

# FYI

**PHILIP MORRIS**  
MANAGEMENT CORP.  
CORPORATE AFFAIRS DEPARTMENT



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Contact: SINIKKA SARRO, (212) 880-3454  
FAX No. (212) 907-5502

## DIRECTORS' EDITION

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# Nannyism fuels the anti-smoking crusade

**STEVEN HAYWARD**

► **THE ISSUE:** There's a lot of moral exhibitionism in the campaign to eliminate smoking in California.

► **THE WRITER:** Mr. Hayward, a non-smoker, is research director for the Pacific Research Institute, a San Francisco-based think tank.

**L**ucky thing Sharon Stone's character in "Basic Instinct" wasn't hauled in for questioning by the police in Davis. Had Stone lit up in the Davis interrogation room and taunted the police with the question, "What are you going to do, arrest me for smoking?" the answer would have been a swift "Yes!"

The always politically correct university town of Davis recently enacted perhaps the most far-reaching smoking restrictions in the nation. Smoking outdoors is even prohibited, unless you are moving somewhere. Loitering with a cigarette is now regarded as the moral equivalent of a coal-burning power plant. Don't even think about lighting up

There is no end to what our government nannies might regulate next in the name of health. Don't dismiss this prospect lightly: An Atlanta-based health group has written Hillary Clinton's health task force with the suggestion that food be taxed according to its fat content to pay for the health-care program — the ultimate sin tax. Fatty foods, alcohol, and meat are all much more solidly correlated with health risks.

in your company car, even if you are alone. Davis police announced their first arrest a few days after the ordinance went into effect.

Never mind that the arguments about secondary smoke are based on science so dubious that even Galileo's inquisitors would blush. Even if one defers to the EPA's panic over a minuscule health risk from second-hand smoke, it cannot mitigate the fact that the inquisition against smoking represents a highly selective indignation bordering on hypocrisy.

It is tiresome and ineffective to go through all of the technical arguments about how we assess relative health risk. The satirical imagination of somebody like Gilbert and Sullivan is required to bring this into perspective. Forget the navy: Today's crew or the Pinafore would caricature "the modern major moralist" decamped in our health and safety bureaucracies.

The Davis city bureaucrat who wrote the anti-smoking ordinance is "the very model of a modern major moralist." No doubt he drove his car a mile or so to the office the day he wrote the ordinance, in the process emitting more carbon mon-

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oxide from his tailpipe in this one short trip than all the outdoor smokers in Davis generate in a year.

Once at the office, our modern major moralist pours his coffee, a single cup of which contains more carcinogens than he is exposed to in a whole year from pesticide residues and food additives.

Then he chomps a donut, increasing his risk of cancer through excess fat consumption. In fact, even as our modern major moralist is feeling quite proud of having struck a blow against the evil tobacco merchants like R.J. Reynolds and Philip Morris, he has been enjoying higher dividends from his stock in Sara Lee, which has lately been pushing its cholesterol-rich and fat-laden cupcakes aggressively in new overseas markets — just like the tobacco giants.

At lunch, our modern major moralist piles mustard — a potent carcinogen that would be banned instantly if the Delaney clause was applied to food itself instead of just food additives — on his hamburger (no comment required), and ketchup on his fatty French fries. The mushrooms in his salad, in fact, are also highly carcinogenic, according to U.C. Berkeley biochemist Bruce Ames.

At the end of the day, he returns home and unwinds with a glass of red wine, which, though good for his heart, contains numerous carcinogens. Then, he throws a log on the wood stove he bought during the energy crisis in the 1970s, but which emits lots of toxics into the neighborhood air.

This unexaggerated caricature is necessary to dramatize the moral exhibitionism behind the proposals in the Legislature in California and elsewhere to ban smoking in all buildings, public and private.

And as our caricature of the modern major moralist above shows, there is no end to what our government nannies might regulate next in the name of health. Don't dismiss this prospect lightly: An Atlanta-based health group has written Hillary Clinton's health task force with the suggestion that food be taxed according to its fat content to pay for the health-care program — the ultimate sin tax. Fatty foods, alcohol, and meat are all much more solidly correlated with significant health risks, especially cancer.

But the most serious objection to this kind of grandstanding government nannyism is that it is simply unnecessary. Most buildings in California are already non-smoking establishments. This is the result mostly of free people expressing their preferences in a free marketplace. It always annoys our putative government nannies to find out that people are able to sort out these problems for themselves.

THE WALL STREET JOURNAL FRIDAY, JUNE 4, 1993

## Sin Tax Creates Jobs— for Bootleggers

By JON NEWTON

High tobacco taxes in Canada have made the price of a smoke so expensive that last year about one in five cigarettes was smuggled in, largely from the U.S. They also cost the life of Ross Diego, a Toronto milk-store clerk. He was shot in the head by a sawed-off shotgun before his killers ran into the night with their haul: 10 cartons of cigarettes.

President Clinton and his tax advisers could do worse than to ponder the Canadian experience as they draw up plans to levy a "sin tax" on tobacco products. The Congressional Budget Office says that hikes in the U.S. cigarette tax from 24 cents a pack to 48 cents will bring in \$18 billion over five years. But they will also create a whole new territory for the multinational criminal entrepreneurs who have honed their skills on Canada's booming tobacco black market.

The Canadian tobacco tax arose in circumstances similar to those now facing the Clinton administration. The federal and provincial governments were under relentless pressure from health lobbyists to make smoking unattractive, but they also badly needed tobacco tax revenues. So they launched anti-tobacco measures and dramatically increased tobacco taxes. In 1989 tobacco advertising was banned, and in 1991 manufacturers were compelled to add warning messages to cigarettes. Meanwhile, federal excise rates soared from just over \$17 (in U.S. dollars) per 1,000 cigarettes to almost \$41.

One effect of this policy was to create big price differences between U.S. and Canadian tobacco products. Today, 200 Canadian-made export cigarettes cost as little as \$14 in the U.S., while in Canada the same carton costs about \$40, two-thirds of it in taxes. This in turn has spawned a vast underground tobacco industry funding a whole raft of criminal operations, such as narcotics and gunrunning.

Much of Canada's illegal tobacco enters through a vast Mohawk Indian reservation that straddles Quebec, Ontario and New York state. It is home to about 8,000 Indians who move freely between the U.S. and Canada. Once the contraband tobacco has arrived, it is peddled in stores, restaurants and bars across the country.

But smuggling operations are hardly confined to this area. Along Canada's east coast, fishermen supplement their in-

comes by off-loading Canadian cigarettes to vessels waiting outside territorial waters. These cigarettes eventually make their way back into Canada via the black market. On the West Coast, cigarettes turn up by sea and land from Washington and Oregon. In central Canada, people near the Montana border buy tax- and duty-free cigarettes on U.S. Indian reservations and in cities like Great Falls.

Export shipments are especially susceptible. Many Canadian cigarettes are put on boats that never reach their supposed destinations. For example, cigarettes legitimately shipped up the St. Lawrence River, bound for Boston, are often unloaded elsewhere on the U.S. coast and transported by road back to Canada. The documentation for other shipments goes to alleged buyers in west or west-central Africa, who process the documents as if they'd actually received the shipments. When the paperwork is returned "executed," the cigarettes are sold to crooks who off-load them in international waters and sell their shipments to U.S. buyers or back to Canadians.

And hijackings go on all the time. In Cornwall, Ontario, recently an armed bandit waylaid a truck carrying cigarettes valued at \$1.7 million. Manufacturers are of course loath to go into details about exactly how many tobacco-laden trucks leave each day, from where and with what frequency. But go they do. Unmarked tractor-trailers cross Quebec and Ontario destined mainly for Buffalo, N.Y., where wholesalers resell to Canadian retailers or to other wholesalers.

Over the past two or three years, Canadian tobacco companies have stepped up their outputs, although they strenuously deny this has anything to do with meeting the demand caused by illicit sales. A recent report by the Canadian Tobacco Manufacturers' Council (CTMC) says that in 1992 almost 10 billion Canadian-made cigarettes were exported. A significant percentage of them made their way back to Canada in illegal shipments.

Canadian cigarettes aren't the only problem. U.S. brands and European imports are also showing up. CTMC president Robert Parker says: "This January, one of our members arranged to have the discarded cigarette packs picked up at the Montreal Forum for three successive

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[hockey] games. When they counted them, 37% were smuggled and 22% of those were non-Canadian manufactured brands, which works out to between 7% and 8% of the total. That compares with the traditional 1% penetration of foreign cigarettes into Canadian markets. So it's soaring."

Marlboros, not legally available in Canada, are hot black-market items, especially with Asians. Ironically, "Marlboros, please" is the trigger-phrase to let convenience store employees know that customers are after black-market cigarettes.

The nearest Canada has come to curbing the problem was in February 1992, when the federal government imposed an 8% tobacco export tax. However, it was hastily suspended two months later, following loud and angry protests, mainly

from tobacco producers and manufacturers. All it really did was give smugglers an excuse to jack up their prices.

According to the CTMC, the street value of the contraband market was about \$1.03 billion in 1992, with Canadian tailor-made cigarettes representing 75.4% and U.S. brands accounting for 4.5%. (The balance is made up of fine-cut, roll-your-own tobacco.)

Canada also lost some \$1.3 billion in tax dollars, says the CTMC. But the fiscal cost is much greater than that if you figure in the costs of paying police officers, customs officials, prosecutors, public-relations experts and other government personnel associated with monitoring or curbing the illegal cigarette trade.

Given Canada's troubles, one wonders whether Mr. Clinton might want to rethink his "sin tax" and raise his money some other way:

*Mr. Newton is a free-lance writer living in Toronto.*

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# Business Day

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The New York Times

SATURDAY, JUNE 5, 1993

## Squaring Off Over Cigarette Taxes

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By MICHAEL JANOFSKY

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Never friends, seldom respectful of each other, the tobacco industry and antismoking forces have renewed their hostilities over industry claims that a higher excise tax on tobacco products, as part of the Clinton Administration's health-care plan, would devastate large parts of the economy.

Braced for the current tax of 24 cents a pack to at least double, and possibly amount to more than \$2, tobacco interests predict those levels would cut consumption enough to kill hundreds of thousands of jobs in industries from farming to retailing, close businesses and deprive state and local governments of millions of dollars in taxes.

### Another Point of View

Yet opponents cite the industry's own behavior of the last 13 years to dispute those arguments. Until April — when Philip Morris announced price cuts of up to 40 cents a pack on Marlboro and other cigarette makers followed suit — the companies had raised prices 33 times, by more than 350 percent, notwithstanding a tripling of the Federal excise tax. Yet jobs did not disappear at nearly the rate the tobacco interests are now predicting they will.

In fact, the companies have generated higher profits during those years largely by raising prices, importing greater amounts of less expensive foreign tobaccos for discount brands and improving technology.

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"The numbers being thrown around by the tobacco industry bear no relation to reality whatsoever," Matthew Myers, counsel to the Coalition on Smoking or Health in Washington, said. "In effect, the tobacco manufacturers cloak themselves as white knights, fighting the evil tobacco tax that would attack jobs. What they're not telling people is that their own decision to raise prices, to import increasing amounts of tobacco and to use ever more mechanized equipment has caused the loss of more jobs than could possibly be lost with the levels of increase being talked about."

#### Black Market

In either case, making cigarettes so much more expensive would likely expand the black market and could lead to increased crime. And such a big increase, if applied at once, could mean that past relationships of price, consumption and jobs no longer apply.

A study by Price Waterhouse for the Tobacco Institute, the industry lobby in Washington, concluded that a 48-cent tax would eliminate 114,117 jobs — or 5 percent of 2.28 million jobs in the growth, manufacturing and distribution of tobacco products — and \$3.33 billion in payroll losses. A \$2 increase would cost 776,056 jobs — or 34 percent — and \$22.68 billion in compensation. A survey by the Tobacco Merchants Association, an eco-

## What is the relationship between tobacco prices and jobs?

nomic information service in Lawrenceville, N.J., was even bleaker.

By comparison, the increase in the price of cigarettes over the last 13 years has caused job losses of only 1.33 percent annually.

Yet the Tobacco Institute projections, the industry points out, do not reflect lower consumption caused by state tax increases on tobacco products. This year alone, 28 states considered increases and three — New York, North Dakota and New Mexico — enacted them, bringing the national average of state taxes above 27 cents per pack of cigarettes.

The overall effect could easily drive the price of premium brand cigarettes up by about a third to \$3 a pack from about \$2.20 to \$2.25 now. That prospect is causing all kinds of concerns for businesses that rely heavily on tobacco sales. For example, convenience store operators, which derive almost a quarter of their sales from cigarettes, more than any other product, are being asked by the National Association of Convenience Stores to put their concerns in writing in a major lobbying campaign.



Jim Stratford for The New York Times

Zane Hedgecock, a tobacco grower in High Point, N.C., said farmers in the area would "absolutely go out of business, no question about it" if the excise tax were raised. With him on his farm was his son Daniel.

Ron Bane, the owner of a distribution company in South San Francisco, Calif., that serves 12 Western states and four Canadian provinces, said he worries over the additional security measures he would need once new taxes make cigarettes more valuable. Already, he said, one of his trucks delivering cigarettes was hijacked at gunpoint in Canada, where excise taxes have pushed the price of cigarettes to more than \$60 a carton, about twice the current price in America.

Equally worried are the tobacco growing states. Twenty-five House Democrats, mostly from Virginia, North Carolina, South Carolina and Tennessee, wrote to President Clinton in March, saying they would "find it most difficult" to support a health-care plan that would harm their constituents.

Zane Hedgecock, a 10th-generation tobacco grower in High Point, N.C., said farmers in the area would "absolutely go out of business, no question about it" if the excise tax were raised.

Farmers' profit margins have declined while the major manufacturers' profits have risen, with Philip Morris's operating income for domestic tobacco doubling since 1986, to nearly \$5.2 billion last year. Farmers have been squeezed by a combination of rising costs for labor, fertilizers and chemicals, and the relatively stagnant prices of tobacco leaves, depressed by an influx of cheap foreign imports. According to the Tobacco Growers Information Committee in Raleigh, N.C., flue-cured tobacco

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leaves generated about \$1,200 an acre last year, a drop of 13 percent since 1988; burley tobacco brought \$801 an acre, a 17 percent drop since 1989.

The Tobacco Institute study predicted that excise tax increases of 24 cents, \$1 and \$2 would eliminate 8,140, 27,654 and 55,308 farming jobs, respectively.

#### A Fine Line

"We work on such a fine line of profit, any decline would have a dramatic effect on us," said Mr. Hedgecock, a 34-year-old farmer who has traced his lineage to William Hitchcock, an Englishman who began growing tobacco in the same area in 1652. Mr. Hedgecock said his greatest fear is that his 4-year-old son, Daniel, would become the first generation of the family not to grow tobacco.

Plant workers in North Carolina and elsewhere are also concerned about jobs. Ray Scannell, the director of research for the Bakery, Confectionery and Tobacco Workers Union in Kensington, Md., predicted that to preserve margins in the face of higher taxes, companies like Philip Morris and R. J. Reynolds might expand operations in countries where manufacturing is cheaper. Since 1990, for example, Philip Morris has opened or improved plants in eastern Germany, Hungary, Russia and Lithuania.

Attrition also worries the sales and distribution sectors.

"If consumption falls by any significant degree, we would see 20 to 30 percent out of business almost overnight," said David E. Strachan, the executive vice president of the American Wholesale Marketers Association, whose membership includes 1,400 distributors and 300 retailers.

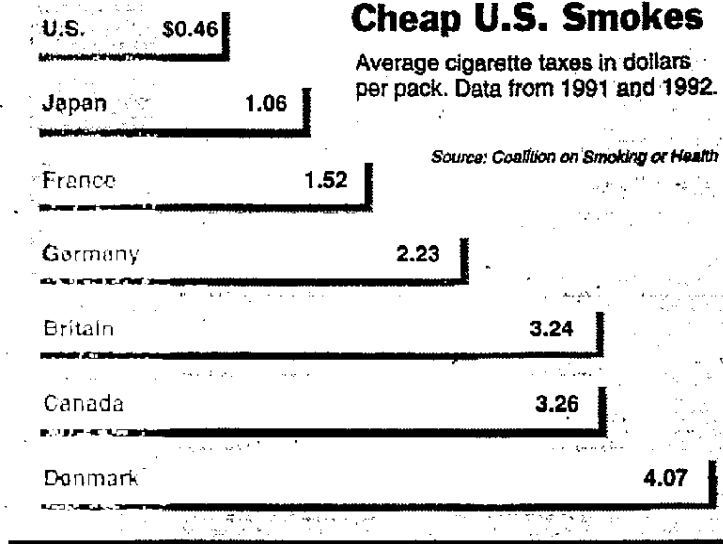
Some wholesalers, he said, would grow short of funds; if retailers, their sales falling, could not pay promptly, forcing middlemen to carry less inventory, borrow more money or both.

Many retailers, like small-store owners in Massachusetts near the state line with New Hampshire, are already suffering. Massachusetts has a cigarette excise tax of 51 cents a pack, the second highest in the country after New York's, which became 56 cents on June 1; New Hampshire's excise tax is only 25 cents.

#### Other Sales Affected

"Massachusetts is not only losing tobacco sales, but sales of everything else," said Cathy Flaherty, executive director of the New England Convenience Store Association. "People are not stopping to buy cigarettes, so they're not buying bread, gum or candy, either."

Those kinds of disparities in cigarette prices are also fueling a growing black market, particularly in Canada, where excise taxes have increased 600 percent since 1980. By last year one of every six packs sold in Canada was contraband, up from one in nine the year before, according to a recent report for the Canadian Tobacco Manufacturers Council.



The New York Times

An increase in excise taxes in the United States might stem some of the smuggling, but could invite other types of crime. Robert Parker, president of the Canadian council, said shootings, robberies, hijackings and murders related to cigarettes have increased in Canada. "We have not collected statistics that are reliable," he said, "but police agencies describe this as the fastest-growing type of urban crime in Canada."

Indeed, law enforcement authorities in the United States say black market cigarette sales have grown in high-tax states. One officer described an emergence of "mom-and-pop organized crime groups," but not yet an escalation of violence.

"The reason is simple," said the officer, John Meenaghan, the agent in charge of the Bureau of Alcohol, Tobacco and Firearms office in Buffalo. "The risk of going to jail if you get caught is probably nonexistent. Maybe you get a fine."

But many of these arguments, reasoned as they seem, are lost on anti-

smoking factions who regard smokers as major contributors to rising health-care costs.

#### 'No Evidence Whatsoever'

"The revenue source used to fund any tax is going to have some affect on jobs," said Mr. Myers of the Coalition on Smoking or Health. "There is no evidence whatsoever that more jobs would be lost raising this tax than any other revenue-raising measure being considered. And this revenue-raiser also saves lives."

Both sides are adamant in their positions, as antismokers pit themselves against manufacturers as social villains and smokers as public nuisances. Already, several bills are under consideration in Congress, including one sponsored in the House by Representative Mike Andrews of Texas and in the Senate by Senator Bill Bradley of New Jersey that would raise the tax by 76 cents, to \$1, to improve health-care coverage.

Mr. Andrews flatly rejects predictions of economic chaos, saying industry officials "spin their numbers to make false points."

It is still far too soon to know what the new excise tax will be. A recommendation by the health-care task force will move to the House Ways and Means Committee and Senate Finance Committee, prior to any Congressional and Presidential approval. Meanwhile, industries wait and worry.

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# Experts Wavering on Steep Rise in Cigarette Tax

By PETER PASSELL

President Clinton is eagerly eyeing a fat new tax on cigarettes, and for reasons easy to fathom. Tobacco addicts are a proven menace to themselves and others, so why not turn that to advantage, deterring their destructive behavior with high costs and using the revenue to offset the burden smokers add to the nation's health bill?

While the size of the tax is still being debated in the Administration, reports last week suggested that it could be as high as \$2 a pack to help cover the cost of the health-care plan the President is preparing to submit to Congress later this year.

"They know cigarette taxes are both good health policy and good politics," says Michael Pertschuk, who was chairman of the Federal Trade Commission in the Carter Administration.

But what seems like slam-dunk common sense to many people arouses unease, if not outright opposition, from economists who study issues at the intersection of health and tax policy.

### Smokers Seen as Paying Costs

While smokers do generate a burden on the medical system, the widely held view that smokers do not pay for the damage they cause is probably wrong, most agree. And while many experts justify Government-imposed restraints on the ground that adolescents and nicotine-addicted adults cannot accurately judge what is in their long-term best interests, this view is being increasingly challenged.

An obvious reason for taxing tobacco is that is where the money is. According to the Advocacy Institute, a Washington group that works closely with anti-smoking advocates, an extra \$2 a pack would generate close to \$40 billion next year. And though revenues would quickly fall as cigarette sales diminished, the cash infusion would help offset the cost of expanded health insurance coverage until savings could be realized from efficiencies in health-care delivery.

If the only thing needed was a broad-based new source of revenue, the Government could as fruitfully, and more reliably, tax shoes or soap. But cigarette taxes are more easily rationalized as forcing smokers to cover their

own costs, much the way so-called green taxes force polluters to pay the cost of tidying their messes.

Smokers do, indeed, put special burdens on health insurance. The latest estimates, from Thomas Hodgson, the chief economist at the National Center for Health Statistics, show that the lifetime medical costs of the average male smoker exceed those of men who never smoked by 32 percent.

### Pensions Not Collected

That is not the complete story, however. John Shoven, an economist at Stanford University, said the higher medical costs are substantially offset by the fact that smokers conveniently die before their time and thus contribute a disproportionate share into the nation's pension funds. The difference for Social Security alone, he estimates, comes to more than \$20,000 paid in and never collected by each smoker.

Will Manning, now at the University of Minnesota's School of Public Health, led of team of economists who in 1989 calculated the "external" costs of tobacco use (the costs not borne by smokers) and subtracted smokers' implicit pension transfers to nonsmokers. Their estimate of that external burden, 24 cents a package, is substantial, but far below the tax rate under consideration by the Clinton Administration. In fact, it is far less than the tax already collected on most packs of cigarettes sold in the United States.

Ken Warner, an economist at the University of Michigan's School of Public Health, pointed out that the Manning calculation was made before the effects of "passive smoking" were well understood. A proper estimate, he argued, should include the health effects on the families of smokers and the fetuses of pregnant women who smoked.

## The Risks of Smoking

### The perceptions

What various groups think is the likelihood of a person's dying of lung cancer caused by smoking. Based on a 1985 survey of 3,000 Americans conducted by Audits and Surveys Incorporated.

Age group	Current smokers	Former smokers	Non-smokers
16-21	45%	43%	51%
22-45	38%	38%	45%
46 and older	33%	42%	46%

### The reality

Actual lifetime risk from smoking, based on a range of 1991 estimates from various Federal sources.

Lung cancer risk for a smoker	6-13%
Total risk of dying from all smoking-related causes	18-30%
Total risk of killing yourself or someone else because of smoking or second-hand smoke (including fetal risk)	22-40%

Source: "Smoking: Making the Risky Decision" by W. K. Viscusi

The New York Times

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But Mr. Manning said he doubted that a full accounting of these added costs would increase the cost for a pack much more than 50 cents. And in any event, some analysts say they are not convinced that focusing on smokers' faults is warranted in a world that is

full of antisocial habits, many of them affecting society's total health bill.

"People take all sorts of risks with medical consequences," notes Robert Tollison, the director of George Mason University's Center for the Study of Public Choice who is sometimes consultant to the tobacco industry. "Why tax smoking, but not the consumption of saturated fat?"

The case for heftier taxes on smokers is further complicated by the lack of competition in the tobacco industry. Through the 1980's, argues Philip Cook, an economist at Duke University's School of Public Policy, the price of

## Conventional arguments for a smoking tax are stiffly challenged.

cigarettes rose far faster than production costs and tax increases could have conceivably warranted.

Joe Camel and the Marlboro Man now seem to be suffering from a resurgence of price competition from generic cigarettes. But cigarette profits, and prices, remain high by any market test, suggesting that smokers are already paying a monopoly "tax" to cigarette makers on top of Federal and state taxes. Thus any calculation of the optimal tax that would penalize smokers for the harm they do to others ought to be reduced by the amount of this tribute siphoned off by the tobacco industry.

The weakness of the conventional wisdom that smokers fail to pay their own way is quietly acknowledged by some anti-smoking strategists. But they say they do not believe that that argument is really necessary to justify a big tax on tobacco.

### Canada's Tax Cuts Smoking

Higher prices would be an effective deterrent to beginning a tobacco habit and a powerful motivator to quit, they say. In Canada, where a \$3 tax has more than doubled the average price to close to \$6 a pack since 1982, average consumption of cigarettes has fallen by 40 percent.

But does Washington have the right to play national nanny, inhibiting self-destructive behavior with a tax that would cut deeply into the living standards of heavily addicted people with modest incomes who choose to smoke in spite of the tax penalty? The answer, for many analysts, is an emphatic yes.

Smoking is a habit typically acquired early in life, they point out. And teenagers hardly fit the model of the rational people whose "consumer sovereignty" economic theorists so vigorously defend. "I would not trust the 17-year-old Philip Cook to be a careful steward of the 40-year-old Philip Cook's body," said Mr. Cook, a former smoker.

Thomas C. Schelling, an economist at the University of Maryland's School of Public Affairs, said he also saw a case for intervening in the behavior of adult nicotine addicts. He says decisions about tobacco are a struggle between short- and long-term desires, in which the powerful urge to alleviate an immediate, concrete hunger conflicts with the more abstract desire to avoid future health problems.

### All Overestimate Risks

Quitting is obviously tough — tougher, Mr. Schelling suggests, than neophyte smokers understand. And regret sets in early. In a 1980 survey, he noted, more than half the smokers 20 to 25 years old who smoked said they had made three or more unsuccessful attempts to break the habit.

But economists with a strong libertarian bent are not satisfied with this justification for paternalism.

W. Kip Viscusi, an economist at Duke University and the author of "Smoking: Making the Risky Decision" (Oxford University Press, 1992), used a 1985 survey of some 3,000 smokers and nonsmokers to see if they correctly perceived the risks of smoking. The results matched many earlier findings that, on average, both smokers and nonsmokers actually overestimated the probability of death and illness from tobacco. Perhaps most surprising, teen-agers attached a higher risk to smoking than did the rest of the population.

That does not necessarily mean teen-agers make good use of the perception. But research by Baruch Bischoff, an experimental psychologist at Carnegie-Mellon University, suggests that the view of adolescents as myopic thrill-seekers is overdrawn.

"We haven't found that teen-agers think they are invulnerable," said Mr. Bischoff. "We haven't been finding much difference between adults and teen-agers in how they process information about risk."

### Raising Many Questions

But he did offer some important qualifications. For one thing, he noted, adolescents may fear social ostracism more than adults, making them more susceptible to peer pressure to take risks. More generally, he said he thought that numerical estimates of risk were crude indicators of how people perceive risk — that people did not really have a way of grasping how percentage chances of dying actually compared with each other and what they meant.

But Mr. Viscusi does not find these to be convincing counter-arguments for a tax-based deterrent, even if one ac-

cepts them. If the object is to stop teen-age smoking, he says, why tax adult smoking? If the object is to save the innocent from passive smoking, why tax smoking in private? Enforcement of regulations against the sale of cigarettes to minors and the use of tobacco in public places, he believes, would be a "more efficient" means to these social ends.

This debate has not filtered into public consciousness so far. Even if it did, the arguments against the tax would probably not persuade many people.

What probably matters most is that a cigarette tax could be a major cash cow, a means of collecting a lot of revenue with minimal offense to the three Americans in four who do not smoke, and at the same time of saving thousands of lives. But is a big cigarette tax, on balance, justified by the conventional wisdom? Like many of his fellow professionals, Mr. Schelling is troubled. "I just don't know," he concedes.

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## *Cigarette Smuggling Lights Up Border Of the U.S.-Canada*

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**Machine Guns Blaze as Gangs  
Battle Over Contraband;  
Canadian Tax Receipts Hit**

By ROSANNA TAMBURI

Staff Reporter of THE WALL STREET JOURNAL  
OTTAWA — Canada is expected to export a record number of cigarettes to the U.S. this year, but few will be smoked by Americans.

The bulk of the cigarettes will be smuggled back into Canada and sold illegally on the black market at cut-rate prices, industry analysts said.

Canada exported 7.9 billion cigarettes in the first five months of the year, up 135% from the year earlier, according to Statistics Canada data issued yesterday. Most of the cigarettes were trucked to U.S. warehouses just across the border from Canada.

The smuggling is causing heavy tax losses to Canada's federal and provincial governments. David Sweanor, a lawyer for the Non-Smokers' Rights Association, a lobby group, estimated that the federal and provincial revenue loss in the January to May period totaled more than one billion Canadian dollars (US\$785.6 million).

Smuggling activity is difficult to check because much of the 5,000-mile border between Canada and the U.S. is only lightly patrolled. Much of it is believed to be done by Native Canadians who claim a right to move goods across the border duty-free. One major reservation straddles the border. The contraband trade has sparked violence mainly between rival smuggling gangs.

"Almost every night machine-gun fire is heard, speed boats are running the rivers at full speed in the dark with their lights turned off," engaged in criminal activity, said Don Boudria, a member of

Parliament. "I am not describing life in Sarajevo or Mogadishu. I am describing the practice of tobacco smuggling on the St. Lawrence River," he said.

A 200-cigarette carton of legally purchased Canadian-made cigarettes sells for more than C\$50. About 70% of that is provincial and federal tax. A carton of contraband cigarettes smuggled back from the U.S. sells for as little as C\$26.

Cigarette exports have surged in recent months partly because Imperial Tobacco Ltd., Canada's largest cigarette maker, resumed exporting to the U.S. market, said Robert Parker, president of the Canadian Tobacco Manufacturers' Council, an industry group.

Imperial, a division of Imasco Ltd., had voluntarily curtailed its shipments to the U.S. last year as part of an agreement with the Canadian government to help reduce smuggling. But Imperial abandoned its antismuggling policy earlier this year after discovering that other Canadian and foreign manufacturers had moved in to fill the supply gap.

Canada's other major tobacco manufacturers are RJR-Macdonald Inc., a subsidiary of RJR Nabisco Holdings Corp., and Rothmans, Benson & Hedges Inc., jointly owned by Philip Morris Cos. and Rothmans Inc., a unit of Rothmans International PLC.

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# Two Bucks Will Finance Health Care for 10 Million

By Jeffrey E. Harris

**T**he fate of the Clinton Administration's again-delayed program to reform the country's health care system will hinge on sources of revenue. Cigarettes, which are detrimental to the health of Americans, are likely to enhance the health of the program.

A \$2 per pack increase in the Federal excise tax on cigarettes, which is now 24 cents a pack, is under consideration. But Government economists cannot easily predict its impact. An extra \$2 would bring the current average retail price to \$4 a pack. Would smoking rates drop so steeply that cigarette revenues would fall?

*Jeffrey E. Harris, an economics professor at M.I.T. and a doctor, is author of the forthcoming "Deadly Choices: Coping With Health Risks in Everyday Life."*

No. For the rest of the 1990's, higher cigarette taxes almost certainly would continue to add billions of dollars to the Treasury even though smoking rates would surely decline.

The best way to try to predict the impact of a major tax increase on cigarettes is to look to Canada, where cigarette taxes and prices have been rising much faster than ours.

From 1984 through 1992, the average price of Canadian cigarettes rose 114 percent over the inflation rate, yet cigarette consumption dropped by only 27 percent, according to my calculations. (Canadians pay an average of \$4.41, in U.S. dollars, for a pack.)

Last year, 24.9 billion packs of cigarettes were bought in the United States. Based on Canada's record, I project that, in the U.S., a \$2 increase would reduce sales by 25 percent, to about 19 billion packs. Subtracting lost income taxes, I calculate that a \$2 hike would add \$28 billion annually to the Treasury.

The Congressional Joint Committee on Taxation has forecast that a \$2 increase would yield \$18 billion a

year; this low estimate presupposes that smoking rates would drop by 50 percent, which is unrealistic.

If the \$2 hike actually raised \$28 billion in revenue, that would be enough to pay for the health care of 10 million Americans. With 37 million

**A higher cigarette tax would yield \$28 billion.**

uninsured, that is a sizable chunk of the cost of universal health care coverage.

Critics might argue that U.S. cigarette manufacturers would not pass the entire \$2 tax increase to consumers — that discount and generic cigarettes would become even more popular. If so, smoking rates would fall less than I predict and, again, Fed-

eral revenues would be even higher.

Why wouldn't the bottom drop out of the domestic cigarette market? After all, at a \$4 price per pack the typical smoker would spend more than \$2,000 yearly on cigarettes. Here's why: It's hard to quit smoking. After a single attempt, the typical smoker has no more than an 8 percent chance of achieving long-term abstinence. When prices go up, many highly motivated smokers may decide to kick the habit and do so successfully. But the most addicted least price-sensitive smokers will go on as before.

Overall, the demand for cigarettes is just too unresponsive to price to expect a \$2 tax to cause revenues to fall. For a \$2 tax to yield no more revenue than a \$1 tax, more than half of today's smokers would have to quit.

An inaccurate forecast of cigarette tax revenues might be hazardous to the health of a great many Americans. But genuine reform could be in the offing if the White House realized that there just might be enough money to foot the bill. □

FRIDAY, JUNE 4, 1993 • USA TODAY

## ACROSS THE USA:

### NEBRASKA

LINCOLN — The Legislature voted to hike the state tax on cigarettes by 7¢ per pack starting July 1. But lawmakers turned

down Gov. Nelson's proposal to add another 3¢ to the cigarette tax to provide \$3.9 million more for enhancing teacher salaries.

2048159410

# Big business helping finance anti-tax drive

## Boeing, Weyerhaeuser part of group fighting budget plans

The Associated Press

OLYMPIA — A committee of Washington's biggest businesses, including Boeing and Weyerhaeuser, has joined the initiative campaign to slash state taxes and put a lid on future increases.

The Ballot Issues Analysis Committee, the members of which also include Microsoft, Phillip Morris and Puget Sound Power & Light Co., so far has contributed \$40,000 of the \$171,000 Initiative 602 campaign fund, records showed yesterday.

The sum makes the committee the biggest single contributor to the anti-tax effort. Dan Wolfe of Safeco Inc. serves as chairman of the group, whose staff works

for the Seattle Chamber of Commerce.

The biggest chunk of the fund, nearly \$90,000, has gone to pay scores of people to gather initiative signatures, the state Public Disclosure Commission records showed.

Big business is weighing in as Gov. Mike Lowry travels the state trying to convince citizens in town meetings that the tax-rollback initiative would devastate public education, the prison system and social services — the biggest consumers under the \$16.2 billion state budget.

The initiative also would effectively kill the state's new health care reform law, which seeks to bring basic health care to all by mid-1999. Passage of I-602 would repeal new taxes, mostly additional levies on alcohol and tobacco, intended to generate \$250 million to help put the program into effect.

But initiative supporters with the Committee to Limit Taxes Now argue that

state budget writers are out of control and need limits to inspire them to "reinvent" a more efficient government.

Although existing taxes over the 1993-1995 budget period are expected to bring in more than \$1 billion in new revenue, it wasn't enough to finance additional costs,

mainly in education and prisons, Lowry and Democratic lawmakers said. The Legislature this spring imposed more than \$1 billion in new taxes and fees. It also reduced state spending by about \$700 million.

The Legislature could not reimpose most of those taxes and fees without at least 60 percent approval from the state House and Senate. It would limit future tax increases to rises in personal income, although that cap could be waived with 75 percent approval of both houses.

The initiative campaign says it has collected about 260,000 signatures, more than enough to qualify the measure for the ballot in November. The signatures of 181,657 registered voters are required, and petitions must be filed with the secretary of state by July 2.

Among other big contributors to the campaign are the alcohol and tobacco industries. The Washington Beer and Wine Wholesalers donated \$5,493, Anheuser-Busch gave \$5,000 and Coors Brewing \$1,000. An additional \$5,000 was kicked in by tobacco lobbyist Bill Fritz.

Home builders contributed a total of more than \$10,000, as did restaurant owners and real estate sellers.

Plum Creek Timber and the Architects and Engineers PAC each gave \$5,000.

2048159411

# Fuming Over Cig Tax

By Harry Berkowitz

STAFF WRITER

Bernie Schmidt had an immediate reaction to the more-than-\$2 tax increase on the carton of More brand cigarettes he bought yesterday for \$25.69 at a Duane-Reade drug store on Park Avenue.

"It's asinine," said Schmidt, a tennis court manufacturer and Manhattan resident who's smoked for 65 of his 80 years. "People who smoke will still smoke, although my doctor is against it. Smoking is a luxury, not a habit. I wish I could quit, but it's hopeless."

New York State raised its excise tax on cigarettes by 17 cents a pack, effective yesterday, to 56 cents, the highest level of any state. But the increase, approved two months ago by the legislature, is aimed not primarily at stopping people from smoking, but at raising an extra \$170 million a year in tobacco taxes on top of the existing \$552 million.

Some people interviewed yesterday said the extra expense, along with a major boost in the 24-cent-per-pack federal cigarette tax the Clinton administration is expected to propose, may be the final straw in getting them to quit — or at least to shop around more and possibly switch to discount brands.

"People ask how much it is and they just walk out," said Ollie Alammari, a salesman at Golden Pipe Shop on Second Avenue at 80th Street, which now charges as much as \$2.55 a pack for premium brands, including the extra state excise tax plus a few cents extra in sales tax. "The raise is too high."

Take Irene Lane, a retired window display worker who bought a carton of Capri cigarettes in midtown yesterday. "I'll just stop smoking," she said. "This is my last carton." Some other people just opted for Marlboro, which is temporarily cutting prices by 50 cents a carton, or discount brands like GPC and Raleigh Extra at \$1.69 a pack.

