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-----Original Message-----

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U.S. TOBACCO WEEKLY 04-39

September 23, 2004

PRODUCT LIABILITY

Washington, DC: Cigarette Companies Worked As Cartel To Deceive Public, Says DOJ Lawyer

At the start of the U.S. Department of Justice's (DOJ) \$280 billion lawsuit against cigarette companies on September 21st, Sharon Eubanks, head of the government's litigation team, told District Judge Gladys Kessler that the defendants misled millions of American smokers, conspired to deceive the public about the reported health risks of smoking and encouraged youth to become smokers. The DOJ lawyers pointed to certain statements made by industry executives, claiming that they created doubts among people as to whether smoking was harmful. The government is seeking disgorgement of \$280 billion in allegedly ill-gotten profits, in addition to restrictions on the industry's marketing practices. The defendants - Altria Group and its Philip Morris USA unit, Lorillard, Liggett, Reynolds American's RJ Reynolds Tobacco unit, and British American Tobacco Investments - are scheduled to present their opening statements on September 22nd (AP 9/21).

Washington, DC: DOJ Lawyer Makes Opening Statements

On September 21st during opening statements of the Department of Justice's suit against cigarette makers, government lawyer Frank Marine said the defendants spent hundreds of millions of dollars starting in the 1960s on organizations created to counter scientific evidence linking smoking to cancer and that company executives knew they were trying to deceive the public. He said that the "problem to them was that the public might stop smoking because of health concerns." The companies created the Center for Tobacco Research and the Center for Indoor Air Research to refute findings about smoking and environmental tobacco smoke, he said, adding that they also set up the Tobacco Institute to promote their findings and serve as a lobbying firm. He claimed that the "massive scheme" had devastating consequences, including the half-million Americans who die from alleged smoking-related illnesses every year (AP 9/21).

8/23/2005

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Washington, DC: PM Official Says Future Of Cigarette Industry Already Shaped By MSA Requirements

Commenting on the Department of Justice's \$280 billion suit, trial of which began September 21st, Michael Pfeil, vice president of corporate communications for Altria Group, Inc., said that the future of the cigarette industry would be determined by changes already brought about as a result of the 1998 Master Settlement Agreement, and suggested that the government's case will ignore these changes and focus instead on past activities. The company has taken significant steps to inform people about the reported health risks of smoking, Pfeil said, adding that it supports the government's role in protecting public health. Philip Morris USA said that during the DOJ trial it addressed the company's "acknowledgements that there is no safe cigarette; that smoking is addictive and causes serious diseases." William S. Ohlemeyer, vice president and associate general counsel for Altria, faulted the government's argument that actions of some cigarette companies in the past were a precursor to future behavior, saying the government has overlooked more recent history and the differences in how cigarettes are now being sold (Business Wire 9/22).

Washington, DC: Defense Lawyer Denies Industry-Wide Conspiracy

During trial on September 22nd of the Department of Justice's lawsuit against cigarette companies, Ted Wells, an attorney representing Philip Morris USA, rejected the government's allegations that the defendants conspired for decades to mislead the public about the reported dangers of smoking, saying, "We do not concede in any way, shape or form that there ever was" an industry-wide conspiracy and adding that "Today the defendants have admitted smoking causes diseases." Wells said that none of the defendants disputes the reported dangers of smoking and said that the "defendants admit today that smoking is addictive." He added that the 1998 Master Settlement Agreement makes future fraud impossible because of its restrictions placed on cigarette makers. The government needs to prove that a conspiracy existed and that it is likely to continue. Government attorneys claim that showing past fraud is enough to infer that it will happen in the future. Justice Department attorney Frank Marine said September 21st that the companies knew the link between smoking and diseases but set up research and public relations agencies to cast doubt on the findings. The MSA led to the closure of industry-funded organizations the government claimed disseminated information that misled the public (AP 9/22).

Washington, DC: Defense Lawyers Deny Misleading Consumers

During the trial of the Department of Justice's suit against cigarette makers on September 22nd, RJ Reynolds attorney Peter Biersteker challenged the government's argument that the defendants colluded to mislead consumers about the alleged health benefits of smoking low 'tar' and 'light' cigarettes, as he noted that the government in the past supported the switch to those products through advertisements and public statements. Recent studies have indicated that smoking low 'tar' or 'light' brands do not benefit consumers because smokers tend to take more puffs or inhale them more deeply. Responding to allegations that companies manipulate nicotine levels to keep smokers addicted, Lorillard attorney William Newbold said that the "evidence will be that we don't spike our cigarettes" and that some companies add ammonia only "to improve the quality and the taste" of cigarettes. Philip Morris lawyer Dan Webb said the company "may have made mistakes in the past" but that these acts did not constitute fraud, as the government alleges. DOJ lawyers said past fraud is indicative of future behavior and that the cigarette industry continues to market teenagers while denying doing so. Deputy Associate Attorney General Matt Zabel said that the "defendants' recent superficial changes in behavior in reaction to this and other lawsuits are too little, too late." The government's case rests on internal industry documents in which company executives reportedly make statements that conflict with their public comments. Defense lawyers say the documents are not being studied in their proper context (AP 9/22).

