit foundation. It provides for organizations and programs which promote and protect the interest of Texas children's public health.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY
SECOND JUDICIAL DISTRICT

SECOND

THE STATE OF MINNESOTA, BY HUBERT H.
HUMPHREY III, ITS ATTORNEY GENERAL, and
BLUE CROSS AND BLUE SHIELD OF MINNESOTA,
Plaintiffs,

ys.

PHILIP MORRIS INCORPORATED, R.J.
REYNOLDS TOBACCO COMPANY, BROWN &
WILLIAMSON TOBACCO CORPORATION, B.A.T.
INDUSTRIES P.L.C., BRITISH AMERICAN
TOBACCO COMPANY LIMITED, BAT (U.K. &
EXPORT) LIMITED, LORILLARD TOBACCO
COMPANY, THE AMERICAN TOBACCO
COMPANY, LIGGETT GROUP, INC., THE COUNCIL
FOR TOBACCO RESEARCH U.S.A., INC., and THE
TOBACCO INSTITUTE, INC.,
Defendants.

Civil Case No. C1-94-8565
May 8, 1998

SETTLEMENT AGREEMENT AND STIPULATION
FOR ENTRY OF CONSENT JUDGMENT

THIS SETTLEMENT AGREEMENT AND
RELEASE ("Settlement Agreement") is made as of the
date hereof, by and among the parties hereto, as
indicated by their signatures below, to settle and
resolve with finality all claims of the State of Minnesota
relating to the subject matter of this action which have
been or could have been asserted by the State of
Minnesota.

WHEREAS, the State of Minnesota, through its Attorney General Hubert H. Humphrey III, and Blue

WHEREAS, the Defendants have denied each and every one of Plaintiffs' allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to Plaintiffs' claims, which defenses have been contested by Plaintiffs;

WHEREAS, the parties hereto wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation of this matter (including appeals from any verdict), the State of Minnesota and the Settling Defendants have agreed to settle this litigation pursuant to terms which will achieve for the State of Minnesota (and thus for the people of the State of Minnesota) significant funding for the advancement of public health, the implementation of important tobacco-related public health measures in Minnesota, as well as funding for national research dedicated to studying and significantly reducing the use of Tobacco Products by youth;

WHEREAS, the State of Minnesota and Settling Defendants have agreed to settle this lawsuit on terms set forth in this Settlement Agreement and Stipulation for Entry of Consent Judgment and the attached Consent Judgment;

WHEREAS, the parties have further agreed to jointly petition the Court for approval of the Consent Judgment, on the grounds that settlement would be in the public interest;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the payments to be made by the Settling Defendants, the dismissal and release of claims by the State of Minnesota and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereto, acting by and through their authorized agents, memorialize and agree as follows:

GENERAL PROVISIONS

Jurisdiction.

Jurisdiction.

The State and the Settling Defendants acknowledge that this Court has jurisdiction over the subject matter of this action and over each of the parties to this Settlement Agreement, and that this

The Master Settlement Agreement

November 1998

CIGARETTE MAKERS AND STATES DRAFT A \$206 BILLION DEAL

By BARRY MEIER NOV. 14, 1998



The nation's four biggest cigarette makers and officials of eight states have reached agreement on the outlines of a settlement designed to resolve all remaining state claims over health costs related to smoking, attorneys general and industry lawyers involved in the talks said yesterday.

The plan, drafted to cover the 46 states that have not already made individual settlements with the industry, would cost the tobacco companies \$206 billion over 25 years and would restrict cigarette advertising and marketing.

It would eliminate the industry's most significant financial and legal threat: state suits seeking to recover the Medicaid costs of treating people with smoking-related illnesses.

The plan would cost the industry far less than a \$368.5 billion agreement with state attorneys general last year that eventually grew into a \$516 billion bill in Congress under which the Federal Government would also have gained regulatory authority over nicotine.

