



CITIZENS

for

Limited Taxation

The Commonwealth Activist Network

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“REIMBURSEMENT”:

The True Intent and Purpose for The “Tobacco Settlement” Funds

**Excerpts from: Statement on the Tobacco Settlement
by Charles M. Condon, Attorney General of South Carolina
November 20, 1998**

As Attorney General, my legal role largely ends with that acceptance. It is now up to the Governor and to the General Assembly to decide whether to trigger the legislative mechanisms required and what to do with the funds received.

However, as counsel to the State of South Carolina, I feel a responsibility to make a recommendation of principle in the strongest terms possible.

These funds - the \$2.2 billion dollars designated for South Carolina - are reimbursements - reimbursements to the taxpayers of our state for dollars already spent.

It would be a terrible injustice if those funds were used to pay for more government programs and more bureaucracy or to grow the government in any way.

Therefore, in making this announcement, I would also like to issue a direct challenge to Governor-elect Jim Hodges. My challenge is this: Will you join me in supporting the use of these funds only for the purpose of giving tax relief to the people of South Carolina and not for more government spending?

Let's give this money back to the taxpayers. That could take the form of car tax relief, income tax relief for seniors or simply a scheduled rebate to all taxpayers. The point is we should pledge this money to tax relief only.

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Excerpt from: COMMONWEALTH OF MASSACHUSETTS, Plaintiff,

v.

PHILIP MORRIS INC., et. al.

The Complaint

Massachusetts' action is brought against six cigarette manufacturers, two trade associations in the tobacco industry, and two Massachusetts wholesalers of tobacco products. The

Every Tax is a Pay Cut . . . A Tax Cut is a Pay Raise

complaint alleges that "each year, the Commonwealth must spend millions of dollars to purchase or provide medical and related services for Massachusetts citizens suffering from diseases caused by cigarette smoking." The "smoking-related costs to the Commonwealth" are said to include, but not be limited to, "medical assistance provided under Massachusetts' Medicaid program" and "medical assistance provided under the Commonwealth Health Program." The complaint seeks "both monetary damages and injunctive relief."

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**Excerpts from: COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, ss. SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
Civil Action No. 95-7378-J**

**SUR-REPLY MEMORANDUM OF COMMONWEALTH OF MASSACHUSETTS
IN FURTHER OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

The plain, express purpose of the Massachusetts enactments is to enable the Commonwealth to recover from liable third parties the "full amount" of Medicaid expenditures provided by the Commonwealth. ...

Under the statutes, the Commonwealth's loss (or "injury") is the legally mandated expenditure of funds to provide medical services to Medicaid recipients harmed by defendants' conduct. ...

The statutes expressly authorize the Commonwealth to sue liable third parties directly for reimbursement of its Medicaid expenses...

For the reasons stated in the Commonwealth's Opposition, the Commonwealth's statutory claims for reimbursement of Medicaid expenditures accrue each time the Commonwealth makes Medicaid payments for which reimbursement is sought. ...

[T]he "magic" word appears in the federal Medicaid statute, which obligates the Commonwealth to "seek reimbursement" for Medicaid expenditures from liable third parties.

...

As the Supreme Judicial Court has held, **reimbursement is simply "repaying or making good the amount paid out."**

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**Excerpts from: STATE OF NEW YORK, Plaintiffs,
- against -
PHILIP MORRIS INCORPORATED, et. al.
STATEMENT OF FACTS**

Historical Context

In 1994, a number of states took the unprecedented step of commencing legal actions against manufacturers of tobacco products and other related entities seeking, inter alia, money damages for the substantial public health costs incurred through Medicaid and other programs associated with the treatment and care of persons suffering from tobacco-related illnesses such as cancer, emphysema, and heart disease.

By 1997, several additional states, including the State of New York, commenced separate lawsuits against tobacco manufacturers also seeking to recover public health costs associated with tobacco-related illness. As more and more states joined in the effort to recover these enormous costs through litigation, settlement discussions on a national level between the various states and tobacco manufacturers were pursued.

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Excerpts from: **Forty-Six States Agree to Accept \$206 Billion Tobacco Settlement** **By Milo Geyelin, The Wall Street Journal** **November 23, 1998**

Forty-six states agreed to accept a \$206 billion settlement with the tobacco industry over public-health costs connected to smoking, setting off a scramble within the states over how to spend the money.

The deal, which ends lawsuits brought by the states against the industry, is the largest civil settlement in U.S. history. It is to be signed by state attorneys general and officials of the nation's five largest tobacco companies today. ...

The 46 states and five U.S. territories that agreed to the settlement will receive their money over 25 years. The amounts will depend on the numbers of Medicaid recipients on each state's rolls, the cost of medical services and the amount each state contributed to Medicaid coverage historically, said Colorado Attorney Gale Norton, one of eight attorneys general who forged the agreement.

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Excerpts from: **Commentary; Lining Up for the Tobacco Money** **By Katherine Kersten, Minneapolis Star Tribune** **December 16, 1998**

Minnesota's \$6 billion tobacco free-for-all is about to begin. Folks, get ready to witness the boondoggle of the century.