Cigarette distributors warned yesterday that the extra taxes will lead to more bootlegging, especially from Indian reservations, where taxes are not imposed, and will cause more New Yorkers to stock up on cigarettes in New Jersey or Connecticut, where taxes are lower.

"I predict that there will be a diminution of sales in the state, a lot of people will lose their jobs, and it will invite organized crime in," said Arthur Katz, executive director of the New York State Association of Tobacco and Candy Wholesale Distributors. In addition to the state and federal taxes, there is an 8 cent excise tax on cigarettes imposed by New York City, plus an 8.25 percent sales tax on top of all that.

The state estimates that 7 percent of cigarettes are sold through Indian reservations — costing the state \$60 million a year in lost taxes — and that the higher tax will increase that market share to 8 or 8.5 percent. The increase will also accelerate the 3 to 4 percent annual decline in smoking, said James Wetzler, commissioner of the state Department of Taxation and Finance. If correct, that means an extra 88,000 people will either quit smoking or won't start, about 30 percent of them teenagers.

2048159412

UPI 06/17 1442 cigarette-tax-ny

**NYPIRG calls on Empire State to raise its already mammoth cigarette taxes**  
ALBANY, N.Y. (UPI) -- Seventeen days after New York State raised its cigarette tax to a highest-in-the-nation 56 cents a pack, an influential public policy group Thursday called on the state to raise the levy even more.

The New York Public Interest Research Group said the state should demand another 22 cents a pack in taxes, with the proceeds going to state-supplied health insurance for poor children and anti-smoking efforts aimed at the young.

Assembly Health Committee Chairman Richard Gottfried, D-Manhattan, has already sponsored legislation to boost the tax.

Gottfried and NYPIRG proposed using the higher revenues to expand the Child Health Plus program, which provides free or cut-rate state health insurance for children of families earning up to 222 percent of the poverty level.

The program currently covers regular checkups and doctor visits, outpatient surgery and prescription drugs.

But Gottfried and NYPIRG's proposed expanded Child Health program would increase the number of youths participating, as well as covering children up to age 21 and paying for dental and vision care.

Money from the proposed tax would also go toward educational efforts designed to keep children from taking up smoking.

"The tobacco companies ruthlessly market their deadly product to children through their multi-billion dollar advertising efforts," said Blair Horner of NYPIRG. "New York must move to counter the recent price cut in cigarettes that is really designed to bolster tobacco's appeal to youngsters."

But state Senate Republicans, who traditionally oppose tax increases, quickly panned the proposal.

"We don't favor any additional taxes," said Chris McKenna, spokesman for state Senate Majority Leader Ralph Marino, R-Muttontown. "We think any additional taxes right now, as our state is beginning to see an economic recovery, is a bad idea."

**THE NEW YORK TIMES EDITORIALS/LETTERS FRIDAY, JUNE 18, 1993**

## For Best Revenue, Tax Cigarettes \$1.26

To the Editor:

According to Jeffrey E. Harris, a \$2 increase in the Federal excise tax on cigarettes from 24 cents a pack to \$2.24 a pack would increase tax revenue from \$5 billion to \$33 billion (Op-Ed, June 4). Professor Harris underestimates the reduction in smoking rates that would accompany the excise tax hike and thus substantially overestimates the additional tax revenue that would be generated.

My research with Gary S. Becker, winner of the 1992 Nobel Memorial Prize in Economic Science, Frank J. Chaloupka and Kevin M. Murphy

demonstrates that cigarette consumption is responsive to price. Given the addictive nature of smoking, consumption of cigarettes is positively related to past consumption. This means that price response grows over time. For example, a price hike in 1993 would reduce consumption in 1993, which would cause consumption in 1994 and all future years to fall. Moreover, since teen-age smoking rates are particularly sensitive to price, the number of new smokers would fall dramatically.

My colleagues and I estimate that eventually each 10 percent increase in price causes per capita cigarette consumption to decline by about 8 percent. Based on our studies, I estimate that a tax rate of \$1.26 a pack would maximize Federal revenue

from the excise tax at \$16 billion. Higher tax rates, such as the \$2.24 suggested by Professor Harris, would yield less revenue than \$16 billion.

Indeed, if the tax rate were sufficiently high, it might produce even less revenue than the \$5 billion yielded by the tax of 24 cents.

The harm done to others by smokers (for example, that done to fetuses by pregnant women who smoke) may justify Federal excise tax rates of more than \$1.26 a pack. But a rate of \$2.24 would not yield nearly enough to pay for the health care of one-fourth of the 37 million uninsured Americans, for which Professor Harris argues.

MICHAEL GROSSMAN  
New York, June 11, 1993

The writer is professor of economics, CUNY Graduate School.

2048159413

# Indiana may raise its tax on cigarettes to 33 cents a pack

By MARY DIETER  
Staff Writer

INDIANAPOLIS — A hefty increase in the cigarette tax may be proposed as an alternative way of raising money to balance Indiana's budget when the legislature returns in special session next month.

The increase likely would hit Southern Indiana harder than any other area of the state. That's where the state's tobacco farms are located and where merchants must already compete with their counterparts in Kentucky, who can charge less for cigarettes because state taxes there are so much lower.

Indiana charges 15.5 cents a pack; Kentucky, 3 cents.

Gov. Evan Bayh insisted in an interview yesterday that he has not yet given up on his proposal for a 1 percent tax on hospitals' gross revenues. Still, he acknowledged that his administration is considering several other revenue-raising schemes, including increasing the cigarette tax.

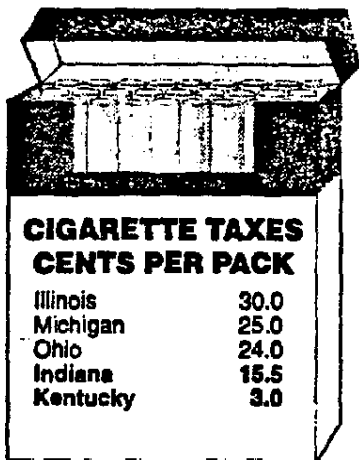
Democratic Sen. Michael Gery of West Lafayette, who has pushed for higher cigarette taxes for years, said yesterday that there's "a very high likelihood that it will be part of the program at least."

Gery said that there is general agreement among Democrats — Bayh; House Democrats, who control their chamber; and Senate Democrats, the minority in theirs — that the cigarette tax is the way to go. "I'm not sure there's been any agreement on the exact amount," he said. But the tax rate proposed by Senate Democrats in March — 33 cents a pack — likely would be the maximum, Gery said.

Bayh proposed the hospital tax to deal with the state's Medicaid-budget problem. Costs have been projected to far outstrip the state's finances, and the governor has set out a package of solutions that also includes cutbacks in payments to health-care providers and a managed health-care network for recipients of Medicaid.

appears to be a politically acceptable tax to increase" so "we obviously view it as a serious threat."

Philip Morris also plans to urge the 300 Hoosiers who work in its Louisville plant, tobacco farmers, and merchants in border counties to fight the increase.



STAFF CHART

But the biggest sticking point during the General Assembly's regular session was the Senate Republicans' refusal to tax hospitals. As the session waned, some even wondered if the proposal could pass the Democrat-led House.

Having "already charged up this hill once," Bayh said, he will not blindly put out a proposal. "I think it's important we get some indication that whatever alternative is considered it is likely to meet with success," he said.

Meanwhile, Philip Morris, the largest U.S. cigarette manufacturer, has already begun an effort to quash a cigarette-tax increase. The company sent letters dated May 20 to Hoosiers in its computer files, urging them to write to their state legislators to oppose the increase.

The letter said that legislators were contemplating raising the tax by as much as 35 cents a pack, bringing the total tax to 50.5 cents. The highest in the 50 states and the District of Columbia is 51 cents a pack, in Massachusetts; the lowest is 2.5 cents, in Virginia. Indiana ranks 42nd and Kentucky 50th.

Gery said, however, that a tax that high is not being contemplated.

Scott S. Fisher, Philip Morris' regional director of government affairs, said that the cigarette tax "ap-

2048159414

# GOP's \$3m antismoking ads idea for T would benefit party chairman

D-23  
By Frank Phillips  
GLOBE STAFF

Republican leaders attached an amendment to the House budget diverting \$3 million of cigarette tax money to the MBTA for mass transit antismoking ads, a move that would reap a windfall for a firm partly owned by GOP chairman Jim Rappaport.

The rider, attached to the budget last week by House Minority Leader Peter Foran of Plymouth, would be a huge boost for both the

Massachusetts Bay Transportation Authority and for Park Transit Display, the Quincy-based agency which places ads on the authority's subways, buses and trains and at station facilities.

Rappaport, the chairman of the state Republican Party, is a 20 percent owner of Park Transit. His sister, Judy Rappaport, and a man named Michael Goden are also investors. Ironically, the firm's owners, including Jim Rappaport, have also raised with T officials the issue of rescheduling a long-standing policy of not accepting cigarette

RAPPAPORT, Page 28

ads.

If the GOP rider survives the budget process, Rappaport's firm, which was awarded the MBTA contract last year after a competitive bidding process, would under its contract take \$1 million of the \$3 million spent on the transit antismoking advertising.

Rappaport said neither he or anyone in the company lobbied the House GOP leaders to include the amendment in the \$18.5 budget proposal for fiscal 1994 that was passed by the House last Saturday and sent to the Senate.

"I've talked to nobody on this," Rappaport said. He said he believed the impetus for the amendment came from MBTA marketing officials.

The GOP leader said the only lobbying from his firm came from his sister, who called state Sen. Lois Pines (D-Newton), an antismoking leader on Beacon Hill who Jim Rappaport said opposed the diversion.

Foran also said the GOP chairman never approached him or his staff to include the amendment. He said he offered it in order to defray the state's contribution to the MBTA deficit subsidy.

A leader in the coalition that successfully pushed the ballot question raising the cigarette tax by 25 cents per pack said the GOP amendment is a "waste of money."

"It would be a total overkill," said Candace Pierce-Lavin, the executive director of the Massachusetts Coalition for a Healthy Future.

Pierce-Lavin said that too many of the antismoking dollars would be aimed at a limited audience. "If discrimination against people who do not use the MBTA," she said.

Pierce-Lavin said the decision on how to use the advertising funds should be left to the media experts that the Department of Public Health is planning to hire to launch its multimillion dollar antismoking campaign.

The move by the House Republicans also comes after Rappaport has talked with MBTA officials about rescheduling former Gov. Dukakis' order banning tobacco advertising on MBTA vehicles and property.

A source at the MBTA said Rappaport and his firm raised the issue of accepting cigarette ads as part of its discussion on how to enhance the subsidiaries' revenues. Cigarette ads could bring in from \$700,000 to \$1.2 million in additional annual revenues for the MBTA.

Rappaport acknowledged the subject came up when he talked with Secretary of Transportation James Kerwick, the MBTA board chairman in a conversation late last year about Park Transit's work. But he said he does not remember who initially raised the issue and he said no conclusion was reached.

Asked his opinion on placing cigarette ads on MBTA vehicles and at stations, Rappaport declined to take a position. "It's not on the table," Rappaport said. "It's not something to oppose or support. I don't deal with hypotheticals. It's not yet an issue."

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NEW YORK TIMES

JUN 12 1993

**Raise the Cigarette Tax**

To the Editor:

Re: "Experts Wavering on Steep Rise in Cigarette Tax" (news article, June 7): Although the costs of smoking to the American economy have been estimated at more than \$100 billion a year — more than \$4 for every pack sold! — some argue smokers shouldn't be asked to pay more through higher cigarette taxes because their early deaths save some pension and Social Security costs.

But the burden on nonsmokers of paying those costs through higher taxes and health insurance premiums will not be offset until 30 to 50 years from now, when today's smokers begin dying off.

No other country in the world has as low a cigarette tax burden as the United States, and many now impose far more than the proposed \$2 a pack increase. All have found that higher taxes bring in much-needed revenue, even while reducing consumption — especially among young children — and slashing health care costs.

Cigarettes are lightly taxed in this country only because of the political clout of the industry and the reluctance of the nonsmoking majority to speak up.

JOHN F. BANZHAF 3D  
Executive Director

Action on Smoking and Health  
Washington, June 8, 1993

**Assembly approves cigarette-tax boost**

SACRAMENTO California's cigarette tax would be increased by two cents per pack to pay for breast cancer research, detection and education programs under a bill passed by the Assembly in an emotional and raucous showdown.

The increase from 35 to 37 cents per pack would cost the average smoker \$14.60 per year and raise \$39 million annually, backers of the plan said.

Six Republicans crossed party lines to join 48 Democrats Monday on the 54-25 roll call, the exact two-thirds margin required in the 80-seat Assembly, sending the bill to the Senate. All 80 votes were cast by Republicans.

Compiled from Examiner wire reports

UPn 06/15 1921 AMA lashes out at tobacco industry

CHICAGO (UPI) -- Members of the House of Delegates of the American Medical Association Tuesday took a strong stand against the tobacco industry with approval of a measure that urges an end to all tobacco advertising.

At the annual meeting, which continues through Thursday, the delegates also called for an end to smoking in prisons and condemned the industry as the leading cause of "preventable mortality in the United States."

"The evidence is clear: tobacco companies continue to pursue aggressive, vile advertising campaigns, spending billions of dollars annually, in an effort to convince more people to use their deadly products," a report prepared for the delegates said.

"What is even more egregious is that these advertising blitzes are often aimed at innocent children and others who are uninformed about the inherent dangers relating to tobacco use and, as a result, are particularly vulnerable to their appeal."

The report calls tobacco company advertising tactics "despicable," especially when it comes to the use of cartoon characters and sexual overtones to push tobacco products rather than "the reality of a cancer ward."

"The costs to society and the substantial burden placed on America's health care system are tremendous," the report said.

"The tobacco industry supports death and ill health and through its abhorrent advertising campaign it continues to prey on the minds of our youth, the uninformed and the disadvantaged."

The delegates voted to support legislation that would ban smoking in prisons and to reaffirm its commitment to smoking cessation programs in jails and prisons.

They also called on the federal government to repeal tax laws that allow tobacco companies to deduct nearly a third of their advertising budgets on their federal income tax.

"In effect, taxpayers are subsidizing the \$1 billion amount the tobacco industry is spending on advertising and promotion and claiming as a business deduction," the resolution noted.

2048159416

# AMA Refuses To Cut Link to Tobacco Cash

By Howard Wolinsky  
Staff Writer *P.52*

The American Medical Association Thursday decided not to go cold turkey on taking money from tobacco-company subsidiaries.

The AMA's policy-setting House of Delegates at its meeting here overruled the recommendation of a hearing committee that the AMA no longer take any funds from tobacco-company subsidiaries.

Dr. Robert McAfee, an AMA Board member, said delegates in essence made a "business decision" which let the AMA take the subsidiaries' money to run public-health programs, such as its campaign against domestic violence.

But Dr. Alan Blum, founder of Doctors Ought to Care, a Houston-based health-promotion group, said the AMA missed the point.

"There is no such thing as a tobacco subsidiary," he said. "The acquisition of food companies is an effort by the tobacco industry to hide their true identity and the true source of their profit. For its part, the AMA did not want to miss out on the money from the tobacco companies."

In 1981, Blum's efforts led the AMA to sell \$1.2 million in tobacco stocks.

The issue arose from a \$250,000 grant that Fleischmann's Margarine gave the AMA for an anti-cholesterol campaign. Fleischmann's is a subsidiary of tobacco giant R.J. Reynolds.

Some doctors said the AMA was sending a message that it endorsed trading with "the enemy," the

tobacco industry, whose products contribute to the deaths of over 450,000 Americans a year.

The AMA House last December asked the AMA

board to provide a definition of a tobacco company to guide acceptance of financial support.

The definition adopted Thursday said a tobacco company is a firm that makes or sells tobacco products. But a division of a tobacco company is "not [to] be considered . . . part of the tobacco industry as long as it does not promote or contribute to the promotion, sale, and/or use of tobacco products."

If a subsidiary became involved in promoting tobacco, the AMA would "blacklist" the firm and no longer accept its support, delegates decided.

Larry Joyce, AMA senior vice president, said the AMA now gets no money from tobacco subsidiaries

for public health programs. But he said he did not know how much it gets for ads or cable television.

In other business, McAfee, 57, a surgeon from South Portland, Maine was elected AMA president-elect. Elected to the AMA Board in 1984, he has been considered in AMA circles one of its strongest tobacco opponents.

And Dr. Lonnie Bristow, 63, an internal medicine specialist from San Pablo, Calif., and the first black AMA board member, announced he will run for AMA president next year. If elected, he would be the first African-American president in the AMA's 146-year history.

## Morning Newsbriefs; 06/17/93

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### "Presidential Health Reform Task Force Official Predicts Federal Ban on Smoking in the Workplace" 1993 The Associated Press (6/16/93)

Tupelo, Miss.--Smoking on the job will be a thing of the past nationwide within two years, a member of a presidential task force on health care reform predicted. Michael Samuelson, a member of President Clinton's task force on health care reform, told Northeast Mississippi industry representatives that rules governing smoking at work will soon be overhauled. Several Mississippi companies have mandated a smoke-free workplace, and Samuelson said Tuesday that move may soon be required. Samuelson, president of the National Center for Health Promotion in Ann Arbor, Mich., made his remarks at a seminar sponsored by the North Mississippi Medical Center and Parke-Davis, a pharmaceutical company. An Environmental Protection Agency report released in January classifies passive smoke, or second-hand smoke, as a Class A carcinogen. Asbestos and dioxin are in the same classification. Within two years, Samuelson predicted, the EPA through the Occupational Safety and Health Administration will ban smoking in the workplace. He said the right of employees to have a safe working environment will supersede the rights of individual smokers. Samuelson said companies would be wise to ban smoking, even without a federal mandate, in order to avoid lawsuits. OSHA already requires employers to provide safe work environments, and employees easily will be able to accuse employers of being negligent in exposing them to second-hand smoke, Samuelson said.

2048159417

# Tobacco Groups Sue to Void Rule On Danger in Secondhand Smoke

By MICHAEL JANOFSKY

Leading forces of the tobacco industry sued the Federal Government yesterday to overturn its declaration that secondhand tobacco smoke causes cancer.

Groups representing tobacco growers and distributors, as well as the country's two leading cigarette makers, Philip Morris Companies Inc. and the R. J. Reynolds Tobacco Company, asked a Federal District Court in Greensboro, N.C., to nullify the designation of smoke from other people's cigarettes as a carcinogen, a classification made by the Environmental Protection Agency last January.

The move was the first unified effort by the industry to prevent governmental agencies from restricting smoking in public places.

Steven C. Parrish, a vice president and general counsel for Philip Morris, said at a news conference in Washington that the environmental agency's linking of secondhand smoke to increased health risks in nonsmokers was "among the most flawed ever" presented by the agency. The lawsuit accused the agency of using flawed scientific methodology to arrive at its conclusion and of overstepping its authority.

## Suit Called Frivolous

The plaintiffs argued that the environmental agency had manipulated results to fit its conclusions, adversely affecting the industry by shrinking the amount of space available to smokers in restaurants, sports arenas, airplanes, trains and workplaces.

The lawsuit, which would be tried before a judge without a jury, was immediately criticized by anti-tobacco groups as frivolous, unfounded and the latest attempt in a 40-year campaign to deny that cigarette smoking causes cancer. One anti-smoking advocate dismissed the lawsuit as a tactic intended to delay Government smoking bans, and predicted that the industry would not prevail.

The lawsuit, which is to be tried in North Carolina because three plaintiffs are based there, comes as the \$45 billion tobacco industry is under siege by health organizations and government agencies at all levels striving to reduce or eliminate smoking. The intended effect of the lawsuit is to delay the

Government from proceeding with a rule-making process that could lead to even more severe smoking restrictions than now exist. Much of this action is being taken as a result of a report by the Environmental Protection Agency titled "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders."

A spokesman for the environmental agency, Dave Ryan, said the agency stood by its report, adding that an independent panel of 16 experts had twice unanimously endorsed the agency's position, presented by William K. Reilly, who was then Administrator of the agency. Mr. Reilly was not named as a defendant in the lawsuit, but his successor, Carol M. Browner, was.

Besides the two cigarette makers, who accounted for more than 71 percent share of the domestic market last year with combined sales of more than \$16 billion, the four other plaintiffs are groups representing a cross section of the tobacco industry, including farmers who grow the two major varieties of leaves used in cigarettes, flue-cured and burley; warehouse operators, wholesalers and vendors.

Fred Bond, the chief executive of the Flue-Cured Tobacco Cooperative Stabilization Corporation of Raleigh, N.C., one plaintiff, said he represented more than 500,000 families of farm owners and workers. The other plaintiffs are the Council for Burley Tobacco, of Lexington, Ky.; the Universal Leaf Tobacco Company of Richmond, and the Gallins Vending Company of Winston-Salem, N.C.

Mr. Parrish said he was aware of at least 13 states in which officials were considering stronger restrictions on smoking. And last week, the Supreme Court ruled that inmates who could show that exposure to smoking was a threat to their health might have a constitutional right not to be confined with a cellmate who was a chain-smoker.

## 3,000 Deaths a Year

The lawsuit focuses on assertions by the environmental agency that secondhand smoke increases the risk of illnesses like lung cancer, and that in children it helps bring on asthma, pneumonia and bronchitis. The agency estimates that secondhand smoke is

responsible for as many as 3,000 deaths a year by lung cancer among nonsmokers in the United States.

The plaintiffs accuse the agency of manipulating the results in the report by "cherry-picking" data, or selectively using only that which satisfied, what Mr. Parrish called "preconceived and predetermined conclusions." The suit contends that 24, or 80 percent, of the 30 studies contributing to the E.P.A. report did not find risks for lung cancer that were "statistically significant" — that is, within a 95 percent confidence level.

The suit also accuses the agency of exceeding its statutory authority by making a declaration that secondhand smoke causes cancer. The industry argues that the E.P.A. can only conduct research and development and disseminate information. It argued that by linking secondhand smoke and cancer, the agency had set off a "regulatory impact and effect" that had led to new smoking bans.

"We have pointed before to the fact that when the E.P.A. could not otherwise research its predetermined conclusion using generally accepted scientific and statistical practices, the E.P.A. simply changed the rules," Mr. Parrish said. "That fact alone can and should negate the conclusions."

He added, "For a governmental agency to leave out studies, to change the rules in the middle of the game in order to justify a scientific claim, in my judgment is totally improper."

The lawsuit asks the court to grant injunctive relief by declaring the designation "wrong as a matter of law and science."

Several anti-smoking advocates predicted that the lawsuit would either be dismissed or defeated in court. Richard Daynard, a law professor at Northeastern University in Boston and director of the Tobacco Products Liability Project, said the lawsuit was being used by the tobacco industry to delay any carrying out of new regulations by the Occupational, Safety and Health Administration.

## Ex-Smoker's Claim Is Rejected

Special to The New York Times

SEATTLE, June 22 — A judge in small claims court today rejected a Washington man's effort to make a tobacco company pay for the costs of his treatments to quit smoking, ruling that the statute of limitations had expired.

The judge, Linda K. Jacke of Mercer Island District Court, rejected the claim filed by Alfred J. Deskiewicz Jr., a 51-year-old design engineer from Kirkland, Wash., who had smoked Marlboros for 34 years.

A move to block limits on smoking in public places.

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# What's News—

\* \* \*

## Business and Finance

\* \* \*

Philip Morris, RJR and four allies filed a suit against the EPA for ruling that secondhand cigarette smoke causes lung cancer, seeking to have the report declared "null and void."

(Article on Page B1)

\* \* \*

## HEALTH

# Passive-Smoke Ruling Sparks Industry Suit

By EBEN SHAPIRO

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK — The nation's two biggest tobacco companies filed a federal lawsuit against the Environmental Protection Agency for ruling that secondhand cigarette smoke causes lung cancer, seeking to have the report declared "null and void."

Philip Morris Cos. and RJR Nabisco Holdings Corp. joined four allies in filing the suit in North Carolina. They seek a permanent injunction overturning the EPA findings and contend that the agency resorted to "manipulating and cherry-picking" data to "falsely disparage" cigarettes.

The aggressive attack on the EPA underscores the damage that the report on secondhand smoke has inflicted on the tobacco industry since its release Jan. 7. The report, published after several years of fierce resistance from the tobacco industry, doesn't mandate any particular action. But it has been a powerful tool in prodding businesses, restaurants, local governments and even sports stadiums across the country to ban or severely restrict smoking to avoid liability for subjecting people to secondhand smoke.

Earlier this month, the U.S. Postal Service outlawed smoking at all of its facilities, citing the EPA report.

"Next to the Surgeon's General report in 1964, the EPA report is probably the most important finding that the federal government has had on the adverse health effects of tobacco," said Gregory Connolly,

an official with the Massachusetts Department of Public Health.

Steve Parrish, senior vice president and general counsel of Philip Morris, conceded that the EPA finding "has been harmful to the industry in a business sense." But he went on to call the secondhand-smoke findings "among the most flawed ever issued by the agency" and charged that the EPA refused to include two major studies that would have negated the findings.

In a statement, Carol Browner, administrator of the EPA, said: "The agency's view is that secondhand tobacco smoke can cause cancer. This assessment is based on scientific evidence that has been thoroughly peer-reviewed, and we stand by it."

Antismoking activists ridiculed the tobacco forces' lawsuit, reflecting the widespread view that the cigarette industry has little credibility on health issues because it steadfastly refuses to acknowledge that smoking causes lung cancer.

"It's like the Flat Earth Society suing NASA for publishing photographs showing that the Earth is round," said Cliff Douglas, tobacco-policy director for the Advocacy Institute, a nonprofit group focusing on health and safety issues. Still, there was concern that the lawsuit would slow the tide of smoking restrictions by raising questions about the validity of the study.

"They are masters of creating scientific controversy where there is none," said Dr. Connolly of the Massachusetts health department.

The tobacco plaintiffs maintain in their EPA suit that the agency buried contradictory research. But one study the tobacco companies cite actually appears to support the EPA's decision. The report from the American Journal of Public Health, which was included in a press packet publicizing the lawsuit, concludes that there is "a small but consistent elevation in the risk of lung cancer in nonsmokers due to passive smoking." And the study adds, "The proliferation of federal, state, and local regulations that restrict smoking in public places and work sites is well-founded."

Many antismoking activists said the lawsuit may only refocus attention on the hazards of secondhand smoke and invite further increases in federal cigarette taxes. "The administration will see it as a reminder of just how brazen these folks are," contended Richard Daynard, a law professor at Northeastern University who heads the Tobacco Products Liability Project.

The lawsuit was filed by an unusual coalition that includes bitter rivals Philip Morris and RJR's R.J. Reynolds Tobacco Co. unit; two organizations representing tobacco growers; Gallins Vending Co., a cigarette-vending-machine company; and Universal Leaf Tobacco Co., a tobacco supplier.

But even the tobacco plaintiffs are hesitant to debunk every aspect of the EPA report. The agency concluded that passive smoke is responsible for about 3,000 lung-cancer deaths each year in the U.S., which tobacco companies strenuously deny. But the EPA also maintains that secondhand smoke can cause pneumonia in young children and that it aggravates childhood asthma.

Asked whether the tobacco industry disputes the EPA's finding about harm to children, Mr. Parrish of Philip Morris said: "I'm not saying people should blow smoke in the faces of their children. People should use some common sense."

—Timothy Noah in Washington contributed to this article.

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(Front Page)

BUSINESS

# Tobacco Industry Challenges EPA Finding

## Suit Faults Classification Of Passive Smoke As Carcinogen

By Michael Pumento  
In Los Angeles

Six tobacco organizations sued the Environmental Protection Agency yesterday, challenging the scientific evidence the agency used in concluding that second-hand smoke causes 3,000 cases of lung cancer in nonsmokers each year.

The civil lawsuit filed in U.S. District Court contends that the EPA misused scientific data in a report in January that formally classified second-hand smoke as a cause of cancer. The suit listed a number of smoking bans and regulations that expressly cited the EPA's declaration of passive smoke as a "class A" carcinogen.

These include a nationwide ban on

smoking in all 400,000 Postal Service facilities that began June 13 and workplace smoking restrictions or bans at numerous private employers, including Raytheon Co., Southern California Edison Co., and Greyhound Lines Inc.

Congress is considering regulations that would greatly restrict smoking in federal buildings, again as a stated response to the EPA findings.

"What the EPA did was more political science than anything else," said Steven Parrish, a lawyer for Philip Morris USA, Philip Morris Cos.' domestic tobacco unit.

If governments or companies want to ban smoking on the basis of aesthetic preferences, "That is one thing," he said. "But if somebody says we should ban smoking because it's harmful to nonsmokers, they need to be able to back that up."

The lawsuit was filed by RJR Na-

bisco Holdings Corp.'s R.J. Reynolds Tobacco Co. unit in Winston-Salem, N.C.; Philip Morris USA, New York; Universal Leaf Tobacco Co., Richmond, Va.; Gallins Vending Co., Winston-Salem; the Council for Burley Tobacco, Lexington, Ky.; and the Flue-Cured Tobacco Cooperative Stabilization Corp., Raleigh, N.C.

EPA spokeswoman Lauren Mical defended the agency's findings.

"EPA's environmental tobacco smoke report has gone through extensive scientific review by scientists inside and outside the EPA," she said.

"We have faith in our scientific process. The risks associated with environmental tobacco smoke are at least an order of magnitude greater than they are for virtually any chemical or risk that EPA regulates."

Michael Greve, executive director of

Continued on Next Page

# Tobacco Industry Challenges EPA Finding

From page 1  
the Center for Individual Rights in Washington, said the best the tobacco companies can do is to get the courts to force the EPA to re-evaluate its findings.

"The question is how far they can get, and I think the answer lies with Congress, and I don't know how much punch the tobacco industry has in Congress," said Greve.

### 'Statistical Handling' Criticized

Alfred Wehner, a toxicologist who headed a panel of scientists and doctors who analyzed the draft of the EPA report for the tobacco industry, said the main problem with the report "was the statistical handling of the data."

The EPA report was essentially a

survey of 11 American studies of spouses of smokers. The report discussed the results of 19 other studies conducted outside the U.S. but did not include these studies in its statistical analysis.

In the combined analysis of the U.S. studies, the EPA found a "statistically significant" difference in the 119 lung cancers suffered by nonsmoking spouses of smokers and the 100 cancers in nonsmoking spouses of nonsmokers.

The finding of statistical significance may sound arcane but is quite important. It is used to establish that the excess cancers didn't happen by chance.

Traditionally, epidemiologists have

allowed a 5% possibility that the results occurred by chance. But for the second-hand smoke study, the EPA doubled that allowance for error to 10%, then used an additional statistical technique to lower the confidence level even further.

At the traditional 5% confidence level, the EPA could not have declared the association between lung cancer and second-hand smoke to be statistically significant.

Critics such as Glenn Lammi, chief counsel of the legal studies division at the Washington Legal Foundation, said that amounts to "moving the goal posts during the game."

"They changed the rules with no

public comment and no explanation as to why they did it," he said.

That's a sentiment shared by University of California at Los Angeles epidemiologist James Enstrom.

### Stakes Are High

"They're just using it so they can get an effect," said Enstrom when the EPA announced its findings.

Lammi said the stakes in the suit are much greater than the profits of tobacco companies or the rights of smokers.

"It's a very definite slippery slope, and we think this is very dangerous for the whole community," he said, noting that a huge number of chemicals have been accused of being cancer-causing on evidence similar to that used in the second-hand smoke analysis.

"It really gives the EPA a lot of power to skew the science," said Lammi.

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(Front Page)

# Industry Sues EPA on Secondhand Smoke

## *Cigarette Makers Say Carcinogenic Ruling Is Based on Fudged Data*

By Tom Kenworthy  
and David Brown  
Washington Post Staff Writers

The tobacco industry yesterday sued the Environmental Protection Agency in an attempt to overturn the EPA's recent designation of secondhand tobacco smoke as a potent carcinogen that kills about 3,000 Americans a year.

The lawsuit alleges that the agency manipulated scientific studies and ignored accepted scientific and statistical practices in making its risk assessment. Filed in U.S. District Court for the Middle District of North Carolina by tobacco industry giants R.J. Reynolds and Philip Morris and four groups representing growers, distributors and marketers, the suit also alleges that EPA exceeded its regulatory authority in declaring secondhand smoke a known cause of cancer.

Tobacco company spokesmen said the EPA action has provoked hundreds of government and private efforts to ban or restrict indoor smoking that have resulted in economic harm to the industry.

"The EPA, when it could not reach its predetermined conclusion with the available data, simply changed generally accepted statistical practices to achieve its findings," Dan Donahue, an R.J. Reynolds vice president and counsel, said in a prepared statement.

In a terse response to the filing of the lawsuit against an action instituted by her predecessor, EPA Administrator Carol M. Browner said: "The agency's view is that secondhand tobacco smoke can cause cancer. This assessment is based on scientific evidence that has been thoroughly peer-reviewed and we stand by it."

Many years in the making, EPA's

Jan. 7 declaration on the hazards of "environmental tobacco smoke" (ETS), had no direct effect on smoking regulations because the agency has no authority to regulate indoor air quality. But as a practical matter, EPA's placement of ETS in the same category as radon and asbestos, and its declaration that it causes hundreds of thousands of respiratory illnesses in children, has had a powerful impact on the movement to create smoke-free workplaces. (Coincidentally, most of the studies examined by EPA concerned home—not workplace—exposure to ETS.)

Just last week, for example, a House committee approved legislation that would ban smoking in most federally owned or leased buildings, with the bill's sponsor citing the EPA study.

Similarly, many local and state governments and private building owners also have responded to the January announcement by formulating policies on smoking inside buildings. Donahue said that 145 local governments have instituted smoking bans since the EPA announcement.

But Donahue and other spokesmen had no figures to back up their claim that the EPA action has economically harmed the tobacco industry. "We don't have any specific figure that would represent bills for any one company directly related to this EPA action," Donahue said.

"There is no loss from it as it stands now," said John Maxwell, a tobacco industry analyst with the Richmond firm of Wheat, First Butcher & Singer. The decline in smoking this year, Maxwell said, is about 2 percent, consistent with the annual slide observed over the past few years.

Bill Wordham, an official with the Tobacco Institute, said the fear is that the future financial impact could be huge. "I'm not sure you could show a clearly demonstrated financial loss or job loss . . . but I don't think there's any doubt about the potential," he said.

Antismoking activists derided the suit as the desperate act of an industry fighting a rear-guard action against scientific evidence and fearful of its economic future.

"It's really a waste of time," said Fran Du Melle, deputy managing director of the American Lung Association. "What the industry is doing is pitting their paid scientists' opinions of the research against the opinions of the people who really did the research. . . . This is an industry that still doesn't acknowledge their product kills people when it is used as intended."

The industry's position on the health effects of direct smoking is that smoking has been identified as a risk factor for certain chronic diseases such as lung cancer but that it has never been proven as a cause of those diseases.

Whether the suit succeeds in court, it is almost certainly going to spark a lively debate on the subject of risk assessment, an often controversial process. The EPA study, for example, employed meta-analysis, a statistical technique of combining the results of numerous small studies to reach a broader conclusion that might not be justified by any single one.

In its lawsuit, the tobacco companies and their co-plaintiffs argue that EPA's conclusion flies in the face of the results of 24 out of 30 scientific studies, and that "EPA was able to reach its conclusion only by manipulating and 'cherry-picking' data."

The suit criticizes only EPA's conclusions about cancer risk, specifically arguing that the agency used sloppy or questionable methods to analyze the 30 medical studies it reviewed.

EPA estimated that longterm exposure to household smoking increases a nonsmoker's risk of cancer by 19 percent, and accounts for about 3,000 cancer deaths a year. Annual deaths from lung cancer in the United States total about 160,000.

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In reaching this conclusion, the EPA used a somewhat unusual yardstick of accuracy. When reporting their results, most medical researchers use what is known as a "95 percent confidence level." That means there is no more than a 5 percent chance the conclusion is wrong and the experimental results occurred purely by chance.

Fewer than half the studies examined by the EPA find an association between environmental smoke and cancer with that degree of certainty. However, when the "threshold" is lowered to the 90 percent confidence level—where there is a 10 percent chance any experimental result is wrong—many more studies show a link between ETS and cancer.

This decision essentially lowered the hurdle that scientific evidence had to jump over in order to convince EPA of environmental tobacco smoke's danger to the public. The EPA followed a similar practice in evaluating the relationship between radon gas exposure and lung cancer.

The agency defended the statistical practice yesterday, saying the unquestionable link between smoking and lung cancer (as between cancer and high-dose radon exposure in uranium miners) makes it defensible to accept a slightly lower standard of proof in the case of ETS.

"If you have a body of evidence that is pointing you toward a conclusion, and the question is do you need to be 90 percent sure or 95 percent sure that the effects you are seeing aren't just due to chance, then we think it is reasonable to accept 90 percent certainty," said William H. Farland, director of the EPA's office of health and environmental assessment.

*Staff writer John Schwartz contributed to this report.*

WEDNESDAY, JUNE 23, 1993 • USA TODAY

(Front Page)

# EPA smoking study invalid, suit claims

By Janet L. Fix  
USA TODAY

Major tobacco companies sued the Environmental Protection Agency Tuesday over a study that blamed second-hand smoke for cancer deaths among non-smokers and prompted many smoking bans.

A suit filed in a U.S. District Court in North Carolina seeks to have the EPA study ruled invalid because it allegedly ignores basic science standards.

"It's shoddy science," says Dan Donahue, lawyer for cigarette maker R.J. Reynolds. "It's not possible to draw valid conclusions" from the study.

The EPA's study, released Jan. 7, found second-hand smoke responsible for the deaths of 3,000 non-smokers a year and for respiratory problems in children.

Philip Morris, R.J. Reynolds and four other tobacco companies filing the suit say the EPA study cannot conclusively link second-hand smoke to cancer.