Unlike the earlier state proposal, companies from punitive damage

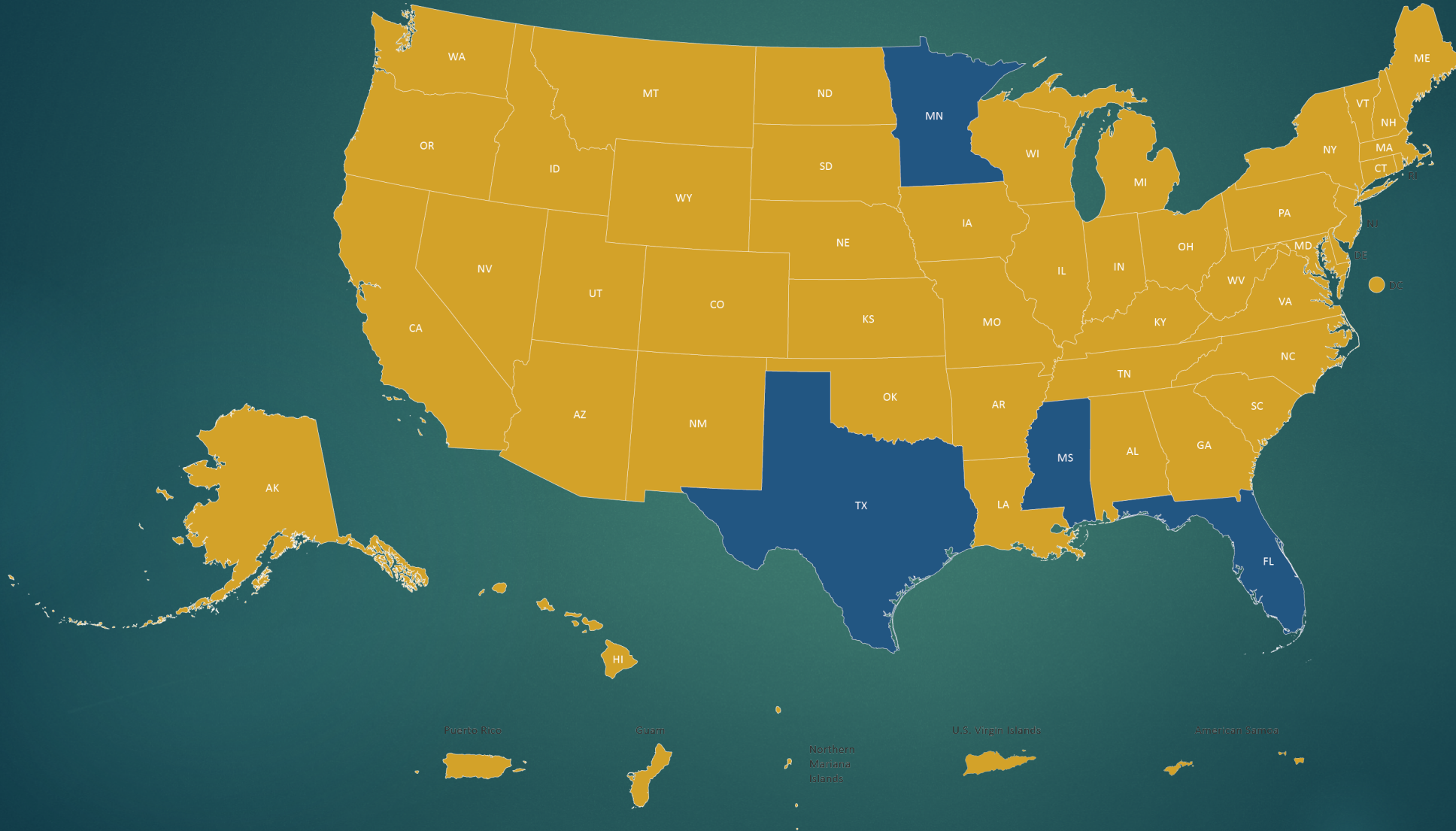
If companies finance the plan's cost, cigarette prices could go up. The pack would increase 35 cents over the next five years, though some makers might, for competitive reasons, choose to raise prices less and absorb the cost themselves.

Under the plan, which is expected to be completed today and announced as early as Monday, the producers have agreed to an array of marketing restrictions like a ban on billboard and transit advertisements as well as the sale of clothing and merchandise with brand logos.