Washington, DC: Nation's Top Defense Lawyers To Represent Cigarette Makers

One of Philip Morris USA's lead lawyers in the Department of Justice suit is Dan K. Webb, who was named the top white-collar criminal-defense attorney in the country in a 2003 survey by Corporate Crime Reporter. Webb's co-lead counsel is Theodore Wells Jr, who in the past has defended former US Secretary of Agriculture Michael Espy and former US Senator Robert Torricelli (D-New Jersey). Webb, who heads the litigation department at Winston & Strawn, has also defended General Electric against price-fixing allegations and worked as chief counsel to represent the New York Stock Exchange in a suit against its former chairman Richard Grasso. RJ Reynolds' lead defense attorney is Robert McDermott Jr, a partner at Jones Day. David Bernick will represent the former B&W. Sharon Eubanks, who has been with the DOJ since 1983, will lead the department's litigation team (Winston-Salem Journal 9/21).

Washington, DC: Former FDA Commissioner Testifies In DOJ Suit

David Kessler, former commissioner of the Food and Drug Administration, testified September 23rd during cross-examination by defense lawyers in the Department of Justice's suit that the agency's investigation in the 1990s found that cigarette makers

manipulated nicotine levels in their products to keep smokers addicted, even as they lowered 'tar' levels. He said that the companies blended different kinds of tobacco leaves to make products with high nicotine content. Brown & Williamson attorney David Bernick tried to portray Kessler as someone who was overzealous and eager for media attention in the 1990s. Kessler said the cigarette companies were not "forthcoming" during his investigation and that parts of the industry waged "a significant attack on the agency." Kessler also said that industry documents indicated that companies added ammonia to "enhance the effects of addictive nicotine." Defense attorneys had denied the allegations on September 22nd during opening arguments (AP 9/23).

Washington, DC: Analysts Say Tobacco Stocks Expected To Be Volatile During DOJ Suit

Merrill Lynch analyst Martin Feldman said the trial of the Department of Justice's suit against cigarette makers is "likely to lead to increased volatility as the scale of the news flow appreciates." Cigarette company stocks fell in heavy trading on September 21st amid investors' concern. Reynolds American Inc shares have fallen 10%, while Altria Group stock declined 6% over the past week. The US Circuit Court of Appeals for the District of Columbia is scheduled to hear in November the cigarette makers' appeal of US District Judge Gladys Kessler's dismissal of the defendants' bid to block the DOJ from claiming \$280 billion in ill-gotten gains. If the appeals court agrees with the cigarette makers and removes the financial component from the case, "tobacco-sector valuations would likely appreciate rapidly," Feldman said (Winston-Salem Journal 9/22).

Washington, DC: PM USA Says DOJ Needs To Show Future Fraud

Philip Morris USA attorney Ted Wells said that the law requires the Department of Justice to show not only that the defendants committed fraud in the past, but also that it will continue in the future, adding that it would be impossible to demonstrate future fraud because companies now post information on issues about smoking and health on their Web sites. He added that as a result of the 1998 Master Settlement Agreement, companies now face restrictions on how cigarettes can be marketed and sold. Wells said that information on company Web sites are "an unambiguous and clear message" that are "of a permanent, irreversible and everlasting nature." DOJ lawyers say that past fraud is indicative of future behavior and that the cigarette companies have not changed its ways (AP 9/22)

Washington, DC: PM Official Says Future Of Cigarette Industry Already Shaped By MSA Requirements

Michael Pfeil, vice president of corporate communications for Altria Group, Inc., presenting evidence in the Department of Justice's \$280 billion lawsuit that began on September 21st, said that the future of the cigarette industry would be determined by changes already brought about as a result of the 1998 Master Settlement Agreement, and suggested that the government's case will ignore these changes and focus instead on past activities. The company has taken significant steps to inform people about the reported health risks of smoking, Pfeil said, adding that the government must also play a key role in protecting public health. Philip Morris USA has conceded that there is no 'safe' cigarette and that smoking is "addictive" with the potential to cause diseases. William S. Ohlemeyer, vice president and associate general counsel for Altria, faulted the government's argument that actions of some cigarette companies in the past were a precursor to future behavior, saying the government has overlooked more recent history and the differences in how cigarettes are now being sold (Business Wire 09/22)

Washington, DC: Top DOJ Keep Low Profile As Suit Goes To Trial

According to lobbyists, public relations specialists and lawyers watching the US Department of Justice's (DOJ) suit against cigarette companies, there has been a notable absence of public comment from Attorney General John Ashcroft and other high-ranking DOJ officials, despite the size of the case (\$280 billion), indicating the political sensitivity within the department and the Bush administration regarding it. The DOJ did have a press briefing on September 13th, but it was for "background" information only and reporters were not allowed to name the department officials who spoke. The DOJ is believed to be unwilling to drop the suit, but it also is not publicly embracing it. Because Ashcroft or other top DOJ officials are not leading the case, the public face of the suit has been left to anti-smoking groups. William Corr of the Campaign for Tobacco-Free Kids said he is confident about the legal team pursuing the case. Meanwhile, Altria Group Inc, whose Philip Morris USA unit is named as a defendant, has launched a public attack on the suit, calling it a weak and expensive effort and that the 1998 Master Settlement Agreement already implemented many of the reforms that the DOJ is seeking. Some observers are surprised that the suit even survived President George W. Bush's four-year term. Ashcroft strongly opposed tobacco regulation and litigation when he served as a member of the US Senate. Although trial for the DOJ case began September 21st, the possibility of a settlement or dismissal of the suit still cannot be ruled out. If Bush wins re-election, he could force the DOJ to settle or drop it. If he loses, he could order the case to be dismissed before leaving office (Legal Times 9/21).

