PROPOSED RESOLUTION
AND TITLE-BY-TITLE
SUMMARY PAPERS

Highlights of June 20, 1997
Proposed Tobacco Resolution

Dramatic Advertising and Marketing Restrictions for Participating Manufacturers:

- No outdoor advertising, including advertising in enclosed stadia and advertising inside retail establishments facing directly outside.
- No human images or cartoon characters.
- Black and white text only, except in adult publications and venues.
- No brand name or logo sponsorship of sports, cultural or social events.
- No non-tobacco gifts with purchase and no use of tobacco brand names on non-tobacco products (e.g., caps, shirts, bags).

Strict Point of Sale Restrictions:

- No self-service displays. Except in adult-only venues, tobacco products must be behind the counter or, if on the sales counter, not visible or accessible to customers.
- No vending machine sales. All transactions must be face-to-face.
- No free sampling of tobacco products.
- Sets minimum federal standards for state licensing program, funded by industry payments. Any entity that sells tobacco products to the public must be licensed.

FDA Would Have Authority Over Virtually Every Aspect of Tobacco Industry's Operations:

The Proposed Resolution includes everything in the FDA's final rule and more:

- FDA will have codified authority to regulate tobacco products, which will be classified as a new subcategory of medical devices, with enforcement fully funded by the industry. FDA has authority to impose "good manufacturing practices."
- Manufacturers must notify FDA of any "reduced risk" technology, and the FDA can mandate the introduction and cross-licensing of such technologies.
- Without any exception for privilege or trade secrets, manufacturers must disclose to FDA all original laboratory research relating to the health and safety of tobacco products.
- FDA assumes sole jurisdiction over "tar" and nicotine testing for cigarettes.
- FDA can mandate modification of tobacco products, including reductions of nicotine, which can be eliminated after 12 years.
- Without any agency action, within three years of enactment, all cigarettes produced must have "tar" yields of 12 mg or less. This reduction will affect nearly half of the cigarettes on the market today.
- Manufacturers must disclose to FDA all ingredients they add to each tobacco brand by type and quantity, with public disclosure to the same degree as food.
- Nine new rotating warning labels. FDA authority to mandate additional warnings.
- The Attorneys General have recommended FDA be authorized to accredit smoking cessation programs which will be fully funded by industry payments.
- Within 5 years of enactment, manufacturers must conduct a safety assessment for ingredients to show they are not harmful under the intended conditions of use.
- States are not preempted from additional actions in areas of youth access and taxes.

Mandatory Reductions in Youth Tobacco Use Supported by "Look Back" Provisions with Teeth:

- Targets for reduction of youth smoking are 30% by 5th year after enactment, 50% by 7th year, and 60% by 10th year and thereafter.
- If target is not met, FDA must impose a surcharge equal to $80 million per percentage point by which the target was missed (subject to abatement up to 75% if manufacturers meet certain criteria), with an annual cap of $2 billion. Surcharge is joint and several obligation on all manufacturers and is allocated by domestic market share.
- Not less than 90% of surcharge proceeds will be transferred as grants to state and local governments to fund additional efforts to reduce youth tobacco usage.

Annual Industry Payments in Perpetuity:

- Total 25 year face value of payments by the tobacco industry: $368.5 billion (subject to adjustment).
- $10 billion lump sum payment due within 30 days of enactment of legislation.
- Annual payments in perpetuity as follows (payments are adjusted for inflation at greater of 3% or CPI and for changes in sales): Year 1: $8.5 billion; Year 2: $9.5 billion; Year 3: $11.5 billion; Year 4: $14 billion; Year 5 --> $15 billion.
- The price of domestic tobacco products must reflect the annual payments.

Stringent Restrictions on Smoking in Public Buildings:

- Smoking in any building regularly entered by 10 or more persons at least one day per week is restricted to separately ventilated areas which are under negative pressure and are exhausted directly outside.
- Exempts restaurants (other than fast food restaurants and other establishments catering largely to minors) and bars, private clubs, hotel guest rooms, casinos, bingo parlors, tobacco merchants and prisons.
- State and local governments can enact stricter regulations.

Civil Liability Protections and Document Disclosure:

- Settles all pending class actions, Attorneys General suits and other aggregated claims (other than third party payor claims pending as of June 9, 1997) and prohibits all future similar suits. All punitive damage claims for past conduct are settled in exchange for $60 billion of the industry's payment.
- In return for the industry's consent to severe advertising and marketing restrictions, acceptance of FDA jurisdiction, the imposition of lookback surcharges and its commitment to pay $368.5 billion, the parties agreed that the industry should receive some measure of protection from aggregated claims.
- The bar on future aggregated claims in no way affects an individual's substantive rights to file suit against tobacco manufacturer(s). Annual payment caps will ensure predictability and stability.
- Manufacturers must establish and maintain--at the industry's expense--a national document depository, which is open to the public and located in the Washington, D.C. area, which should dramatically reduce the costs of litigation for plaintiffs and will expedite the pre-trial stage of litigation.
- A three judge panel will determine the legitimacy of all claims of privilege related to documents.
- Manufacturers must deposit all original laboratory research relating to the health and safety of tobacco products, except legitimate trade secrets. (Health and safety documents that contain trade secrets will be disclosed to the FDA under confidentiality arrangements.)