Forget the fact that the tobacco lawsuit was waged in the name of the taxpayers, ostensibly to compensate them for the smoking-related costs they have borne. At this moment, organizations ranging from HMOs to ad agencies to schools are lined up 12 deep to grab a piece of the mind-boggling tobacco windfall for themselves.

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Excerpts from: Hospitals Want Tobacco Money

Associated Press

December 17, 1998

Seventy Michigan hospitals will ask an Ingham County judge next week for a share of the state's \$8.2-billion tobacco settlement.

The settlement, announced last month, is intended to compensate states for Medicaid coverage of smoking-related illnesses. Hospitals say they deserve some of the money since the amount the state pays for Medicaid patients doesn't cover the patients' total costs.

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Excerpts from: Illinois Hospitals File Seeking Share of Tobacco Settlement

Bloomberg Press

December 7, 1998

Sixteen Illinois hospitals filed a motion in Cook County Circuit Court in Chicago last week seeking a share of the state's \$9.1 billion settlement with tobacco companies, according to Crain's Chicago Business. The hospitals requested in the filing the right to sue the tobacco industry independently if they can't get a piece of the settlement. The hospitals seek to recover the cost of treating Medicaid patients with illnesses related to smoking, Crain's said.

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Excerpts from: Smokescreen; The Ifs and Buts of the Tobacco Settlement

by Sylvia Nasar, New York Times

November 29, 1998

Last week's \$206 billion settlement between the tobacco industry and 46 states is supposed to put Big Tobacco on the run. The agreement requires cigarette makers to compensate states for the medical costs of treating smoking-related diseases.

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Excerpts from: Lawyer Who Took On Tobacco is a Fighter

by Wendy Koch, USA TODAY

November 24, 1998

Under the deal signed Monday, the nation's four largest tobacco companies will pay 46 states \$206 billion over 25 years for them to drop their lawsuits to recover the

health-care costs of treating smokers.

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Excerpt from: A New Tobacco Deal
Editorial, Washington Post
November 17, 1998

A new agreement has been reached between the major tobacco companies and the states that have sued them to recover past tobacco-related health care costs. The agreement is more modest than the one that became the basis for the tobacco bill that failed in the last Congress. It would settle the state lawsuits, mainly for money -- perhaps a fifth of a trillion dollars over the next 25 years.

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Excerpts from: Editorial, New York Times
November 17, 1998

The deal negotiated by eight state attorneys general and the tobacco industry would do far too little to combat teen-age smoking, the primary goal that any legal settlement should advance. Instead, this proposal is mostly a financial agreement in which the companies would pay off state lawsuits for Medicaid costs incurred for smoking-related diseases.

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Excerpts from: \$206B Tobacco Deal Would Limit Ads, Repay States for Health Costs

by Harry Berkowitz, Newsday
November 16, 1998

Negotiators yesterday completed a \$206-billion deal, including \$24 billion to New York State, for tobacco companies to reimburse states for smoking-related health costs and to restrict marketing and advertising of cigarettes.

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Excerpts from: Feds May "Rip Off" Tobacco Money
by Randy Ludlow, Cincinnati Post
November 18, 1998

Sixty percent of Ohio's \$9.9 billion share of a potential settlement with the tobacco industry could disappear if the federal government seeks to "rip off" the states by claim-

ing Medicaid reimbursement, warns Ohio Senate President Richard Finan.

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Excerpts from: Clinton sets own agenda for tobacco settlement

By Laura Meckler, Associated Press

December 5, 1998

The Clinton administration contends the federal government has a right to some of the money.

Many of the original state lawsuits were to reclaim Medicaid spending on sick smokers. Because the federal government pays for at least half of Medicaid in each state, the law requires Washington to recoup at least half of any settlement, administration officials say.

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Excerpts from: State's Tobacco Funds in Danger?

by Brian Ford, TulsaWorld

December 17, 1998

The attorney general says the federal agency that oversees Medicaid may get a substantial portion of the money.

A huge part of Oklahoma's \$2 billion tobacco settlement could wind up in the hands of the federal agency that runs the Medicaid program unless Congress says otherwise, state Attorney General Drew Edmondson warned Wednesday.

Oklahoma is to receive \$2 billion over the next several years as part of a \$206 billion settlement between several states and the nation's top six cigarette producers. Oklahoma had filed suit to recoup money paid for Medicaid for tobacco-related illnesses. Medicaid receives most of its funding from the federal Health Care Finance Authority. The state pays for the rest.

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Excerpts From: McConnell; Give States Tobacco Money - Bill Would Block U.S. from Getting Any of Settlement

by Kirsten Haukebo, The Courier-Journal

December 13, 1998

U.S. Sen. Mitch McConnell said yesterday that he will sponsor legislation to stop the federal government from claiming any of the \$206 billion from the national settlement between tobacco companies and the states.

As things stand now, the federal government could claim up to 70 percent of Ken-

tucky's \$3.45 billion share of the pact.

That's because the states, in their lawsuits against tobacco companies, are seeking compensation for money spent under Medicaid to treat smoking-related illness, and Medicaid is largely a federally funded program. In Kentucky, about 70 percent of the program's cost is paid by the federal government.

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