Washington, DC: DOJ Trial To Begin Sept 21; Expected To Last 6 Mos

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Trial of the Department of Justice's suit against cigarette companies, which is scheduled to begin September 21st, is expected to last at least six months, with 100 witnesses to testify in person and 200 more through depositions or testimony in other trials. The government claims that what cigarette company executives discussed in 1953 at the Plaza Hotel in Manhattan has resulted in 50 years of fraud and conspiracy. It is the largest civil case ever prosecuted under the Racketeer Influenced and Corruption Organizations Act. Defense attorneys say the meeting at the Plaza Hotel produced only a now-defunct research group to study smoking and health, but the DOJ claims that the same meeting led to a conspiracy of deception to misrepresent the "addictive" nature of cigarettes, conceal information on environmental tobacco smoke and market cigarettes to youths. The cigarette makers say the DOJ is distorting history and that the 1998 Master Settlement Agreement has forced them to comply with orders that the government is seeking in the suit. Merrill Lynch analyst Martin Feldman said the net worth of the defendants, which hold about 85% of the US cigarette market, is under \$200 billion. The government is seeking \$280 billion. Meanwhile, the US Circuit Court of Appeals for the District of Columbia is scheduled to hear starting November 17th an appeal of US District Judge Gladys Kessler's May decision to dismiss the defendants' request to toss out the \$280 billion disgorgement claim. Martin noted that if the appeals court overturns Judge Kessler's decision, "this case ceases to be newsworthy" (New York Times - NYT 09/20)

Oregon: PM Lawyer Asks Appeals Court To Overturn Punitive Damages Award

On September 20th, Bill Gary, a lawyer for Philip Morris, asked Oregon's State Court of Appeals to overturn a lower court's \$100 million punitive damages award issued against the company in 2002 as unconstitutional, maintaining that the amount in the case brought by the estate of Michelle Schwartz was excessive. Lawyers for Schwartz, a Salem resident who died of lung cancer in 1999, argued that Philip Morris deceptively marketed its low tar Merit cigarettes as being less harmful than its regular brands. Philip Morris said it never claimed that its low tar Merit cigarettes were safer than its regular filtered brands. A jury had set the punitive damages at \$150 million, but Circuit Judge Roosevelt Robinson ruled that was excessive and reduced it by one-third, still granting a huge award because of the alleged "reprehensibility" of the company's conduct. Gary argued that the award is "manifestly unconstitutional" under punitive damage standards handed down in 2003 by the US Supreme Court. Gary said that the punitive damages in the Schwartz case are 595 times the \$168,000 awarded in compensatory damages (AP 9/20).

California: Attorneys Seek Revival Of Class-Action Lawsuit Dismissed In 2002

On September 20th, attorneys arguing on behalf of Californians who began smoking as teens asked the Fourth District Court of Appeal to revive a class-action lawsuit dismissed in 2002 by San Diego Superior Court Judge Ronald Prager, saying the First Amendment should not protect companies from advertising that was allegedly deceptive and encouraged underage smoking. San Diego lawyer David Markham said the First Amendment should not protect advertising of cigarettes targeting underage people and cited the example of the Joe Camel cartoon character used by R.J. Reynolds Tobacco Co. Defense attorney Daniel Collins said Judge Prager correctly interpreted prior court rulings and found that those ads were protected speech. The defendants named in the suit include Philip Morris USA, RJ Reynolds, B&W and Lorillard. The suit demanded \$700 million - \$2 billion believed to have been earned from sales to about 1.5 million teenagers in the State from 1994 and 1999. A three-member panel is expected to issue a ruling within 90 days (AP 9/20).

California: Philip Morris To Appeal Boeken Award To State Supreme Court

Philip Morris USA said September 22nd that it will petition the California Supreme Court to review an appeals court's decision to award \$50 million in punitive damages to the family of deceased smoker Richard Boeken, half of the previous amount of \$100 million, because the reduced award is "still wildly excessive" and conflicts with the 2003 US Supreme Court ruling that said punitive damages cannot greatly exceed actual damages. The appeals court reinstated the original compensatory award of \$5.5 million. A Los Angeles jury in August 2001 awarded Boeken punitive damages of \$3 billion, which was later reduced to \$100 million. Philip Morris also said that the appeals court's decision conflicts with a State precedent, whereby the California Supreme Court reversed a State Court of Appeals' decision upholding the \$21 million award to Leslie Whiteley. Boeken died of cancer in 2002 (Dow Jones 9/22).

United States: Conference Discusses 'Fat Lawsuit Movement'

At a three-day conference at Northeastern University, George Washington University law professor John Banzhaf III said suing food manufacturers, restaurants and fast food chains is still a strong weapon to fight the nation's obesity problem. The US surgeon general's report in 2001 identified obesity as an epidemic. A panel of four lawyers said the "fat lawsuit movement" will need to extend beyond obvious targets like food companies in order to bring about substantial policy changes. They compared the efforts to the anti-tobacco movement in recent years. Banzhaf said people should consider suits against doctors who did not warn patients about health risks associated with obesity. The "anti-tobacco movement did not just sue the tobacco companies; We sued lots of people," he said. The Centers for Disease Control and Prevention estimates that 64% of Americans are overweight or obese (Washington Times 9/20).

