

EDITORIALS



Fees galore

Where your money goes

ARKANSAS IS about to get an expensive education. So's the whole country when it comes to the huge new tobacco tax, deal, transfer payment and rake-off. But this state will have its view unobstructed. Because the lawyers who are demanding \$243 million in contingency fees—that's right, *two hundred and forty-three million dollars*—aren't being paid by the tobacco companies in a side deal. They've sued the state directly for their millions.

To quote from their suit, "Arkansas will be the only state or political subdivision in the United States to have its tobacco litigation recovery reduced by attorneys' fees." How lucky can you get?

The lawyers dunning the state say there's still time for Arkansas to list them as the state's attorneys, and let them collect their fees from the tobacco companies. That way, nobody might even notice.

But as it happens, the state's attorney general—Winston Bryant—settled Arkansas' claim against the tobacco companies without ever feeling the need to name these outside lawyers as attorneys of record. They still want to be paid \$243 million for things like doing research, renting office space in Little Rock, attending seminars, and travel expenses.

Now \$243 million might seem a tad high for such services—it certainly did to Winston Bryant, who's not exactly a big spender—but it's scarcely out of line when compared to what other law firms are getting. And nobody much objects so long as others, namely the tobacco companies, are paying the bill.

At last rising count, \$8.2 billion—that's right, *\$8,200,000,000*—has been awarded in contingency fees to lawyers representing just three states: Texas, Florida and Mississippi. The other states are due a total of some \$206 billion over the next 25 years, so you can imagine the astronomical sums lawyers will claim from that settlement. You'll have to, because the actual figures haven't been announced yet, and if they don't come from the states' share, who cares? Nobody except the lawyers, their heirs and assigns.

Only a state like Arkansas, where Winston Bryant drew the line, may actually perceive the pinch because our bill is no longer hidden. Otherwise, to quote Lester Brickman of Yeshiva University's Cardozo School of Law, everybody's happy: "The tobacco companies earn Wall Street plaudits by containing a potentially huge liability; the states' attorneys-general garner political capital in the form of headlines; and the plaintiffs' lawyers get rich beyond comprehension."

And just how rich is rich-beyond-

comprehension? To quote Professor Brickman, "Those lawyers who have done little work, and would like to take their windfalls and run, can collect up to a total of \$1.25 billion at the rate of \$250 million per year." But that's chump change compared to those who may be awarded billions from generous arbitrators—as in Texas, Florida, and Mississippi.

Professor Brickman concludes that "it is not out of the question that some states will award their trial lawyers total fees that exceed the amount that their state client has been awarded for a 25-year-period. In this feeding frenzy, the sky is not the limit. Fifty or more years from now, as mankind travels to the outer reaches of the solar system, lawyers will still be clipping their \$500 million tobacco coupons."

And it will all be paid for by the poor suckers, the folks hooked on tobacco who will be paying an extra 80 cents a pack to finance the settlement. Sure, states might have simply raised the tax on a pack of cigarettes 80 cents, but then the lawyers wouldn't have got their fees. Can't have that. Not in our lawyerbound society. It would have been unspeakably simple, sensible, and direct. The great tobacco rake-off of 1999 deserves a chapter of its own when Philip K. Howard writes a sequel to his little classic, *The Death of Common Sense: How Law is Suffocating America*.

ONLY IN a state like Arkansas, where a stubborn attorney general couldn't see paying lawyers who were never listed as attorneys for the state, may it become painfully clear just how this vast fund transfer from public consumers to private lawyers works. And now that frugal attorney general, Winston Bryant, is departing. He'll leave it to his successor, Mark Pryor, to handle this \$243-million detail.

Last time we talked to Mark Pryor about the impending tobacco settlement, it was at Homer's, the unofficial state Capitol at lunchtime. And he was salivating over more than the blue-plate special, talking about all the money the states stood to collect from the tobacco companies. Nobody had yet mentioned this state's paying a \$243 million contingency fee. Now one of his first tests as attorney general will be to see just how he handles that little bill.

Mark Pryor's response will say a lot about his idea of the public interest, and of private ethics. According to the American Bar Association's code of ethics, legal fees should be "reasonable." But there are codes of ethics and then there are the ways things are done. As you may have noticed, the two are not always the same.