The EPA defends its study: "It has been reviewed by our scientists and by independent scientists," says spokeswoman Lauren Mical.

The problem for tobacco companies is that the EPA study — which has no power as law or regulation — has increasingly been cited by those seeking bans on smoking.

But companies and restaurants started restricting smoking long before the study.

Since January, bills to limit smoking have been filed in 43 states and 296 municipalities, the Tobacco Institute says.

So far, 13 states and 152 municipalities have restricted smoking. Vermont is considering a bill to ban smoking in most indoor public places and ban it in restaurants and bars by July 1995.

If the suit can discredit the study, the industry will have won another legal victory.

The industry has yet to have to pay damages or pay to settle a suit that claimed smoking caused a smoker's cancer or death — even though U.S. surgeons general have linked smoking to cancer.

"Virtually any scientist or medical researcher will say smoking causes cancer in smokers — but the industry won't admit it," says John Banzhaf, executive director of Action on Smoking and Health. "They'll never admit second-hand smoke causes cancer."

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(Front Page)

**Tobacco companies sue:** US tobacco companies Philip Morris and RJR Nabisco sued the US Environmental Protection Agency, alleging its report on passive smoking was unscientific, "arbitrary and capricious". Page 6

# US tobacco groups sue over report

By Nikki Tait in New York

PHILIP MORRIS and RJR Nabisco, the two largest US tobacco companies, yesterday sued the Environmental Protection Agency, claiming its report on the dangers of passive smoking was unscientific, "arbitrary" and "capricious".

The companies claimed the agency reached its conclusion that environmental tobacco smoke (ETS) was a cancer-causing substance "only by manipulating and cherry-picking data, ignoring critical statistical studies and chemical analyses, failing to account for confounding factors and sources of bias [and] violating basic statistical principles".

Their suit, which is backed by other industry groups, also argued that the EPA's scientific guidelines were violated.

The legal action follows a high-profile EPA report, published in January, which classed ETS as a class A carcinogen. This is the most serious category of cancer-causing material.

The EPA report indicated that about 3,000 US non-smokers die from lung cancer caused by exposure to tobacco fumes each year, and that exposure to ETS increases the risk of asthma in "normal" children. It could also increase the severity of symptoms in children prone to asthma, the agency said.

A draft version of the EPA's study, published three years ago, was attacked by the industry and was sent back by a science advisory board for better justification of its conclusions.

However, since its publication the report has been used by anti-smoking activists to demand more restrictions on smoking in public places, and has almost certainly contributed to an increasingly prescriptive climate in the US.

Most states now have some restrictions on smoking in public areas.

The suit was filed with the district court for the middle district of North Carolina.

(EXTENSIVE OTHER COVERAGE)

## Philip Morris Wins Small-Claims Suit By Former Smoker

\* \* \*

Judge Rules Ex-Marlboro Fan Was Too Late in Seeking Reimbursement of \$1,153

By JUNDA WOO

Staff Reporter of THE WALL STREET JOURNAL

A former smoker who sued Philip Morris Cos. in small-claims court failed in his bid to become the first person to collect money from a tobacco company for smoking-related damages.

The case had been heralded by anti-smoking activists as a harbinger of future lawsuits in which smokers would use small-claims courts — where, in some states, lawyers aren't welcome — to win damages they've been unable to secure in bigger cases.

But Judge Linda K. Jacke in Mercer Island, Wash., said plaintiff Alfred J. Deskiewicz Jr.'s suit was barred by the state's three-year statute of limitations for small-claims cases because the plaintiff had known as early as the 1970s that he had a potential claim against Philip Morris. That was when he tried twice, unsuccessfully, to stop smoking. The judge didn't rule on the merits of Mr. Deskiewicz's claim.

Mr. Deskiewicz, a 51-year-old design engineer, had sought \$1,153 as reimbursement for doctor's visits, nicotine patches and membership in a health club that he joined to lose the weight he gained when he quit smoking Marlboros after 34 years. He said he first recognized in 1989 that he was addicted to smoking.

Judge Jacke, however, said the word "addiction" has no clear legal meaning. In addition to the statute of limitations problem, she dismissed the case because Mr. Deskiewicz failed to present evidence that he couldn't quit smoking on his own.

Mr. Deskiewicz, of Kirkland, Wash., said he didn't know whether he would appeal. "My basic reaction, and the word for the day, is 'stunned,'" he said. Philip Morris attorney Charles Wall said the company was pleased with the ruling.

The case attracted widespread attention because in Washington state and 10 other states, attorneys aren't allowed in

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small-claims court. That means plaintiffs can make arguments without facing the usual phalanx of tobacco-company lawyers. In Mr. Deskiewicz's case, for instance, Philip Morris was represented by a sales director. Anti-tobacco activists delighted at the idea of a guerilla war of small-claims suits across the country.

Richard Daynard, a law professor who

runs an anti-tobacco group at Boston's Northeastern University, called the decision "technically wrong" and said it won't affect his group's plan to publish a manual showing smokers how to file similar small-claims suits. A decision by a small-claims judge has no value as precedent inside or outside the state of Washington.

Professor Daynard said Mr. Deskiewicz didn't incur economic damage for the smoking-cessation treatments until 1989,

and that was when the statute of limitations should have started running. But in any case, he added, "The fact that one judge in Mercer Island thinks the statute of limitations ran does not mean this is not still a very good strategy."

(Deskiewicz vs. Philip Morris, Mercer Island, Wash., District Court, 16917)

SEATTLE POST-INTELLIGENCER JUN 23 1993

# Court rejects ex-smoker's claim

### District judge contends plaintiff 'should have known' of the dangers

By Gordy Holt  
PI Reporter

MERCER ISLAND — A district court judge yesterday snuffed out an ex-smoker's small-claims suit against tobacco giant Philip Morris, the world's No. 1 cigarette maker.

Citing the state's three-year statute of limitations, Judge Linda Jacke said the ex-smoker, Kirkland design engineer Al Deskiewicz, "knew or should have known" smoking wasn't good for him prior to December 1989, when a doctor first diagnosed his addiction to nicotine, the drug in tobacco.

Deskiewicz said he was stunned by Jacke's decision, but would not say if he would appeal to King County Superior Court.

He filed suit hoping Philip Morris would be required to pay the \$1,144.53 he said he's spent on doctor bills, prescriptions, a health-club membership and the Marlboro cigarettes he smoked while trying to quit.

In this state, small-claims courts accept civil-damage lawsuits for amounts no greater than \$2,500.

Deskiewicz said his "state of denial" over smoking's ills prior to the 1989 diagnosis should have been recognized by the court as part of any addict's problem. He quit Jan. 1 after two tries.

"That's when the (statute of limitations) clock should start running, not before," he said.

Deskiewicz said he sued after Philip Morris ignored him.

"Because the amount was for so little I thought, mistakenly, that they'd be gentlemen about it," he said. "I got mad when they just ignored me."

His claim has cost him about \$200 so far, he said, "and that was for copies and telephone calls." His legal and expert advice was donated, he said.

Philip Morris' New York attorney, Charles Wall, who had hovered over events without comment since early March, said Jacke's verdict didn't surprise him and will discourage those in the future who might eye the small-claims court route as a way of nailing the tobacco industry.

"There is just no merit to such a suit," he said. "As the judge said, the term addiction is so abused as to be meaningless, and if it is meaningless, there is no

claim. People can quit smoking. I think that's the essential message," Wall said.

Because attorneys are not allowed to play a vocal role in small-claims cases, Deskiewicz represented himself and the company was represented by its Northwest sales director, Michael Pfeil, who was present but quiet

yesterday.

In several court appearances since the case was filed, however, it was Pfeil who argued that, at age 52, Deskiewicz was old enough to have read long ago about tobacco's link to poor health.

It was Pfeil who cited anti-smoking article after anti-smoking article in such popular magazines as Reader's Digest and Time dating to the 1950s.

Before revealing her verdict in the small but packed courtroom yesterday, Jacke reviewed for both sides how much reading she had done to prepare.

The list ranged from the 1982 and 1988 U.S. surgeon general's reports to articles from tobacco trade journals. All of it was part of the record, she said.

USA TODAY • WEDNESDAY, JUNE 23, 1993

# NATIONLINE

FROM USA TODAY'S NATIONAL NEWS NETWORK

(EXTENSIVE OTHER COVERAGE)

**TOBACCO SUIT:** A judge rejected Al Deskiewicz's claim that cigarette maker Philip Morris owes him \$1,154.53 — the cost of quitting smoking after 35 years. Deskiewicz, 51, of Kirkland, Wash., said that's what it cost for doctors' appointments, nicotine patches and a health club membership to shed weight he gained. Judge Linda Jacke said the state's three-year statute of limitations expired long before Deskiewicz filed the claim. "The fight isn't over," Deskiewicz said. He's considering an appeal and might seek a teen-age smoker to file a claim within the three-year limit. (Secondhand smoke lawsuit, 1A)



By Dave Weaver, AP  
**DESKIEWICZ: 'Fight isn't over'**

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### Tobacco Firm Wins Suit

Plaintiff attorneys were unable to win a liability suit against American Tobacco Co., despite a ruling by the judge in the case that cigarettes are defective and unreasonably dangerous.

The ruling last month by Mississippi Judge Eugene Bogen of Washington County Circuit Court was apparently the first in the nation to find that cigarette companies are strictly liable for illnesses caused by smoking. To win the liability suit, plaintiff attorneys had only to prove that cigarettes caused the smoker's death and to back up the amount of damages sought. That is a much easier standard than plaintiffs typically face in such litigation against tobacco companies.

But 11 of the 12 jurors, after deliberating for about two hours, weren't persuaded that the smoker died because of the Pall Malls he smoked heavily for 45 years. The smoker, disabled military veteran Anderson Smith, died in February 1986.

Attorneys for American Tobacco, a unit of American Brands Inc., Old Greenwich, Conn., had argued that Mr. Smith's history of urinary tract infections and kidney ailments was a major contributor to his death. The tobacco industry has never paid any damages to a cigarette-liability plaintiff.

Don Barrett, the Lexington, Miss., attorney for Mr. Smith's children, who brought the suit, couldn't immediately be reached for comment.

RJR Nabisco Holdings Corp., which wasn't a party to the case, issued a statement that said, "This case once again demonstrates that even when the jury is denied the opportunity to hear key elements of the tobacco industry's defense, they conclude that these cases are without merit."

*(Jeanette Wilks vs. American Tobacco Co., Circuit Court of Washington County, Greenville, Miss., 91-12,355 (B)(W))*

TUESDAY, JUNE 8, 1993 • USA TODAY

## ACROSS THE USA:

### MISSISSIPPI

**GREENVILLE** — The state's new products-liability law virtually wipes out a judge's earlier ruling that cigarette manufacturers are liable for customers' health problems. The first test begins today with jury selection in a trial pitting a longtime smoker's family against a tobacco company and a cigarette distributor.

THURSDAY, JUNE 3, 1993 • USA TODAY

## ACROSS THE USA:

### PUERTO RICO

**SAN JUAN** — The House and Senate approved a ban on smoking in public buildings, schools, libraries and buses. Smoking sections can be set up. The House added a provision forbidding smoking at public sports facilities. Next: a conference committee. ... Gov. Pedro Rosello signed a law abolishing the local Appeals Court created by ex-governor Rafael Hernandez Colon, claiming it was a political instrument.

### INDIANA

**MUNCIE** — The husband of a nurse who died of lung cancer has sued a group of tobacco firms claiming secondhand smoke from his wife's patients killed her. Philip Wiley claims his wife, Mildred, 57, got the disease while working with smokers at the VA Hospital.

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# Judge postpones secondhand smoke trial

JACKSON, Miss. — Burl Butler of Laurel fears he will not live long enough to testify in his lawsuit against tobacco companies over secondhand smoke.

The barbershop owner, who has lung cancer, contends he got the disease from years of inhaling secondhand smoke in his business.

On Friday, Hinds County Circuit Judge Robert L. Gibbs postponed the trial that had previously been set for Nov. 29. Gibbs did not set a specific date, but he said it would be in summer 1994.

"It looks as though if they can delay it long enough, I won't be around," Butler, 59, said after the court hearing in Jackson. "I want to be alive to tell my story to the jury."

Ed Blackmon Jr. of Canton, representing tobacco companies, said the defendants could not be ready by Nov. 29. He said extensive research is needed to prepare for this lawsuit because no similar claim has ever been put before a jury.

Butler, a non-smoker, filed a \$25 million lawsuit in October 1992 against six national tobacco companies and six Mississippi wholesalers of tobacco products. Attorneys familiar with tobacco industry lawsuits said they knew of only one other suit in the nation that pits a person suffering

**"It looks as though if they can delay it long enough, I won't be around."**

Burl Butler

in case he dies before the trial, Sweet said.

Tobacco company lawyers are trying to trace potential health hazards Butler could have been exposed to in a lifetime, Blackmon said. They are also checking Butler's family medical history.

Butler's lawyers are seeking to add to the lawsuit claims that tobacco companies fraudulently conspired to conceal from the public information that would have shown cigarettes to be a health hazard, said Lexington attorney Don Barrett, representing Butler.

"Our proof will show the tobacco industry knew by 1953 full well that cigarettes caused lung cancer in droves of people," Barrett said.

Barrett said the tobacco companies publicly advertised that they were conducting an independent study to determine if smoking was hazardous. Barrett said the companies then privately funneled all the research findings through lawyers to give it the protection of an attorney-client privilege and keep it secret. Butler's lawyers want access to research documents sealed by a judge in a tobacco lawsuit in another state.

Defense lawyers are fighting to keep out an Environmental Protection Agency report on the effects of secondhand smoke.

Gibbs refused to issue a gag order in the case, as was sought by the tobacco companies.

from illness against tobacco sellers in a second-hand smoke suit.

Most of the secondhand smoke suits have been directed at private employers or governments that allowed smoking in the workplace.

Dennis Sweet of Jackson, one of Butler's lawyers, said tobacco company lawyers are already making plans based on the expectation that Butler will die before the trial begins.

Tobacco lawyer Michael Ulmer wrote a letter to Butler's lawyers asking that tobacco company representatives be present for Butler's autopsy as part of their trial preparations.

"The only way to have the audacity to write such a letter is they had assumed they could get this case prolonged long enough for Mr. Butler to die," Sweet said.

Butler's lawyers have videotaped his testimony

DAILY NEWS • Wednesday, June 2, 1993

## Mom can puff in front of kids: German court

MUNICH, Germany — A German court ruled yesterday that a mother can legally smoke in front of her two children.

The Munich court threw out a case brought by the woman's mother, who claimed that passive smoking was harming her grandchildren, aged 14 and 4½.

The court said that while smoking was harmful to third parties, it was an acceptable social activity.

"Individuals are not bound by law to stop smoking when they are in the same room as nonsmokers," it said.

Reuter

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JUN 0 7 1993

*Makers are accused of suppressing evidence of health hazards.*

## Criminal probe on tobacco

**p. A1** By Barbara Demick  
INQUIRER STAFF WRITER

NEW YORK — For years, the tobacco industry has enjoyed an enviable record in the courts. Despite more than 300 lawsuits, filed by ex-smokers and their families, it has never paid out a dime in damages.

But now the industry faces a new, potentially more formidable adversary — the U.S. Attorney's Office in Brooklyn.

The office is conducting a criminal investigation into charges that tobacco companies suppressed evidence of the health hazards of cigarette smoking. Attorneys familiar with the case say that prosecutors believe charges could be brought under federal mail fraud, wire fraud, conspiracy or racketeering statutes.

If an indictment is issued, it would be the first time criminal charges were leveled against an industry that the U.S. Centers for Disease Control link to 434,000 annual deaths.

The investigation revolves around the Council for Tobacco Research, set up in 1954 with tobacco industry funding. The council was to fund

independent research to "learn the truth" about smoking and health "in the most objective and scientific way possible," said one industry advertisement.

But critics and litigants have alleged otherwise.

Early last year, in a New Jersey lawsuit filed against the council by the daughter of an ex-smoker, U.S. District Judge H. Lee Sarokin in Newark issued a scathing denunciation of the council.

"A jury might reasonably conclude that the industry's announcement of proposed independent research ... was nothing but a public relations ploy — a fraud to deflect the growing evidence against the industry, to encourage smokers to continue and nonsmokers to begin," opined Sarokin.

The judge's opinion piqued the interest of federal prosecutors in Brooklyn. The office, under then-U.S. Attorney Andrew Maloney, was known for its aggressive pursuit of white-collar and corporate crimes. One of its best-known cases was the 1991 guilty plea of Eastern Airlines for falsifying aircraft maintenance records.

A criminal investigation was soon launched. People familiar with the case say the federal prosecutors have been reviewing thousands of pages of internal council documents for

the last year. More recently, they have started querying tobacco-industry experts about potential witnesses to testify before a grand jury, sources said.

"I think a very simple, but very persuasive case could be made. The evidence is very powerful that the tobacco companies decided to preserve their profits by pretending, in bad faith, to be doing research into whether smoking is really hazardous," said Richard Daynard, a law professor at Northeastern University and an anti-smoking advocate.

Donald W. Garner, a law professor at Southern Illinois University who has also spoken with the U.S. Attorney's Office about the case, says that criminal charges could more likely prevail where civil suits have failed.

Garner said juries in civil cases have been reluctant to award damages to former smokers. "Juries hate smokers. They want to know why a smoker didn't quit ... Instead of going out and hiring a lawyer," he said.

The Council for Tobacco Research, based in New York, declined to comment and its attorney did not return telephone calls.

Phillip Morris, manufacturer of the best-selling Marlboro cigarettes, has retained a criminal defense attorney, former New York U.S. Attorney Robert Flak, who said the company was "cooperating fully with the investigation."

Both Philip Morris and RJR Nabisco, the second-largest cigarette

manufacturer, have acknowledged the investigation in recent filings with the Securities and Exchange Commission.

Zachary Carter, who became U.S. attorney for Brooklyn last week, said through a spokeswoman, "It's an investigation and we cannot comment."

The Council for Tobacco Research grew out of a December 1953 meeting at New York's Plaza Hotel between executives of the top tobacco companies and the public relations firm Hill & Knowlton. It had been a trying year for the industry following publication of several studies linking cancer to cigarette smoking.

"Everyone was shocked. ... The tobacco industry prided itself on being a genteel, pleasure-giving industry. ... Nobody thought that smoking was supposed to be good for you, but it never occurred to us that it was dangerous," James Bowling, a retired Philip Morris director, said in an interview.

"We hoped [the council] would be a mechanism to discover what caused cancer. ... Our belief was that tobacco would be totally exonerated ... or that if cigarettes were found responsible, they would identify the ingredient that caused cancer and it would be removed."

"We had that kind of post-World War II belief that if you pursued a problem dutifully, and poured enough money at it, you would come up with a solution."

(Cont'd.)

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(Cont'd.)

With much fanfare, the council was installed in offices at the Empire State Building. To bolster its credibility, it hired as scientific director Clarence Cook Little, a former director of the American Cancer Society. It appointed a board of 190 scientists and doctors, a board the industry would later say was "completely autonomous."

The council quickly became a powerful player in cancer research, doling out millions of dollars to universities and hospitals.

Retired chemist Mianing Hagopian of Mason Research Institute in Worcester, Mass., says the scientists were always aware of their dependence on the tobacco money, and that it could be yanked at any minute.

There was a sense, he said, that "as soon as the research got to a point where one could start evaluating the results, the council withdrew the funds, saying, 'Oh well, we got all the information we need.'"

For example, Freddy Homburger, the retired director of cancer research at Tufts University in Boston, has testified in a civil suit that the council attempted to suppress his findings, showing that cigarette smoke induced cancer in hamsters.

Homburger had received grants from the council to research the effects of cigarette smoke, but said he

then was denied permission to publish. On one occasion, when he sent a paper on his findings to the National Cancer Institute, he said, he received a visit at his Maine summer home from council officials.

"They urged me to withdraw the submitted paper, never to publish any data without their permission or, failing to do this 'never receive another penny,'" Homburger recalled.

Eventually, the council agreed to let Homburger publish, if he eliminated any reference to the word cancer and substituted instead the term "pseudoeithelial hyperplasia."

In 1974, Homburger went to Atlantic City to read his paper at a meeting of research biologists. He was to give a news conference as well. But when he arrived, Homburger found only an empty hotel room.

Decades later, lawyers who sued the Council for Tobacco Research found a letter in which a council public relations person discussed sabotaging the news conference.

Much of what is known about the council comes from a lawsuit filed by Susan Haines, a Philadelphia lawyer whose father died of cancer in 1982.

Documents unearthed during the Haines case, still pending in federal court in Newark, suggest that the

council was more preoccupied with serving as a "shield" and a "front" to protect the industry from lawsuits.

Internal memos show that the council prepared trial witnesses, issued news releases through Hill & Knowlton denying any ill-health effects from smoking and helped to discredit other independent studies that suggested otherwise.

What happened when council-funded research came too close to linking cigarette smoke to cancer?

It was shifted into a secretive, "special projects unit" directly under the control of the council's lawyers. That way the council could avoid having unfavorable research subpoenaed, because it could be protected by attorney-client privilege.

Edwin Jacobs, longtime attorney for the council, told other lawyers for the tobacco industry in 1981, "The idea was that the council's scientific director would review a project. If he ... did not like it, then it became a lawyer's special project," according to court documents.

Even though thousands of pages of council documents were released in the Haines case, there are an estimated 1,500 pages of "special projects" documents the council has withheld under attorney-client privilege.

Judge Sarokin ruled in February of last year that the documents were not covered by attorney-client privilege, and therefore should be turned over immediately. In September, the tobacco companies were successful

in getting Sarokin removed from the case. A new judge has not yet been appointed.

Marc Edell, the Short Hills, N.J., lawyer who filed the Haines case, believes the U.S. Attorney's Office has been more successful in subpoenaing council documents than he has.

The federal prosecutors still have their work cut out for them. In delving into alleged crimes that date back to the 1950s, the prosecutors could run into problems with statutes of limitations. It is also possible that defendants could challenge whether the Brooklyn U.S. attorney has jurisdiction, although the prosecution side quips that people in Brooklyn smoke, too.

Law professor Daynard believes any potential case would be strongest against the council, but notes "there is a certain urgency to corporate criminal indictments. You can't put a corporation in jail. It is a much more effective case if you can go after the ringleaders."

Whatever happens with the case, anti-smoking advocates say the real contribution of the criminal investigation might be simply to unearth more of the secret history of cigarettes and cancer research.

"There are an incredible number of internal documents that no one has seen," said Cliff Douglas, tobacco policy director of the Advocacy Institute in Washington. "And somewhere in there, there could be the smoking gun."

### **An authority says criminal charges could prevail where civil suits have failed.**

20448159428

# Children's Exposure to Tobacco Smoke Is Found to Cause or Worsen Asthma

Reuter

BOSTON, June 9—Tests of nearly 200 children with asthma have uncovered strong new evidence that secondhand tobacco smoke causes or worsens the condition in children.

Although doctors have suspected a connection between asthma and environmental smoke for years, the link has been circumstantial, based on studies in which people were asked to estimate how much youngsters had been exposed to cigarette smoke from others. Such estimates may have been inaccurate.

The new study, published in Thursday's issue of *The New England Journal of Medicine*, used a more direct method. The team of Maine doctors who conducted the study calculated the children's exposure by measuring levels of a tell-tale chemical called cotinine in their

urine. Cotinine is a byproduct of nicotine, and is thought to be an accurate indicator of how much tobacco smoke a person has inhaled.

When the doctors counted the number of asthma attacks each

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*Researchers urged  
"systematic efforts"  
toward prevention.*

child had suffered during the preceding year, they discovered that youngsters exposed to the most secondhand smoke had 70 percent more attacks compared to children with little or no exposure.

The evidence that the smoke from someone else's cigarettes

causes asthma-related illness "is sufficiently strong," and the amount of illness it causes is sufficiently severe that "systematic efforts to reduce inhalation . . . are warranted for children with asthma," the researchers concluded.

An estimated 2 million to 5 million American children suffer from the lung problem.

The team, led by Barbara A. Chilmonczyk of the Foundation for Blood Research in Scarborough, Maine, also found that the parents accurately estimated how much secondhand tobacco smoke their children had been exposed to, a discovery that gives additional credence to past epidemiologic studies.

The latest findings come after the Environmental Protection Agency, using the results of 30 studies, concluded that secondhand smoke can cause cancer in nonsmokers.

2048159429

# FDA to Ban Over-the-Counter Smoking Deterrents

By John Schwartz  
Washington Post Staff Writer

Declaring that no smoking deterrent products sold over the counter do what they say they do, the Food and Drug Administration announced yesterday that it will ban new shipments of the products starting Dec. 1.

Such familiar brand names as Cigarrest, Bantron, Tabmint and Nikoban fall under the prohibition, along with more than two dozen others. The products usually are sold in pill, tablet, lozenge or chewing gum form. The agency will allow the products to be sold until current supplies run out.

The action is part of the FDA's ongoing examination of products sold over the counter.

In a statement, FDA Commissioner David A. Kessler said: "Smoking is one of the nation's leading public health risks, and we favor any safe and effective method for helping people kick the habit. However, to reduce smoking-related illnesses and deaths, smoking deterrents have to work."

The ban does not affect prescription products such as nicotine patches and Nicorette chewing gum, a product by Marion Merrell Dow Inc. that contains nicotine. Marion Merrell Dow has expressed an interest in gaining FDA approval for switching its product to nonprescription status, agency officials said. But "before allowing a switch, the agency would need to consider carefully Nicorette's own potential for addiction," the announcement stated.

Many of the over-the-counter products contain lobeline sulfate and silver acetate. The industry has long claimed that these substances confuse the body into thinking it has ingested nicotine, providing some of the stimulus nicotine gives and thus slaking the craving for a smoke. The FDA said that studies have not proved the effectiveness of the substances.

The agency said it would work with companies

to develop new products. Among the companies that have contacted the FDA about conducting studies and clinical trials is New Life Health Products Corp. of Morris Plains, N.J., which is interested in developing a silver acetate-based smoking deterrent, an FDA spokesman said.

Manufacturers defended their products yesterday. Jim Stapleton, a spokesman for Advantage Life Products Inc., which manufactures and distributes Cigarrest, said, "Advantage believes that the Cigarrest self-help system is an effective stop-smoking product." Cigarrest products, which include a self-help audio cassette course as well as gum and lozenges, cost up to \$19.95 each. Cigarrest has the largest share of what industry officials estimated as a \$60 million-a-year over-the-counter antismoking market.

Stapleton said that Cigarrest has helped 4 million people stop smoking, but he noted that self control is far more important than any chemical properties in his product.

Cigarrest's packaging states explicitly: "The effectiveness . . . is directly related to the user's motivation to stop or stay smoke free." Materials supplied with the self-help kit state that "If you are not 100 percent ready to stop smoking, please do not attempt this plan."

Advantage Life said it will stop using lobeline sulfate in Cigarrest but would not identify a substance it will use instead. Other products made by the company, based in Laurel Hills, Calif., include CholestControl, InsomAway and PMS Solution.

Bantron is manufactured by Dep Corp., a California-based hair care products company. A spokeswoman for Dep said the company would comply with the FDA ban. "It's not a big product to the Dep Corporation," the spokeswoman said.

An official for a manufacturer who did not want to be identified questioned the FDA's judgment in going after such a small and seemingly innocuous class of products—whether or not the products actually work. "I never got cured by a cold remedy either," the official said. "Are you going to take them off the market too? I think the FDA should have more important things to do."

2048159430

**LA XGR-Smoker Bill, La Bjt,290 Smokers' Bill Approved By Legislature**  
BATON ROUGE, La. (AP) A bill backed strongly by powerful tobacco lobbyists will prohibit most local governments in Louisiana from adopting pure no-smoking ordinances.

The measure, now on its way to Gov. Edwin Edwards, guarantees smokers a room in all public buildings where they can enjoy their habit.

Any city or parish that does not have a tough ordinance in place by Sept. 1, cannot pass one that is more restrictive than the new law, under the bill approved Wednesday in the Senate.

The 23-12 vote was to approve House changes to the bill by Sen. Ron Landry, D-LaPlace.

The bill, if signed by the governor, would allow local governments to prohibit smoking in public buildings as long as they provide a room for smokers.

The measure exempts the Legislature and the Capitol, thus leaving the seat of government open to smokers in every area but legislative committee rooms and the House and Senate chambers. However, legislators can smoke in those areas.

"Now, we are going to do something each and every other state and city I read about is going in the totally opposite way," said Sen. John Hainkel, R-New Orleans. "Again, Louisiana will be the laughing stock. We will be the only one to guarantee you can smoke in public buildings. It's just the opposite of what every progressive state and even non-progressive states are doing."

Sen. Ron Bean, R-Shreveport, countered that government wants to continue to take freedom away from people. "If they want to kill themselves smoking, that's fine with me. Think about the rights of people." In separate rooms, the smokers will not pose a hazard to non smokers, he said.

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The Star-Ledger **WEDNESDAY** June 9, 1993

## HOLLYWOOD HOTLINE

# Anti-smoking groups fume over 'Made in America'

By MARILYN BECK and  
STACY JENEL SMITH

**HOLLYWOOD**—Anti-smoking groups are up in arms over Ted Danson's heavy use of cigarettes in "Made in America"—and the blatant placement of Marlboro cigarettes throughout the film.

Joe Cherner of Smokefree Educational Services blasts, "If it's a paid product placement—and it certainly looks like it is—it's horrendous and outrageous. Even if it's not, it's a terrible situation."

A Warner Bros. spokesperson insists, "No money was exchanged and it was not a matter of product place-

ment. The decision was simply made that Ted Danson's character should take on the appearance of the Marlboro Man."

No matter what the motivation, Jim Bergman, executive director of STAT (Stop Teenage Addiction to Tobacco), is convinced "Made in America" should not have been made the way it was—particularly appealing, as it does, to young people and African-Americans, which are two of the tobacco industry's prime target markets."



Ted Danson  
*Marlboro Man* manque

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# O.C. smokers find fewer places to light up legally

**HEALTH: Local governments increasingly moving toward snuffing out cigarettes.**

By GINA SHAFER  
The Orange County Register

From city hall to the shopping mall, tobacco's fast becoming taboo across Orange County.

Mission Viejo is the latest city considering a crackdown on smoking in public places.

"It's a matter of life and death," said Mission Viejo Mayor Robert Breton, who this week proposed restrictions that would make restaurants in his city mostly smoke free.

#### Elsewhere:

- ▶ South Coast Plaza in Costa Mesa and MainPlace in Santa Ana have banned smoking.
- ▶ Puffing cigarettes is cut limits in most areas of Anaheim Stadium and everywhere in Anaheim's new arena.
- ▶ City councils in Dana Point and Laguna Beach have voted to phase out smoking in public places by 1995. Los Angeles is considering a similar ban.
- ▶ Several other Orange County cities, including Huntington Beach, Laguna Hills, San Juan Capistrano and Seal Beach, are

studying restrictions on smoking, in some cases more stringent than existing laws, said Phillip Falchetti, a prevention specialist with the Orange County Health Care Agency.

▶ Twenty-four of the county's 31 cities regulate smoking in government buildings or public areas to some degree, according to the agency.

"That seems to be the trend in Orange County," Falchetti said.

The restrictions — designed to limit nonsmokers' exposure to secondhand smoke — are not always popular.

"If someone wants to smoke, let them smoke," said Rhoda Kelly of Duffer's Irish Pub in Mission Viejo. "I think it's still a free world."

The ability of local government to regulate smokers could be thwarted by the Assembly bill passed last week. That measure, backed by tobacco lobbyists, would prohibit cities and counties from enacting smoking laws stricter than state standards.

The county has proportionately fewer smokers than anywhere else in the state — just 18 percent of the Orange County residents light up, compared with nearly 21 percent statewide, Falchetti said.

In January, the U.S. Environmental Protection Agency issued a long-awaited report blaming secondhand smoke for 400 to 7,000 lung-cancer deaths a year among U.S. non-smokers.

On Monday night, the Mission Viejo mayor proposed increasing nonsmoking sections in restaurants and other enclosed places from the current 20 percent to 80 percent.

Breton, a nonsmoker, wants a 100 percent ban on smoking in public places but only if surrounding south county cities clear the air as well.

#### ▶ WHAT DO YOU THINK?

If you have an opinion on smoking bans, call The Orange County Register's Infoline at 530-INFO (4638) and punch extension 7250. Selected quotes from the call-in will run in the Register by week's end.

Breton said he doesn't believe businesses that eliminate smoking will lose revenue, but he doesn't want to give a competitive advantage to cities that permit smoking, either.

He also suggested a citywide ban on cigarette vending machines to keep minors from sneaking puffs.

The council is studying his proposal.

Mission Viejo was developed by the Mission Viejo Co., which is owned by tobacco giant Phillip Morris.

Some area merchants think it's a drag to ban vending machines. Jesus Ortiz, assistant manager of T. J. Willie's, a Mexican restaurant in Mission Viejo, said his customers would be disappointed if they had no place to buy cigarettes.

"This is a cantina," he said. "After nine, they close the nearest liquor store so where else would they buy cigarettes?"

Terry Owens, president of the 150-member South Orange County Chambers of Commerce, said his group is studying the economic effects of smoking bans before taking any position.

"Does it truly have a substantial financial impact or does it not? What is best for the health and welfare of all of us living and working in this area?" Owens asked.

Register staff writer Tom Berg and South County News staff writer Amy Woods contributed to this report.

# If L.A. ban holds, smoking and eating won't mix

By Haya El Nasser  
USA TODAY

LOS ANGELES — Restaurateurs across the country are watching to see if this city becomes the nation's largest to ban smoking in all eateries.

The Los Angeles City Council today could decide to put out cigarettes in the city's 7,000 restaurants for good. The council temporarily approved the ban last week.

"People are going to flock to Los Angeles because they can come to a restaurant and they won't have to worry about obnoxious smoke ruining the meals they paid hard-earned money for," says Councilman Marvin Braude, an anti-smoking crusader for 15 years.

California long has been in the forefront of the no-smoking push. Of the 56 cities and counties that ban smoking in restaurants, 49 are in California.

And now, the state Senate is bracing for a showdown over two smoking bills just passed by the Assembly.

One would ban smoking in all indoor workplaces.

The other, backed by the tobacco industry, would limit smoking sections to just 30% of



**BRAUDE:** People 'won't have to worry about obnoxious smoke ruining meals.'

a restaurant's space. It would supersede local ordinances.

But the city seems determined to move ahead, and neighboring cities such as Santa Monica and Beverly Hills are expected to follow suit.

"What is proposed in California is likely to hit all across the country," says Manny Mighdoll of the Florida Restaurant Association.

Calls are pouring in from anti-smoking advocates in New York and Seattle who want to

use the Los Angeles ordinance as a model, says Kevin Goebel of Americans for Non-Smokers' Rights in Berkeley, Calif.

That worries Michael O'Neal, owner of the popular O'Neal's restaurant near New York City's Lincoln Center.

"In the real world, there are people who insist on smoking," he says. He fears he'd have to redesign his place to separate the bar from the restaurant.

New York state law now sets aside 70% of restaurant seating for non-smokers. Elsewhere:

► Chicago, which required no-smoking sections but never set limits, just began requiring that up to half the seats must go to non-smokers.

► Florida health groups are pushing for a statewide ban on smoking in public places. State law requires restaurants that seat 50 or more to give 35% of seating to non-smokers.

Smoking-ban opponents such as Jivan Tabibian, the non-smoking owner of fashionable Remi's in Santa Monica, fears Los Angeles will become the guinea pig for other big cities toying with such a ban.

His prediction: This recession-battered city will see more tourism dollars go up in smoke.

## No smoking in post offices

Beginning Sunday, smoking will be banned in the U.S. Postal Service's 40,000 facilities.

Postmaster General Marvin Runyon says the ban includes lobbies, offices and cafeterias.

The action is due in part to a January Environmental Protection Agency report that secondhand smoke causes 3,000 cases of lung cancer among non-smokers each year, postal officials say.

Postal Service spokeswoman Monica Hand says the action is an effort to provide a safe and healthy environment for customers and workers.

William Burrus of the American Postal Workers

Union says the union wanted a six-month lead-in for workers to stop smoking.

Burrus says members will file labor complaints because the ban was imposed without bargaining.

"Their attitude is 'just do it,' and 'if employees don't abide by that, we'll fire them,'" he said.

"On the heels of the (postal worker shooting) tragedy recently in Michigan, it would seem they would be more sensitive.

"We have a number of employees who are addicted to smoking. Just because the postmaster general says smoking has been banned doesn't mean that addiction is going to end."

— Gary Fields

By allowing smoking in bars but not in restaurants, Tabibian says supporters show that their intent has less to do with setting health standards than with regulating personal tastes.

"Are we regulating offen-

siveness or are we regulating health?" he asks. "Because if we're going to regulate offensiveness, I would like to eliminate Giorgio perfume from being worn by women in restaurants."

2048159433

# 5 shopping malls ban smoking

**■ 'Sign of the times': Western Michigan centers try to snuff secondhand smoke.**

By David A. Marklewicz  
THE DETROIT NEWS E1/2

Five malls in western Michigan will ban smoking starting Sept. 1, but Metro Detroit pufflers don't have to worry about smoke-free malls — yet.

The shopping centers near Kalamazoo and Battle Creek will join a handful of malls in other states to initiate smoking bans.

"It's something that's going to happen anyway down the road, so we decided to take a pro-active approach now rather than wait for the government to act," said Paul Skram, general manager of the largest of the five malls, The Crossroads, in Portage.

A spokesman for the Tobacco Institute in Washington, D.C., called the move "discriminatory" and said it would drive many consumers to other malls.

Managers at Detroit-area shopping centers say they have no plans to ban smoking. But some, including Fairlane Town Center in Dearborn and Oakland Mall in Troy, have designated areas for non-smokers.