PRODUCT CONTENT/REGULATIONS

Washington, DC: Altria Ups Contributions To Democrats

Some tobacco industry lobbyists said Altria Group is beginning to send a larger share of its political contributions to Democrats in an effort to garner support for legislation that would give the Food and Drug Administration the authority to regulate tobacco products. The FDA issue is one of the company's top legislative priorities for this year. Since 1990, it has given about 75% of its \$19 million in campaign money to the Republican Party, according to the Center for Responsive Politics. Altria has been reaching out to Democrats to push for FDA regulation because Republicans are generally opposed to new Federal regulations. During the current election cycle, 39% of the \$447,500 in Altria's campaign contributions went to Democrats, compared to 29% in the 2001-02 election cycle. The company also gave \$100,000 each to the Democratic and Republican national conventions. Meanwhile, some of Altria's competitors who are opposed to FDA regulations have increased contributions to Republican party members. So far this election cycle, RJ Reynolds has given 85% of its \$417,000 in political donations to Republicans, up from 83% in the previous cycle. Lorillard's contributions to the GOP rose to 84% from 76% (Roll Call 9/20).

BUSINESS & FINANCE

Virginia: Hank Armour Appointed New NAC President And CEO

The National Association of Convenience Stores (NACS) announced September 22nd that it has appointed Henry O. Armour as the new president and CEO, succeeding Kerley LeBoeuf, who will retire in July 2005 after 24 years of service. Armour resigned from the NACS Board of Directors and will become the group's part-time consultant in October 2004 to prepare for a smooth transition in July 2005, the NACS said. LeBoeuf said Armour is "the perfect person to lead the NACS staff" and the decision continues the succession pattern of selecting the immediate past chairman to assume the position as president and CEO. Armour served as chairman for two years (National Association of Convenience Stores 9/22).

Connecticut: USSTC Names New Executive Vice President/General Manager

US Smokeless Tobacco Company (USSTC) announced September 17th that Daniel W. Butler, former executive vice president of Kraft Foods North America, has joined USSTC as Executive Vice President and General Manager. USSTC President Murray Kessler said Butler brings experience in consumer packaged goods management and his strength in marketing will help the company's efforts to grow the moist smokeless tobacco category (PR Newswire 09/17)

North Carolina: Standard Commercial To Close Down Operations In Italy

North Carolina-based leaf tobacco dealer Standard Commercial Corporation has decided to close down its operations in Italy, with CEO Robert Harrison attributing the reason to adverse market conditions amidst a strengthening of the euro. The recent reforms initiated within the European Union as part of the Common Agricultural Policy and their potential impact on future tobacco production and costs also influenced the company's decision, Harrison said. The company expects to lay off 62 workers in Italy by next spring. In other respects, Harrison noted that the company has been performing as per expectations (TheStreet.com 9/17).

North Carolina: Wellstone Announces Stock Split

Wellstone Filters announced September 20th that it declared a 3-for-1 stock split to shareholders of record as of September 27th. Shareholders will receive two additional shares of common stock for each share held on that date. The payment date is October 5th, it said (PR Newswire 09/20)

CONSUMPTION/SMOKING RESTRICTIONS

Oklahoma: City Asks Foster Parents Not To Smoke Inside Home

A new Oklahoma City Department of Human Services policy, based on a 2003 Oklahoma State law that bans smoking in a licensed child-care facility, requires foster parents to smoke outside the home, and bans smoking inside a vehicle in the presence

of a foster child. Linda Smith, director of the DHS children and family services division, said that the new policy, though hard to implement and monitor, was important considering the alleged ill effects of exposure to environmental tobacco smoke. Smith said foster parents had been asked to find alternative smoking areas in the home, like patios, porches or garages. She noted that a child would not be pulled out from a home in which a foster parent continues smoking, but vacant slots would not be filled in such home (AP 9/22)

North Dakota: Health Department Launches Tobacco Quitline

The North Dakota Health Department has launched a toll-free telephone line that will counsel smokers and other tobacco product users on cessation, Dr. Terry Dwelle, State health officer said on September 20th. The line will be funded by the State's share in the settlement. Dr. Nicholas Neumann, a pulmonary physician and director of medical education at the University of North Dakota Medical School's Bismarck campus, said even though most of the smokers are willing to quit, many do not receive adequate support in their efforts. The Centers for Disease Control and Prevention estimates that more than 20% of adults in the State smoke or use other tobacco products. Counselors at UND's medicine department and the Mayo Clinic in Rochester, Minnesota will counsel smokers on the Quitline. Eighteen counselors, who will undergo training at the Mayo Clinic's nicotine dependence center, are expected to lend their services at the two locations (AP 9/20).

Iowa: Casinos Install Ventilation Equipment To Remove ETS

Casino operators in Iowa are installing air ventilation equipment to remove environmental tobacco smoke, arguing that they can accommodate smokers and non-smokers without banning smoking altogether. The Iowa Department of Public Health and the State attorney general believe that the ventilation systems do not necessarily make the air any "safer" to breathe and that the best way to address ETS is to voluntarily ban smoking. None of Iowa's casinos currently ban smoking, but some of them have designated nonsmoking areas (AP 9/22).

