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“Florida. Tobacco strike a deal”

**State wins \$11.3 billion, landmark concessions
by Scott Gold**

The tobacco industry agreed on Monday to pay \$11.3 billion to settle its grueling four-year legal battle with Florida in a pact that includes landmark restrictions on advertising and marketing of cigarettes to children.

The settlement comes two years after Gov. Lawton Chiles filed a lawsuit in West Palm Beach accusing the industry of using fraud and deceit to increase profits at the expense of taxpayers and children.

At the time, the industry – which has annual sales of \$45 billion – was considered legally invincible. “Our long and difficult four-year journey down Tobacco Road has come to a victorious end,” Chiles said after signing the agreement in the Palm Beach County Courthouse. “The tobacco industry has conceded defeat. We have a settlement of historic proportions.”

Still, the multibillion-dollar surrender could help the industry as it negotiates for concession in much larger national settlements talks with the Clinton administration and Congress.

By showing it accepts some responsibility for the damage caused by smoking, the industry hopes to head off critics demanding their product be declared an addictive drug subject to strict regulation by the federal Food and Drug Administration, analysts said.

“I think the industry is in conciliatory posture” said Ellen Baras, a Chicago analyst, who follows tobacco stocks. “Federal regulation is a real fear because if you start lowering the nicotine level in cigarettes and limit cigarettes marketing, you could lose our customers. and these companies want to stay in business.”

Regardless, the settlement marked how years of relentless litigation have transformed an industry once perceived as a legal juggernaut into an industry scrambling to secure its future.

“This settlement is a real dambuster,” said Fort Lauderdale attorney Sheldon J. Schlesinger, a key member of the state’s trial team. “This is a very historic day.”

Under the pact, the industry will pay \$1 billion within the next year, including \$200 million to start a pilot anti-smoking campaign aimed largely at teen smokers.

The rest of the money – a minimum of \$440 million per year paid over the next 25 years – will be devoted largely to children’s health and substance abuse programs. Florida will also recoup money spent through the state Medicaid program treating poor people for diseases linked with smoking. Including lung cancer and emphysema. Those costs approach \$1 million per day.

Despite such huge sums, state officials insisted the most crucial parts of the deal are advertising and marketing restrictions, some of which will be unique to Florida.

The industry will tear down all advertising billboards, starting with those closest to schools. They will no longer advertise in arenas and stadiums, nor on public transit systems. And they will remove all vending machines that teens have access to.

In a joint statement, five cigarette makers – Phillip Morris Inc., R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., The Lorillard Tobacco Co., and U.S. Tobacco – billed the settlement as a new commitment to children.

“Today’s settlement with the state of Florida addresses the financial issues in Florida and is a concrete demonstration that the industry is prepared to cooperate with government and the public health authorities to emphasize that it does not want kids to smoke,” the statement said. “This is another step in a process to end the climate of confrontation and litigation that has marked the national debate on tobacco-related issues.”

The money paid through Florida’s settlement, he said, will merely lead tobacco companies to raise the price of cigarettes.

The agreement will eliminate many of tobacco’s traditional methods of advertising, he said, but merely force them to be more creative, further increasing the cost of cigarettes.

Industry analysts are well aware, he said, that consumption falls 4 percent every time prices rise 10 percent, and tobacco companies will simply do the math and go on their way.

On Monday stock prices rose for three of the four publicly trade cigarette makers sued by the state. Stock in Philip Morris Co. closed at \$4.93, up 62.5 cents; RJ Nabisco Holding closed at \$35.75, up 43.8 cents and Brooke Group closed at \$4.31, up 56.3 cents. Only BAT Industries stock price declined. It close at \$16.81, down 6.3 cents.

“This is just part of the bigger picture,” he said. “The big show is the settlement of \$368 billion.”

The state had been seeking about 12.3 billion through its lawsuit, almost \$1 billion more than the settlement dictates.

However, Florida achieved virtually every non-economic goal on its agenda.

While appeals for a jury verdict would have outlasted the decade, the money flow will begin next month. Tobacco has agreed to advertising restrictions that some state representatives felt could not be won in court.

Moreover, the amount of money Florida will receive, as well as the regulation of the industry, could increase if congress and President Clinton are able to approve a proposed \$368.5 billion settlement with 40 states.

If the national settlement is approved, it cannot reduce restrictions on the industry that Florida has already won, but it can increase them.

For example, the national settlement could lead to a ban on tobacco advertising in national publications, a concession that could not be achieved in negotiations with a single state.

Kathleen E. Scheg, legislative director of Action on Smoking and Health, a Washington, D.C. based group that has opposed the proposal for the nationwide settlement, said Florida's agreement should allow congress to take its time.

"The Florida settlement should set up a big red light, telling Congress to stop rushing forward with a premature settlement." Scheg said. "It shows that we need to let more of the state lawsuits go forward before Congress will be in any kind of position to make an intelligent deal with the industry."

For example, if Congress had approved the national settlement earlier this summer, previously secret internal tobacco document made public though Florida's lawsuit would have been kept under wraps.

Those documents showed how tobacco companies routed sensitive and potentially damaging information through their attorneys to hide them behind a shield of attorney-client privilege.