"I wouldn't have a total ban on smoking because it would alienate some customers," said Jeanne Hilde-

brandt, general manager of Livonia Mall. "We might someday have non-smoking areas, but you have to cater to both smokers and non-smokers."

Claudia Frederick, marketing director at Westland Shopping Center, said, "We haven't even discussed changing at this point, but a number of malls are going to ban. It's a thing of the times."

Tom Miles, general manager of the Somerset Collection in Troy, said, "We're studying this issue, but no decision has been made."

Smoking is banned by law in stores themselves, but not in common areas.

The alliance of malls in west Michigan includes owners from competing companies. They were brought together by an anti-smoking coalition in Kalamazoo after a January report by the U.S. Environmental Protection Agency that classified secondary tobacco smoke as a Group A carcinogen, meaning it has been found to cause cancer in humans.

The EPA says 3,000 lung cancer deaths among non-smokers a year in the U.S. are caused by environmental tobacco smoke.

Skram said a survey of shoppers at The Crossroads found 80 percent favored the ban. As for smokers who might oppose the ban, he said, "Some of them might go elsewhere to shop, but we might pick up others because of this policy. It's similar to no-smoking policies in airplanes, theaters, hospitals and government buildings."

Steve Schiale, owner of the Tinder Box smoke shop at The Crossroads mall, said it won't be popular with his customers — or his bottom line.

"Only time will tell how the ban affects business," he said. "A little more compromise might be appropriate, like designated areas in the mall for smokers. I don't feel this is necessary."

In addition to the Crossroads, other malls enacting the ban are Southland Mall in Portage; East Towne Mall and Maple Hill Mall in Kalamazoo; and McCamly Place in Battle Creek.

Bill Wurdham, spokesman for the Tobacco Institute, acknowledged that the move by the west Michigan malls "appears to be the beginning of a trend."

He added, however, that the detrimental effects of second-hand smoke can be eliminated through proper ventilation.

UPwe 06/11 1737 Legislature bans smoking in Capitol

SACRAMENTO (UPI) -- The California Legislature banned smoking in the state Capitol building Friday.

The Senate voted 23-3 to adopt a resolution already passed by the Assembly that bans smoking in all areas of the Capitol controlled by the Legislature.

Included are hearing rooms, offices, hallways, stairwells, restaurants and bathrooms, and legislative offices outside the Capitol.

Besides offering the resolution, ACR27 by Assemblyman Phillip Isenberg, D-Sacramento, the Assembly also adopted internal rule changes that forbid smoking in areas of the Capitol it controls.

Sen. Dan Boatwright, the Concord Democrat who presented Isenberg's resolution in the Senate, observed Friday that Assembly employees "have been coming to our side to smoke."

He said more than 400 Capitol employees had signed petitions urging the Legislature to adopt the anti-smoking resolution.

Boatwright said Gov. Pete Wilson announced in February a prohibition of smoking in all state-owned and leased buildings by the end of the year, but it does not apply to the courts and the Legislature.

Meanwhile, rival bills that would impose statewide smoking bans in public and private indoor workplaces throughout California are awaiting action in the Senate.

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# THE MATIER & ROSS REPORT

**WHERE THERE'S SMOKE:** Despite all the recent machinations, don't count on any major new anti-smoking legislation to make its way out of Sacramento anytime soon.

Yes, the Assembly recently approved two rival smoking bills — but chances are slim that either will survive the Sacramento gauntlet and become law.

**Here's why:**

After much debate and public outcry, the state Assembly courageously passed two rival smoking bills on to the Senate for another round of Solomon-like wisdom.

The first was a tobacco industry-backed bill carried by Assemblyman Curtis Tucker Jr., D-Inglewood, that would restrict indoor smoking but provide many exemptions. It would also bar cities from adopting stricter regulations.

The second bill, by Assemblyman Terry Friedman, D-Brentwood, would ban smoking in virtually every building outside the home — including bars, factories and pool halls.

Both bills now head to the Senate, where insiders say that Tucker's tobacco-backed bill has the best chance of coming out the winner.

Now comes the rub. Governor Wilson is putting out the word that Tucker's bill faces an almost certain veto unless it undergoes some significant changes.

The conventional call: Both bills die in the majestic Senate.

THE NEW YORK TIMES METRO, WEDNESDAY, JUNE 2, 1993

NEW YORK STATE

## A Bill to Ban Smoking Dulls Tavern Cheer

Special to The New York Times

ROCHESTER, June 1 — Unwinding at the Atlantic Tavern here recently after a day of painting houses, Mike Brandes said a Monroe County anti-smoking proposal crosses a line that should not be crossed.

The proposal, now before the County Legislature, would ban smoking in restaurants, bowling alleys and even bars.

"It's not a great habit to have," Mr. Brandes said while smoking a cigarette near the bar's two pool tables. "I can see having designated areas and even banning it in restaurants. But bars? That's going too far."

Steve Steinhardt, associate counsel for the State Health Department, concurs, saying, "You can't get too much more restrictive than that."

Monroe County has a history of being tough on smoking. The bill now before the County Legislature would toughen a 1987 measure that at the time was among the most restrictive in New York.

### Respiratory Infections

The current measure is sponsored by the County Legislature's president Arnold J. Eckert, a Republican, and a Democratic colleague, William J. Benet.

The two legislators decided to act after the Environmental Protection Agency declared in January that secondhand and sidestream smoke was a carcinogen in the same category with asbestos and arsenic. The E.P.A. linked environmental smoke to 3,000

### A proposal widens a county's already tough tobacco curbs.

lung-cancer deaths a year and to as many as 300,000 cases of respiratory infections in infants and children.

Mr. Eckert and Mr. Benet said that while businesses might want to reserve smoking areas for their customers, they should consider the impact that secondhand smoke has on their nonsmoking employees.

"I am gratified to see the leadership Monroe County is showing and I appreciate your efforts," the State Health Commissioner, Dr. Mark R. Chassin, told Mr. Eckert in an April 16 letter.

### Violation of Rights Seen

Not everyone is so appreciative.

The chairman of the Monroe County Conservative Party, Thomas D. Cook, is working with opponents of the measure. A group called CAOS — Citizens Against Outlawing Smoking — lists Mr. Cook's law office as its home address.

Mr. Cook said his work on the issue was separate from the party, which has not taken a position on the issue. Lawmakers may have more trouble making the distinction, aware as they are that Conservative Party endorse-

ments can mean the difference in a close County Legislature election. Eighteen of the 29 county legislators, both Republicans and Democrats, ran with Conservative Party support.

Mr. Cook said the legislation would violate the rights of customers and business owners. He said the market should determine if there was a need for smoke-free bars, restaurants and bowling alleys.

For many bar owners, the proposed ban is also an economic issue.

"We want to stop this ridiculous ban," said Al Hirsch, manager and co-owner of the Atlantic Tavern. "It's going to kill our business, especially small tavern owners. I know this business. I've been doing this for more than 20 years."

Robert Babcock, who was playing pool at the tavern and works at the Genesee Brewery in Rochester, said he was convinced that beer sales would be hurt by the ban.

"If smokers can't sit down and smoke and have a beer, they won't come into bars," he said.

Mr. Eckert and Mr. Benet said initially that they thought they had the votes for the measure but now some supporters seem to be wavering.

"I'm taking this case to the people," Mr. Eckert said. "Who do you want protecting your health, the tobacco interests or the health-care experts? Unless the legislators hear from the great silent majority, the special interests will win the day."

2048159433

JUN 19 1993

# Ecker vetoes bill to ban smoking in public places

## Howard may get state's toughest law

By James M. Coram  
Staff Writer

Howard County Executive Charles I. Ecker vetoed yesterday what would have been the toughest anti-smoking law in the state, but he could soon sign an even tougher one into law.

Mr. Ecker said a bill to ban smoking in all public places except bars and taverns in three years is bad for business. But if the county is going to ban smoking, it should ban it everywhere, Mr. Ecker believes.

It is unfair to exempt bars and taverns from a total smoking ban that would take effect July 1, 1994, Mr. Ecker said.

He is also opposed to a so-called smokers' rights amendment tacked on to the bill just prior to its passage June 7.

The amendment, which was recommended by tobacco lobbyist Bruce Bereno and approved unanimously by the council, would make it illegal for employers to fire or refuse to hire people who smoke off the job.

"The amendment was produced at the last minute and was not adequately publicized before it was included in the bill," Mr. Ecker said.

Mr. Ecker told council members privately that if they delete the tavern exemption and the Bereno amendment from the bill, he will sign it.

Some council members think that amending the bill along the lines Mr. Ecker suggests might be a good idea.

"Did we set up a protected class?" Councilman Darrel Drown, R-2nd, asked rhetorically. "I think we have. That piece really has to come out of the bill."

"I think we can work our way through the bar and tavern part."

Although he voted for the bill, Mr. Drown said he could not support it now unless the smokers' rights clause is removed.

"I'm disappointed, but the veto was not unexpected," said Councilman C. Vernon Gray, D-3rd, the chief architect of the bill. "I hope my colleagues will do the right thing and override his veto."

venues don't include nonalcoholic soda sales in the food portion of their operation in order to stay within the food-to-alc-hol ratio.

Mr. Ecker's veto followed the advice given to him by the Restaurant Association of Maryland, said Marcia Harris, the executive vice president.

"We met with him on Tuesday and told him the Bereno amendment was creating a special class and that as business people, we had real concerns about that," she said.

"I don't think the council meant to put smokers in the same category with women, minorities and the disabled."

Restaurateurs were also "concerned, confused and disheartened" about the tavern exemption, Ms. Harris said, adding that concerns must be expressed for bartenders exposed to second-hand smoke as well as waiters and waitresses.

The restaurant association began lobbying for a statewide smoking ban after the Environmental Protection Agency issued a report saying secondary smoke is a Class A carcinogen, Ms. Harris said.

"It became an employee issue rather than a customer issue," she said.

"We would prefer not to have county-specific legislation, but we have three years to work on a statewide basis [before the county law takes effect]. I would hope the outcome would be the same."

Mr. Gray said he would prepare a revision of the bill that eliminates the Bereno amendment if other council members prefer.

Council Chairwoman Shane Pendergrass, D-1st, said she plans to draft two amendments to the bill — one eliminating the Bereno amendment, the other eliminating the bar and tavern exemption — in order to give the council opportunity to discuss them.

Ordinarily, the council would have until July 8 to weigh its response to Mr. Ecker's veto. However, it must deal with the issue Monday, because in order to reconsider a vetoed bill, the council must act on the bill at the next legislative session. The council is holding a legislative session at the administration's request Monday to deal with a budget matter.

"It's unfortunate that [Mr. Ecker] waited" until Friday to veto the bill, Ms. Pendergrass said.

"I know it was not on purpose, but it couldn't come at a worse time, giving us the least amount of time to deal with it."

Mr. Ecker had 10 days in which to veto the bill after he received it. Yesterday was the 10th day.

Mr. Ecker also said the bar exemption would mean that a third of county restaurants would not be covered by the ban.

Mr. Gray disagreed, saying that the bill defines a tavern as one that earns less than 50 percent of its income from the sale of food. Any establishment that earns more from food than from alcohol becomes a restaurant covered by the bill, Mr. Gray said.

Ms. Pendergrass said restaurant owners in her district believe that some competitors with tavern li-

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WA Boeing-Smoking, 510 Boeing Banishes Cigarettes

SEATTLE (AP) For most Boeing Co. employees, July 31 will be the last day they can smoke inside a company building.

Boeing is capping a nine-year anti-smoking effort by banning smoking in all company-owned and leased buildings by the end of the year.

The policy will take effect Aug. 1 at Boeing's Puget Sound, Spokane, Wichita, Kan., and Portland, Ore., facilities, where most of the company's 126,000 employees work.

Other Boeing sites, including its helicopter plant in Philadelphia, will announce their smoking bans separately but before the end of the year, Boeing spokesman Patrick Palmer said.

Larry McKean, Boeing corporate vice president of human resources, said smoking is a health and safety issue for the aerospace company.

"The recently released evidence of the dangers of secondary smoke supports our moving ahead to having all smoke-free work areas," McKean said in a recent issue of Boeing News, the weekly company newspaper.

Palmer said the company took the first step toward banning smoking in April 1984, when it designated a number of plant areas as smoke-free. It also removed cigarette vending machines from company property and started offering free stop-smoking classes for its workers.

In July 1986, Boeing Computer Services and Boeing Electronics banned smoking in their buildings. A year later, all company-owned and leased office buildings were declared smoke-free.

Last year, cafeterias and other eating areas, parking garages and building entrances were designated as no-smoking. Essentially, the only inside areas where smoking is now permitted are specially designated areas in factories and warehouses.

General managers of each Boeing work site will determine areas outside buildings where smokers can light up on breaks. Boeing also will accommodate customers and special guests who want to smoke, Palmer said.

Palmer said he had no figures on the number of Boeing workers who smoke, although an employee survey taken in 1984 found 72 percent did not.

So far, 3,700 people have gone through Boeing's in-house "Smokebusters" program to stop smoking, and 43 percent of them have quit, he said.

Boeing also will pay as much as \$160 toward a commercial stop-smoking program, if an employee so chooses.

Connie Kelliher, spokeswoman for Boeing's largest union, Machinists' District Lodge 751, said she knew of no real opposition to the anti-smoking policy.

"It hasn't come up at any meetings as an issue," she said. "I think it's because people have known about it for several years."

In fact, two locals within District Lodge 751 have voted to ban smoking at their meetings, she said.

The American Lung Association says a growing number of businesses are restricting smoking, not just out of concern for employees' health but to reduce insurance premiums and limit liability from employees asserting they got sick from co-workers' cigarettes.

In January, the Environmental Protection Agency issued a report saying that secondhand smoke causes cancer and other lung diseases.

According to the Lung Association, 44 states and the District of Columbia have adopted smoking restrictions.

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# Court Offers Inmates a Way To Escape Prison Smokers

By LINDA GREENHOUSE  
Special to The New York Times

WASHINGTON, June 18 — Prison inmates who can show that exposure to cigarette smoke is a threat to their health may have a constitutional right not to be confined with a chain-smoking cellmate, the Supreme Court ruled today.

While the Court stopped short of declaring a constitutional right to a smoke-free prison, the 7-to-2 decision offered a notably generous interpretation of the Eighth Amendment's prohibition against cruel and unusual punishment.

In an opinion by Justice Byron R. White, the Court decisively rejected an argument put forward by the State of Nevada: that in the context of prisoners' health, the Eighth Amendment prohibits only a current deprivation of adequate health care and does not apply to future health risks. The Nevada prisoner in this case, William McKinney, was not sick when he sued the state prison system but argued that being housed in a six-by-eight-foot cell with a man who smoked five packs a day was a threat to his future health.

Justice White said the Eighth Amendment made no sharp distinction between current and future harm. "We would think that a prison inmate also could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery," he said.

### Reflects Changing Attitudes

Based on the Eighth Amendment, the ruling applies only in the prison setting and has no direct bearing on government smoking policies in general. Nor is the opinion, written in Justice White's typically dry and direct style, a nonsmoker's manifesto.

Yet the ruling undoubtedly reflects the Court's awareness of changing social attitudes about smoking. Justice White referred to "contemporary standards of decency," long an inherent part of the Court's approach to the Eighth Amendment.

The Court, which ruled a year ago that smokers can pursue some lawsuits against cigarette manufacturers for the medical consequences of smoking, was also aware of a changing landscape of state policy. Nevada itself has recently adopted a policy requiring reasonable accommodation of non-smoking prison inmates. California has banned smoking in prisons entirely, and in recent years many states, as well as the Federal prison system, have adopted policies that restrict smoking to designated areas of prisons and prohibit wardens from assigning a nonsmoking inmate to the same cell as a smoker except when impractical.

The two dissenters from today's ruling were Justices Clarence Thomas and Antonin Scalia. Justice Thomas, in an opinion that Justice Scalia signed, offered a reprise of his dissent in a

prison beating case last year, when he objected to the majority's holding that the Eighth Amendment bars guards from physically mistreating inmates even if no medically significant injury results.

Justice Thomas said that while he regarded last year's ruling, *Hudson v. McMillian*, as expanding the Eighth Amendment "beyond all bounds of history and precedent," the decision today — that the amendment also applies to what Justice Thomas referred to as "a prisoner's mere risk of injury" — was equally objectionable.

He said that in his view, the Eighth Amendment applied only to a prison sentence or official punishment and did not address prison conditions at all. The Court took the wrong path in the Eighth Amendment area in 1976, he said, when it ruled in *Estelle v. Gamble* that the amendment protected prisoners against "deliberate indifference" by officials to their "serious medical needs."

The decision today, *Helling v. McKinney*, upheld a 1992 ruling by the United States Court of Appeals for the Ninth Circuit, in San Francisco. That court found that the prisoner, Mr. McKinney, had made out a sufficient constitutional argument.

Justice White's decision outlined what the prisoner, a convicted murderer, must now prove in order to win at trial. First, he must show that his future health has been placed at an unreasonably serious risk. Second, he must show that this risk "is not one that today's society chooses to toler-

## The Constitution may bar locking up someone with a chain smoker.

ate." And third, he must demonstrate that prison officials were "deliberately indifferent to his plight."

In fact, Mr. McKinney is unlikely to be able to meet these conditions for victory at trial because, in addition to adopting its new policy requiring reasonable accommodation of nonsmokers among the inmate population, the state has moved him to another prison, where he is no longer housed with a smoker. Justice White noted that the new policy "may make it impossible for him to prove that he will be exposed to unreasonable risk." Mr. McKinney filed his lawsuit in 1986, seeking to be moved to another cell.

When briefs were filed in the case, last summer, the Bush Administration as well as 34 states asked the Court to rule against the prisoner. Noting that "smoking is widespread in society" and that "smoking is a habit that is deeply rooted in our history and experience," the Administration said there was no basis for ruling that exposure to secondhand smoke could even theoretically violate the Eighth Amendment.

### Smokers' Family Loses Suit

GREENVILLE, Miss., June 18 (AP) — A judge's unprecedented ruling that cigarettes are inherently dangerous was left moot as jurors ruled that 43 years of smoking did not kill a man whose family sued the maker of Pall Mall cigarettes.

Eleven of 12 jurors decided Thursday that Anderson Smith Jr., 63, of Kosciusko, died from a blood clot brought on by surgery, rather than from emphysema or lung cancer caused by his smoking.

A May 11 ruling in the case by Judge Eugene Bogen of Washington County Circuit Court had raised hopes of smoking opponents that this would be the nation's first case in which a tobacco company would have to pay damages to smokers' survivors.

"Cigarettes are, as a matter of law, defective and unreasonably dangerous for human consumption," he wrote.

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# Prison and Nonsmokers: Yearning to Breathe Free

By RONALD SMOTHERS  
Special to The New York Times

ATLANTA, June, 19 — William Lynch might have stepped straight from a film noir prison scene of the 1940's. A grizzled, toothless convict who goes by the name Pops and gives his age as "sixtyish," he squints at a visitor through the perpetual haze of bluish smoke that rises from the ever-present Camel cigarette dangling from his lips.

But these days Pops Lynch and his nicotine haze are becoming cellblock anachronisms as corrections officials push for smokeless prisons and the number of smoking prisoners falls.

For the last six months, any of the 503 inmates in need of a smoke here at the minimum-security Atlanta Prison Camp have had to step outside into one of the courtyards to indulge their habit. From midnight until 7 A.M., doors leading to the courtyards are locked, and all smoking is prohibited.

"It's an inconvenience, but not a problem," said Mr. Lynch, who still finds time to smoke five packs a day as he serves his five-year sentence for credit-card fraud. "Besides, we have to be respectful of the nonsmokers here."

## Court Sounds Smoke Alarm

On Friday, the United States Supreme Court went one step further. More than just being owed respect, the Court said, a Nevada prisoner had a constitutional right to relief from the health dangers posed by a cellmate who smokes.

The ruling caused barely a ripple here, where Mr. Lynch and other inmates in the gleaming, blue-and-white Dormitory A area said they had long since come to grips with the rights of nonsmokers.

In many ways their attitude reflects what is happening in the world outside. Fewer inmates now arrive at the gates as smokers, said Greg Bogdan, a spokesman for the Federal Bureau of Prisons, and corrections officials have become more health conscious.

An informal 1991 survey by the Association of State Correctional Administrators found that 51 percent of state prisons limited smoking by inmates in some way, 29 percent prohibited it altogether in living units, and 7 percent were entirely smoke free.

## Overcoming Skepticism

James Gondies, the executive director of the American Correctional Association, said he was skeptical in 1990 when his group recommended no-smoking policies for jails and prisons.

"But it has been generally accepted where it's been tried," Mr. Gondies said. Friday's Supreme Court ruling, he predicted, would "cause many, many more institutions throughout the nation to, at a minimum, designate smoking and nonsmoking areas."

Alvin Bronstein, director of the American Civil Liberties Union's National Prison Project, said the ruling meant that an inmate would not have to wait until he had "two black lungs and cancer" before seeking protection.

But he also predicted that the ruling would "create a serious problem for prison officials, who have terrible conditions of overcrowding, tense environments, boredom and idleness that they must work around."

"The ruling needs some refining and fleshing out," Mr. Bronstein said, "but it sends a clear message."

## Process of Trial and Error

The State of Vermont got a head start on the refining process when the Legislature passed a law three years ago requiring smoking regulations in all state agencies. Dennis DeBevec, a spokesman for the state's Department of Corrections, said that last July the department enacted a no-smoking policy at all its prisons, but it had since modified the policy to allow smoking in certain areas at some prisons.

The Atlanta Prison Camp, which sits in the shadows of the neo-gothic 2,400-inmate Atlanta Federal Penitentiary,

began with a mixed approach when it began limiting smoking a year ago.

Terry Wofford, the camp administrator, said he first surveyed inmates to determine how many smokers there were. When the results were in, he set aside two smoking dormitories that shared ventilation systems; two others, with separate ventilation, were set aside for nonsmokers. But he said that some inmates had lied on their surveys because they wanted to be placed in nonsmoking quarters with friends and were caught breaking the rules.

"We eventually decided about six months ago to go nonsmoking for all inside areas and allow smoking outside only," Mr. Wofford said. "I still get complaints, but it seems to be working."

## 'Major Tension and Hostility'

Roosevelt Head, an inmate serving three years for embezzlement, said that one of the reasons it was working was because even prisons had to operate on rules and mutual respect. And in minimum security facilities like the camp, he said, things were flexible and open enough for smoking limitations to work.

"Even when we were allowed to smoke inside, I would ask people if they

## The smoke is slowly clearing from the nation's cellblocks.

mind if I smoked," Mr. Head said as he surveyed the courtyard full of first offenders, nonviolent felons and white-collar criminals with sentences of 10 years or less. "The majority of the people in here and in the Federal system are courteous to each other."

But Mr. Head, who served time "inside the wall" of the maximum security penitentiary for an earlier crime, said it would not be practical to eliminate smoking there. A penitentiary policy adopted in 1990 prohibits smoking by inmates or staff in most public areas, like corridors, kitchens, classrooms and work areas. But the living areas are designated either smoking or nonsmoking.

"If you said 'no smoking' to some guy who has a 30-year sentence and knows he is going to have to do 29 of those under the new sentencing guidelines," Mr. Head said, "then you are going to have some major tension and hostility."

(Other coverage available upon request.)

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## MARKETPLACE

## LAW

# Employers Fume Over New Legislation Barring Discrimination Against Smokers

By JUNDA WOO

Staff Reporter of THE WALL STREET JOURNAL

Laws forbidding discrimination against smokers are on the rise—and some companies that prefer nonsmoking employees are doing a slow burn.

Faced with an antismoking fervor that stretches from the corporate office to the Oval Office, the tobacco industry has turned to state legislatures to protect the right to smoke. Largely in the past two years, 28 states and the District of Columbia have made job discrimination against smokers illegal. And at least two states have made it a civil right for workers to smoke outside the workplace.

The industry's push is continuing: Legislation to protect smokers from discrimination is pending in California, Delaware, Massachusetts, Nebraska and Pennsylvania, according to the Tobacco Institute, a Washington trade association. The laws don't affect office smoking bans or smoke-free zones in the workplace. But they bar companies from refusing to hire smokers and from firing employees who fail to kick the habit.

The legislation comes in response to policies many companies have adopted in recent years against hiring smokers because of health and safety concerns. In Washington state, for instance, about 10% of all employers refuse to hire smokers, according to Smokers International, a Phoenix-based consulting concern that helps people stop smoking. A proposed smokers' rights law in Washington was defeated earlier this year.

## Fines and Compensatory Damages

Some of the laws also prohibit discrimination in compensation and benefits, although higher insurance rates for smokers generally are allowed. In most of the states, companies that violate the laws face fines and can be sued for compensatory damages. Apparently none of the laws has been tested in court by smokers seeking protection.

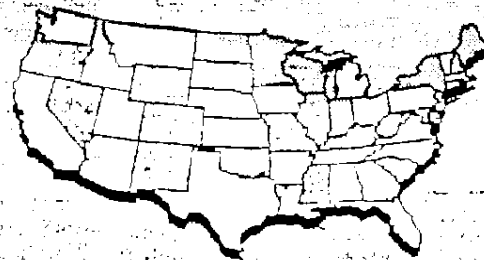
A 1991 "smokers' rights" law in New Jersey forced Fortunoff, a retail chain based in Westbury, N.Y., to dump a policy prohibiting all employees from smoking on or off the job. The 10-year-old policy was adopted after a worker caused a fire by smoking in a storeroom. Fortunoff stopped hiring smokers, and anyone caught sneak-

## Legalities of Lighting Up

Although the laws vary from state to state, they bar discrimination against smokers in some of these areas:

- Hiring and firing
- Promotions
- Compensation
- Occupational licensing

States in shaded areas have adopted laws protecting smokers' rights



Source: American Civil Liberties Union

ing a cigarette was sent to smoking-cessation programs at company expense.

"There were no real victims of the nonsmoking policy," says Vice President Louis W. Fortunoff. "People who couldn't get a job with us, they got a job at Macy's. They didn't care. The real purpose of this legislation is to legitimize tobacco use — it was purely a ploy by the tobacco industry."

The company now prohibits smoking indoors. No fires have been started yet, Mr. Fortunoff says, but he still resents having to change the policy. Smokers are likely to need a cigarette during the workday, he says, adding, "Why take chances?"

## Different Tack

In New Hampshire and Wyoming, lawmakers chose a different tack. They declared smoking outside the workplace (where legal) a civil right. Although such measures may sound sweeping, they aren't likely to actually give smokers any broader protections than the other antidiscrimination laws covering smokers, says John F. Banzhaf III, a George Washington University law professor and tobacco-industry opponent.

"But it helps the tobacco industry to try to equate discrimination against smokers with discrimination against blacks or Asians or women, which is ridiculous," Mr. Banzhaf says.

The Tobacco Institute says it doesn't support making smoking a civil right. "It's demeaning to existing civil-rights legisla-

tion to put it on a par with that," says spokesman Bill Wordham.

The industry is a major contributor to state and national political campaigns. Because disclosure rules vary from state to state, and because the industry simultaneously lobbies for other legislation besides the smokers' rights laws, it is impossible to tell how much was spent lobbying for the laws.

"Obviously, we will work to help consumers of our product," Mr. Wordham says. "We'd be a pretty strange industry if we didn't."

## Help From the ACLU

In some states, the tobacco lobby is getting a boost from the American Civil Liberties Union, which says off-the-job antismoking policies are a corporate intrusion into private lives. The civil-liberties group helped win laws in eight states, including New York, that broadly bar discrimination against employees who use any lawful product or who engage in lawful activities in their off hours.

Such laws protect not only smokers but alcohol drinkers and devotees of risky recreational sports, such as motorcycle riding. "As long as the behavior doesn't affect job performance, people should be allowed to do it on their own time," says Lewis Maltby, director of the ACLU's workplace-rights office in New York.

Even in states without antidiscrimination laws that address smoking, smokers have gained some workplace protection

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## Fuming Employers Deplore Legislation Protecting Smokers

*Continued From Page B1*

under the Americans With Disabilities Act of 1990. The extent of a smoker's claimed disability would depend on the strength of his or her addiction, says Michael Lofito, managing partner of the San Francisco office of Jackson, Lewis, Schnitzler & Krupman, a labor law firm representing management.

The move to protect smokers' rights, however, has had its setbacks. According to the Tobacco Institute, legislation in 11 states was defeated this year, including a bill vetoed in March by Virginia Gov. Douglas Wilder. Gov. Wilder, whose state

is one of the nation's biggest tobacco producers, said he opposed the measure because it suggested that smokers deserve safeguards identical to those used to fight race and sex discrimination. Virginia already has a narrower antidiscrimination law that protects public employees who smoke outside the workplace.

Many companies that have adjusted their no-smoker policies have done so only grudgingly. Chuck Crawford, president of Kimball Physics Inc., a Wilton, N.H., electronic-optics company, defiantly tightened his company's antismoking rules when the state made smoking a civil right in 1991. He believes the state's law contradicts federal health regulations and should be thrown out.

Mr. Crawford says he opposes corporate intrusion into employees' lives. But he worries that residue from smokers' clothes and from their breath could contaminate rooms at the company that must be

kept clean for the manufacturing of electronic optics. In addition, some employees are allergic to smoke. "We can smell a smoker, typically, at a distance of a couple of feet," Mr. Crawford says. "In point of fact, they stink."

Kimball Physics no longer asks potential employees whether they smoke. But it has started telling them that they can't smoke on company grounds, even in the parking lot inside their own car. The smell of smoke would linger on the workers' clothes, Mr. Crawford explains. Employees who are exposed to smoke at home must wash up in company showers and put on clean clothes when they arrive at work.

Mr. Crawford, who once paid an employee \$3,000 to stop smoking, says he doesn't know of any current workers who smoke. "I would spend every cent this company has to attack that industry if I thought it would do any good," he says. "We will fight to the death on this."

THE NEW YORK TIMES MEDICAL SCIENCE TUESDAY, JUNE 8, 1993

## Health Workers Enlisted in Antismoking Effort

**G**ENEVA, June 7 (AP) — The World Health Organization is urging all health workers to quit smoking and to spread the message to their patients.

"No doctor should ignore the fact that smoking already kills three million people each year and that the figure will continue to grow if nothing is done," the United Nations health agency said in a report last week on World No-Tobacco Day, when the W.H.O. and many governments encourage smokers to quit for at least one day. This year's theme was the role of health services.

The W.H.O., citing data from the United States, reported that although 90 percent of physicians believe helping patients quit was an important part of their job, fewer than half offer such advice. Only 3 percent of those

surveyed who offered advice thought their efforts had succeeded. But evidence shows that even a few minutes of counseling increases the chances a smoker will quit, the report said.

The W.H.O. was particularly critical of pharmacies in the United States and Canada, which often sell cigarettes.

In the United States, the report said, pharmacies account for an esti-

mated 25 percent of tobacco sales to minors. Many have vending machines, making illegal purchases easy.

About 1.5 million men and 500,000 women in the industrial world die each year because of smoking. In developing countries, the annual toll is 1 million. That number is expected to increase to 7 million within the next few decades, according to W.H.O. figures.

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# U.S. Pushes for a Smoking Ban on Flights Abroad

By MARTIN TOLCHIN  
Special to The New York Times

WASHINGTON, June 12 — Responding to complaints and new worries about the effect of second-hand smoke, the Clinton Administration is working to speed the day when smoking is banned on all international flights into and out of the United States.

Currently, United States airlines allow smoking on all international flights, except to Canada. An international agreement adopted by a United Nations agency urges that smoking be banned on all flights between countries by 1996, but it has no enforcement provisions. So the Administration has begun trying to negotiate regional or bilateral agreements that would ban smoking for passengers and crew members without putting United States airlines at a disadvantage.

About 87 million passengers fly into or out of the United States annually on 800,000 flights. About half of the passengers, and the flights, are American.

"We're in the process of negotiating with various governments," said Mortimer L. Downey, Deputy Secretary of Transportation. "It seems a sensible direction to go. Lots of people express the view that they don't want to be captive of someone else's smoking. The confirmed smoker may find himself discommoded, but the bulk of the people will welcome the ban."

## Risks Comparable to Asbestos

A study by the Environmental Protection Agency last January found that second-hand cigarette smoke posed as great a cancer risk as asbestos, arsenic and benzene, being responsible for 3,000 deaths annually. The study said second-hand smoke increased children's risks of asthma, bronchitis, middle-ear infections and pneumonia. Smoke also obstructs airlines' air-filtering systems, hindering the air circulation.

Smoking has been banned on all commercial flights within the United States since 1990, and the International Civil Aviation Organization has endorsed a ban on smoking on international flights by July 1996. But that United Nations agency has no enforcement power, relying only on the pressure of public opinion, so the Clinton Administration is hoping to speed the process by revising its agreements with other nations directly.

One such agreement is expected to be concluded shortly, said Don Newman, the United States representative to the international aviation organization. It would involve Canada, the United States, Australia and New Zealand, Mr. Newman said, adding, "It looks like that's going into effect this year."

Chris Chiames, a spokesman for the Air Transport Association, which represents the major domestic airlines, said those companies support the United

## Get the Chewing Gum Ready

Airlines in the United States allow smoking on international flights except those to Canada. Smoking is banned on all domestic flights. Here are the smoking rules of some international airlines.

**Air Canada** bans smoking on all flights, domestic and international.

**Air France** bans smoking on domestic flights and on international flights of less than two hours.

**British Airways** bans smoking on domestic flights, but allows smoking on international flights. It plans to start offering some smoke-free international flights.

**Cathay Pacific** bans smoking on flights between Hong Kong and the United States.

**Japan Air Lines** bans smoking on domestic flights, but allows smoking on international flights.

**Lufthansa Air Lines** allows smoking on all domestic and international flights.

**Qantas** bans smoking on domestic flights, but allows smoking on international flights.

**Scandinavian Airlines System** bans smoking on flights between Scandinavian nations but allows smoking on all other flights.

Source: Airlines, Air Transport Association and International Civil Aviation Organization.

The New York Times

## Trying to reduce a health risk without cutting airline profits.

ed Nations effort to bring about a worldwide ban. "But they would not support an international ban only on U.S. carriers, for competitive reasons," he said.

The United States airlines would, however, support bilateral and multilateral agreements, Mr. Chiames said, "as long as they are enforced equally on foreign and U.S. carriers alike."

### Great for Some Passengers

That would be good news for passengers like Richard Chadwick of Bethesda, Md., a mathematician with the National Institutes of Health. Two weeks ago he took a United Airlines flight from Frankfurt to Dulles International Airport here, after his scheduled Delta Airlines flight was delayed.

"I sat in the smoking section because I ran to get on this plane, and that was

the only seat that was left," Mr. Chadwick said. "The air was very bad, and I got sicker as the flight progressed, beginning with a runny nose, sore throat and headache."

Similarly, Lynn Sadofsky of New York City, a producer with Home Box Office who took an American Airlines flight from Sweden to Chicago to Kennedy International Airport in New York last April, said that she was bothered by the smoke even though she was sitting in a nonsmoking section. "The next day I woke up with the most amazing headache I ever had," she said.

Some flight attendants would also welcome the ban. "We have reams of reports in our files from flight attendants who complained of feeling sick after smoking flights," said Chris Witkowski, director of aviation safety for the Association of Flight Attendants.

Smoking is much more prevalent in Europe, Asia and the Middle East than it is in the United States, and airlines from these areas have been reluctant to initiate a smoking ban.

### Smoke-Free Flights Planned

But British Airways has disclosed that it plans to start offering smoke-free international flights between London and San Francisco and Los Angeles. A spokesman for the airline said

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details of the plan would be announced Tuesday.

In 1990, Air Canada banned smoking on all flights, domestic and international. Canadian Airlines now allows smoking on some international flights. But this summer, the Canadian Government plans to ban smoking on all Canadian airline flights.

Denis Couture, a spokesman for Air Canada, said that initially "there was a negative impact with smokers, especially in Germany and France." Eventually, he said, "we were able to sell ourselves as some kind of an environmentally conscious carrier. Air Canada adopted the slogan, 'A Breath of Fresh Air.' It's given us a very nice image."

Cathay Pacific airlines, a Hong Kong partner of Air Canada, has banned smoking on its flights to the United States. The airline hands out boxes of candy cigarettes that have printed on them, "Captain's Warning: Flying aboard nonsmoking flights may be addictive, and can lead to increased Ca-

thay Pacific travel."

In 1988, Northwest Airlines, which flies to both Canada and Australia, became the first United States airline to voluntarily ban smoking on all domestic flights.

#### 'Important Health Issue'

"We believe it's an important health issue," said Elliot Seiden, the airline's vice president and counsel. "In Asia, it's an important competitive issue, so we haven't felt it commercially possible to impose a unilateral ban on ourselves. But we would welcome a multilateral agreement."

Thomas Lauria, a spokesman for the Tobacco Institute, the industry's trade group, said the organization had no position on a smoking ban on international flights. "Our expertise ends at the border," he said. "We're a domes-

tic lobby. Our lobbyists won't be fighting that."

But he said the organization strongly opposed the smoking ban on domestic flights. Speaking of the airlines, he said, "They could have remedied any discomfort with increased and better ventilation."

United Airlines, which has flights to Australia and New Zealand, is reviewing its policy of allowing smoking on international flights, said Joseph Hopkins, a company spokesman. "If the governments banned smoking on those flights, we would certainly comply," he added.

The Scandinavian Airlines system abandoned a brief experiment banning smoking on international flights. "The survey papers distributed showed that a majority wanted to retain the possibility to smoke," said Nils Flo, a spokesman for the airline. "Even the Danish Queen likes to light up."

SAN FRANCISCO CHRONICLE JUN 16 1993

# British Airways Clears Smoke From Travel

By Jeff Pelline  
Chronicle Staff Writer

## Nicotine patches in duty free shops?

It's possible, as a ban on smoking spreads from restaurants, hotels and even prisons, to international airline travel.