New York: Health Groups Organize Anti-Smoking Program

To increase the awareness of people about the potential hazards of smoking and using other tobacco products, two health groups in New York, Project Action of Fulton, Hamilton and Montgomery Counties, and Reality Check organized their third annual anti-smoking program at Gloversville on September 19th. While Project Action Director Maureen Rhodes said that the program would help people understand the reported ill effects of smoking, some opponents of the State Clean Indoor Air Act said that the measure not only negatively impacted business of bars and restaurants, but also curtailed people's right to make choices (Capital News 9/19).

South Carolina: Smoking Ban May Exempt Charleston Restaurants, Bars

Sean Keefer, chairman of a committee formed to study the issue of a smoking ban in Charleston, South Carolina, said the panel favors a workplace smoking ban, while exempting the hospitality industry from the regulation. This follows debate on the smoking regulation between healthcare professionals and members of the hospitality industry. Owners of some restaurants and bars argued that prohibition of smoking on their premises would drive some of their clientele to competitors just outside the city limits. The committee wants restaurants and bars to post signs denoting whether they allow, restrict or forbid smoking and also incentives to encourage restaurants and bars to become smoke-free (Post Courier 9/21).

Ohio: Smoking Ban Opponents Received Funds From Cigarette Company, Say Industry Watchers

The Ohio Licensed Beverage Association, a group that is supporting efforts to overturn Columbus' smoking ban, has reportedly received \$62,000 from cigarette companies during the past two years, according to industry watchers. Stanton Glantz, a professor of medicine at the University of California, San Francisco, cited 20 years of research to show that cigarette companies funded campaigns opposing smoking bans. Glantz's Web site tobaccoscams.org cites a letter to the National Restaurant Association from Philip Morris USA, in which Philip Morris reportedly contributed \$250,000 to the group and also recommended ventilation systems for restaurants as an alternative to banning smoking. Jacob Evans of the Ohio Licensed Beverage Association said business owners and not cigarette companies had initiated the idea of installing ventilation systems (Columbus Dispatch 9/19).

California: Manhattan Beach City Council Approves Smoking Ban Along Shores

On September 21st, the Manhattan Beach, California City Council unanimously approved a smoking ban along its shores and on

the pier, beginning in October. Once the ordinance takes effect, smoking along the Santa Monica Bay will be permitted only on Redondo Beach, Hermosa Beach and in Torrance. Smoking bans have already taken effect on beaches along Malibu, Santa Monica, the county and city of Los Angeles, as well as parts of San Diego and Orange counties. Manhattan Beach officials expect to post signs informing visitors of the smoking ban. Violators will not be cited but officers on weekend beach patrol will supervise the enforcement of the measure. The city council also discussed a smoking ban at city parks. Under State law, smoking is banned within 25 feet of playgrounds and sandboxes, but city officials are recommending an outright ban (Daily Breeze 09/22)

Maryland: Smoking Banned In Army Barracks

In line with Army Regulation 600-63, which prohibits smoking in government living quarters with common heating and ventilation systems, soldiers living in Fort Detrick's Unaccompanied Enlisted Personnel Housing in Maryland have been restricted from smoking in their rooms or in common areas of the barracks. US Army Garrison Command Sgt. Maj. Eugene Jeffers said all the single barracks shared common heating and ventilation systems, enabling smoke from one area to permeate throughout the buildings by means of ducts. Jeffers said the smoking ban would cover the six-barracks complex and the older Building 1430, all located along Porter St. Jeffers said the previous regulation allowed smoking in the rooms, but not in the common areas (dcmilitary.com 9/16).

Indiana: Survey Shows About 20,000 State Youths Become Smokers Each Year

According to Indiana's State Department of Health, accessibility to tobacco prompts about 19,600 youths from the State to become daily smokers each year, which roughly works out to 53 teens each day or two children each hour. More than half of middle school and 75% of high school students surveyed in the State reported sharing room with a smoker within the previous seven days. Youths living with smokers could start smoking, with children in middle school being more susceptible to home influences, said Terrell W. Zollinger, professor at the IU Department of Family Medicine and lead investigator of the study. Smokers at home could negatively impact a child's behavior, Zollinger said, adding that parents could instead send anti-tobacco messages to influence children (Decatur Times 9/18).

New York: Researchers Recommend Counseling To Help Women Prisoners Quit Smoking

T.L. Durrah and T.J. Rosenberg of the Medical & Health Research Association NYC Inc., who studied the smoking behavior of 836 female arrestees in the New York City prison system and found that 71% of the inmates and 64% of pregnant women were daily smokers. Durrah and Rosenberg, in their study, included information on the use of licit and illicit substances, current pregnancy, age at smoking initiation, daily smoking, dependence on tobacco and quit attempts among the jail inmates. According to the researchers, among daily smokers, nearly a third, mainly Latinas, had tried to give up smoking. Durrah and Rosenberg recommended smoking cessation counseling for women prisoners who had tried to give up smoking, as counseling would help them most (Physician Weekly 9/22).