The New York Times

\$206 billion over 25 years

The Settling States



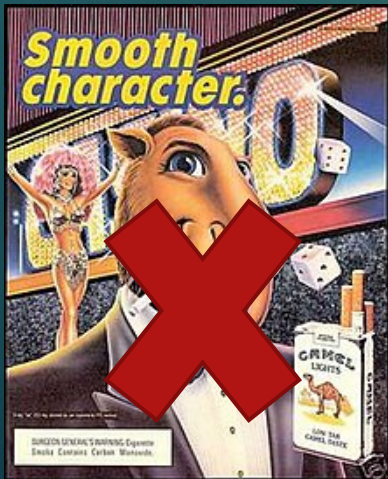
The Participating Manufacturers

- ▶ OPMs – Original Participating Manufacturers.
 - ▶ Philip Morris
 - ▶ RJ Reynolds (absorbed Brown & Williamson and Lorillard)
- ▶ SPMs – Subsequent Participating Manufacturers



Main Terms of the MSA

- ▶ Settling States dropped their suits against the PMs – all past civil claims and future claims for smoking related health care costs
- ▶ PMs make annual payments to the Settling States based on their sales in the US and Puerto Rico.
- ▶ Prohibitions and restrictions on cigarette marketing/advertising.
- ▶ PMs funded the Truth Initiative (formerly American Legacy Foundation)
- ▶ Tobacco Industry documents



Payments

- ▶ Payments made based on annual sales in the US and Puerto Rico
- ▶ Each Settling State receives its “Allocable Share” of that payment amount.
- ▶ “Base amount” is adjusted by:
 - ▶ Volume Adjustment
 - ▶ Inflation Adjustment
 - ▶ PSS Reduction
 - ▶ NPM Adjustment (potential)
- ▶ 2019 Payment: \$6,088,176,134.70
- ▶ Payments to date: \$132,756,482,473.96

The NPM Adjustment

- ▶ Non-Participating Manufacturers – not parties to the MSA.
- ▶ Potential downward adjustment in payments unless a state had in effect and “diligently enforced” a “Qualifying Statute” during that calendar year
- ▶ 2003 NPM Adjustment Arbitration: 2009-2013.
 - ▶ Late 2012, 20 states joined a “Term Sheet” to resolve the NPM Adjustment.
 - ▶ Nine states found diligent, six states found non-diligent.
- ▶ 2018 NPM Adjustment worth **\$998,229,302.55**.

2019 State of Play

- ▶ The “Term Sheet” – the NPM Adjustment Settlement
 - ▶ Finalized in Fall 2017, 36 states are now parties.
 - ▶ Bifurcated Adjustment
 - ▶ SET-Paid Adjustment – The Data Clearinghouse
 - ▶ New standard of diligent enforcement beginning in 2018 – all cigarettes the State “reasonably could have known about.”
- ▶ 2004 NPM Adjustment Arbitration
 - ▶ 9 Arbitrating States, 2 Uncontested States
 - ▶ State hearings nearly complete
- ▶ New York Settlement
- ▶ Montana – court has said its diligence must be determined in state court.

PACT Act

- ▶ The Prevent All Cigarette Tracking Act
 - ▶ Went into effect 6/29/10
 - ▶ Amends the Jenkins Act
- ▶ Cigarettes non-mailable
- ▶ Any person selling/shipping cigarettes (or smokeless tobacco) into a state must:
 - ▶ Register with ATF and the tobacco tax administrators of that state, and
 - ▶ Report each shipment made into the state, including the name/address of the receiver, the brand and quantity shipped to them, and the name/address/phone number of the person delivering the shipment.
- ▶ ATF Noncompliant List

Electronic Reporting/Uniformity

- ▶ Implement uniform reporting guidelines, uniform definitions, forms, and TPM/brand names.
- ▶ Schemas, schedules, and codes created by the FTA Tobacco Uniformity Committee.
- ▶ Makes information sharing between states easier and more efficient, as well as allowing Industry to file more efficiently.
- ▶ Tobacco Tax Information by State