British Airways became the latest convert yesterday, confirming it would launch nonsmoking flights from both San Francisco and Los Angeles to London starting September 1 on a trial basis.

Although smoking has been banned on nearly all domestic flights since 1990, it is still permitted on most international trips.

"The trial is part of British Airways' commitment to research what our passengers really want and need during the 10- to 11-hour flights between the West Coast and London," said Charles Gurassa, the airline's general manager for the Americas.

British Airways is hedging its bets: The ban only applies to one of two daily flights from each California city to London and is on a two-month trial basis.

But don't be surprised if the smoke-free cabin becomes permanent. British Airways also said yesterday that it would offer no-smoking flights between London

and Hong Kong indefinitely after a two-month trial proved successful.

British Airways, the largest international carrier, is not alone in creating smoke-free aircraft. Cathay Pacific bans smoking on flights between Hong Kong and the United States, and Air Canada bans smoking on all international flights.

Other airlines likely will follow suit. An international agreement adopted by the United Nations urges that smoking be banned on all flights by 1996. But the real impetus will come from the Clinton administration, which is working on a plan to ban smoking on all international flights that go into or out of the United States.

Besides the United States, 27 other nations for more than 13 years. "Smoke-free flights are healthier and safer for passengers and crew alike."

Many patients with lung disease, including children with asthma, the elderly and people who are allergic to tobacco

smoke, cannot travel by air because smoking is allowed, according to Rubin.

Second-hand cigaret smoke also can be dangerous to healthy passengers. The Environmental Protection Agency recently released a study that showed second-hand smoke poses as great a cancer risk as asbestos, arsenic and benzene, being responsible for 3,000 deaths annually.

Some flights attendants also have complained that exposure to tobacco smoke causes headaches and light-headedness. They worry it may affect their ability to think and act rapidly in an emergency.

Smoking also raises the hazards of fire on airplanes.

The airlines also risk losing loyal passengers who smoke. "I'd switch to another airline," if it banned smoking, Dave Hoyer, president of Chevron USA Products Co., said yesterday.

2048159443

# Ban goes up in smoke

**S**candinavian Airlines System (SAS) has been forced to abandon a smoking ban on its international flights after a two-month trial, *Harvey Elliott writes.*

The company discovered that Nordic smokers and non-smokers alike objected to the ban even more than the smoke drifting from the rear rows of the cabin. Enough passengers switched to rival airlines when the ban was introduced to persuade SAS to allow smoking again from the beginning of this month.

"We took surveys regularly and the response proved very negative," an SAS spokesman said. "Obviously, we have to listen to our customers and if they don't like the ban then we must respond accordingly."

British Midland, in which SAS has a 34.5 per cent stake, introduced a similar ban on all its European flights on March 28 — the same day as SAS. "As far as we are concerned, the ban stays," a spokesman said. "We conducted regular surveys and have had nothing but praise. Complaints could be counted on one hand while

we have received hundreds of letters of support."

The smoking issue has affected airlines around the world. The Canadian government has forced its national airline to outlaw smoking and has proposed a worldwide ban, to come into effect in July 1996. Australia has banned smoking on internal flights and in airport terminals.

Most flights anywhere in the world lasting less than two hours are smoke-free and virtually all domestic flights within the United States do not permit smoking.

THE DAILY TELEGRAPH

THURSDAY, JUNE 3, 1993 \* \* \*

# Woman sacked for smoking wins her appeal

A BOOKMAKER'S cashier who was sacked for "gross misconduct" because she insisted on smoking at work won a claim for unfair dismissal at an industrial tribunal yesterday.

But the tribunal did not accept her claim, backed by the pro-smokers' organisation Forest, that Ladbroke's acted unreasonably in stopping staff from smoking and should have consulted them before imposing the ban.

Miss Pauline Wright, 35, a cashier at Ladbroke's betting office in Leamington, Warwicks, was sacked in July 1991 after a district supervisor turned up unan-

nounced and found her smoking, the tribunal in Birmingham was told.

The company stopped its staff smoking behind the counters two years ago although there is no ban on customers smoking. Employees who want to smoke are allowed to do so only during their breaks.

But Miss Wright, who had worked for the company for nine years and smokes 30 cigarettes a day, told the tribunal that pressure of work in the betting office meant that she never had time for breaks.

She said she refused to give up smoking because cig-

By Michael Smith

arettes helped her to concentrate and to cope with the stress of the job. She also said she did not think it was fair to expect staff to be stopped from smoking when customers were entitled to smoke as much as they liked.

Ladbroke's said Miss Wright was sacked for gross misconduct after repeated requests for her to stop smoking had been ignored.

The tribunal acknowledged that Miss Wright was "an exemplary employee" and decided that her dismissal was "procedurally unfair". A further month

should have been allowed before any action was taken.

But it also said the company had not acted unreasonably in imposing the ban on staff without consultation.

Afterwards, Miss Wright said: "I am very pleased that I won. I hope it will give employees elsewhere the courage to speak out against smoking bans."

"They should argue for proper provision to be made for those members of staff who do smoke."

Mrs Marjorie Nicholson of Forest — the Freedom Organisation for the Right to Enjoy Smoking Tobacco — said the organisation was

delighted at what she said was "a victory for smokers in the workplace".

She said: "This is a clear warning to employers that they must follow proper procedures if taking disciplinary action against smokers."

"We hope it will encourage more people to speak up if they are segregated from workmates or treated badly because of their smoking."

Ladbroke's said, yesterday that its no-smoking policy for staff would continue at its 2,000 branches.

The tribunal was adjourned to a date to be fixed when compensation will be determined.

2018159444

# Tobacco lobby pushes Ottawa to postpone warning labels

## Committee drops idea of including nicotine in drug laws

BY GEOFFREY YORK  
Parliamentary Bureau

OTTAWA — In the latest skirmishes in Canada's tobacco war, lobbyists for the cigarette industry have scored a pair of victories against their anti-smoking foes.

The tobacco industry has apparently persuaded the federal government to postpone its new cigarette warning labels and to abandon the idea of including nicotine in its drug laws.

Both of these decisions are of key importance to the tobacco industry. The warning labels would be the strongest and most dramatic in the world, featuring powerful warnings such as "Smoking can kill you" in prominent black-and-white letters.

Similarly, the inclusion of nicotine in Canada's drug laws would have sent a symbolic message that cigarettes are as addictive and destructive as illegal drugs such as cocaine and heroin.

After some intense lobbying and pressure tactics, the tobacco industry has succeeded in fending off both of these threats — at least temporarily. The warning labels are still expected to become mandatory, but probably not until next year.

For the tobacco lobbyists, a delay in the federal regulations could be almost as good as a total victory. If they can postpone the warning-label regulations for another two weeks, they can watch the disappearance of one of their biggest enemies, Health Minister Benoit Bouchard, who is expected to leave his portfolio in the first cabinet shuffle after a new Conservative leader is chosen next week.

Mr. Bouchard had strong personal convictions on the need for cigarette

regulations, and his departure could open the door for a health minister who is more sympathetic to the tobacco industry.

The back-room feuds over the warning labels and the drug laws are just the latest skirmishes in one of Ottawa's biggest lobbying battles: the war between the beleaguered tobacco industry and a growing number of health groups that have mobilized against cigarette smoking.

"It's a heck of a fight," said David Swenor, a lawyer and strategist at the Non-Smokers Rights Association.

"It's easy to outsmart the tobacco industry, but it's not easy to outspend them. They're outspending us to an alarming degree. It's frustrating."

The tobacco lobbyists deny they are as powerful as their enemies suggest. "If you look at the regime in Canada, everything from taxation to a ban on advertising, I don't think you'd come to the conclusion that the tobacco lobby has been massively successful," said Rob Parker, president of the Canadian Tobacco Manufacturers Council.

But the industry seems to have been successful in fighting a rear-guard action against two of the latest threats from the anti-smoking forces. After letters and telephone calls to Conservative MPs this week, Mr. Parker persuaded a parliamentary committee to shoo down a proposal by health groups to include nicotine in Canada's drug laws.

At the same time, the tobacco industry has apparently persuaded the government that it should postpone the new dramatic cigarette warning labels for several months at least.

Mr. Bouchard originally an-

nounced that the new labels would become mandatory on Sept. 1, but the government is now looking at a phased timetable that would delay most warnings until next year.

"The minister is open to that," said Ed Arundell, chief of staff to Mr. Bouchard.

The government has already been forced to extend its deadline for public comments on the proposed new warning labels from 30 days to 75 days. As part of the public-comment process, the tobacco industry has filed strenuous objections to the regulations, and the government says it is prepared to respond.

"When we get reasonable comments, changing the proposal is what good government is all about," Mr. Arundell said.

The tobacco industry has claimed that the proposed regulations are causing byoffs in the cigarette-packaging industry, and it says the jobs won't be recovered unless there is a delay in the new regulations. Only large foreign companies could meet the volume and deadlines required for a Sept. 1 introduction of the new labels, it says.

"I have to assume there's going to be a change of some kind," Mr. Parker said. "A three-month implementation period is fully impossible. It just cannot be done."

The revisions to the new regulations might not be completed for another two or three weeks, Mr. Arundell said. That possibility is causing headaches for the anti-smoking lobbyists.

"If the industry manages to delay this, and manages to have some influence over the next minister of health, we're in real trouble," Mr. Swenor said.

20448159445

# Groups urge nicotine control

## MPs welcome bid to include tobacco under drug laws

BY GEOFFREY YORK  
Parliamentary Bureau

OTTAWA — Tobacco could be controlled under the same laws that prohibit illegal drugs such as cocaine and marijuana, a parliamentary committee said yesterday.

The committee, dominated by Conservative MPs, is studying a radical proposal to amend Canada's drug laws to include nicotine — the addictive agent in tobacco.

The move was suggested yesterday by a coalition of health groups, and the MPs immediately said it is worthy of serious consideration.

"Nicotine, through tobacco, causes more deaths in Canada than all other drugs combined," the health coalition told the parliamentary committee.

"A drug which is considered to be at least as addictive as heroin and cocaine, and which kills tens of thousands more Canadians each year than other drugs, must be included in a consistent legislative framework for dealing with drugs."

The proposal would not make tobacco an illegal substance, but it would expand the government's powers to crack down on the tobacco industry.

The proposal was immediately welcomed by Tory and Liberal MPs, who asked the health coalition to draft an amendment to include nicotine in Canada's drug laws.

"We're willing to look at it very carefully," said Conservative MP John Reimer, a member of the parliamentary committee.

"If we really want to say that we have problems with drugs in society, nicotine is the worst one. We're continuing our agenda of making it more expensive and saying to kids, 'Don't use it.'"

Bobbie Sparrow, parliamentary secretary to Health Minister Benoit Bouchard, said the committee will discuss the proposal next week. "I feel very strongly that nicotine is a psychoactive substance and it's not healthy and very costly to society," she said.

The committee is reviewing Bill C-85, which would consolidate and modernize the various laws that provide penalties for the consumption and trafficking of illegal drugs.

Under its current wording, the bill would specifically exempt nicotine from the drug laws. The Tory MPs, at the urging of the Canadian Cancer Society and other groups belonging

to the health coalition, are considering an amendment to remove this exemption.

Mr. Reimer said the proposal would be "almost revolutionary in its impact" if it is carried to its logical conclusion. But he said the bill could be amended to control nicotine without making it an illegal substance.

"I'm glad you're using these strong words," Mr. Reimer told the health coalition. "I can't quarrel with a single one."

David Sweanor of the Non-Smokers Rights Association said the inclusion of nicotine in the drug laws would make it more difficult for the tobacco industry to find loopholes in existing tobacco legislation. It would also permit the federal cabinet to pass regulations much faster in response to problems caused by tobacco, he said.

About 40,000 people die from the effects of cigarette smoking every year in Canada, the coalition said. "The inclusion of nicotine in Bill C-85 or any other comprehensive drug legislation would constitute formal recognition by the government that tobacco use is a serious drug problem that warrants serious measures."

RTf 05/31 0924 Minister backs doctors on treatment for smokers

LONDON, May 31, Reuter — A British government minister on Monday backed doctors' rights to give reduced priority to unrepentant smokers seeking free health treatment.

Junior Health Minister Baroness Cumberlege said the government had no objections if doctors refused to treat patients who ignored advice to stop smoking.

"We really do feel that it is up to clinicians to exercise their clinical judgment," she told British Broadcasting Corporation (BBC) radio.

"If they feel that people they are treating are less likely to recover than other people on the waiting list (for health service treatment), then that must be a judgment for them," she added.

Last week doctors in hospitals in Manchester and Leicester in central England said they refused to do non-urgent heart bypass surgery on heavy smokers.

REUTER PAR CD

2048159446

# Doctors' refusal to operate on smokers sparks debate

Associated Press **P.A.O.**  
LONDON—Doctors at two hospitals have set off an ethical debate in refusing to perform non-urgent heart bypass surgery on patients who smoke.

"We're not penalizing smokers and not discriminating. The fact of the matter is the benefits they might get from having coronary bypass surgery are negated by the fact they continue to smoke," said Dr. Christopher Ward, a cardiologist at Wythenshawe Hospital in Manchester.

People who continue smoking after heart-bypass surgery are at least 50 per cent more likely to suffer from a heart attack, stroke or chest pain within 10 years of surgery compared to non-smokers, said Dr. Ward. Some doctors believe non-smokers, who do better after surgery, should get priority compared to smokers.

Dr. Ward believes smokers who suffer from heart disease live longer if they are treated with drugs instead of bypass surgery, a theory not confirmed by statistical studies.

Other doctors agreed that smokers do not fare as well as non-smokers, but opposed denying treatment or giving priority to non-smokers.

"My view is that once we accept an absolute bar to surgery for smokers, we . . . may well be on the slippery slope to withholding treatment for the unmotivated and unfit," Dr. Matthew Shiu, a general practitioner in Birmingham, wrote in the British Medical Journal.

Forest, an organization support-

ing smokers' rights and partly supported by tobacco companies, contends that non-smokers may someday be denied health care for lifestyle choices. It pointed to homosexuals suffering from AIDS, alcoholics with liver disease, and athletes injured in competition.

The decision not to treat smokers is not new but the issue catapulted into the press recently after a television debate between two doctors. Their arguments were published in the British Medical Journal, spurring a series of articles and rejoinders.

The Spectator, a conservative weekly magazine, published a cartoon of a doctor telling a wrinkled patient: "You've terribly old and decrepit, probably the result of your lifestyle, so I'm not treating you."

The British Medical Association and the Department of Health both said decisions about treatment should be left to the doctor.

"Clinicians have always had to make difficult judgments for setting clinical priorities. Smoking is just one of a number of factors, such as age, weight and family history which they would consider upon determining clinical outcomes for a patient," said Baroness Cumberlege, a min-

ister at the Department of Health.

Dr. Ward and other doctors say they do consider other risks, such as hypertension, age, and obesity. But smoking sparks the fiercest fights.

"I wouldn't do non-urgent bypass surgery on dangerously obese patients nor on patients with certain diseases," such as some forms of diabetes, said Dr. John Bailey, a surgeon at Groby Road Hospital in Leicester, who opposes non-urgent surgery for smokers. But he said "fatness and old age don't make hype with the tobacco companies."

"Without substantial increases in resources, additional pressure will be put on the already growing waiting lists for coronary surgery," Dr. Bailey said in a letter published in the British Medical Journal.

When the operation was fairly new, about 20 years ago, surgeons offered bypass surgery only to those who seemed the best candidates. Smokers were excluded. With experience, doctors have been more willing to operate on smokers and other high-risk patients.

PM-U.S.A. Morning Newsbriefs; 06/01/93

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**"Philippines Launches Campaign Against Smoking"**  
Reuters (05/30/93)

Manila--Thousands of non-smokers walked through Manila Sunday to begin a government-supported campaign against smoking. Philippine Health Secretary Juan Flavio Velasco told participants that he had created an order forbidding smoking in all state hospitals following a survey that revealed 67 percent of male doctors and 36 percent of female doctors smoked. He added that 50 percent of the nation's 63 million people are smokers, and that one Filipino fell victim to lung cancer every 12 minutes last year.

2048159447

# Japan no longer smoker's haven

*Movement against tobacco growing*

ASSOCIATED PRESS

TOKYO — Yukinobu Watanabe stood on the platform, inside painted lines designated "Smoking Area," having a few last puffs before the train arrived to take him home.

"It's gotten tougher at the office," he said. "Even at home, I have to be careful about smoking."

Watanabe is one of 33 million Japanese smokers, for whom offices and public spaces are no longer fair game. It is finally becoming rude in this heavy-smoking country to light up whenever and wherever you want.

Earlier this year, East Japan Railway declared 406 stations — including all major terminals in Tokyo — off limits except for marked-off smoking corners.

"It's the way the world is going," said Kenji Kawasaki, a railway spokesman. "It's gotten a good review from most of our customers."

According to state-owned Japan Tobacco Inc., 20.4 percent of men and 13.3 percent of women smoke.

Although it has declined, the figure still is higher than the one-quarter of Americans with the habit.

"Japanese are the craziest people," said Bungaku Watanabe, head of the Tobacco Problems Information Center. "They have this mistaken idea that making provisions for smokers is a nice thing to do."

Among Watanabe's numerous villains are airlines that allow smoking in most seats, television stations that broadcast cigarette commercials and the Finance Ministry, which collects \$8.5 billion in tobacco taxes each year.

He and other anti-smoking activists accuse the ministry of blocking tougher action because it would reduce tax revenues and the profits of Japan Tobacco, the only Japanese maker of cigarettes.

Thirty years after the U.S. surgeon general declared smoking harmful to health, the ministry maintains the link has not been established.

"There are a lot of risky things, like liquor, so you have to wonder about the people who single out tobacco," said Seishi Higo, director of the ministry's tobacco office.

Higo pulled a pack of cigarettes from his desk drawer and said its mild admonition — "Let's be careful about smoking too much" — shows the Finance Ministry and Japan Tobacco care about health.

Some think smoking may not be so bad; the Japanese tend to live longer than people in other countries — an average 82.1 years for women and 76.1 for men.

But doctors say smoking contributes to Japan's two leading causes of death: cancer and heart disease.

SAN FRANCISCO EXAMINER  
AND CHRONICLE

MAY 30 1993

# Singapore limits smoking by its youth

**Law bans anyone under age 18 from lighting up in public**

By Ajay Sen  
REUTERS

SINGAPORE — Young Singaporeans who smoke in public have until Monday to stub out their cigarettes.

The Singapore government, never coy about criticizing or restricting the behavior of the island state's citizens, passed a law earlier this year banning youths under the age of 18 from smoking in public. It takes effect Monday.

The deadline, after which young

people will face fines of up to \$62 (Singapore) for each offense, is being heralded with the normal fervor of all government campaigns.

It is the beginning of the end," said an advertisement in the Straits Times newspaper. "Do yourself a favor. Stop smoking."

In another, an attractive model says: "My friends were surprised when I left Gary because of his smoking. Then again, they weren't the ones kissing him."

A television commercial shows groups of young people making fun of smokers or shunning them, as when a group of boys and girls abruptly leaves a dinner party when someone lights up.

Singaporeans, who can be heavily fined for such infractions as chewing gum, littering or forgetting

to flush public toilets, seem to be taking the clampdown on young smokers in stride. But some see new challenges in it.

"Laws alone are not enough to curb the habit among youngsters. In fact, it is a problem that cannot be eradicated completely," S.K. Chakravarti wrote in a recent letter to the Straits Times.

"Putting pressure on children below the age of 18 to stop them from smoking may even be risky. Because of the defiant nature of children at that age, some may smoke to show courage to their friends and make a statement of being anti-establishment."

But such sentiments have never done much to deter Singapore government planners once they spot a trend they believe to be harmful.

"It is indeed alarming that smoking rates among younger Singaporeans have increased significantly," said Health Minister Yeo Cheow Tong.

Yeo said the smoking rate among males aged 18-19 jumped from 10 percent in 1987 to 26 percent in 1992, and for those aged 20-39 was up from 26 percent to 39 percent.

More than 80 percent of Singapore's 2.7 million people are already non-smokers — thanks to a 20-year anti-smoking drive, heavy taxes on cigarettes and other restrictions.

Currently smoking is prohibited in air-conditioned restaurants, department stores, snooker parlors, bowling alleys, theaters, taxis, buses and hospitals.

2048159448

## Low-tar cigarettes not seen lowering heart risk

RTI 06/10 1900

LONDON, June 11, Reuter - Smoking low-tar cigarettes does not reduce a person's risk of heart attacks, a report published on Friday said.

Eva Negri of the Institute of Pharmacological Research in Milan studied 2,000 people in 80 hospitals across Italy in 1988 and 1989. In a report published in the British Medical Journal, she said studies clearly showed that smokers have more heart attacks than non-smokers.

"Patients with acute myocardial infarction (heart attacks) were more often smokers and among smokers they tended to smoke more cigarettes," the report said.

The patients were questioned about their smoking habits and about what kind of cigarettes they smoked. Cigarettes were put into four categories according to tar content -- below 10mg, 10 to 15 mg, 15 to 20mg or over 20 mg.

Negri said the risk of heart attacks did not increase noticeably with an increase in tar content.

"Shifting to lower-yield cigarettes is not an effective means of reducing tobacco-related morbidity (death) from myocardial infarction (heart attacks)," the report concluded.

Other studies have found that switching to low-tar brands could help smokers avoid cancer.

REUTER

RTI 05/28 1007 Netherlands to ban high-tar cigarettes next year

AMSTERDAM, May 28, Reuter - High-tar cigarettes will be banned in the Netherlands from next year and some lower tar brands will be outlawed in 1998, the health ministry said.

Cigarette brands containing over 15 milligrams of tar will be taken off the market following an EC directive which comes into effect on January 1, 1994. Brands containing 12 milligrams or more will be banned from 1998.

"It is going to happen from 1994 onwards," said spokesman Jan van Diepen. "More than 15 milligrams will be forbidden from next year."

Cigarettes manufactured before January 1, 1994 can be sold for up to a year from that date but any new cigarettes will have to comply with the directive.

Rolling tobacco will be unaffected by the directive because of the problem in calculating the amount of tar contained in self-rolled cigarettes.

A spokesman for the Cigarette Industry Foundation said consumers and suppliers were both moving towards low-tar cigarettes and manufacturers would adjust the composition of brands according to the legislation.

REUTER

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Morning Newsbriefs; 06/01/93

**THE WALL STREET JOURNAL**

**THURSDAY, JUNE 3, 1993**

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**WORLD WIRE**

**SWITZERLAND REJECTS AD CURBS**

The Swiss parliament rejected further restrictions on advertising of alcoholic beverages and tobacco products, already barred on television. The government proposals would have prohibited such ads from movie screens, billboards and youth magazines but allowed them in other magazines and newspapers. Parliament also rejected a petition signed by 114,000 people demanding a ban without exceptions. But as only 100,000 signatures are needed to force a referendum, the initiative will be put to Swiss voters. Opponents said curbs would put Swiss companies at a disadvantage to foreign competitors.

**"Sweden Clamps Down on Smoking"**  
Reuters (05/28/93)

Stockholm--On Friday, the Swedish parliament voted to ban tobacco advertising, as well as smoking in schools and hospitals. The Riksdag voted 188 to 84 in favor of the bans, but did not impose age restrictions on cigarette purchases. The Swedish tobacco industry criticized the ban, arguing that it would favor the foreign brands advertised in imported foreign publications. "It will help international tobacco companies market their products at our cost," said Bo Aulin, a Swedish Tobacco company director. Finland and Norway have similar bans. The Dutch government said it will ban high-tar cigarettes in 1994, and some lower tar brands in 1998. The Netherlands is implementing the ban to meet a European Community directive.

RT1 05/27 1137 EC chief vows to fight on for tobacco advert ban

BRUSSELS, May 27, Reuter - The European Commission vowed to keep pushing for a ban on tobacco advertising in the European Community although there has been total deadlock on the issue since it first raised the idea two years ago.

"The proposal for a ban still stands...and it will continue to," European Commissioner Padraig Flynn said after the ban was discussed by EC health ministers.

Flynn said nothing changed at the meeting and the plan was still jammed by Britain, Germany, Denmark, Greece and the Dutch.

The Commission proposals would ban all advertising and the use of tobacco firms' logos almost everywhere.

Seven EC health ministers meetings failed to break deadlock.

Britain suggested a different tactic in the war against tobacco. Brian Mawhinney, a junior health minister, said Britain would produce a paper later in the year on the need for EC countries to set themselves targets for reducing smoking.

"In the last 18 years the percentage of (Britons) smoking has decreased from 45 pct to 30," he said, adding the target was to cut the number of adults smoking to 20 pct by 2005.

Similar targets in the rest of the Community would be a useful way to attack smoking, he said. But Flynn said the move could not be seen as an alternative to an advertising ban.

REUTER

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# Tobacco foes decry 'genocide of a people'

## Groups cite poll on ads aimed at Asian-Americans

BY KEN McLAUGHLIN  
Mercury News Staff Writer

A statewide coalition of anti-tobacco groups Friday accused the tobacco industry of "the genocide of a people," pointing to a new survey showing that Asian-American neighborhoods have 17 times more cigarette billboards than white neighborhoods.

The survey by the University of Southern California School of Medicine also shows a greater concentration of cigarette advertising in Asian-American neighborhoods than in black and Hispanic neighborhoods, said Rachelle Reyes, a spokeswoman for the Asian/Pacific Islander Tobacco Education Network.

A 1992 survey done in San Francisco by California Rural Legal Assistance showed the same

patterns, Reyes said at a news conference at the Clarion Hotel in Millbrae.

She and other speakers also chastised the tobacco industry for its aggressive marketing in Asian countries to make up for sagging tobacco sales in the United States, Europe and Australia.

"While the tobacco companies continue to poison and kill Asian-Pacifics here in the U.S., they stop at nothing to infiltrate the market overseas," said Reyes, coordinator of a Filipino-American health agency in Los Angeles. "Clearly, what is happening here is the genocide of a people."

Efforts to reach tobacco industry representatives Friday were unsuccessful.

The anti-tobacco network represents more than 100 communi-

ty-based organizations in California that have joined to fight the tobacco lobby with educational programs and anti-smoking advertising campaigns targeted at Asian-Americans.

Between December and March, USC researchers counted 0.87 tobacco billboards per mile compared to 0.05 per mile in white neighborhoods in Los Angeles County. And the proportion of all billboards devoted to tobacco products in Asian-American neighborhoods was 17.5 percent compared to 2.2 percent in white, 4.3 percent in Hispanic and 7.8 percent in African-American neighborhoods.

Speakers at Friday's news conference also criticized research that often falsely shows that smoking among Asian-Americans

**'(Tobacco companies) stop at nothing to infiltrate the market overseas.'**

— Rachelle Reyes,  
Asian/Pacific Islander  
Tobacco Education Network

is lower than among the population as a whole because those surveys are done in English and Spanish.

But recent California surveys show that the rate among immigrant Asian males ranged from high to astronomical — 28 percent for Chinese and Korean to 72 percent for Laotian. The surveys indicated that smoking rates for women are much lower: 0.4 percent of Vietnamese-Americans and 1.2 percent of Chinese-Americans.

Health officials say many

(Cont'd.)

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(Cont'd.)

Asian cultures accept smoking as normal — and that Asian politeness often makes it hard to tell others not to smoke.

But Anh Le, tobacco education coordinator at the Vietnamese Community Health Promotion Project at the University of California, San Francisco, said many Vietnamese immigrants tell him they plan to quit before their first child is born — an indication that the American anti-smoking attitude is sinking in.

Wendy Nguyen, a 10-year-old Vietnamese-American girl from San Francisco, believes Asian-American children should do their best to make parents who smoke feel guilty.

Wendy said she would prefer that her parents' friends not smoke when they visit her home. But, she said, "They're, like, grown-ups. You can't control them."

## WHO SMOKES

Men who immigrated to California from East Asia are far more likely to smoke than the state's adult population.

Laotian males	72%
Cambodian males	71%
Vietnamese males	38%
Korean males	28%
Chinese males	26%
All adults	20%

Source: Data on East Asian men from Asian/Pacific Islander Tobacco Education Network; data on all adults from Field Poll  
MERCURY NEWS

**Mercury Center**  
INSTRUCTIONS ON PAGE 2A  
L.A. council adds fuel to smoldering smoking ban issue. N776

SAN FRANCISCO EXAMINER AND CHRONICLE JUN 8 6 1993

# Black market cigarettes \$200 a pack at smoke-free L.A. jail

ASSOCIATED PRESS

LOS ANGELES — A smoking ban in Los Angeles County jails has created a pricey black market for cigarettes and triggered a rash of firings of employees for selling the contraband to inmates, officials said.

A pack of cigarettes can fetch up to \$200, and a carton as much as \$2,000.

Smoking was banned in the 22,000-inmate system in September 1991.

The Sheriff's Department is now losing about one employee a month for alleged violations of a policy that prohibits selling cigarettes to inmates, said Cmdr. Robert Pash of the Custody Division.

At least 15 employees, including three deputies with no record of serious disciplinary problems, have been fired.

"(Inmates) are putting money in your face — here's \$100, here's \$200, here's \$500. When you put the temptation there, sometimes you just fall for it," said Roy Price, a cook and union steward at the downtown Men's Central Jail.

Price said firing is too severe a penalty for what may be a one-time offense by an employee who is facing money problems and constant temptation.

Five or six of the fired employees appealed to the county Civil Service Commission, Pash said. Only one appeal has been accepted.

Selling cigarettes to inmates is considered fraternization.

Inmates smuggle cigarettes into jails by hiding packs inside body cavities, Pash said.

Some inmates operate "stores" by purchasing cigarettes at \$50 a pack and reselling them for \$80 to \$100, according to testimony in Civil Service Commission documents.

Inmates pay for cigarettes by gambling or by using money deposited by friends or family in their accounts with the jail cashier, Pash said.

Despite the black-market boom, Pash said the no-smoking policy is 95 percent effective.

An unexpected result of the high cost of cigarettes is that inmates are using fewer drugs, Pash said. After buying cigarettes, they have no money left.



2048159452

## Bill could snuff tobacco sponsors on court, at track

Proposal would devastate NASCAR, women's tennis

By Jim King  
STAFF WRITER

The bonds between Winston cigarettes and NASCAR, and Virginia Slims and women's tennis, have such long histories and are so strong, it seems nearly impossible that anything could separate them.

Nonetheless, Democratic congressmen Dick Durbin and Mike Synar are giving it a shot.

The Illinois and Oklahoma lawmakers have introduced legislation that would prohibit tobacco companies from sponsoring sporting events or even buying signage at sports venues. And given the recent push to ban smoking in public places — including the White House — and the movement toward massive health care reform, they insist the bill stands a good chance of passing.

"Each year, the tobacco industry loses more than a half million of its best customers that either die or quit," said Durbin, who sponsored the law that banned smoking on commercial airlines. "In order to replenish their ranks, they've got to turn to kids, and they have been very successful. When we took tobacco ads off the radio and TV, they went to the next most visible thing to get kids — sporting events.

"These are major companies that don't spend money carelessly. They know that in order to get kids they have to be affiliated with sporting events."

The bill also proposes the tobacco industry be regulated by the Food and Drug Administration. Further, it would require additional health warnings and prohibit free samples and discounts. It has yet to be assigned to a committee, and Durbin said hearings probably wouldn't be held until late this year.



CHARLOTTE B. TEAGLE / Staff

Former Winston Cup champion Bill Elliott has ridden momentum generated by cigarette advertisers.

Predictably, it is backed by a coalition of groups like the American Heart Association and the American Lung Association. And, just as predictably, it's opposed by both the tobacco and sports industries.

"I would hope my congresswoman has better things to do than spend time on this," said NASCAR spokesman Chip Williams. "If we pass a law that says you can't buy a sign and put the name of your legal product on it, well, I say we've got some problems."

(Cont'd.)

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(Cont'd.)

But if the bill passes, the impact on auto racing and women's tennis could be nothing short of devastating. NASCAR has been affiliated with R.J. Reynolds, the manufacturer of Winston cigarettes, since 1971. Virginia Slims, manufactured by Philip Morris, has been a major sponsor of the Women's Tennis Association for more than 20 years.

Combined, they spend tens of millions of dollars on the sports.

"Obviously, we oppose this. It's absurd," said Bill Wordham, a spokesman for the Tobacco Institute, a trade association. "Clearly [sporting events] are a very important part of the industry's advertising and promotional budget. But not only is it important to the industry, but to millions and millions of sports fans as well.

"The dollars that are spent don't just pro-

note a product, but [they] sponsor major events as well. It would impact participants and fans alike."

While Kraft is the biggest sponsor of the Women's Tennis Association, the circuit almost has become synonymous with Virginia Slims. While controversy about that relationship has existed for years, WTA officials say they're comfortable with it and would oppose the legislation.

"They obviously have research that shows segments of our audience are smokers," said Gerry Smith, the WTA's executive director. "But they've never targeted any of our players and don't ask them to endorse their product or smoking.

"I think they're just targeting people who are smokers and over 21 years old, and I don't have any problems with that."

### The procedure

The tobacco bill introduced by Reps. Dick Durbin and Mike Synar has to clear several hurdles before becoming law:

► The bill will be assigned to a committee of the House of Representatives, which will hold hearings.

► The committee will then "mark up" the legislation and, if it passes the committee, will be sent to the full House.

► If the House approves the bill, it goes through a similar process in the Senate.

► If it passes the Senate in the same form, it is sent to the president.

► If the president signs it, the bill then becomes law. If he lets it sit for 10 days while Congress is in session, the bill automatically becomes law. If Congress is not in session, however, the bill dies in what is called a pocket veto.

WEDNESDAY, JUNE 9, 1993

1-22 THE RECORD

## HEALTH

### All-Stars urged to forgo tobacco during game

WASHINGTON — Five health groups, two congressmen, and Philadelphia Phillies pitcher Terry Mulholland called Tuesday for ballplayers to go tobacco-free

when the major leagues hold their All-Star game on July 13.

"Day after day during baseball season, children watch their baseball idols play ball and, in many cases, spit tobacco," said Dr. Jerome Goldstein, vice president of the American Academy of Otolaryngology — the branch of medicine pertaining to disorders of the throat, ear, and nose. "A tobacco-free All-Star game would send a powerful message to Little Leaguers around the country."

THE WALL STREET JOURNAL TUESDAY, JUNE 15, 1993

## MARKETING & MEDIA

### ADVERTISING / By LAURA BIRD

#### Seattle Turns Down Smokes

The Seattle Times will no longer carry ads for tobacco products, citing campaigns that appeal to young people and mounting evidence that it's a health hazard.

The paper's president, H. Mason Sizemore, said that one ad in particular broke the camel's back, so to speak — though it wasn't for RJR Nabisco Holdings' Camel

cigarettes, whose mascot Joe Camel has a high recognition among the country's youth and is widely reviled by antismoking activists.

"Joe Camel was not the ad that pushed us over," Mr. Sizemore said. "It was a Marlboro ad. And the message geared at young people was, this is a healthy lifestyle, even though that clearly is not the case." Marlboro's maker, Philip Morris,

couldn't be reached, but the company has denied it targets youth with its ads.

The move will cost the Times about \$100,000 this year, Mr. Sizemore said, adding that the figure has been declining in recent years. The Times said that it will honor existing contracts and that it's negotiating to obtain cigarette-free editions of syndicated publications, such as the magazine Parade.

2048159454

# Smoke turns to fire in Asia as the cigarette market soars

By RICHARD READ  
Newhouse News Service

XIAMEN, China — The first joint-venture cigarette factory in China pumps out 2.5 billion smokes per year.

That's enough to give U.S. partner R.J. Reynolds Tobacco Inc. a toehold in the country that produces and consumes more cigarettes than any other nation.

That's also enough, U.S. health officials say, to cause the eventual deaths of 75,000 Chinese per year.

As fewer Americans smoke, U.S. tobacco companies are venturing abroad, targeting Asia as the mega-market of the century. Anti-smoking activists are scrambling to block the export drive, which is supported by U.S. government

*"The global tobacco epidemic is not being beaten. It's simply being transferred from Western countries to third-world countries."*

—Dr. Judith Mackay,  
director, Asian Consultancy  
on Tobacco Control

trade officials. "Asia is where the battlefield is now," says Dr. Judith Mackay, director in Hong Kong of the Asian Consultancy on Tobacco Control. "We're at the center of the war here."

Western governments and health organizations have mounted massive education campaigns at home during recent decades to warn of the dangers of smoking. Tobacco use has declined dramatically in the United States, Britain and other countries.

But in Asia, cigarette sales are soaring. More than half of Asian men smoke; about 5 percent of the women indulge. Clever advertising targets women and children, as increas-

ing affluence makes smoking more affordable. Already the number of smokers in China exceeds the total population of the United States. One-third of the world's cigarettes are consumed in China. Tobacco firms hope to boost China's smoking rate well beyond the current 35 percent as the market economy expands.

"We'd like to double our production this year," says Zhou Shing-teh, public relations manager and economist at the Xiamen joint venture, the China American Cigarette Co. Ltd.

The factory, which opened in 1988, uses the most advanced production equipment in China to make Camels and Winstons. Its most popular brand is Golden Bridge, which sports a logo of the Golden Gate Bridge.

U.S. Centers for Disease Control scientists note that the plant produces enough cigarettes to provide more than 300,000 smokers with a pack per day. Smoking at that rate could be expected eventually to cause 75,000 deaths yearly, the scientists say.

Tobacco executives argue that the industry supplies more than 20 percent of government revenue in Asia, and employs 80 million workers. They defend U.S. government threats of trade sanctions in order to open Far East markets to American cigarettes, saying that all foreign products deserve equal access.