Ohio: Jury To Decide Issue Of Neighbor's Smoking And ETS

Jurors in Summit County Common Pleas Court in Ohio were to hear on September 20th a case filed by Robert Zangrando, a resident at a condominium in the town of Stow, who is seeking damages of over \$50,000 because he believes his neighbor Nicole Kuder is causing a nuisance by smoking and letting environmental tobacco smoke waft into his home. He is making claims of assault, battery and trespass. He also claims that the property value of his home has declined and he has suffered emotional distress. Kuder denies his claims and says that to address his complaints, she smokes on the back patio or under a nearby tree. She also claims that Zangrando has harassed and intimidated her on her own property and is demanding unspecified damages for trespass and intentional infliction of emotional distress. Kuder moved out of the condominium in July (Plain Dealer 09/20)

Ohio: Foundation Launches New Quit Line

Ohio Tobacco Use Prevention and Control Foundation on September 22nd announced the launch of the Ohio Tobacco Quit Line, a Statewide toll-free counseling service for all residents who want to quit tobacco use. The Quit Line provides callers with individualized cessation advice and offers a personal plan to help them through all phases of quitting. It gives callers a Quit Kit that includes brochures on tobacco use, tips on quitting, and information on where to find additional resources. The foundation, which is funded by the State's settlement money, will invest about \$20 million over the next three years to maintain the Quit Line (PR Newswire 09/22)

California: Ordinance Proposed In San Francisco For Smoke-Free Outdoor Areas

On September 21st, San Francisco, California supervisor Michela Alioto-Pier proposed a new ordinance that seeks to ban "inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant" in all city outdoor recreation areas, including parks, gardens and playing grounds, and could impose a \$250 fine on violators of the legislation. The proposal will be sent to a committee for review before being considered for voting by the city council. Alioto-Pier said that she proposed the ordinance not only to protect children frequenting parks from exposure to environmental tobacco smoke (ETS), but also to promote a healthy environment in all city outdoor areas. San Francisco Public Health Chief Dr. Mitchell Katz supported the proposal, saying that the move would help maintain a clean environment across the city. Steve Braccini, a nonsmoker and an opponent of Alioto-Pier's in the upcoming November election, said that although he supported restrictions on smoking in outdoor areas, the proposed \$250 fine was excessive (San Francisco Chronicle 9/22).

Pennsylvania: Smokers Urged To Quit For Their Loved Ones

As part of the "Quit for Them" campaign in Pennsylvania, the Department of Health in the State urged smokers at Nazareth Speedway during the Firestone Indy 225 weekend racing to sign pledge cards that they would quit for the sake of those whom they love, according to State Health Secretary Dr. Calvin B. Johnson. With research suggesting that more than half of residents in the State who attend Indy racing use tobacco products, Johnson said that the pledge cards could be effective in influencing people to refrain from using tobacco products (Science Letter 9/21).

Arkansas: Lawmakers Doubt Gallup Survey's Findings

Some lawmakers in Arkansas on September 17th questioned the validity of a Gallup Organization report that said overall adult cigarette use fell 14% from 2001 to 2002 and sales to minors declined to 11.2% in 2003 to 14.8% in 2002. State Reps Herschel Cleveland (D-Paris) and Daryl Pace (R-Siloam Springs) said the survey did not account for cigarettes that Arkansas residents bought in the neighboring States of Oklahoma and Missouri or from online vendors. Pace said in its future survey, he wants Gallup to factor in cigarette purchases made outside the State because Arkansas's tax hike in 2003 is sending smokers to stores in neighboring States (Southwest Times Record 09/17)

Georgia: CTFK Urges Atlanta City Council To Draft Tougher Anti-Smoking Ordinance

Peter Fisher, Director of State Issues for the Washington, DC-based Campaign for Tobacco-Free Kids, urged the Atlanta, Georgia City Council to reject the proposed Smoke-free Workplace Ordinance currently being considered and draft a stronger ordinance that protects the public from exposure to environmental tobacco smoke. Fisher urged the City Council to support a strong smoke-free workplace law that protects the right of all Atlanta citizens to breathe clean, smoke-free air. The group commended Council member Natalyn Archibong's efforts towards protecting public health (US Newswire 9/20).

MARKETING: ADVERTISING & PROMOTION

California: Appeals Court Reconsiders Lawsuit Filed By Underage Smokers

The California Court of Appeal in San Diego is considering whether to reinstate a lawsuit filed by four underage smokers on behalf of minors who bought cigarettes between 1994 and 1998, accusing the companies of targeting minors with campaigns featuring characters such as Joe Camel and the Marlboro Man, plaintiffs' attorney David Markham said on September 22nd. The court heard arguments on September 20th as to whether the dismissal of the class action by a trial judge in 2002 should be overturned. The trial judge rejected the case after finding that the advertising campaigns of Philip Morris Inc., the erstwhile Brown & Williamson Tobacco, Lorillard Tobacco Co. and former R.J. Reynolds Tobacco Co. were constitutionally protected commercial speech. Additionally, the court found that the lawsuit was excluded from the provisions of the Federal Cigarette Labeling and Advertising Act. The plaintiffs claimed that the companies used the Joe Camel and Marlboro Man images as well as extreme sports to appeal to adolescent boys. The lawsuit also claimed that Lorillard marketed Newport cigarettes to girls with an image that paired a girl with a man resembling James Bond. The appeals court will decide whether to reinstate the case within 90 days (Reuters 9/22).