Justus Reed, a West Palm Beach attorney and a member of the tobacco industry's Florida trial team, said he thinks cigarette makers would have won at trial, but he added that both sides are satisfied with the settlement.

SETTLEMENT AT A GLANCE

Key points of an \$11.3 billion settlement between the tobacco industry and the state of Florida:

CIGARETTE BILLBOARDS:

Would be pulled down within four months, starting with signs within 1,000 feet of schools

VENDING MACHINES:

Would be removed from places where children have access.

ADVERTISING: Should be banned in open-air or enclosed arenas and on mass transit, except for billboards and ads for NASCAR auto racing and similar multi-state sports and entertainment tours.

FLORIDA TOBACCO SETTLEMENT

Chiles ate, rose for a toast and dropped bombshell

The governor was late and the lasagna was getting cold.

It was Sunday, a day before attorneys seeking billions of dollars from the tobacco industry for the state were to resume jury selection. They had been summoned by Gov. Lawton Chiles to dinner at the Palm Beach mansion of attorney Bob Montgomery, a leader of the team.

“We all thought it was just a pep talk,” Montgomery said on Monday.

Chiles arrived with his wife, Rhea, at about 7:30 p.m. He calmly picked through the buffet - burgers, salmon, vegetarian lasagna - and ate, there was small talk. There was dessert. Wiping his mouth, he rose for a toast.

His news: After a sudden breakthrough in negotiations, the state had settled the case for \$11.3 billion.

“I said, ‘You’ve got to be kidding.’” Montgomery said. “I was stunned.”

Talks had gone on for months, but Chiles had walked away from the table with tobacco negotiators three weeks ago as jury selection was getting under way. Opening statements were set to commence after Labor Day.

“We were ready to rock’n roll,” said Fort Lauderdale attorney Sheldon J. Schlesinger, another member of the state’s trial team.

At the time, tobacco was prepared to write a large check, but Chiles wanted more. He wanted landmark advertising and marketing restrictions to curb teen smoking.

Then, on Wednesday, the tobacco industry blinked. Tobacco representatives told Charleston, S.C. attorney Joseph F. Rice, who was negotiating the settlement for Florida, that they would discuss removing some billboard advertisements.

It was the beginning of the end. While members of the state’s trial team were kept in the dark to prevent them from losing concentration, the flood gates had secretly been opened.

Over the next two days, in exchange for Florida dropping its lawsuit against the industry, cigarette makers began conceding advertising and marketing restrictions that Chiles had wanted all along, including an advertising ban in sports arenas. Most of the meetings took place at Attorney General Bob Butterworth’s Fort Lauderdale office.

Hundreds of potential jurors’ questionnaires had revealed a remarkable level of hostility toward tobacco. Palm Beach County Circuit Court Judge Harold J. Cohen upheld - again - the 1994 liability law that was the foundation of the state’s case. That eliminated many of the industry’s traditional defenses.

Then, in a deposition of Thursday, Philip Morris CEO Geoffrey Bible conceded that smoking may be linked to 100,000 deaths. Steven Goldstone, his counterpart at R.J Reynolds Tobacco Co., the next day said that “smoking plays a part in causing lung cancer.”

“It put a lot of pressure on them.” Said Kim Tucker, deputy general counsel for the Florida Attorneys General’s Office.

On Sunday, at Cohen’s urging, the two sides gathered a last time. In one last request, tobacco representatives asked to be reimbursed for additional payments they might have to make under a proposed \$368.5 billion national settlement.

Chiles rejected them flatly, said Rice, who was at the meeting.

“I don’t give it back, “ Rice quoted Chiles a saying. Tobacco relented and the talks were over.

Now the squabbling will shift from the courtroom to an arbitrator, who will decide how much in fees, the tobacco industry should pay the state’s trial team.

Had the state’s trial team prevailed in court, they would have sought a 25 percent contingency fee on any jury award, but the settlement denied them what could have been a record fee.

Attorneys for the state said they had invested at least \$15 million of their own money preparing for the trial.

Montgomery said the team may still shoot for a fee equal to 25 percent of the \$11.3 billion settlement. That is about \$250 million for each of the 11 law firms enlisted by the state.

THE MONEY TRAIL

Terms of the \$11.3 billion settlement between the tobacco industry and the state of Florida:

Industry pays:

\$550 million by Sept. 15.

\$200 million by Sept 15. for a two-year anti-tobacco advertising campaign.

\$10 million by Sept. 30 for state expenses.

\$12 million by Sept.30 for expenses of private attorneys retained by the state.

Reasonable fees to private attorneys.

Compensation for expenses of negotiating national settlement if approved.

\$220 million on Sept.15, 1998.

\$247.5 million on Dec. 21, 2000.

\$275 million on Dec.31,2000.

\$357.5 million on Dec.31, 2001.

\$357.5 million on Dec.31, 2002.

\$440 million on every Dec.31 thereafter.

Plus an annual cost-of-living escalator equal to 3 percent of the consumer price index, whichever is greater.

Money to be used for children's health-care coverage, mental-health services, substance-abuse prevention, intervention and services and other health-related services, to reimburse state for medical expenses, for mandated improvements in state enforcement of a ban on tobacco sales to minors and to guarantee performance targets set in the national settlement.