The United States has no business imposing its health restrictions on other countries, the U.S. Cigarette Export Association says. But anti-smoking groups counter the economic argument, finding Asian governments more responsive to cost analyses than health concerns. Income from cigarette tax revenue, Mackay says, is wiped out by costs of medical care, lost productivity, cigarette-caused fires and agricultural land withdrawn for tobacco cultivation.

"Tobacco is a debit," Mackay says. She cites a Chinese Academy of Preventive Medicine study that estimates China's smoking-related health costs in 1989 were \$5 billion—about the same amount earned from tobacco taxes. Mackay, a British doctor who has lived in Hong Kong for 26 years, says that she used to treat many patients suffering from tobacco-related diseases. She left her practice in 1984 to work full time on the anti-smoking cause, and has traveled throughout Asia advising governments and activist groups.

"The global tobacco epidemic is not being beaten,"

Mackay says. "It's simply being transferred from Western countries to third-world countries." Three million people die each year worldwide due to smoking, including a half million in less-developed nations, Mackay notes. By 2025, the annual death toll will increase to 10 million, out of which 7 million will be in Third World countries.

"Two million alone will be in China," says Mackay, who is funded in part by the American Cancer Society.

Asia's most developed nation, Japan, has the highest smoking rate of major advanced countries. More than 60 percent of Japanese men smoke, according to a government report released this month. Only 13 percent of women in Japan smoke, but the number of young women smokers is rising.

Tobacco sales hit an all-time high in 1991, as the number of cigarettes smoked per year increased more than 10 times over the preceding 12 years. Foreign brands are making new inroads.

More Japanese are aware of the health effects of smoking, however. Airlines are banning smoking during flights, and more restaurants offer no-smoking sections.

Anti-smoking activists, doctors and government health officials are gathering Sunday for a three-day meeting in Omiya, Japan. The third Asia-Pacific Conference on Tobacco and Health will consider recent medical studies and legislation concerning tobacco in the region.

Anti-smoking activists emphasize the growing numbers of Asian children who smoke.

The China Commercial News reported a recent smoking endurance contest among six teenagers in rural Shang-qiu county, Henan province. Village elders declared one of the youths, identified as Zhu, the winner after he puffed for three straight hours.

"Zhu was overjoyed by his success," the May 9 newspaper reported, "but suddenly felt dizzy and dropped to the ground dead."



Four men enjoy a smoke outside a shop in Xiamen, China. Cigarette sales are slumping in the West, but are soaring in Asia where half the men smoke

2048159455

# Cincinnati finds smoking bad for citizens, good for coffers

## City's pension fund holdings include tobacco interests

By BILL SLOAT

PLAIN DEALER REPORTER

### CINCINNATI

Because those old coffin nails are so demonic, annoying and addictive, the health-conscious folks who govern Cincinnati have exorcised smoking from Riverfront Stadium and other outdoor structures where more than 200 citizens might gather.

The new city law, which declares passive smoke "a human lung carcinogen" and "public nuisance," joins previous edicts that have already restricted smoking in public buildings and created separate smokers' seating areas for restaurants and halls.

But the city's crackdown on tobacco isn't as socially conscious as it seems.

For when it comes to Wall Street, where the city's pension fund invests, Cincinnati continues to seek a Lucky Strike from the Marlboro Man.

Records show the city has a financial stake in at least 21 brands of cigarettes, including Marlboro, Winston, Virginia Slims, Benson & Hedges, Camel, Salem, More, Pall Mall and Lucky Strike, along with generics and less popular labels.

Cincinnati now owns about 28% more shares of tobacco company stocks than before City Council ruled in March that passive smoke in outdoor settings was detrimental to public health.

According to city records, Cincinnati's pension fund owned 120,800 shares of tobacco company stocks while the smoking ban was being debated. Those holdings were worth about \$7.2 million.

The city had 85,600 shares of Phillip Morris Co.; 27,300 shares of R.J.R. Nabisco Holdings Corp.; and 7,400 shares of American Brands Inc.

But after passive smoke was declared a health hazard, Cincinnati upped its stake to 152,900 shares in the three companies, which also have financial interests outside of tobacco. It had 18,200 shares of American Brands, 66,000 of R.J.R. Nabisco and 68,700 of Phillip Morris.

The portfolio was worth \$4.2 million, a decline due largely to the drop in value of Phillip Morris, which reduced prices on Marlboro cigarettes to boost market share. Wall Street responded by battering the stock.

Anti-smoking advocate Ahron Leichtman, who lobbied for the cigarette ban at stadiums, accused the City Council of hypocrisy for allowing pension funds to be invested in tobacco companies. He said Cincinnati was profiting from products that have been deemed a carcinogen by city law.

"There's an ethical and moral issue here: Should the city profit from a product that causes disease and disability?" Leichtman said. "What they are profiting from is the disease, disability, death and human pain and suffering."

Leichtman said he was shocked that the city owned tobacco stocks. "It's rank hypocrisy," he said.

"I don't think there's an inherent conflict in that," said Councilman Todd Portune, who was a key supporter of the stadium smoking ban that takes effect Jan. 1, 1994. "But there are some good questions about the investments."

"Are we sending conflicting messages as a municipality?" Portune wondered. "On the other hand, are we hurting our investments by taking that action to ban smoking at Riverfront?"

Tom Chema, executive director of the Gateway sports complex in Cleveland, said there are no plans to ban smoking at the new ballpark.

"We're hard-pressed to take the lead in banning smoking when a substantial part of the money (to pay for the park) comes from people who smoke," Chema said, noting that taxes on tobacco are expected to raise \$63 million for the new park and adjacent arena.

Portune said Cincinnati does not have a policy on socially responsible investing — a broad concept that forces public pension funds to invest in companies that do not harm either the environment or people.

However, Cincinnati does have an

ordinance, adopted during the 1980s, that largely bans the pension fund from buying stocks in firms that operate in South Africa.

"We're not going on the attack against the tobacco companies directly," Portune said. "We're trying to safeguard the health of individuals. We haven't come up with socially responsible investing."

Councilwoman Nell Surber, who voted against the outdoor ban, was a city employee for 30 years and can collect retirement benefits. She said it's not hypocritical for Cincinnati to attack smoking as unhealthy while reaping profits from cigarette manufacturers.

"Most of those tobacco companies have diversified," she said. "We have to make the best investments for our pension fund that we can. We try to invest in companies that pay good dividends. As long as we don't invest in something that's immoral, illegal or criminal, we're not on bad ground."

Surber, who doesn't smoke, said she feels sorry for those addicted to cigarettes. "I don't know that we're addicted to cigarette profits, but I know the board (pension fund trustees) are supposed to keep that fund solid."

Finance Director John L. Andreyko said the pension fund doesn't take into account the product a company makes when it buys stock. He said it hires professional money managers who look for profits.

"If everyone was told what to do and where to invest, you wouldn't have a true democracy. The fund's goal is to maximize its rate of return and diversify its risk. It's not set up to be socially responsible."

2048159456

## Morning Newsbriefs; 05/28/93

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### "Convenience Stores See Strong Response to Marlboro Promotion"

1993 Dow Jones and Company, Inc. (Willis, Gerri) (5/28/93)

New York— With signs promoting a reduction in Marlboro prices and a holiday weekend under way, convenience-store retailers and their suppliers say the elements are in place for smokers to respond to the 40-cent-a-pack discount. As reported, the promotion ignited a price war among cigarette brands when Phillip Morris Cos. announced the reduction early last month. Since that time, industry experts have been monitoring signs to determine how successful the promotion will be in winning back market share for the company's most important brand. Initial indications are upbeat, says Ted Varner, president of Richmond, Ind.-based Convenience Stores Distributing Co., a distributor serving 1,400 convenience stores in eight midwestern and southern states. "Virtually every one of our accounts has been buying the Marlboro brands that are being promoted with this 40-cent discount," he said. "The displays are being hit well. The consumers are picking them up. I'd say it's going to be a good promotion." Meanwhile, Ron Frost, a spokesman for the grocery wholesaler, Fleming Cos. (FLM), said the company has had strong response to the promotion in midwestern states, and even some product shortages. Rich Flask, Southland Corp.'s (SLCMC) category manager, said it may be too early to tell how consumers will respond, although he says their expectations appear to be high. "We're waiting to see what the impact might be," he said. Southland, the Dallas-based operator of 7-Eleven stores, is one of the many convenience store operators that industry watchers are keeping an eye on as the promotion gets rolling. Philip Morris has said convenience stores have increased their share of cigarette sales dramatically to a 33% share of the market. Other types of stores also are poised to do well. Catlettsburg Tobacco Shop based in Catlettsburg, Ky., sells cigarettes, soda and potato chips at a tiny drive-through store near the Ohio border. Manager Robert Simpson says consumers are switching to Marlboro when buying cigarettes and that sales of the brand have picked up this week over last. The store sells more than 2,000 cartons of cigarettes a week, often to Ohioans looking to escape higher state tobacco taxes.

2048159457

THE MEDIA BUSINESS

Advertising | Stuart Elliott

Another tobacco company is trying to entice smokers with offerings of merchandise.

ARE millions of smokers too busy to smoke? They may well be, as another big cigarette brand joins a lengthening list offering clothing and other merchandise as enticements to get them to clip, save, sort and send in proofs of purchase from packages.

Beginning Tuesday, the R. J. Reynolds Tobacco Company will introduce "Winston Weekends," an elaborate national promotional program for its best-selling Winston cigarette line, the country's No. 2 smoke behind Philip Morris's Marlboro. The program's centerpiece is a 24-page calendar-cum-catalogue, offering 48 merchandise items and 7 sweepstakes to smokers over 21 who clip "Worth a Winston" proof-of-purchase seals from packs of Winston and Winston Select.

The program is the sixth offered smokers as part of the tobacco companies' most extensive and expensive efforts ever to shore up sagging sales of their full-price brands. Those premium products have been under relentless fire from cheaper brands like Shield and G.P.C., which can cost as much as \$1.50 a pack less.

The promotional programs are intended to complement short-term price rollbacks at retail outlets that have become widespread since "Marlboro Friday," April 2, when Philip Morris disclosed drastic temporary discounts to counter the surging sales of lower-priced brands.

"These promotions add value to the smokers' choice of a full-price brand," said Peggy Carter, a spokeswoman for Reynolds in Winston-Salem, N.C.

"Most adult smokers feel they're getting a superior product when they purchase a full-price brand," she added. "These programs reinforce that."

The "Winston Weekends" program is similar to one that Reynolds has been running since October 1991 for its Camel line, offering smokers gear like sandals, T-shirts and caps in exchange for "Camel Cash" coupons bearing the incongruous image of the Joe Camel cartoon character dressed to resemble George Washington on a dollar bill.

The Camel program, now on its third catalogue, "has been enormously popular," Ms. Carter said, and effective in persuading Marlboro smokers to switch to Camels. She declined to discuss spending on the Winston and Camel programs, but estimates range from \$10 million to \$20 million.

Marlboro, for its part, is sponsoring the largest promotion in its history, a "Marlboro Adventure Team" program that offers merchandise like watches, lighters and sleeping bags and a chance to win an 11-day Western wilderness trip. Philip Morris is estimated to be spending more than \$200 million to distribute "Adventure Team" gear catalogues and redeem "Adventure Team Miles" — Universal Product Code seals from package sides.

Participation is "more than we had expected," said Sheila Banks-McKenzie, a spokeswoman for Philip Morris in New York. Orders to date total 1.1 million, she added, and more than 100,000 orders a week are pouring in.

A Philip Morris survey indicates that of the nation's approximately 55 million adult smokers, 46 percent are aware of the "Adventure Team" promotion, she continued, and 17 percent are collecting the U.P.C. seals. That would mean a staggering 9.35 million Americans are participating.

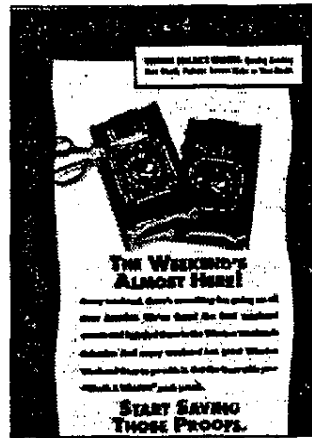
The Winston promotion will be on a smaller scale than Marlboro's, with the calendar/catalogues distributed primarily at stores rather than via costly magazine inserts. Ms. Carter said that advertisements for the promotion would run in the June and July issues of publications like Cosmopolitan, Hot Rod, Parade, Penthouse, People and Sports Illustrated.

The promotion was created as a special project by Long, Haymes & Carr in Winston-Salem, a Reynolds agency that handles the company's "value" cigarettes like Doral and Magna and its sports marketing promotions.

The "Winston Weekends" theme was developed from a campaign by FCB/Leber Katz Partners in New York, carrying the slogan "That's worth a Winston," that appears in advertising at retail outlets.

In addition to Winston, Camel and Marlboro, smokers nationally are being urged to collect proofs of purchase from three other brands: all marketed by Philip Morris: Benson & Hedges, Parliament and Virginia Slims. The promotions share a common element — smokers are required to puff like demons to collect enough proofs of purchase for the fanciest merchandise.

"Winston Weekends," for instance, offers a leather jacket for 980 Winston seals, which would require smoking 19,600 cigarettes.



R. J. Reynolds

The "Winston Weekends" calendar/catalogue offers items in exchange for proofs of purchase from Winston packs.

2048159458

## Philip Morris Cos. Extends Price Cuts On Marlboro Line

By EBEN SHAPIRO

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK — Philip Morris Cos. extended by six weeks the aggressive price-cutting program for its Marlboro cigarettes — essentially doubling the length of time in which the No. 1 brand is selling at a discount of 40 cents a pack.

Retailers and wholesalers report brisk sales of Marlboros since the promotion started late last month. But some tobacco experts believe that smokers — and retailers — are simply stocking up on cigarettes to take advantage of the temporary price cut, rather than fundamentally boosting Marlboro business.

"Marlboro is cannibalizing its future," said Gary Black, an analyst with Sanford C. Bernstein & Co.

### Guarded by 'Marlboro Police'

The promotion, which has decorated the nation's convenience stores and tobacco shops with new Marlboro sale signs, is proving to be a logistical nightmare for Philip Morris. The company was forced to hire 2,500 temporary workers, dubbed the "Marlboro Police" in the tobacco trade, to make sure that retailers pass on the price cuts to consumers rather than pocket the rebates from Philip Morris.

Rob Heuberman, general manager of Starkman Distributors in Atlantic City, N.J., said that Philip Morris is using the price cuts to build huge inventories at retail stores and in smokers' glove compartments. In the past, cigarette companies inflated sales by loading up wholesale distributors, rather than the retail channel, in a practice known as "trade loading." Now, "What we are really looking at is a new approach to loading," Mr. Heuberman said.

But the rampant discounting is simply training consumers to buy whatever brand is on sale, rather than cementing affection for Marlboro, Mr. Heuberman said. "Once the promotion is gone, interest in the

product disappears," he added. "The cigarette manufacturers are in an unbelievable state of denial if they think there is anything they can do to stop the move to low-price cigarettes."

### RJR Nabisco to Respond

While the tobacco companies have been attempting to raise prices on cheaper cigarettes, Philip Morris's latest move, extending the Marlboro discounts until Aug. 8, is a reminder that the price war is raging unabated at the upper end of the market. The company's biggest rival, RJR Nabisco Holdings Corp., matched the earlier move and said it will respond to the latest Philip Morris announcement.

Tobacco experts said the extension of Marlboro's 20% discount will make it even more difficult for Philip Morris to raise prices back up again. "I don't think it will ever expire," David Goldman, an analyst with Oppenheimer & Co., said of the Marlboro promotion. "You haven't seen the last of it, or the worst of it." He predicted that by the end of the year, cigarette companies will be forced to slash prices by an additional 20 cents a pack.

ADVERTISING AGE, JUNE 7, 1993

# PM feeds the pricing fire

## Marlboro promo extended to August; RJR likely to follow suit

By Ira Teinowitz

Philip Morris is extending the cigarette wars by more than a month in an indication the marketer thinks its Marlboro pricing strategy is starting to work.

The company told distributors last week that discounts of 40¢ to 50¢ per pack, scheduled to run through month-end, will now continue through Aug. 8.

"We are doing this due to the early positive indications of consumer acceptance," said Nicholas M. Rolli, director of financial communications.

R.J. Reynolds Tobacco Co. officials were considering their response and were expected to announce this week extensions of the company's 40¢-per-pack and \$4-per-carton discounts on Winston and a variety of localized promotions for Camel that were to cease at monthend.

"As we even said [before], we will respond appropriately to protect our brands," a spokeswoman said. Originally, the Winston program was to cover only cigarettes shipped for June distribution. But RJR confirmed the company decided to offer retailers on-pack buy-down coupons to cover inventory on hand.

Philip Morris' decision to extend its offer comes amid early reports that Marlboro sales are up but not at the expense of other brands.

Grocery buyers and tobacco distributors in several

markets said Marlboro smokers seem to be stocking up at the lower prices.

"We have seen an increase," said a large Texas wholesaler who like other wholesalers and grocers contacted requested anonymity. "We have sold quite a bit of Marlboro products, but I think we are pulling up sales from later in the summer."

A buyer for a Minnesota-based chain said that while his stores have asked for twice the Marlboro shipments of this time a year ago, sales of other brands haven't been affected.

Buyers in three other markets said they haven't seen any impact on other brands' sales.

The Marlboro promotional program via Leo Burnett USA, Chicago, is designed to boost flagging market share and also includes increasing promotion of the Marlboro Adventure Team.

The RJR price-cutting response

could be one reason Marlboro rivals don't seem to be hurting yet. The Winston promotion began closer to June 1, and RJR said it was too early to judge its effects.

The marketer last week also launched a "Winston Weekends" continuity program. FCB/Leber Katz Partners, New York, is Winston's agency; the "Winston Weekends" program is being handled by Long, Haymes & Carr, Winston-Salem, N.C.

Distributors said last week that so far other rivals have not responded with price promotions. □



2048159459

## Philip Morris <MO.N> says extends Marlboro plan

RTf 06/11 1657

NEW YORK, June 11, Reuter - Philip Morris Cos Inc said it is extending until early August its price promotions and discounts related to its flagship Marlboro cigarette brand.

Director of communications Victor Han said the decision was made because of "early positive indications of consumer acceptance. We also wanted to have more time to evaluate consumer response to the current price gap," between premium brands such as Marlboro and lower-priced discount brands.

RJR Nabisco Holdings <RN.N> spokeswoman Maura Payne said, "It's a fair assumption that the people here are analyzing and formulating a response, which may be no response,"

On April 2 Philip Morris announced it would be making such promotions for its cigarettes and later set a plan for Marlboro to run from late May until late June.

When Marlboro is priced at the right level, Marlboro's share will grow. We're still finding out what that price is," Han said.

Separately RJR said beginning July 1 it will offer a buy two-for-one promotion to launch a newly repackaged Winston Select cigarette product, with new blends and advertising.

And on August 2 the company will launch similar promotions for four new Winston select lights styles.

Both Winston Select promotions will last for an undecided length of time. "We're just going to have to wait and see where the market is at that point," Payne said.

The two-for-one promotions will exclude current discount deals this month previously announced for RJR's Winston and Camel cigarettes. Winstons are currently discounted \$4 off per carton, with Camel prices cut at varying levels depending on the market, Payne said.

Philip Morris's Marlboro's promotional discounts are also mixed nationwide, through a combination of couponing and up-front discounts, Han noted.

REUTER

DENVER-ROCKY MOUNTAIN NEWS

JUN 12 1993



### Cigarette promo extended

Philip Morris Cos. Inc. said Friday it is extending until early August its price promotions and discounts on its Marlboro cigarette brand. A spokesman said the decision was made because of "early positive indications of consumer acceptance. We also wanted to have more time to evaluate consumer response to the current price gap" between premium brands such as Marlboro and lower-priced discount brands. Separately, RJR Nabisco Holdings Corp. said it will offer a buy two-for-one promotion beginning July 1 to launch a newly repackaged Winston Select cigarette product, with new blends and advertising. And on Aug. 2 the company will launch similar promotions for four new Winston select lights styles.

2018159460

SAN FRANCISCO CHRONICLE

JUN 12 1993

# Reynolds Fires Up Cigaret Price War

Associated Press

Winston-Salem, N.C.

**R.J. Reynolds Tobacco Co.** tossed a new salvo in the budding cigaret price war yesterday by announcing some new varieties of its Winston Select brand and starting a two-for-one price promotion.

The moves, taking place next month, are part of an effort by Reynolds to grab sales from Philip Morris and its popular Marlboro brand, a Reynolds spokeswoman said.

Philip Morris cut the price of Marlboros by 40¢ several weeks ago, prompting other cigaret companies to reconfigure their prices with discounts and promotions.

Winston Select was originally introduced to appeal to Marlboro smokers. Now, Reynolds is introducing four new "light" varieties of the Winston Select brand: king size soft pack and box, 100s soft pack, and slim 100s box.

The new varieties will be available starting August 2.

"Marlboro is clearly our target in the Winston Select family," said the R.J. Reynolds spokeswoman.

Philip Morris cut the price of Marlboros in a response to declining market share due to the popularity of cheaper, generic brands of smokes.

Payne said the Winston changes were in the works before the Marlboro price cut.

The changes were based in part on consumer surveys conducted earlier this year. Part of the responses dealt with packaging.

"Consumers were telling us they weren't sure what Winston Select was. We wanted to draw a clear distinction between the Winston family and Winston Select," Payne said.

To make the distinction, the full flavor brands have been re-packaged to play up the word "Select" with a blue rectangle underneath the word. The word "Light" will appear in the blue rectangle for those brands.

"I think there was some confusion to some degree," Payne said. "People couldn't draw a distinction between the base family and the select styles."

The price cut has a simple purpose, she said.

"The buy-one, get one free is simply to generate trial. There are 400 styles on the market. To generate any interest and grab attention, buy-one, get-one free is the most commonly used vehicle in the industry," she said.

The Marlboro price cut may actually benefit Reynolds, she said.

"I think the interest that has been generated by smokers because of all the pricing changes will play to our favor because people who walk into stores are less likely to ask for the same brand."

2018159461

# Marlboro price promo smoking RJR's Winston

By Ira Teinowitz

## Effects of Marlboro promotion

Cigarette shares from four Midwest and Southern markets.

	Week ended 5/16	Week ended 6/6	Change
Marlboro .....	25.2%	30.3%	+5.1
Winston .....	8.7%	4.5%	-4.2
Camel .....	3.4%	3.3%	-0.1
<b>Total premium .....</b>	<b>80.1%</b>	<b>80.8%</b>	<b>+0.7</b>
Doral .....	4.8%	4.8%	—
Cambridge .....	2.8%	2.3%	-0.5
<b>Total mid-price .....</b>	<b>14.5%</b>	<b>13.9%</b>	<b>-0.6</b>
Private label .....	4.4%	4.5%	+0.1
Basic .....	0.2%	0.2%	—
<b>Total generics .....</b>	<b>5.3%</b>	<b>5.3%</b>	<b>—</b>

Source: Efficient Market Services

Early market share figures indicate that if R.J. Reynolds Tobacco Co. does not respond adequately to Philip Morris USA's Marlboro price promotion, it could be in trouble.

In four major markets where Marlboro was being price promoted but Winston wasn't yet, Winston saw unit sales in the first week of June drop 45.7%, while Marlboro sales rose 26.2%.

"That's why they have to respond," said Manny Goldman, an analyst with PaineWebber. "The difference is too great, and the conclusion is RJR has to respond."

The data from 330 supermarkets in the South and Midwest come from Efficient Market Services, a Deerfield, Ill., scanner data research company created by former Nielsen Marketing Research and Information Resources Inc. executives. Efficient Market Services claims it gathers and processes scanner data quicker than some of its rivals and last week provided a week-by-week tracking of share changes at supermarkets May 10 through June 6.

Philip Morris dropped Marlboro prices by 40¢ to 50¢ a pack in the promotion that began as early as May 23 and is scheduled to end in August. RJR's own 40¢ discount on Winston was supposed to start in

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## Cigs

(Continued from Page 3)

June in the four markets but hadn't as of the study period. RJR also has a variety of localized Camel promotions.

The numbers show Marlboro's overall sales rose 26.2% for the week ended June 6, compared with the week ended May 16, before the promotion began. Its unit share jumped 5.1 points to 30.3%.

Sales of individual Marlboro packs rose 5.6%, giving the brand a 32.1% share, up 2 percentage points. But carton sales took off, with volume up an amazing 41.7% and share of carton sales at 29.3%, up 6.9 points. (The share was even higher the week ended May 30, reaching 32.4% of carton sales.)

Winston, meanwhile, saw overall sales plummet 45.7% in the same period, with its share down 4.2 points to 4.5%. Sales of individual packs dropped 18.5% and Winston's share of pack sales dropped 2.6 points to 5.4%. Carton sales dropped 51.6% and share fell 5 points to 4.1%.

Surprisingly, midprice brands, which Philip Morris seemed to target in its price cutting, saw virtually no change in overall sales, though sales of Philip Morris' Cambridge fell 15.1%. Generics saw a 4.5% increase in overall sales.

An RJR official said the company's own numbers show no decline of any significance, and a Philip Morris official said that while numbers are up, the marketer has not seen increases in the range shown by the Efficient Market Services survey. □

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# Will 'Temporary' Discounts On Cigarettes Endure?

## Changing Smoking Patterns Hinder Efforts To Protect High-Margin Brands

By Marilyn Much  
In New York

Tobacco companies long will remember "Marlboro Friday" as the day their conventional marketing strategies went up in smoke.

On that day, Philip Morris Cos. disclosed that earnings from its U.S. tobacco business would plunge as much as 40% this year in the face of fierce price competition.

### Marketing

In making the April 2 announcement, management of the New York-based Philip Morris USA tobacco unit admitted that discount rivals have been encroaching upon its premium brands, especially its coveted Marlboro, the world's leading cigarette.

Marlboro's share of the domestic market has slipped from a peak of 26.3% in 1989 to 22.2% currently, say analysts.

Domestic unit volume of off-price cigarettes surged 20% last year to 153 billion pieces, according to a report by Terry Bivens, an analyst with New York's Argus Research Corp. Volume for full-priced brands slid 7.4% to 353.8 billion pieces.

Discount brands now hold a striking 39% share of the U.S. cigarette market, Philip Morris Chairman and Chief Executive Michael A. Miles said recently.

"With consumer confidence at historic low levels, these very low-priced cigarettes offered a compelling value for the money to an increasing number of smokers," he explained.

Cigarette marketers traditionally tapped into consumers' quest for status to build brand loyalty. Their message was that smokers made a very personal statement when they pulled out a particular brand.

But the mix of smokers is now skewed toward less educated, lower-income consumers, who are more price-sensitive and less image-conscious than other groups, experts say.

#### Range Of Prices

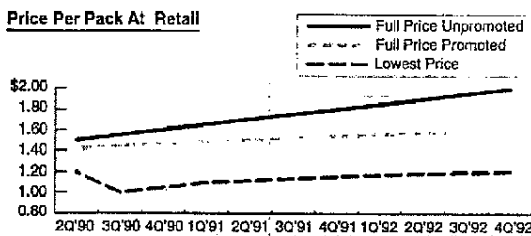
Low-priced contenders have thrived in such an environment because what they lack in quality, image and taste, they make up for in price, contends John Lister, chief executive of New York marketing consultant Lister Butler Inc.

Discount brands are priced at various levels. Philip Morris, in addition to its premium brands, makes branded discount cigarettes, such as Cambridge; deep discount brands like Basic; and private-label brands.

The price differential between the

### Where There's Smoke

Cigarette industry prices, sales



Top-Selling Brands		Units	% Chg.	Market Share	Market Share
Company	Brand	(Bilts.)	from	1992	1991
Philip Morris	Marlboro	129.9	-5.6%	24.4%	25.8%
RJR Nabisco	Winston	34.4	-10.3	6.8	7.5
RJR Nabisco	Salem	24.6	-11.2	4.9	5.4
Loillard	Newport	N/A	N/A	N/A	4.7
RJR Nabisco	Boral	22.1	-6.2	4.4	4.6
Brown & Williamson	Kool	N/A	N/A	N/A	4.6
RJR Nabisco	Camel	20.6	+2.6	4.1	3.9
Philip Morris	Benson & Hedges	15.5	-5.4	3.1	3.2
Philip Morris	Merit	15.3	-2.5	3.0	3.1
Philip Morris	Virginia Slims	13.3	-7.6	2.6	2.8

industry's deep discount brands and its full-margin brands has grown over the years. As of April, some brands sold for as low as 99 cents a pack, while others went for as much as \$3.10.

In response to this ever-widening spread, Philip Morris reduced the price of Marlboro cigarettes about 40 cents per pack to about \$2 in a temporary promotion.

#### Winston Price Cut

RJR Nabisco Holdings Corp.'s R.J. Reynolds Tobacco Co. matched the 40-cent cut on its Winston brand, and it is offering special price promotions on Camels in certain markets.

Philip Morris also said it would forgo further price increases on premium brands for the foreseeable future.

In May, it raised the price on its deep discount brands by \$2 per 1,000 pieces.

The price battle heated up early this month when Philip Morris management extended its Marlboro promotion by more than four weeks to early August.

"There have been early positive indications of consumer acceptance to the program, such as favorable retail sell-through, (that suggest we are meeting) our intention of making Marlboro more competitive," a com-

pany spokesman said.

The extension of the promotion, however, indicates the pricing battle is accelerating.

Critics charge that industry leaders have been their own worst enemies.

"The major cigarette makers got too greedy by demanding too high a price spread between the upper-tier and lower-price brands," said Jeffrey Omohundro, an analyst with Louisville, Ky.-based J.J.B. Hilliard, W.I. Lyons Inc.

The big question is whether the industry's discounts are temporary.

"I am skeptical whether these companies will be able to raise prices as they had in the past," Omohundro said.

#### Further Cuts Speculated

Some analysts say premium-brand prices could drop another 20 cents a pack before the pricing battle ends.

Some experts say industry leaders sowed the seeds for their current predicament through their longtime pricing practices. They then compounded the problem by developing their own low-priced brands, thus cannibalizing their markets, these observers say.

For years, cigarette makers raised

prices at rates higher than inflation, without noticeably improving product quality. In the process, industry leaders created a market vacuum, prompting smaller players like B.A.T. Industries PLC's Louisville-based Brown & Williamson Tobacco Corp., to enter the fold with brands priced at half the price of premium brands.

#### Major's Discount Brands

As the smaller company's products prospered, the major players developed their own discount brands.

In 1992, 50.8% of RJR's domestic tobacco dollar volume came from discount brands, up from 36.1% the prior year.

Since these brands are much less profitable than premium brands, the tobacco giants are determined to keep growing the premium end.

Gross profit on Philip Morris' Marlboro, for example, is about \$1 a pack, compared with 25 cents for discount brands, figures Hilliard Lyons' Omohundro.

"We're committed to narrowing the price gap to make Marlboro and other premium brands more affordable through our promotional efforts, and in doing whatever is necessary to maintain our share in the premium segment," said Ellen Merlo, a company spokeswoman.

The company's strategy is to regain momentum by adding value to the trademark and to create strong relationships with consumers through loyalty programs like the Marlboro Adventure Team, a contest that offers trips and Western gear in exchange for proof of Marlboro purchase.

The company markets its discount brands with much less fanfare. Price is the most significant aspect of the positioning.

#### Another Approach

Brown & Williamson uses a different approach.

Introduced in 1985, its GPC brand became the top-selling generic cigarette in 1991. Last year, market share doubled to 4.2%, says Tom Fitzgerald, a company spokesman.

The brand is marketed by Marketing Management Inc., a distributor.

"Our approach has been to coordinate our efforts behind a single branded entity, rather than fragmenting our efforts across numerous brands," Fitzgerald said. This has allowed it to generate considerable brand equity among consumers and the trade.

Brown & Williamson has 15 discount cigarette brand styles, while Philip Morris has more than 100 extra-low-priced brand styles spread across 12 separate brands, he notes.

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THE ECONOMY

# Consumer Prices Rose A Tiny 0.1% In May

## Weak Inflation May Keep Fed From Tightening — For Now

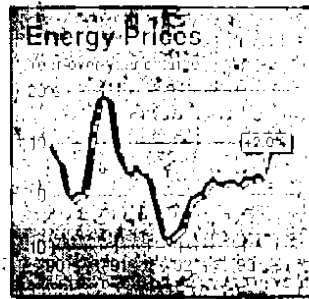
By Kathleen Hays  
In New York

A slim 0.1% rise in May consumer prices reported yesterday confirmed that inflation is not spiraling out of control and pushed the chance of Federal Reserve credit tightening into the future.

The increase in the May consumer price index was a moderation from April's 0.4% rise and on par with March's 0.1% gain, the Labor Department said yesterday.

The CPI stood at 114.2 (1982-84 = 100) in May, up 3.2% from a year earlier.

The May CPI pulled back in spite of a substantial 0.4% rise in food prices that was paced by a 48% surge in the price of



tomatoes, the Labor Department said yesterday.

Offsetting the jump in food costs was a large 1% drop in energy prices, the biggest monthly decline in more than two years. May's drop completely wiped out gains of 0.2% in April and 0.7% in March.

Excluding these volatile food and energy price components, the "core" CPI rose just 0.2% in May, only half of April's 0.4% gain, although a shade higher than March's 0.1% increase.

Yesterday's figures were better than the 0.2% and 0.3% increases expected in the overall and core CPI rates by Wall Street analysts.

In addition, the favorable May CPI confirmed the benign inflation message in the May producer price report, released Friday, that showed wholesale price inflation unchanged after jumping up 0.6% in April and 0.4% in March.

"The inflation scare was overdone," Edward Boehne, president of the Philadelphia Federal Reserve Bank, told Reuters yesterday. "It is hard to see where inflation pressures come from."

President Clinton extolled the recent PPI and CPI reports as pointing to

lower inflation, juxtaposing them against the growth in nonfarm payrolls of nearly 750,000 so far this year.

"I am confident that the continuation of this trend depends on our ability to pass a strong economic program through Congress that reduces the deficit, increases investment in our future and is fair," the president said at a news conference yesterday, linking the better jobs growth with low interest rates and low inflation.

Clinton was alluding to the administration's view that yields on the Treasury's long-term 30-year bonds have fallen in response to his budget deficit reduction plan and will fall further if the plan is actually passed.

Economists said bond investors appear to be reassured by the latest inflation data that there is no pressing need for the Fed to raise short-term

interest rates immediately in order to squelch intensifying price pressures.

But many analysts also said that, far from eliminating the need for such a move, May's well-behaved price data merely postpones the inevitable day when the Fed will start tugging back on the nation's credit reins.

**Good And Bad News**

"There's good news and bad news in the May CPI report," said Sam Kahan, chief economist at Fuji Securities Corp in Chicago. "It confirms that the uptick in inflation earlier this year was not real inflation but a reflection of the maladjustment of seasonal statistical factors."

He predicted favorable inflation readings for the next month or two that would be consistent with an annual inflation pace of 3% to 3.15%. But as the economy picks up to a "solid" annual growth rate of 3%, inflation could pick up to a 3% to 3.5% rate, he

added.

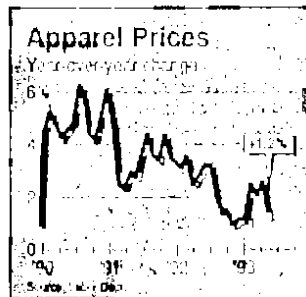
"If I'm right... it's more than likely the Fed will tighten policy a notch or two by the fourth quarter," Kahan said.

Economists counted among the pleasant surprises in the May CPI report unexpected declines in apparel, transportation and entertainment costs.

Clothing prices fell 0.5% in May, reflecting larger-than-usual sales on spring and summer clothing, the Labor Department said. In April, apparel prices were unchanged after falling 0.5% in March.

Transportation costs fell 0.1% in May after gaining 0.2% in April. Entertainment prices declined 0.2% last month after rising 0.2% in April.

In addition, housing costs eased off to show a gain of just 0.1% in May after a surprising 0.5% gain in April. Since housing costs comprise 41% of the CPI, they have a big impact on the overall



index. Economists were relieved to see that the average of the past two months was in line with the 0.3% average monthly gain of the past year.

**Medical Costs Up**

One of the uglier parts of the May CPI report was a 0.8% increase in medical-care costs to a level 6.3% above one year ago. In April, health-care prices gained 0.6% on top of a 0.3% increase in March and a 0.5% rise in February.

The Labor Department's "other goods and services" price component advanced a brisk 0.7% in May after rising 0.5% in April and 0.6% in March. Tobacco prices posted a gain of 0.4% last month and 4.3% for the first five months of the year.

Economists were quick to point out that at least part of this tobacco price advance should be reversed this month as Philip Morris's highly publicized cuts in cigarette prices at last come into effect.

Some said they still expected to see food prices ease off as the impact of heavy rains in March that decimated crops dissipates and production picks up. Food costs rose 0.4% in April and at a 3.5% annual rate in the first five months of the year.

Energy prices, which as of May were at the same level as December, also are supposed to be on the soft side if the oil-producing states remain unable to resolve their differences and agree to stick with output-limiting quotas.

Overall, the CPI has risen at a

seasonally adjusted 3.8% average annual rate in the year through May, compared with 2.9% for all of 1992. The core CPI gained at a 4.1% pace compared with 3.3% for all of last year.

**'Inflation Persistent'**

"Inflation is not zero, inflation is here, and it's persistent at a rate of about 3% to 3.5%" annually, said John Silvia, chief economist at Kemper Financial in Chicago.

"It's not skyrocketing, so people can't speculate in commodities, and it's not crashing, so they can't go long in bonds," he observed. "Dealing with a scenario of moderating inflation is very difficult."