PRODUCTION (MANUFACTURING)

Illinois: Candy-Flavored Cigarettes Target Children, Says Official

8/23/2005

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Colorado: \$1.6 Million Raised To Support Tax Hike Ballot Initiative

On September 20th, Mike Melanson, spokesman for the Citizens for Healthier Colorado, a group that supports Amendment 35, which seeks to increase the State tax on cigarettes from 20 cents to 84 cents per pack and on other tobacco products from 20% to 40% of the wholesale price, said the organization has so far raised \$1.6 million in support of the measure. The group is planning to spend approximately \$2.2 million in an effort to promote Amendment 35, Melanson said. However, Roy Turner, executive vice president of the Colorado-Wyoming Petroleum Marketers and Convenience Stores Association, said his group had not yet mobilized any funds to challenge the amendment, but would continue to oppose the proposal that would increase taxes on cigarettes by 320%. Meanwhile, Jamie Drogin, spokesperson for Philip Morris, said the proposed 64-cent tax increase was excessive. The increase in taxes, if passed would generate approximately \$175 million in annual revenues, which may be used for programs such as the Children's Basic Health Plan, Medicaid, primary care clinics, tobacco prevention and treatment of illnesses reportedly caused by the use of tobacco products (AP 9/20).

Colorado: Poll Shows Significant Support For Cigarette Tax Increase

A poll of 500 registered Colorado voters conducted by Public Opinion Strategies found that 65% of those surveyed support the Initiative 35 ballot proposal to increase the State tax on cigarettes from 20 cents to 84 cents per pack and on other tobacco products from 20% to 40% of the wholesale price. About 33% of respondents oppose the measure, while 2% said they were undecided or declined to answer. The cigarette tax increase, if passed in the November election, could generate \$175 million annually for health programs, including public health insurance, primary care to the poor, tobacco education programs and programs to fight cancer, lung disease and heart disease. Barbara O'Brien, executive director of the Colorado Children's Campaign, said it was encouraging to see such strong support for the proposal. However, Wilson Croom, founder of the "Protect Our Constitution: Vote 'No' on #35 Committee" and executive director of the Colorado Association of Distributors, a trade group for tobacco wholesalers, said the poll results did not surprise him, as smokers are far out-numbered by non-smokers (AP 9/21).

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On September 19th, U.S. Rep. Mark Kirk (R-Ill.) said in the Chicago Children's Museum in Illinois that some tobacco companies were producing candy-flavored cigarettes such as Kauai Kolada, Caribbean Chill and Twista Lime to target children. Kirk supported the Senate version of the buyout bill, which seeks to give the Food and Drug Administration authority to regulate tobacco products. However, some tobacco companies denied the charge, saying candy-flavored cigarettes were meant to give variety to adult smokers (Chicago Tribune 9/20).

California: El Cajon Retailers Oppose Proposal To Increase Fines For Underage Cigarette Sales

In California, the El Cajon City Council's proposals to lower the annual license fee to sell tobacco products from the current amount of \$511 and increase the fines on merchants involved in underage cigarette sales to \$1,000 may negatively impact city merchants, according to the California Independent Grocers & Convenience Stores (CIGCS), a trade group. Auday Arbo, president of CEO of the group, said that merchants would prefer an ordinance requiring a licensing fee only if some among them violated law. The proposal was based on a study done by the American Lung Association of San Diego and Imperial Counties and its partners in the Tobacco-Free Communities Coalition, which found that 41% of city stores sold cigarette to minors. However, the CIGCS challenged the validity of the survey, saying it could not obtain a list of the storeowners who allegedly sold cigarette to minors (San Diego Union-Tribune 9/16).

RETAIL, DISTRIBUTION, & SALES

United States: Analysts Say Cigarette Prices Nearing Tipping Point

Some financial analysts say the average price of a pack of cigarettes could be approaching a tipping point, after which any additional hikes would drive away consumers, as studies have suggested a direct correlation between cigarette price and consumption. The correlation is particularly pronounced among teenagers. Cigarette prices have risen about 72% since 1997, according to the National Bureau of Economic Research. While higher prices have led to reduced smoking among youth, the overall smoking rate has declined only slightly because many of the smokers just switched from premium to discount brands. Some observers say that if there is another legal settlement with cigarette makers, large manufacturers of premium brands could raise prices even further, driving more smokers to the discount brands and leading to lower profits for the major players. Major manufacturers have not speculated on the ramifications of another price hike as a result of the outcome of the Department of Justice's suit against cigarette makers. They say that even if the defendants lose the case, payouts would be delayed because of the appeals process (ABC News 9/21).

Mississippi: Sting Operation For Underage Alcohol, Tobacco Sale Ends In 21 Arrests

A sting operation in Hinds County in Mississippi on September 11th across 38 metro area gas stations and convenience stores resulted in 21 arrests for alcohol and tobacco use, said Henry Glaze, commander of the Hinds County Sheriff's Department's juvenile unit, said on September 15th. Glaze said that the sting operation was necessitated because of laxity in checking IDs and is part of compliance checks conducted throughout the year to target underage smoking and drinking. Lt. Steve Pickett, spokesman for the Hinds County Sheriffs Department, said that those who were arrested were given court dates (Clarion-Ledger 9/16).