In a separate report, the Labor Department said that American's average weekly earnings, adjusted for inflation, leaped 1.6% in May, the biggest increase since February 1982. Labor costs make up about 60% of the cost of producing a good, and economists watch them closely as a harbinger of rising inflation.

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## BUSINESS



## Shoot out at the check-out

NEW YORK, LONDON AND LOS ANGELES

From Marlboro to Kellogg's, big brands are under siege from supermarkets' own-labels. Many brands will perish or never be so profitable again

LIKE Shakespearean scholars after a spell at Harvard Business School, the managers of the world's best-known branded products have long pondered the question: what's in a name? In 1988 a flurry of brand-driven mega-deals provided some breathtaking answers. Kohlberg Kravis Roberts paid \$25 billion for RJR Nabisco (more than double its book value); Philip Morris bought Kraft for \$12.9 billion (four times book value) and Nestlé spent \$4.5 billion for Rowntree (five times). John Bryan, boss of Sara Lee, remembers 1988 as "a time of large dreams and loose money." It was, said many, "the year of the brand."

Make that "decade". It was the spectacular performance of brands—and their owners—throughout the 1980s that lay behind the hefty premiums paid in these and other takeovers. By exploiting consumers' loyalties to famous names with price hikes well in excess of inflation, firms such as Kellogg and Heinz increased profits by 15% a year. By the decade's end, shares in America's packaged-food firms were trading at a 30% premium to Standard & Poor's 500-stock

index. Not just the purest treasures, brands were viewed as perpetual ones too.

Yet that was wrong. Faced with a staggering array of products in every size, shape and shade, many cynical American and European shoppers have concluded (correctly) that there is scant difference between them. Price-sensitivity is waxing and brand-loyalty waning. This is taking a toll on even the savviest marketing machines, such as Philip Morris and Procter & Gamble (P&G).

In part, the fading lustre of famous names can be blamed on the economic downturn of the 1990s. But much more of it is due to consumer-goods firms having encouraged shoppers to buy on price by bombarding them with special offers. Also responsible are retailers' own-label products, which are eating into many brands' market shares. Larry Light, a marketing guru and head of America's Coalition for Brand Equity (an industry study-group), says that "brands are being bargained, belittled, battered and battered." Will 1993 be remembered as the year their spell was broken?

If it is, the day that will live in infamy is

"Marlboro Friday". This was April 2nd, when Philip Morris admitted that one of the world's most powerful (and profitable) brands was losing out to cheaper cigarettes most people have never heard of. As it slashed Marlboro's price, Wall Street wailed. In one day, investors not only wiped \$13.4 billion off Philip Morris's stock-market value but also dumped shares in scores of other consumer-goods firms. RJR, P&G, Coca-Cola, PepsiCo, Quaker Oats and Gillette were all bludgeoned by traders convinced that the explosive profit growth once delivered by branded standard-bearers was a thing of the past.

## Brands on the run

Publicly, few packaged-goods companies admit that Wall Street's fears are justified. Cigarettes, they argue, are a special case given the huge price gap between full-priced brands at over \$2 a packet and discount smokes that cost as little as 69 cents. There is some truth to this, but it is the other qualities of cigarettes—addictiveness, historic price inelasticity and unusually high levels of brand loyalty—that make price cutting by Philip Morris, and subsequently by its main rival RJR, such a stark symbol of change.

In private most managers worry intensely about how corrosive the change will be. Consumers who once stuck to favourite brands most or all of the time are now willing to try any item that catches their eye. Separate studies by the Roper Organisation, a research group, and DB Needham, an ad agency, have found that the proportion of shoppers seeking out particular brands and willing to pay more for them has fallen sharply since the late 1980s. Another study shows that the combined market shares of the top three brands among many supermarket goods have dropped too. Causing these symptoms are three related maladies: • The first is perceived product parity. According to research by BBDO, an international advertising agency, nearly two-thirds of consumers worldwide believe there are "no relevant or discernible differences" between rival brands across a broad range of products. They are largely right. Technological advances in manufacturing have raised the quality of most goods and made it easier for competitors to copy one another's innovations—which are, anyway, typically minor and increasingly rare.

As goods have become less unique they have become bewilderingly abundant. Last year 16,800 new products (including extensions of familiar names to new products, but not old brands in new sizes or shapes) were introduced in America—a third more

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than five years ago. There are now 200 brands of breakfast cereal in America; 220 types of cigarettes in Holland and 100 perfumes in Argentina. This trademarked torrent, and the advertising avalanche that comes with it, has only bolstered the belief that brands are all the same. Perceptions of product parity are highest in markets like Japan, where product proliferation is wildest.

• Product proliferation also begat the promotion monster. Faced with the blizzard of brands, retailers (especially in America) auctioned their coveted shelf space. Suppliers were forced to give discounts and pay fees to supermarkets to stock their products. Much of this was pocketed by retailers instead of being passed on to customers. As more of their advertising budget was diverted into promotions, consumer-goods firms strengthened retailers by giving them far more discretion over pricing. In Britain, where the trade-promotion system is not as byzantine as in America, supermarkets sometimes sell top brands below cost as loss leaders, thereby angering manufacturers.

• Together these trends have produced the own-label threat. Because of pioneering retailers such as Britain's J. Sainsbury and Canada's Loblaw, store brands in those countries have long grabbed big market shares. What rattles brand managers now is the surge in own-labels in places such as Spain and America, and in products like cigarettes and detergent which were once thought immune to them. Own-label prod-

making own-label products. Usually they stick to things in which they do not have a dominant brand. Heinz is the biggest own-label soup maker; Ralston Purina the biggest in cereals. Some firms have resisted: Kellogg, which has seen own-labels' share of the cereal market double since 1988, is now emblazoning its boxes with the slogan "We don't make cereal for anyone else." But Kellogg is in a minority. Last year Campbell Soup, one of the last to hold out, started making own-label goods—except soups.

As their quality improves and sales rise, the threat from own-label products will get tougher. Retailers, which often make twice their normal margin on these goods, are flexing their muscles and turning own-labels into brands in their own right. Consider Britain, where Tesco, a supermarket chain, is now the brand with the biggest ad budget. True, firms like Unilever spend more on their various brands combined; but it is to Tesco's advantage that all its own-labels fall easily under one "brand umbrella". Similarly, hundreds of products can be sold with "Good food costs less at Sainsbury". The same may soon happen in America: on Marlboro Friday, the country's biggest retailer, Wal-Mart, launched its second own-label line, Great Value.

That is one reason why many consumer-goods firms which reckon all they need to do is cut prices temporarily will probably be proved wrong. Kraft and other firms such as Frito-Lay, a leading savoury-snack maker, have indeed helped their brands by lowering prices. But shoppers are now more loyal to their local shops than to faceless behemoths like Philip Morris. This means they are less likely to accept price hikes in future. "We have to face the fact", says the boss of one manufacturer, "that our margins will never be the same again."

No firm is more intimately acquainted with the difficulties of price cutting than P&G. Over the past 18 months the giant Cincinnati firm has slashed the wholesale prices of about 70% of its products and eliminated discounts to retailers in an attempt to reward customers' loyalties with "everyday low prices." It has been rough going. Retailers that rely heavily on promotions were furious; some denied shelf space to P&G products. Worse, rivals such as Unilever stepped in with generous deals of their own. Salomon Brothers says that in ten of 11 categories, including nappies, toothpaste and washing powder, P&G's market share fell last year.

Naturally, the advertising industry reckons the best way to shore up brand loyalty is to spend hugely on even more ads. But that may not help much either. Nowadays, consumers are far too sceptical. And they are

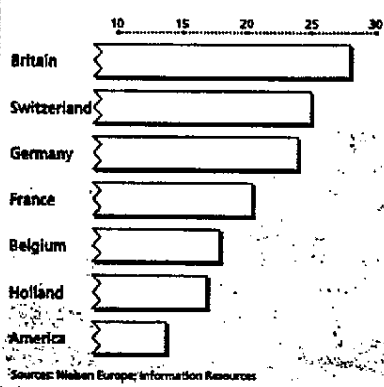
getting harder to reach. The prospect of a future which provides hundreds of television channels gives Madison Avenue nightmares. Many of the most durable brands were born because of television's wide reach. As the media fragments, so will audiences. This could cause companies to shed their peripheral brands and spend most of their money on innovating rather than launching yet more "me-too" products.

This would enhance efficiency and slow product proliferation. Frito-Lay recently slimmed its product line; now its main rival, Borden, is planning to do the same. At P&G, where 25% of its 2,300 brand varieties account for only 2% of sales, old brands like Puritan cooking oil and White Cloud toilet paper are being scrapped. Prell shampoo and Gleem toothpaste may be next.

Retailers, closer to the customer and flush with the success of their own-labels, will ensure the death of many brands. In future, says David Robey, a top manager at Tesco, "all the 'second division' brands... will gradually disappear." Many of Mr Robey's colleagues at big supermarket chains would like to see just the top two or three brands in a product line left on the shelf—plus, of course, their own labels.

### Supermarket power

Own label as % of total grocery sales, 1992



ucts now account for more than 20% of sales in some European supermarkets (see chart).

Partly this is due to recession and to consumer-goods firms jacking up prices on many brands until there is a huge discrepancy with own-label rivals. Last year Kraft was forced to slash prices when it began losing sales to own-label cheeses that were 45% cheaper. Last month, P&G cut prices for the same reason on its two leading brands of nappies, Pampers and Luvs. Consumers have discovered that the quality of many own-label goods is just as high as that of established brands.

There is a reason for this: most big branded-goods manufacturers have started

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# RJR's Offering of Nabisco Shares Leads To Questions on Quasi-Stock Structure

## HEARD ON THE STREET

By WILLIAM POWER

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK — Eight years ago, tobacco colossus R.J. Reynolds swallowed up food giant Nabisco to form what eventually became RJR Nabisco Holdings. This week, Nabisco will partially re-emerge from the belly of the whale — but in a state some money managers find less than appetizing.

As soon as tomorrow, the New York Stock Exchange expects to begin trading stock in RN-Nabisco Group, which represents a 25% interest in the Nabisco food operations. As a Big Board official describes it, RN-Nabisco "is an instrument to receive a particular revenue stream from the parent" company, namely RJR Nabisco Holdings.

Quite a few money managers are turning their noses up at this new quasi stock. They dislike its oddball structure, and think RN-Nabisco shares — if priced at the expected \$17 to \$19 — will be no bargain. If one wants to hold any RJR security at all, they suggest, the beaten-down stock of the parent may be a better bet than the spiffed-up offspring.

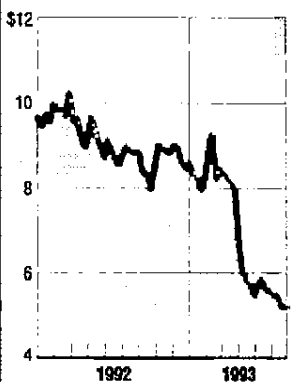
Here's the pitch for the pending deal — as hurled by dealmakers Kohlberg Kravis Roberts & Co. and Wall Street underwriter Morgan Stanley. Investors will get rights to part of the earnings of RJR Nabisco's food business (home of all those Ritz crackers and LifeSavers and Grey Poupon), without owning the company's tobacco half, which nobody wants a part of anymore. Forget all those worries about declining U.S. cigarette consumption, price wars and tobacco litigation. That sounds promising enough.

But the two halves of the company aren't actually being legally separated. The new RN-Nabisco holders would still be exposed, both directly and indirectly, to

## Will Investors Take the Plunge?

### As RJR Stock Slips...

Weekly stock prices (NYSE symbol: RN)



Source: Baseline.

### A New Stock Blooms

RN-Nabisco Group (NBG). Expected price: \$17-\$19.

FINANCIAL RESULTS <sup>1</sup>	THREE MONTHS ENDED	
	3/31/93	12/31/92
Net sales (millions)	\$1,632	\$6,459
Operating income	140	568
Net income	48	189
RJR earnings attributable to Nabisco Group <sup>2</sup>	89	355
Per-share earnings for RN-Nabisco	\$0.24	\$0.90

<sup>1</sup> Pro forma, as if offering had already been made at \$18. <sup>2</sup> Attributing acquisition-related expenses to parent company. NOTE: All financial results, except per-share earnings, are in millions of dollars.

the huge risks of RJR's tobacco business. And RJR can recombine its two stocks whenever it wants to, anyway.

Among the skeptics is Standard & Poor's Corp., which has one word for this unusual, \$1.7 billion offering: "Avoid."

RJR Nabisco is "just trying to rejigger the pie. It's an accounting transaction," says Terry Bivens, who follows food, tobacco and beverage companies at Argus Research and says he wouldn't buy the RN-Nabisco shares. "If you really want to buy a good [food] stock now, you can buy ones every bit as good or better at comparable multiples," such as Sara Lee or Campbell Soup, both at roughly 16 times projected 1993 earnings. RN-Nabisco's multiple is expected to be about 14.

The new offering also shows something about evolving New York Stock Exchange standards. Once, the Big Board was so conservative about its listings that it wouldn't even allow warrants to be traded. Now, it seems, almost anything goes.

A Big Board spokesman says, "We're treating it as another class of stock of an already listed company." But privately, at least one Big Board director questions whether the exchange should be listing such a quasi stock.

The extremely complex stock offering is expected to get easy approval at a special RJR-Nabisco shareholders meeting today in Parsippany, N.J. The offering price could be set as soon as tonight, with trading to begin the next day under the symbol NBG.

Will this deal fly? It's hard to find people on Wall Street willing to criticize it — at least on the record. After all, most top Wall Street brokerage firms are involved in trying to make the huge underwriting a success.

One reason some money managers aren't buying the offering is the valuation it puts on the Nabisco food business. Here's the math: The global offering of 93

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## Nabisco's Partial Re-Emergence From Parent As Quasi Stock Raises Managers' Eyebrows

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### HEARD ON THE STREET

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*Continued From Page C1*

million RN-Nabisco shares represents 25% of the Nabisco food business, with the remainder retained by RJR. At \$18 a share, the offering values the Nabisco food business at about \$6.7 billion. Based on yesterday's RJR closing price of 5%, all of RJR Nabisco has a market value of just \$6.1 billion.

The company's investment bankers figure that investors will live with the valuation anomaly because if Nabisco were actually sold, it could fetch at least \$6 billion or so. (However, no hostile takeover of the other 75% of RN-Nabisco is possible; a hostile bidder would have to go after all of RJR.) At a multiple of about 14 times projected 1993 earnings, the new stock isn't out of line with other top food companies.

Still, experts on initial public offerings generally feel there are plenty of "real" IPOs out there that are more promising than this offer. The offering's 140-page prospectus makes it clear that holders of RN-Nabisco stock "will continue to be subject to all of the risks associated with an investment in" RJR-Nabisco. That means tobacco-liability litigation, new federal taxes on smokes and everything else that has helped batter the prices of tobacco shares—including RJR Nabisco.

"Why do you want to buy someone else's headaches?" says Jay Gottlieb, the publisher of New Issues Outlook newsletter in White Plains, N.Y. "RN-Nabisco, to me, is like buying a used car. It may be good. You may get good mileage out of it. But chances are, you're just buying someone else's headaches."

Mr. Gottlieb's newsletter prefers putting IPO investments into such other pending deals as Industrial Scientific, appliance retailer P.C. Richard & Sons, Key Technology, Image Industries and National Record Mart.

A Big Board official says the exchange concluded that the RN-Nabisco offering is "roughly analogous" to USX Corp. separating its energy and steel businesses into separately traded stocks in 1991, or Ralston Purina's similar proposal for Continental Baking.

RJR, for its part, would prefer to compare its offering with General Motors' issuance of Class H and Class E shares, which were pegged to results of the auto maker's Hughes Aircraft Co. and Electronic Data Systems businesses. RJR denies that its arrangement is cozier than GM's. But there isn't any precedent for a situation in which a new stock is spun out by a company facing as much legal trouble as RJR Nabisco. "Any net losses" of the

RJR tobacco business, warns the prospectus, "will reduce the legally available funds" for RN-Nabisco holders.

In giving the offering an "avoid" rating, new-issues analyst Robert Natale of Standard & Poor's notes that many investors have "anxiously awaited a chance to own Nabisco Foods again, separated from RJR's tobacco operations." However, he shies away from the deal "because of the complexity of the deal, the continued potential legal tie to RJR's tobacco litigation, and the generally lackluster interest in branded food-product company shares at the moment."

Some traders say that, assuming the offering goes off at \$18, they expect a possible rise to \$20 or so in subsequent trading days. But then they envision many big institutional investors selling out as soon as they make a profit.

Mr. Bivens of Argus Research says some of the criticism of the RN-Nabisco offering has tended to be overly harsh. The Nabisco food operations — with 44,000 employees and its enviable stable of brand-name cookies, crackers, gum and pet foods — are solid, he says. Yet with food companies out of favor and tobacco stocks under fire, he concludes: "It's a bad time to be bringing this out."

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## Ex-ConAgra Chief Steps Onto Minefield At RJR Price War, Possible New Taxes Are Among Issues Confronting Him As CEO

By Marilyn Much  
In New York

Revered as a marketing whiz, brand-builder and visionary, Charles "Mike" Harper takes command of RJR Nabisco Holdings Corp. at a trying time for the No. 2 cigarette marketer.

Harper, 65, who succeeded Louis B. Gerstner as chairman and chief executive of RJR last month, made his mark in corporate America by turning the once-floundering ConAgra Inc. into a major force in the nation's food business.

### Management

He is credited with creating the Healthy Choice line of low-sodium frozen dinners and entrees in 1989 while recuperating from a heart attack. The line should generate sales of \$1 billion at retail this year.

But in taking the top spot at RJR, Harper steps into an industry fraught with peril.

Price wars are cutting into lofty tobacco profits. In addition, the industry is facing the possibility of new federal taxes on cigarettes to finance health-care reform. Analysts figure a 25-cent-a-pack increase in taxes will cut consumption 3%.

RJR is also in the middle of a corporate restructuring under which it is expected to create a new class of stock representing 25% of its Nabisco foods unit. The offering will help RJR pay down high-coupon debt.

Finally, the company's shares have been in decline for over two years.

### Price Cutting

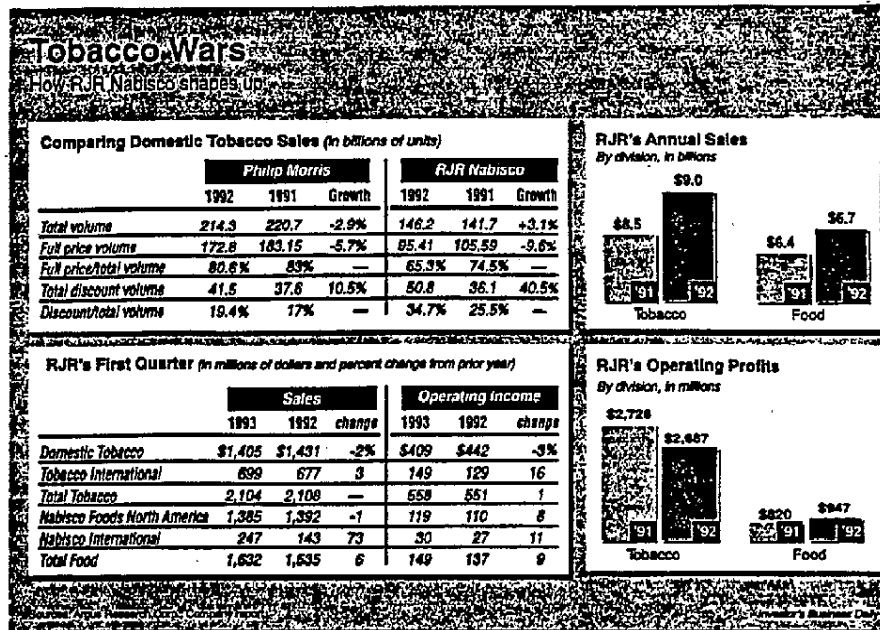
Sparked by an ever-widening gap between less profitable discount smokes and full-priced cigarettes, industry leader Philip Morris Co. has moved aggressively to protect its mighty franchise in recent months by slashing prices.

In April, Philip Morris reduced the price of Marlboro, the world's leading cigarette brand, by 40 cents a pack, or about 15%, and raised the prices on its discount brands slightly. It also froze prices on other premium brands.

RJR followed, cutting 40 cents off the price of its flagship Winston brand.

"Harper is used to getting good results, but the challenges that confront him at RJR are worse than those he faced at the near-bankrupt ConAgra," suggested David Goldman, an analyst with New York's Oppenheimer & Co.

Even before the price war, RJR's domestic tobacco business was slip-



ping. In the first quarter, domestic operating income fell 3% to \$409 million as sales fell 2% to \$1.4 billion.

Harper's predecessor predicted at the time that domestic tobacco profits would decline for the year.

Terry Bivens, an analyst with New York-based Argus Research Corp., predicts RJR's 1993 earnings per share will come in at 60 cents a share, up 9% from 55 cents last year.

To analysts, the most crucial issue facing RJR is the possibility that Philip Morris has just begun to fight. Some believe it may lower premium-brand prices another 20 cents.

### Finding Cash Flow

"Harper has very little option but to follow. He certainly can't keep full-priced cigarettes at previous levels. It would be suicide," said Bivens.

"How does a company (RJR) find the cash flow to do everything that needs to be done with Philip Morris waging such an aggressive price war?" asked Oppenheimer's Goldman.

The answer may lie in Harper's marketing expertise.

"With a stable of established brands that are household names and a top-notch management group... we have more than enough ammunition" to grow the food and tobacco business, Harper said in a statement.

Fortunately for Harper, the RJR he's taking over is considerably less indebted than the one that went private in 1989 in a record \$25 billion leveraged buyout led by Kohlberg Kravis Roberts & Co.

Gerstner was credited with cleaning up RJR's balance sheet and trimming fat. In the Nabisco Foods Group, he sold such lackluster performers as Del Monte and Chun King.

He cut RJR's debt in half, from nearly \$30 billion in 1989 to \$14.2 billion at the end of 1992. Operating costs were trimmed 12%, or \$550 million annually.

And the food unit has remained a good performer.

"Gerstner was very shrewd in introducing new food products, such as SnackWell's fat-free cookies and crackers, that have received very good consumer reaction," said Bivens. "So I expect Harper won't have to tinker with the food business very much."

### Repositioning Stalled

Still, tobacco accounted for 76% of the parent company's \$3.5 billion in 1992 operating income.

Gerstner kept a much-needed repositioning of RJR's tobacco brands on the back burner over the past four years as he paid down debt and restructured the balance sheet, analysts say.

Winston's volume has declined at a 13% annual rate for the past five years. The Salem brand's volume has declined 12% a year, and Vantage volume has fallen 16% a year, according to a report by Bivens.

In all, RJR's 1992 U.S. tobacco operating profits slid 5% to \$2.1 billion from \$2.2 billion a year earlier, Bivens calculates.

Compounding the problem has been its reliance on low-priced brands. Analysts say premium brands yield gross profits of about \$1 a pack, while discount brands generate only about 25 cents.

Though RJR's share of the domestic tobacco market actually increased to 28.9% last year from 27.8% the year before, its gains came mainly in the low-price tier.

Now, Harper must use his marketing

savvy to stem further erosion in market share and profits.

"Harper's focus should shift away from slashing prices toward using his marketing expertise to maximize shareholder value," said Tom Meyers, a vice president with Carmel, Ind.-based investment advisory firm Conesco Capital Management.

In short, Meyers believes future increases in domestic tobacco market share should not come at the expense of profits.

### New Methods Needed

Up until Harper's arrival, RJR had been aggressively cutting prices on its discount brands, a tactic that helped fuel Philip Morris' recent actions.

But Harper no longer can afford to play that game.

Instead, he must concentrate on building awareness and value through special promotions, giveaways and customer loyalty programs, analysts suggest.

"It's up to Harper to figure out another method to maintain or grow market share other than reducing cigarette prices and increasing unit growth in its discount brands," contended Davis Smith, an assistant vice president with Conesco.

He says Harper could develop marketing programs that revolve around a brand's image, not its price.

RJR has been successful in attracting young smokers to its Camel brand through its Joe Camel ad and marketing program.

It also claims to have made more than 100 separate improvements in the Winston brand to enhance quality, attract adult smokers of competitive brands and offer incentives to maintain current customers.

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# Top of the News

EXECUTIVE SUITE

BUSINESS WEEK/JUNE 14, 1993

## MIKE HARPER TAKES HIS MAGIC ACT TO RJR

The man who turned sleepy ConAgra into a superstar faces a huge task

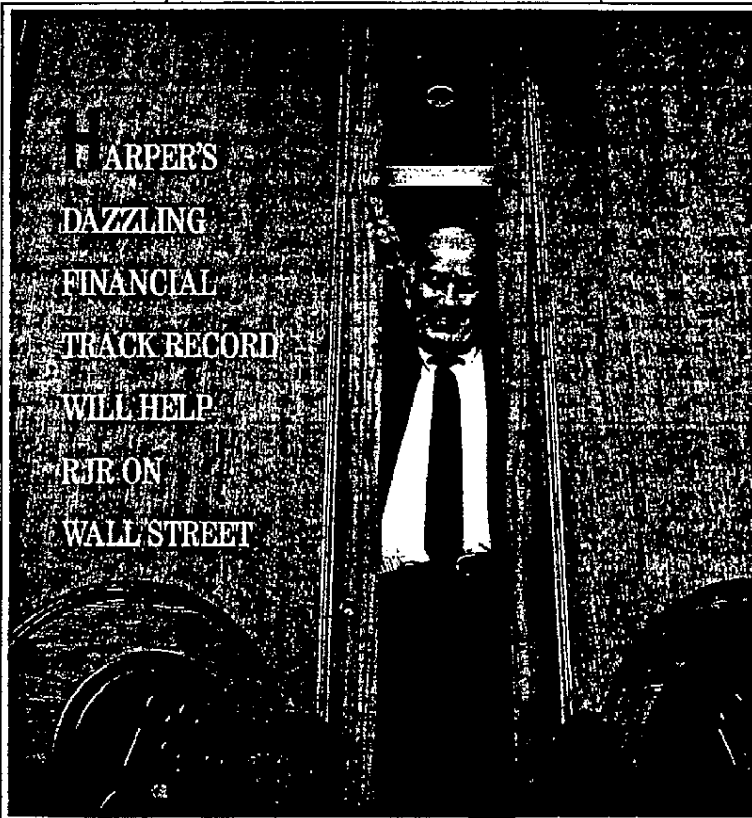
It's barely 11 a.m. on June 1, his first official day as chairman and chief executive of RJR Nabisco Holdings Corp., but Mike Harper already is in top form. "It's really my second day," he quips between briefings on operations, get-acquainted sessions with key employees, and meetings with investment bankers. "I worked on Friday for nothing—and that's what they got."

Actually, RJR Nabisco got a whole lot more. Wall Street analysts reacted with some surprise to the selection of a 65-year-old semi-retired exec for the top job at the food and tobacco giant, vacated when Louis V. Gerstner Jr. was appointed CEO of IBM on Mar. 26. But self-effacement aside, Charles M. Harper may prove an inspired choice. In fact, he put in 12-hour days at Omaha-based ConAgra Inc. And with a series of savvy acquisitions and aggressive new-product introductions, he turned the small, near-bankrupt grain processor into the second-largest U.S. food company.

Welcome now, Mr. Harper, to RJR Nabisco. The problem Gerstner was hired to fix—massive debt from Kohlberg Kravis Roberts & Co.'s buyout four years ago—has diminished. Instead, what RJR needs is a manager with experience battling price wars and building market share in both commodities and packaged goods. In particular, its domestic tobacco profits are plunging, hammered by brutal discounting by market leader Philip Morris Cos. and cheap generic cigarettes. For 1993, RJR's net income, excluding extraordinary items, will dive 19%, to \$633 million, figures Roy D. Burry, an analyst for Kidder, Peabody & Co.

More to the point, RJR Nabisco as early as June 4 will receive Securities & Exchange Commission approval to sell a

new class of stock based on the food unit's operating profits. Originally expected to be priced at \$17 to \$19 a share, the company had hoped to raise \$1.5 billion to help repay debt. But now, with food stocks slumping, some potential buyers are pressing RJR to sweeten the



deal. "I'm really skeptical about whether I want to participate in the Nabisco offering," says Arthur Cecil, an analyst for mutual fund giant and RJR stockholder T. Rowe Price Associates Inc.

That's one place Harper fits in. Henry Kravis, the KKR partner who recruited the new CEO, says the hiring wasn't related to the food division offering. But Harper's dazzling financial track record surely will help win the plan credibility with investors—and sell the issue for KKR, which owns 49% of RJR Nabisco.

Since 1980, indeed,

ConAgra's per-share earnings have shot up at a compounded annual rate of nearly 17%—compared with 11.5% for the Standard & Poor's food group—to an estimated \$371 million in the fiscal year ended May 28, says Craig L. Carver, research director at John G. Kinnard & Co. And ConAgra's stock has appreciated an average of 26% a year since Harper joined the company in 1974.

A prime beneficiary: KKR, which sold Beatrice Co. to ConAgra in 1990. Harper paid half of the \$1.34 billion purchase price in ConAgra stock, which gave KKR a tidy \$336 million profit in 18 months. That left Kravis impressed: "[Harper] is a hands-on administrator, an extremely

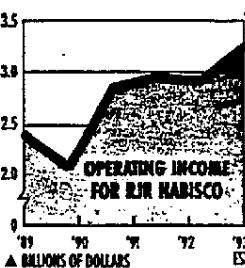
well-respected leader, a builder of products and brands," he says.

Harper certainly doesn't match the slick, Manhattan-toned style of Gerstner or, for that matter, Kravis. In fact, he'll keep his primary home in Omaha, preferring to commute to the company's bases in New York and Winston-Salem, N.C. He wears unfashionable short-sleeved shirts to the office and pilots small planes for fun.

**CLOSE TABS.** But it's Harper's management style that KKR finds appealing. His penchant for delegating should fit well with RJR's decentralized structure and with the seasoned executives, H. John Greeniaus and James W. Johnston, who head its food and tobacco units. At ConAgra, Harper set stiff financial goals, then gave his managers virtually free rein to hit the targets. But he kept close tabs on them, too, demanding weekly financial briefings by telephone and in person from 25 operating-unit heads around the world.

Harper, whose only experience with tobacco was a two-pack-a-day habit until he quit in 1985 after a heart attack, must fashion a strategy to rev up RJR's domestic tobacco business, which will kick in 47% of 1993's \$3.42 billion in operating income and 35% of sales, says Burry. Nabisco also will demand some atten-

### PROFIT PROGRESS



PHOTOGRAPH BY ERIK REICHMAN; CHART BY US HOUSE BROOMAN/REX

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tion. It's the U.S. leader in cookies and crackers, but those markets are flat, at best. So Harper is likely to pursue more acquisitions, following Nabisco's \$400 million in purchases last year, and move more aggressively overseas.

Some investors even expect KKR to cash out of its RJR Nabisco investment by selling off parts or even all of Nabisco in the next few years. KKR, they say, will rely on Harper to revive the holding company's stock, which has nose-dived 50% since mid-1992. "Any

time you have financial holders, they keep looking at offers and running the numbers," says Patrick Clegg, an analyst at RJR shareholder Luther King Capital Management. "At some point, they'll want to sell more of this thing." RJR and KKR won't comment on that scenario, and Harper himself says he wants to "build a great company." He'd better move fast.

*By Lois Therrien in Chicago, with Maria Mallory in Atlanta and Laura Zinn and Elizabeth A. Lesly in New York*

ADVERTISING AGE, MAY 31, 1993

# Ed Horrigan to 'horriganize' Liggett

By Ira Teinowitz

The new chairman-ceo of Liggett Group, ex-R.J. Reynolds Tobacco Co. Chairman Edward Horrigan, promises to revitalize the company even as the tobacco price war begins.

Discounts on Philip Morris Cos.' Marlboro and RJR's Winston cigarettes began creeping into stores last week and are expected to hit full force this week.

Declaring he missed the cigarette wars and needed a challenge, Mr. Horrigan said he wants to work at reviving the country's No. 6 cigarette company. Liggett last year had 3% of the 507 billion-unit U.S. market, compared with No. 2 RJR's 28.8%, according to John C. Maxwell Jr., an analyst for Wheat, First Securities.

"Though Liggett's problems are difficult," Mr. Horrigan said, "I have the chance to come back to the industry that I enjoyed and deal with solvable problems and make it work."

Mr. Horrigan, 63, left RJR in 1989 with a nearly \$46 million severance package.

Although he wouldn't be specific about his immediate plans, Mr. Horrigan said Liggett will have to capitalize on the midprice and value segments for growth while retaining share for premium brands including Eve, L&M, Chesterfield and Lark.

Discount brands, including Pyramid, now represent more than two-thirds of Liggett's volume.

"If you go back in time, we

created the value segment," he said. "If you look ahead, we need to reaffirm and strengthen our position in the value segment."



Horrigan

Liggett spent \$20 million on advertising in 1992 but has suspended spending this year pending a re-evaluation of corporate priorities. New York agencies Ogilvy & Mather and Bloom FCA handle Liggett.

Mr. Horrigan said Liggett will also look increasingly at the fast-growing overseas market. As for Liggett's future, all Mr. Horrigan would predict is its survival.

"The industry is in such a state of change, all I can say is we expect to be in business and a factor," he said. "As quickly as I can have a so-called Horriganized Liggett, we will have it."

In the meantime, Philip Morris' 40¢-a-pack discount on Marlboro and RJR's Winston discounts began making their way to stores last week. The discounts were supposed to hit on June 1.

Philip Morris has said it hopes the temporary price cut, together with promotion, will prompt smokers to return to premium brands.

If price pressure in the industry isn't enough, a new round of promotional activity this week adds even more intensity.

RJR is launching a "Winston

Weekends" promotion that offers the brand's most extensive ever continuity program. Winston smokers who get a calendar by direct mail or at retail can trade in proofs of purchases for items featured on the calendar.

RJR said the program will get heavy print support from Long, Haymes & Carr, Winston-Salem, N.C., normally RJR's agency for Doral and Magna, and was planned before Philip Morris announced its increased promotional efforts for Marlboro FCB/Leber Katz Partners, New York, usually handles Winston.

Other cigarette marketers are joining Liggett in looking at non-premium brands. No. 5 American Tobacco Co. last week said it would focus more on midprice smokes. □

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## BUSINESS BRIEFS

### Philip Morris Cos.

Kraft General Foods International, a unit of Philip Morris Cos., signed a joint venture agreement with Beijing Agriculture Industry & Commerce General Corp. to make dairy products.

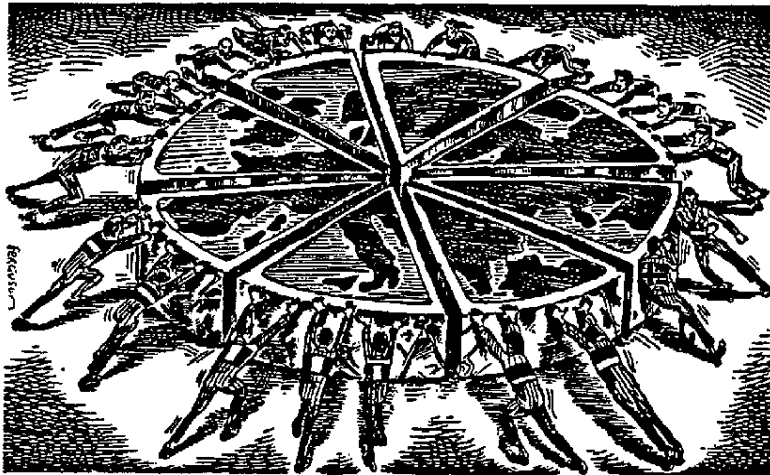
Philip Morris said the joint venture,

Beijing Kraft Food Corp., will manufacture and market "a wide range of value-added dairy products" such as ice cream and yogurt.

Kraft already has two joint ventures in China: one with Guangtong Food Co. making Maxwell House coffee in Guangzhou; and one with Tianmei Food Co. producing Tang powdered beverages in Tianjin.

FINANCIAL TIMES THURSDAY JUNE 17 1993

## MANAGEMENT: MARKETING AND ADVERTISING



The US food group is aiming for closer collaboration between its European units, says Guy de Jonquières

# Cross-border Kraftsmen

Soon after Todd Martin became vice-president of marketing and business development at Kraft General Foods Europe 18 months ago, he made a radical decision. He gave his job away.

That is how he describes the thinking behind a recent shake-up

of marketing strategy at the large, US-owned food group, intended to tackle one of the toughest dilemmas facing consumer products manufacturers operating in several European countries.

The challenge is to find a management structure which maximises

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scale economies and eliminates wasteful duplication, while remaining sensitive to often very different patterns of local demand.

Prompted by the single market, tougher competition and the growing power of retailers, other companies including Unilever and Mars have recently extensively re-organised their operations in an effort to meet these objectives.

However, in several cases, the search for strategic coherence has led to unwieldy centralisation or blurred responsibilities, leaving national managers confused and demoralised.

Martin was determined to avoid these mistakes. Instead, he set out to make the group's eight European operating subsidiaries responsible for initiating and implementing cross-border collaboration.

His approach was coloured by Kraft's failed attempts a decade ago to impose uniform product and marketing strategies across Europe. The results were so catastrophic and created such ill will that the central marketing team was disbanded soon afterwards.

The loose system of headquarters co-ordination which replaced it mollified KGFE's national managers, but discouraged direct communication between them. Each pursued its own marketing strategies, even for big international brands such as Philadelphia cream cheese and Kraft dressings.

By the time Martin, a 37-year-old American, arrived, national managers had begun to chafe at this compartmentalised structure. They needed little persuasion, he says, to see the advantages of closer cross-border collaboration.

A year ago, he set up eight "core teams", covering KGFE's principal product categories and the main marketing functions. The teams, which meet for two days, three times a year, bring together more than 100 KGFE national marketing staff.