New Jersey: Federal Judge Fines Lighter Distributor For Illegal Transport

US District Judge Harvey Bartle ordered Garden State Tobacco Co of Neptune, New Jersey, which conducts business as H.J. Bailey Co and distributes lighters and tobacco accessories, to pay \$500,000 in fines for reportedly sending 10,000 unmarked packages containing flammable items via FedEx and UPS to avoid having to pay a special handling fee. The judge also sentenced Allen Roth, chief executive of Garden State Tobacco Co, to one month in prison followed by three months of house arrest. Federal prosecutors in Philadelphia, Pennsylvania charged Roth and his company in May with unlawful transportation of hazardous materials. The shipments in question were made between January 1, 2000 and August 31, 2003. They were sent in unmarked packages to avoid the \$20 per-pack fee to handle hazardous materials, prosecutors said. Roth also acknowledged that he evaded taxes for years by skimming \$1,000 per month in cash from company revenue. He reported the evasion to the IRS and is now paying the back taxes and interest, he said (Philadelphia Inquirer 9/21).

California: State Settles With Online Retailer Over Internet Sales

California Attorney General Bill Lockyer announced September 17th that the State reached a settlement with Dirt Cheap Cigarettes, in which the online retailer of tobacco products will halt all Internet-based sales to California residents and will pay \$300,000 in civil penalties plus \$200,000 for litigation costs to the State. California sued Dirt Cheap Cigarettes in April 2003 over

violations of State laws banning Internet or mail-order sales without verifying the buyers' age. The case was scheduled to go to trial this month. Lockyer's office said California filed similar suits against five other retailers and settled with two (San Francisco Chronicle 9/18).

Utah: Tooele County Underage Cigarettes Sales Decline

According to Utah Department of Health's fourth Annual Report on Tobacco Prevention and Control, the percentage of Tooele County stores found selling cigarettes to minors during compliance checks decreased from 23.4% in 2001 to 2.9% in 2004. Bucky Whitehouse, a health educator assisting the local police in the compliance checks, attributed the "dramatically lower rates" to the county's mandatory tobacco handlers education course that comes with a permit. Kim Clausing, who shares tobacco prevention activities with Whitehouse, said efforts to educate retailers as well as education programs in schools should continue to keep the rate of underage tobacco sales low. Clausing pointed out that during 2003 she involved 929 students within the district in a four-session tobacco prevention program (Tooele Transcript Bulletin 9/22).

AGRICULTURE/PROGRAMS & RESTRICTIONS

North Carolina: Tobacco Harvest Festival To Take Place September 25th

Duke Homestead State Historic Site in North Carolina will have its annual Tobacco Harvest Festival on September 25th. The event will feature harvest activities, a mock tobacco auction, and bluegrass music by The Boys of Carolina. Also at the festival will be Joanne Sharpe, author of "Before TV – Life on a Tobacco Farm," who will sell and sign her books in the afternoon. The Duke Homestead State Historic Site and Tobacco Museum are located on the ancestral home of the Washington Duke family (Herald Sun 9/22).

North Carolina: Buyout Proposal Key Component Of Senate Race

The race for U.S. Senate in North Carolina has intensified, with Democratic candidate Erskine Bowles and Republican candidate Richard Burr each questioning the other's ability to influence Congress in order to help achieve a Federal tobacco buyout. The candidates each spoke on September 18th at Bill Ellis' barbecue restaurant in Wilson, a town that once boasted the world's largest tobacco market. According to Bowles, Burr has been ineffective in his role as congressman from Winston-Salem in pushing a buyout bill presently before the House-Senate conference committee. Burr said Bowles was part of the Clinton administration that had cut money for farm programs, raised taxes on cigarettes and sought to give the Food and Drug Administration authority to regulate tobacco products. Meanwhile, former Gov. Jim Hunt said that Senate Democrats had voted for the buyout particularly because of Bowles' involvement. If passed, the buyout could bring about \$6 billion to tobacco growers in the State (News & Observer 9/19).

TAXATION

Alaska: Anchorage Votes To Increase Cigarette Tax By \$1 Per Pack

The Anchorage, Alaska Assembly unanimously voted to increase the local tax rate on cigarettes from 30 cents to \$1.30 per pack and on other tobacco products from 15% to 45% of their wholesale price beginning October 1st, as part of Mayor Mark Begich's tax reforms that are intended to generate about \$8.9 million next year in additional tobacco tax revenues. Opponents of the measure said it would negatively impact small businesses selling tobacco products. Assembly members Debbie Ossiander and Brian Whittle stressed the need to diversify sources for generating additional revenues, saying that Anchorage should not rely too heavily on property taxes alone (AP 9/22).

Colorado: Judge Refuses To Block Language In Voters' Guide Including Tax Amendment

Judge Michael Villano of Denver District Court in Colorado declined to block the printing and distribution of a voters' guide on ballot initiatives for the November election, rejecting State Sen. Ken Gordon's (D-Denver) claims that the so-called "Blue Book" in its current form contains language that favors developers and tobacco companies. Amendment 35 seeks to raise the State's tax on cigarettes from 20 cents to 84 cents per pack and on other tobacco products from 20% to 40% of the wholesale price. Gordon said he will probably appeal to the Colorado Court of Appeals because the blue book contains partisan politics even though it is supposed to have "a fair and impartial analysis" of each initiative (Denver Post 9/22).