Each team has a co-ordinator, assigned to KGFE's Munich headquarters for two to three years from a country unit, who identifies issues of common concern, prepares research and case studies and guides debate. However, what to do and how to do it are left to national managers to decide jointly.

"I had to look to self-interest to drive this process because I can't be everywhere at once making sure it works," says Martin, who stays away from team meetings so that managers can discuss mistakes and failures without fear of reproach.

The biggest financial pay-off so far is from agreements to rationalise the specifications and packaging of the 1,000 KGFE product lines sold in more than one country, which

account for 40 per cent of the group's \$3.6bn (£2.3bn) annual sales. Some come in more than 50 versions, often because of unco-ordinated decisions by country managers rather than real differences in local demand.

KGFE expects decisions already taken to reduce by \$10m in the next two years the \$100m in manufacturing fixed costs needed to support this product complexity. Martin thinks savings of as much again are achievable.

Another priority has been to improve effectiveness of brand management and advertising. The main goal here is not to cut costs, but to get maximum mileage from the \$400m KGFE spends annually on advertising and marketing.

Relying heavily on comparisons of national subsidiaries' past experience and detailed analyses of failures as well as successes, the core teams have begun to define general principles for effective marketing.

One is that food products are often better promoted by focusing on questions such as when, how and by whom they are eaten, rather than by concentrating on intrinsic qualities such as texture and taste, as some national units have done in the past.

The objective is a broadly consistent strategy across Europe which can be tailored to individual markets. It is already being practised in television commercials for Philadelphia cream cheese, one of KGFE's main product lines.

In the commercials, a housewife shows a visitor various ways of serving Philadelphia. In Italy, where the aim was to differentiate the product from the many other soft cheeses on the market, an exotic touch has been injected by casting the visitor as a Japanese au pair. But in Spain, a hard-cheese eating country where Philadelphia is unfamiliar, KGFE played safe by making the visitor a neighbour's daughter.

For a new range of do-it-yourself pizza and pasta dinners, sold under the Miracoli brand, KGFE uses identical commercials in five countries. These show an Italian family enthusing at mealtime, in Italian, over the toppings and sauces available.

Ironically, the range is not sold in Italy, where its potential is considered very limited. However, as Martin observes, the Miracoli brand stands "not for Italian food, but for the idea of Italian food".

Unlike previous KGFE campaigns, the Miracoli commercials were neither developed by each country separately, nor imposed

from the centre. Instead, core team members adopted a campaign thought up by KGF Belgium after judging it superior to alternatives developed by their own and other subsidiaries. The Miracoli dinners are also an early result of efforts to develop more products jointly. Since the new system began, the list of research and development proposals from national subsidiaries has halved, and many more are for products to be sold in several countries.

"In the past, there were almost no multi-country projects - and if there were, it was pure coincidence," says Phil Smith, marketing director of KGF's UK operation. "The core teams have got marketing people to focus on big new ideas and meaty projects, rather than on easy window-dressing like minor line extensions."

A drawback is that the new system is relatively slow to respond to demands from KGF's US headquarters and Philip Morris, its ultimate parent. "If Michael Miles [chairman of Philip Morris] asks if we can do something in a month, I have to say it will take six months," says Martin.

However, KGFE is also better equipped to formulate its strategies and initiate ideas without transatlantic prompting. Piero Capizzi, director of refrigerated products, says he spends only 30 per cent of his time liaising with the US, compared with 70 per cent for his predecessor.

Martin thinks there are two main reasons for the smooth working of the core teams system, which Jacobs Suchard, the Swiss coffee and confectionery company owned by Philip Morris, is also thinking of adopting.

One is that many traditional cross-border management links were severed by the reorganisation which followed Philip Morris's acquisitions of General Foods in 1985 and Kraft in 1988. That made it easier to introduce a new approach from scratch.

The other is that KGFE has solidly established core businesses with broadly similar strengths in different markets. That means subsidiaries from smaller countries do not worry about being pushed around by those from bigger ones. "Getting the balance right requires democracy," says Martin.

He is open-minded about how the system will develop, saying national subsidiaries may sometimes find it makes more sense to act separately than jointly. But at least they will have considered the possibility of cross-border co-operation first. "If there are synergies to be had at a European level, we'll capture them," says Martin. "If we can't, they don't exist."

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## Heinz's Net Fell 52% in Its 4th Period Due to Charge for 8% Work-Force Cut

By GABRIELLA STERN

Staff Reporter of THE WALL STREET JOURNAL  
PITTSBURGH — H.J. Heinz Co. said fiscal fourth-quarter net income plunged 52% after a big restructuring charge, reflecting its efforts to slash costs in the face of flat pricing.

The bulk of the charge of \$111 million, or 43 cents a share, reflects plans under way to cut the company's world-wide work force by 8%. It also includes consolidating billing, collection and distribution, and combining pet food and canned tuna operations. Earnings were depressed by another charge of \$9.9 million, or four cents a share, related to an accounting change.

For the quarter ended April 23, Heinz earned \$69.7 million, or 27 cents a share, compared with \$145.7 million, or 56 cents a share, a year earlier. Operating earnings jumped 32% to \$192.3 million, or 74 cents a share, from \$145.7 million.

Sales rose 8.9% to \$2.03 billion, from \$1.87 billion, reflecting the acquisition of Wattie's Ltd. in New Zealand and a 9% increase in unit volumes, particularly in StarKist tuna, Weight Watchers frozen entrees and Ore-Ida frozen potatoes.

Wall Street attributed much of the company's improved operating earnings to a lower tax rate—12% in the fourth quarter vs. 25% a year earlier, and 29% in the full year vs. 35% — that Heinz said resulted from tax benefits overseas.

"It is very clear the company did not manage to deliver . . . without being very aggressive on the tax rate," says Nomi Ghez, an analyst with Goldman, Sachs & Co. who rates Heinz a "market performer." She says she's maintaining her \$2.60 a share estimate for fiscal 1994, "but with less confidence."

After the announcement yesterday, Heinz shares fell 62.5 cents to \$36.75 in New York Stock Exchange composite trading.

For the year, Heinz net income fell 38% to \$396.3 million, or \$1.53 a share, including restructuring charges of 45 cents

a share and accounting-related charges of 55 cents a share. A year earlier, the company earned \$638.3 million, or \$2.40 a share. Sales rose 7.9% to \$7.1 billion from \$6.58 billion a year earlier.

Heinz Chairman Anthony J.F. O'Reilly, who revised his full-year operating earnings forecast in March to \$2.50 a share from \$2.60, notes that the company came in at \$2.53, "slightly in excess of our recent forecast. . . . The company has produced record sales and attained record market shares in almost all major categories both domestically and abroad."

Analysts say the company had to make some restructuring moves to achieve earnings growth amid flat consumer prices in the past two years. The 8% work force reduction—which affects about 3,000 of the company's 40,000 workers and is to be completed in 12 months — comes on the heels of a 10% work force reduction announced in September 1991.

"The restructuring simply reflects one fact: If you can't raise your selling prices, you've got to lower your costs," says John M. McMillin, analyst with Prudential Securities Inc.

Concern about pricing problems prompted some analysts to reduce their fiscal 1994 earnings forecasts. "On balance, the situation is not good," says William Maguire, an analyst with Merrill Lynch & Co., who lowered his estimate to \$2.70 a share from \$2.75, noting that Heinz expects to return to an approximately 35% tax rate in the next 12 months. William Leach of Donaldson, Lufkin & Jenrette Securities Corp. lowered his estimate to \$2.55 from \$2.60 a share, but rates the stock "moderately attractive," he says, "because the stock's so cheap."

Heinz played down analysts' concerns, saying prices will rise 2% in fiscal 1994, and volumes will grow 4% to 5%. There will be fewer promotions, such as coupons and allowances for retailers, and more media advertising.

## ConAgra to Shift Tactics For Frozen-Food Products

By a WALL STREET JOURNAL Staff Reporter

MINNEAPOLIS — ConAgra Inc., adopting new tactics to cut its losses in the supermarket frozen-food wars, said it will reformulate products, drop others and refuse to engage in what has become "the deal of the day."

One early casualty: Ultra Slim-Fast frozen meals, which ConAgra makes under license from Slim-Fast Foods Co., New York, a unit of Thompson Medical Inc., ConAgra's Chairman Philip B. Fletcher said in an interview. He also said ConAgra's line of children's frozen meals, Kid Cuisine, is undergoing scrutiny for probable reformulation.

ConAgra, which sells about \$1 billion of frozen foods annually, has been battling for two years with companies like Campbell Soup Co., the Stouffer Foods unit of Nestle SA and the Kraft General Foods unit of Philip Morris Cos.

But the new tactic could backfire. Many consumers now expect discounts in frozen food. Moreover, competitors may respond with even more discounting.

ConAgra also said it will take \$131 million in after-tax charges against fiscal 1993 earnings — equal to 56 cents a share — to adopt mandated accounting changes. As a result, previously reported quarterly figures will be restated. Earlier, ConAgra had said it expects to report net of \$1.62 a share for the year, which ended May 30.

Mr. Fletcher said Omaha-based ConAgra expects record earnings in the current fiscal year.

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# Race and the American Workplace

For years, blacks say, insults spewed from a Miller paging system. Now, they're suing.

By MICHAEL JANOFKY

**T**HERE are nights Harold Thomas lies in bed, kept awake by the words that still scream through his head, words he heard for years over the paging system at the Miller Brewing Company plant in Fulton, N.Y.

A production supervisor in the packaging department, Mr. Thomas has no idea whose voice it was, calling him: "Harold, the . . . ape, Thomas." But by early 1991, he had grown so distraught that a psychiatrist advised him to take a leave. Upon his return almost a year later, a voice rang out over the paging system, "Welcome back, Harold, but you're still a nigger."

For almost a decade, through last year, many black and female employees at the plant in Fulton, a small industrial town north of Syracuse in central New York, say they were targets of racial epithets or sexual comments over the speaker system or were harassed by other means, such as messages written on restroom walls, obscene drawings and prominently placed items, like a noose, that spoke of overt hostility.

While these kinds of incidents are not necessarily characteristic of Miller plants, they are remarkably common in the American workplace — and may even be on the rise. Efforts by companies to hire more minorities and women, often at the expense of white males, coupled with the wave of corporate downsizings that has further threatened job security, have led to a backlash against minority workers, Federal authorities and management experts say.

Since 1990, complaints of racial harassment filed through local and regional offices of the Equal Employment Opportunity Commission and state human rights agencies increased nearly 17 percent, to 6,638 filings last year. Among the recent cases is a class action suit against the Ford Motor Company charging racial discrimination and harassment.

"It's not just limited to blue-collar workers," said Mildred Saunders, a New York-based consultant on equal employment matters. "In academia, in government, among professionals, wherever people are different and fewer jobs are available because of the economy, these kinds of issues are commonplace."

One reason the problem persists is that com-

panies often deny it exists or fail to eradicate it at its base levels, forcing victims to turn for action to the courts, as Mr. Thomas has. Lawrence Kunin, general counsel to the New York State Division of Human Rights, said that sometimes a company "has established a culture, without realizing that it's discriminatory."

## The View From Milwaukee

While perhaps extreme, the Miller case in Fulton provides a compelling study of how bigotry endures in the workplace, even after victims complain repeatedly and managers experienced in diversity are brought in to help.

At Miller's headquarters in Milwaukee, officials maintain that their efforts to catch the Fulton perpetrators were adequate, if unsuccessful. Michael Brophy, a Miller spokesman, said that through the years in question senior managers in Fulton had taken "corrective action" in the form of a tape monitoring system and surveillance by security personnel.

"Were we concerned? Of course," he said. "Do we believe the problem was rampant? Of course not. We're talking about a plant where there are 1,200 to 1,400 pages a day, about 550,000 a year, more than 5 million over 10 years. How many offensive pages are we talking about? Maybe 12 or 14." Largely for that reason, he said, the paging system, the principal means of abuse, was retained until last year.

A Miller lawyer in Milwaukee, Bert Butler, insisted Miller has always complied with state and Federal antidiscrimination laws. He said that over a 16-year period no "formal complaint" of racial harassment reached the office of the Fulton plant manager. He said Miller officials in Milwaukee would not have known about complaints from people like Mr. Thomas to their superiors or how the superiors handled them.

Mr. Thomas and others — managers as well as union workers — said complaints were largely ignored.

How much harassment might be considered too much? Speaking in general terms, Mr. Kunin said, "After 35 years of civil rights laws, I have to question a response of 'I didn't know,'

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or 'it happened at such a low level,' or 'It was too subtle.' I have to question even one statement over a loudspeaker."

Several employees have filed complaints against Miller for discrimination. Mr. Thomas and Waverly Faison, a former Miller employee who was laid off in 1984, presented enough evidence to the United States Attorney in Syracuse last year to have the Federal Bureau of Investigation investigate whether Federal criminal civil rights laws had been violated. To prevail in a criminal action, a prosecutor must show that racial harassment included physical harm or a threat of physical harm.

In addition, Mr. Thomas and two other black ex-employees filed separate civil claims against Miller with the New York State Division of Human Rights, in which a plaintiff must show by a preponderance of the evidence that discrimination occurred. Mr. Faison has challenged Miller in New York State Supreme Court under the same civil rights laws.

### The Lure of Fulton

A vast complex about 10 miles south of Lake Ontario, Miller's Fulton plant opened in 1975 and quickly became a magnet for college graduates of all races seeking management careers. In an economically depressed town of fewer than 13,000 residents, 98 percent of them white, it was an oasis of diversity.

Mr. Faison was a typical recruit, part of an initial work force of more than 2,000. Now 43, the former Marine with a degree in history and education from North Carolina Central University was hired in 1976 as a packaging supervisor. Within three years, he said, he became the first black at the plant to be promoted to middle management. As a packaging superintendent, he managed nearly 75 people, "about 80 percent of whom were Caucasian," he said. "That's when the trouble started."

Easily accessed through hundreds of telephones around the plant, the paging system became a vehicle for foul language and abusive comments. "Nigger," black employees say, was a common term.

At his supervisors' suggestion, Mr. Faison began a written log of derogatory remarks in September 1982, keeping it at a desk a floor above the packaging area. "It was a feeble attempt to do something," Mr. Faison said. In the first three months, at least two dozen racial or sexual references to him and other employees were logged.

"It was humiliating," Mr. Faison said. "They talked about my mother, my mother's sexual preferences, whatever they wanted. And the log shows only part of it. You couldn't always stop working to run up the stairs to write in the log."

The log was discontinued in 1983. Testifying in a 1984 sexual harassment case against Miller, Bruce Olm, a supervisor and custodian of the log, said the abusive messages on the paging system had ended by then. However, nearly a dozen current and former Miller employees — black and white, management and union — dispute that.

"What bothered me so much," said Michael Oldenburgh, a white manager who worked at the plant until 1984, "was that this was a company using its commercials to portray itself as the All-American company. But guess what? They failed miserably in Fulton."

Mr. Butler, the Miller lawyer, said the corporate office first became aware of a problem with the paging system in 1983, when Mr. Faison "said he had been subjected to two abusive pages." Mr. Butler said that plant officials attempted to learn the identity of the abusers, to no avail.

But Mr. Faison, who said his complaints were far more numerous, pointed out, "If that's all I complained about, why did the F.B.I. agree to look at the case?"

Meanwhile, other objectionable behavior persisted.

George Clarke, a black who retired as superintendent of maintenance in 1988, recalled several incidents. "Chicken bones kept appearing in my desk," he said. "They also erected a tombstone in the courtyard with a sign that said, 'George Clarke, rest in peace,' and there were chicken bones sprinkled over the grave. These people went to great lengths."

He said he informed his superiors of each incident, but never discovered who was responsible.

Cynthia Brewer, a black who resigned last September, has a claim against Miller in the state human rights division, charging that plant officials discriminated against her after she spoke to the F.B.I. in her role as head of security and safety manager, as part of its investigation of

Mr. Faison's charges.

Mr. Faison, now the human resources director for the municipal bus company in Syracuse, said he once encountered a noose hanging from a gate and said that people periodically left racially offensive messages on his beeper number.

Black union workers say they suffered similar indignities. J.D. Smith, a 38-year-old machinist who has worked in the plant since 1976, said that in addition to harassment, black union workers were often assigned to "less responsible jobs" than whites. He said he complained to union representatives, Miller officials, and state authorities. None, he said, took action.

Frank Carelli, business manager for the International Association of Machinists and Aerospace Workers, local 2587, and a former Miller employee, said that "in an industrial complex that large, sure they have racial incidents. Nobody is immune to that and I truly believe that the Miller Brewery is no different than General Motors or anybody else. You just have to adjust and deal with it."

But a union representative (who, like Mr. Carelli, is white) who spoke on the condition of anonymity said black workers in the plant suffered "unmerciful and unrelenting" abuse and that "until recently," Miller officials "never dealt with it."

Jerry Church, manager of the plant for 10 years until his retirement in 1990, said the paging system caused "sporadic problems," but that he never heard any objectionable remarks himself. He also said "never was anything formally" brought to his attention. "But in hindsight," he added, "the company should have dealt with it."

Miller apparently recognized a need to address racial tension at the plant. To replace Mr. Church, it brought in David Green, who had spent 11 years at Miller's brewery in Albany, Ga. Mr. Green, who is white, said his success in harmonizing a racially mixed work force in Georgia earned him the transfer. (At Miller, neither Mr. Butler nor Mr. Brophy would discuss Mr. Green's selection. "That's personnel stuff," Mr. Brophy said. "If we discussed any aspect of it, we'd be in trouble.")

As Mr. Green recalled it: "When I got there, it was obvious what the problem was. Miller wasn't focusing on the harassment. They were chasing people rather than heading off what was at the heart of the issue, and it wasn't getting any better."



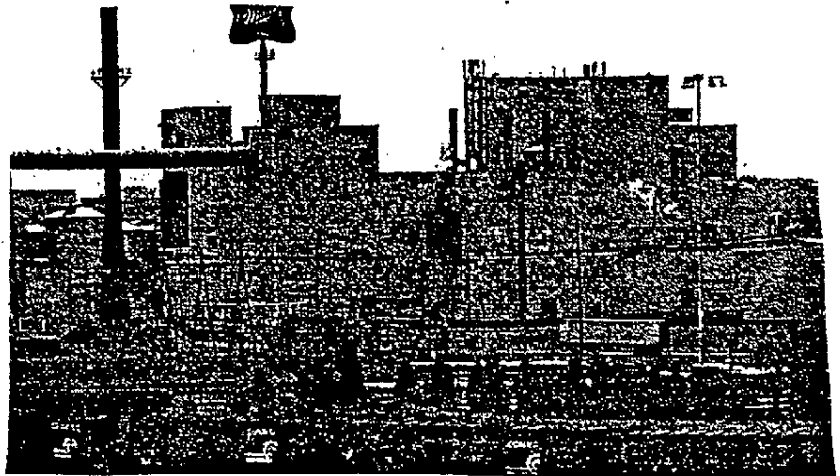
Nicholas Pirezelli Photography

Waverly Faison, filing suit.

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Michael Chomkowski for The New York Times

Miller's plant in Fulton, N.Y., which was a magnet for would-be managers of all races.

### Miller Brewing's Fulton Plant: A Picture of Abuse

**1970's** Miller opens a new brewing plant in Fulton, N.Y., and hires Waverly Faison as a packaging supervisor and Harold Thomas in production. Both men are black. Mr. Thomas is promoted to production supervisor; Mr. Faison becomes the first black promoted to a middle-management position at the plant, as a packaging superintendent, in 1978.

**1979** Racial epithets and abusive language begin to be heard over the plant's public address system. Other incidents of racial and sexual harassment begin.

**1982** At the request of a supervisor, Mr. Faison and other employees begin keeping a log of offensive remarks heard over the loudspeakers.

**1983** Executives at Miller headquarters in Milwaukee become aware of a problem with offensive remarks over the Fulton loudspeakers, according to Bert Butler, a company lawyer.

The log is discontinued because a supervisor says improper use of the public address system has stopped.

**1987** Mr. Faison, laid off with several hundred other workers in 1984, files a state racial discrimination action against Miller.

**1990** David Green is transferred from Georgia to become plant manager at Fulton. He begins programs to promote better race relations, but abusive incidents continue.

**1991** On a psychiatrist's advice, Mr. Thomas takes a leave of absence. Abusive remarks over the loudspeaker system abate. Later in the year, Mr. Thomas files a complaint against Miller with the state human rights division.

**1992** When Mr. Thomas returns to work, the abusive loud-speaker remarks resume. Mr. Green has the public address system removed.

Mr. Faison and Mr. Thomas take their cases to the United States Attorney. The F.B.I. investigates, but no charges are filed because no perpetrator is positively identified.

**1993** The F.B.I. reopens the case after Mr. Faison provides a new list of witnesses.



Michael Chomkowski for The New York Times

Harold Thomas, a Miller manager, says racial violence caused the smashed window at his home.

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Mr. Green formed a multicultural steering committee and instituted "consulting pairs," in which one black employee discussed issues with one white, or one man with one woman. He also met with managers to stress the need for attitudinal change and got agreements from union officials and other plant leaders that any objectionable behavior would stop.

But incidents continued. In two, during the fall of 1990, security officers found messages in restrooms saying to "kill" black people.

Harold Thomas, now 43, was a graduate of Morris Brown College in Atlanta with a degree in biology and psychology when was hired by Miller in 1977. He was promoted a year later to production supervisor, a position he still holds.

He said he felt so threatened by the verbal abuse, vandalism (a tampered air valve on a front tire, a smashed patio window at home) and overall atmosphere at Miller that "sometimes I couldn't do my job effectively." Those feelings led to his medical leave of absence, beginning in February 1991, at partial pay.

Mr. Thomas said he never filed a formal complaint at the plant because he "had always been told to follow the chain of command. . . I'm not a boisterous person. If I started shouting and jumping on tables, they would have thought I was out of control."

But in a sworn affidavit filed with his state case in June 1991, Mr. Thomas listed 21 instances in the seven months leading to his leave in which he was paged in the plant or on his beeper in an offensive context. He said he notified a superior each time.

The personnel administration manager for the plant at the time, Michael C. Sigona, who has since left the company, argued in response that the complaint should be dismissed because the brewery had "done everything it could be expected" to do to learn the identity of those responsible for the pages.

The offensive pages subsided when Mr. Thomas began his leave, according to Mr. Green, but resumed when Mr. Thomas returned 11 months later. Mr. Green decided to remove the paging system. A month later, he was asked to resign.

Mr. Green said that subordinates had complained to the corporate office, a view shared by several former Miller employees. Sam Crumpton, a black who is a retired Miller supervisor, said people in Milwaukee were told by his colleagues that Mr. Green was engaged in "white-male bashing." Mr. Butler and Mr. Brophy again declined to discuss any aspect of Mr. Green's employment.

By late last year, Mr. Thomas began wondering if these episodes had violated his civil rights. His lawyer recommended he meet Anita Roberts, whose client, Mr. Faison, was proceeding along the same path. Mrs. Roberts suggested the two combine efforts, in taking their case before the United States Attorney in Syracuse.

## Enter the F.B.I.

The F.B.I. "largely substantiated" some of the allegations, according to a letter to Miller's lawyers in Syracuse from Paula Ryan Conan, an Assistant United States Attorney. But without evidence to identify the perpetrators, she wrote, neither her office nor the Justice Department could take any action against Miller.

But she chastised the company for what "may be a deep-rooted problem at the plant" and for the "appearance of endorsement-by-inaction" that allowed the alleged acts to continue.

Unsatisfied, Mr. Faison presented the F.B.I. a list of additional witnesses, some of whom, he said, "have direct knowledge" of who was responsible for various of the incidents. Mrs. Roberts said that the F.B.I. is still interviewing witnesses.

Mr. Thomas, meanwhile, reports to work each day. "I still look over my shoulder," he said. "They have threatened my life. But I'm not leaving. If I walk out, I'm gone, and Miller will never address the issue." ■

## The Case Against Ford

**C**LARENCE A. HOLCOMB, a 44-year-old manager for the Ford Motor Company in St. Louis, claims he has suffered racial discrimination and harassment as a Ford employee since 1977. He says he was passed over for promotions and pay increases, made the butt of racial slurs, and, after he filed a complaint with the Equal Employment Opportunity Commission, subjected to false claims of bad performance, threatening his employment.

Mr. Holcomb's charges are included in a class action suit filed earlier this month against Ford in Federal district court for Minnesota. He is one of 12 plaintiffs — black managers at Ford facilities around the country — with at least one common complaint: that they suffered as a result of unfair performance evaluations.

Judith Muhlberg, a Ford spokeswoman, said the company has a "very well-developed and disciplined program for considering the performance of all employees," but

charges of discrimination of this kind are hardly unusual in America. Last year, the E.E.O.C. compiled 125,217 complaints of racially motivated discrimination or harassment nationwide, up 8.5 percent from 1991.

"We probably get 200 queries a week," said Paul C. Sprenger, whose Minneapolis firm, Sprenger & Lang, specializes in employment litigation. The growing number of complaints is a result, he added, of relaxed labor-law enforcement under the Reagan and Bush Administrations.

In the case against Ford, the plaintiffs charge that the company has "engaged in a general practice of discriminating against black persons and denying them equal opportunities." Ford is also charged with failing to hire and recruit blacks on an equal basis with whites.

This, Mr. Sprenger said, is a "second generation" suit. The first generation meant getting minorities hired. "Now," he said, "we have to make sure they are treated fairly."

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# Hefty comeback for Miller Lite slogan

By Martha T. Moore  
USA TODAY

Trying to reverse two years of sales declines, Miller Lite has revived its venerable "Tastes great, less filling" slogan.

In TV ads that begin tonight during the National Basketball Association and Stanley Cup hockey finals, beer-drinking viewers who can't decide between watching, say, a sumo wrestling match and a high-diving championship get to watch both — sumo wrestlers launching themselves off the high board. The jokes play on Miller Lite's tastes great-less filling combination.

Miller used "Tastes great, less filling" for 18 years in "All-stars" ads starring retired athletes such as Bob Uecker. But in 1991, trying to appeal to a younger audience that didn't care about aging jocks, Miller dumped the campaign and the agency that created it, Backer Spielvogel Bates. Backer continues to create ads for



**BIG SPLASH:** Scene from Miller Lite ad.

other Miller brands.

Ads from Lite's new agency, Leo Burnett, carried the slogan "It's it and that's that," which last year turned into "C'mon, let me show you where it's at." Most of the commercials focused on young people partying in bars.

Advertising critics were underwhelmed. "It was a tremendous mistake to move away from" the old slogan, consultant Tom Pirko of Bevmark says. "The campaign was tired, but the slogan wasn't."

Paul Basquin, Miller's light-beer chief, says he has looked at 100 campaigns in the two years since the all-stars were retired. But he denies that the recent campaigns were flops. "The 'C'mon' campaign ... did an excellent job of making us more competitive in the (light-beer) category. We had to get to that point before we could move forward."

In fact, Miller Lite, which declined 5% in volume shipments in '91 and '92, needs to recapture drinkers who have defected to rivals Bud Light, up 10% last year, and Coors Light, up 3%, Benj Steinman of *Beer Marketer's Insights* says. Premium-priced brands like Lite and top seller Budweiser also have lost ground to lower-priced light beers like Anheuser-Busch's Natural Light.

ADVERTISING AGE, JUNE 14, 1993

## Reviving Miller Lite: Can new ads do this?

By Ira Teinowitz

Miller Brewing Co. officials believe they have found the advertising fix for Miller Lite in the new \$83 million "Can your beer do this?" campaign.

Two years after abandoning Lite's 17-year-long "Tastes great, less filling" campaign following the account's move to Leo Burnett USA from Backer Spielvogel Bates, Miller is returning to humor but with a fresh approach.

The new campaign broke June 9 and replaces "Come on, let me show you where it's at."

"The 'Come on' campaign had clearly put us back in the ballpark, and this beats 'Come on,'"

said Dick Strup, Miller senior VP-marketing. "It's very effective against the competition.

"We wanted a campaign that clearly leveraged the brand equities of 'Great taste, less filling,' the

■ **Garfield reviews Miller Lite's new spots—Page 52.**

humor and the camaraderie. This executional device had all three. It beats what is on the air currently, and it offers opportunities to leverage in other areas of the marketplace that 'Come on' didn't have."

Mr. Strup declined to predict the new advertising's effect on

sales, noting that pricing battles in the industry are again increasing and have put premium beers on the defensive.

Both Stroh Brewery Co. and S&P Corp., marketer of Pabst and other beers, have drastically cut prices on their non-premium beer. For example, over Memorial Day weekend in Chicago, various discounts had Stroh's Schlitz beer down to \$1.99 a 12-pack.

The Miller campaign came after months of extensive research and a month of tests in Denver, Milwaukee and Corpus Christi,

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Guy No. 1: Look, it's "Big Shot Lawyers" . . .  
 Guy No. 2: Put "Calf Roping" back on!  
 Guy No. 1: Let's watch both . . .



Anncr.: Miller Lite presents . . . "The Big Lawyer Roundup!"  
 Anncr.: There's Billy Pugh goin' after that divorce lawyer that took away his bass boat.



Guys: Get 'im!  
 Anncr.: Got 'im.  
 Anncr.: Brought to you by . . . Miller Lite. If you can combine . . . great taste and less filling . . . you can



combine anything.  
 Anncr.: Check it out, Bobby. Here comes a big, rich tax attorney!  
 Crowd: Get 'im.  
 Guy No. 1: This is some beer.



Anncr.: Great taste, less filling. Can your beer do this?

(Cont'd.)

Texas. Miller used its sponsorship of NBC's coverage of the National Basketball Association finals and ESPN's coverage of the National Hockey League's Stanley Cup to launch the new campaign.

Besides returning to humor, the new campaign returns to full use of the old tagline, though in a slightly different form. Instead of the original "Tastes great, less filling" from New York-based Backer, Miller is using "Great taste, less filling."

Instead of using famous former athletes, the new spots offer viewers crazy combinations of TV shows, created after two people arguing over what to watch hit their TV with a Miller Lite.

In one spot, a debate between watching a TV series on lawyers or one on calf roping turns into a program featuring rodeo cowboys roping lawyers (a divorce lawyer and a tax lawyer are first out of the gate).

"We think we have come up with [a campaign] that will put us in the world of superior beer advertising for the brand," said Paul Basquin, Miller's low-calorie category director.

The brand needs some help. Lite, the nation's No. 2 brew, continues to decline, with last year's shipments down 4.7% to 18.1 million barrels, according to *Beer Marketer's Insights*.

Since abandoning the "Tastes great, less filling" campaign, Lite has gone through four or five major advertising changes, though Miller claims all but the initial change to "It's it and that's that" were executional changes under a single "best beer" strategy.

A transitional campaign that broke in May 1991 after Burnett. Chicago, took over the account downplayed "Tastes great," calling Lite "America's favorite light beer." Two months later, a new campaign abandoned "Tastes great" for the product-oriented "It's it and that's that."

By March 1992, "Come on, let me show you where it's at" was appearing in spots and four months later had totally supplanted "It's it."

By last summer, "Tastes great, less filling" had crept back into all spots in the line "one great taste that's less filling."

This year, the line became a stronger focus in all of Miller's commercials and a main focus in the new campaign. □

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# Molson watchers glued to bottom line

By Paul Brent

Financial Post

MARSHALL COHEN must be wondering these days what a company has to do to get some respect from investors.

Cohen, president and chief executive of Molson Cos. Ltd., got the company off to a flying start this year with some moves that observers agree have the company well positioned for growth. First, in January the Toronto company secured access to the huge U.S. market by selling a minority stake in Molson Breweries to U.S. giant Miller Brewing Co., pocketing \$180 million and tapping into Miller's muscular marketing and distribution system.

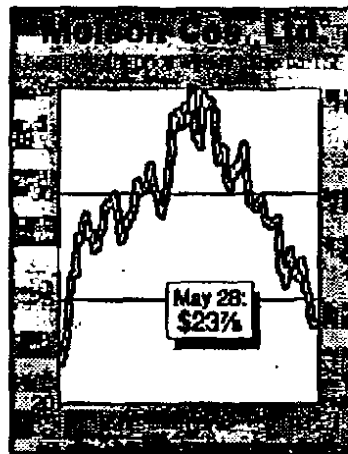
More recently Molson has stepped up the rollout of its white-hot Aikenhead's Home Improvement Warehouse chain. Not satisfied with vacuuming up market share in its Toronto-area base, Aikenhead's this month unveiled an ambitious expansion plan to build a dozen of its 120,000-square-foot monsters in Vancouver, Calgary and Edmonton.

While these moves set the stage for growth, they are a drag on earnings for the short term. Investors have responded by sending Molson class A shares tumbling. From a 1992 high of \$36, shares are now trading in the \$23-\$24 range and setting new yearly lows each week.

The investment community points to a 10% decline in year-end profit before unusual items and \$157 million in fourth-quarter writedowns as justification for their skittishness.

Restructuring costs in its problem-plagued U.S. Diversy cleaning operation chipped \$47 million off Molson's balance sheet and it took provisions of \$83 million against its Beaver Lumber chain. Beaver, a relatively high-priced player in the home improvement market, is getting hammered by none other than Aikenhead's, and plans to close 30 urban stores and retreat to smaller centres.

Virtually no one in the investment community expects things to get better soon. "The company is in for another tough year," says Michael Palmer, president of Equity Research Associates Inc. of



Toronto. "The Aikenhead's thing isn't going to kick in for a couple years — if it does — and the beer business isn't going to be easy for Molson either."

Startup costs meant a \$10-million loss this year for Aikenhead's and the faster rollout will push breakeven from mid-1995 to the end of that year, analysts predict. And Aikenhead's is the brightest star in the Molson universe.

"There are a couple of reasons why the share performance has some softness to it," said Barry

Joslin, Molson senior vice-president of public affairs. "This was the first year in a number of years the company hasn't registered a profit improvement. Also Diversy and Beaver. [Shareholders] want some clear proof that we are dealing with those problems."

Molson's brewing business, which last year generated 33% of sales and 65% of operating income, is also a concern, with beer consumption steadily declining and the prospect of low-cost U.S. competitors entering the market. Molson's 40%-owned brewery last year saw its market share slip about two points to 50.5%, with share lost mostly to arch-rival John Labatt Ltd.

Molson Breweries could conceivably regain some of that share with new product introductions like ice beers, but any real growth has to come from higher U.S. sales generated by the Miller alliance. Most observers expect that to take at least two years.

Despite the significant and admitted challenges, Molson shares are not expected to fall much below current levels. In February the company announced plans to

buy back 4.48 million non-voting class A shares and 765,000 class B voting common shares. Molson has more than 44 million class A shares outstanding and more than 15 million class B shares in circulation.

"Thus far we've bought back a little more than one million in total, mostly class As," said Joslin. "The rationale is that we think at our current prices our shares are undervalued, and it will have some modest improvements on earnings per share. It'll certainly send a signal to the market that we have a lot of faith in our company."

Molson's buyback may keep prices from falling much further but it's not expected to push up prices as investors wait for improvements.

"In my opinion it's dead money for the next 12 months," said Steve Holt, analyst with Wood Gundy Inc. of Toronto.

"In the longer term there are a lot of positives, the Miller deal, the resolution of the retail side. Longer term, it's actually an interesting story."

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Labatt's Bruce Elliot toasts the Ontario launching of Wildcat beer in Toronto yesterday.

PETER REDMAN/FINANCIAL POST

## Labatt's new Wildcat beer to battle U.S. competition

By Paul Brent

Financial Post

PREPARING for tougher competition from U.S. brewers, Labatt Breweries of Canada Ltd. yesterday launched its Wildcat discount brew in the key Ontario market.

The Toronto-based brewer said the "popular-priced" beer, first introduced this spring in Alberta, will satisfy consumers looking for cheaper, non-American suds.

Wildcat, which carries the slogan "We've tamed the price, but not the beer," is aimed at "the Schlitzes and the Pabsts of the world," said Bruce Elliot, Labatt vice-president of marketing. "This is a response to what the consumer wants and what is currently happening in the marketplace."

Priced at \$24.95 (\$1.45 less for a case of 24 than regular beer), Wildcat is expected to soak up a significant share of the estimated \$60-million Ontario market for discount beer.

The Wildcat launch also takes some wind out of the sails of arch-rival Molson Breweries, which today is to launch its own discount-priced Carling brand in Ontario. "It appears that our competitor got wind of our plans and threw a press conference together," said Molson spokesman Charles Fremes.

The brewer is celebrating record profits and mar-

ket share — 43.7% nationally — due largely to the successful launch of Labatt Genuine Draft last year and Labatt Ice this spring.

The brewing results come despite a \$70-million, or \$1.12-a-share, loss by parent John Labatt Ltd. in fiscal 1993. The company blamed the loss on a \$173-million provision from the writedown of its U.S. dairy operations and costs related to the closing of its Saint John, N.B., brewery. The loss compares with net earnings of \$101 million (\$1.04) in 1992. Total restructuring costs for fiscal 1993 were \$45 million.

For the year ended April 30, 1993, sales were \$2.14 billion, up 24% from \$1.73 billion last year.

Earnings before charges were \$1.63 a share, up 15% from \$1.42 a share last year.

On the brewing side, earnings before interest, restructuring charges and taxes rose 22% to \$218 million. Sales rose 7% to \$1.67 billion.

Yearly sales at the entertainment group jumped 46% to \$546 million, aided by the full-year contribution from Supercorp and BCL, and also from revenue increases by JLL Broadcast Group, the Toronto Blue Jays and Supercorp. Earnings fell 3% to \$56 million due to lower Blue Jay profits, which offset gains at the Broadcast Group and BCL.

For the fourth quarter, Labatt posted a loss of \$204 million (\$2.64) compared with a loss of \$23 million (36¢) a year earlier.

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