NEWS CONFERENCE WITH ATTORNEY GENERAL JANET RENO AND ACTING ASSISTANT ATTORNEY GENERAL FOR THE CIVIL DIVISION DAVID W. OGDEN
TOPIC: FEDERAL TOBACCO LAWSUIT
U.S. DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE NW,
FIRST FLOOR, CONFERENCE ROOM B
WASHINGTON D.C.
12:05 P.M. EDT
WEDNESDAY, SEPTEMBER 22, 1999

ATTY GEN. RENO: This morning the United States filed a lawsuit in federal court in Washington D.C. against the major cigarette companies. In the complaint the United States alleges that for the past 45 years the companies that manufacture and sell tobacco have waged an intentional coordinated campaign of fraud and deceit. As we allege in the complaint, it has been a campaign designed to preserve

their enormous profits whatever the cost -- in human lives, human suffering, and in medical resources.

The consequences have been staggering. Each year 400,000 Americans die from smoking cigarettes. And as a result, each year the federal government alone spends more than $20 billion in taxpayer money just to treat diseases caused by cigarettes.

Last December, after an extensive review by Justice Department lawyers, I concluded there was a sufficient basis to prepare a litigation plan against the major tobacco companies. And for the last months, lawyers on the Justice Department's tobacco litigation team have worked to develop the facts and the law to make a final decision on whether to proceed. Today we are moving forward.

Today we filed a lawsuit that seeks to recover from the tobacco companies the billions of dollars that American taxpayers spend each year on smoke-related illnesses. As millions of cigarette smokers have gone into the hospital for lung cancer and emphysema, the American taxpayer has footed the bill. And over the bill that bill has added up.

Today, on behalf of the taxpayer, we're asking the tobacco companies to pay their fair share.

The companies named in today's complaint have long dominated the market for cigarettes in the United States, and over the last five decades, as discussed in the complaint, they have conducted themselves without regard to the truth, without regard to the law, and without regard to the health and life of the American people.

Internal documents that have come to light in recent years demonstrate that the cigarette companies have known more than they let on. They knew far better than the rest of us that smoking increases the risk of disease and death; they knew that nicotine is extremely addictive; they knew that the success of their business depends on inducing new customers, typically under 18 years of age, to become hooked on nicotine. That's why they targeted our youth, and that's why every day nearly 3,000 young people take up smoking.

As our complaint also asserts, the cigarette companies realized, since at least 1953, that the truth poses a mortal threat to their

businesses. Rather than divulging what they knew to be true, the companies sought to convince the American people of their concern for the public's well-being. As our complaint makes clear, at no time did they honor that commitment. Instead, at every turn they denied that smoking causes disease, and denied that it is addictive. As the complaint alleges, they placed profits above the public health.

Our goals in this lawsuit are simple. We want to recover health- care expenditures paid out by the federal government to treat tobacco-related illnesses. We want to require the tobacco companies to disgorge the funds that they earned through their unlawful conduct. We want to require the tobacco companies once and for all to disclose all relevant research on smoking and health. And we want to engage in counter-advertising and other public education campaigns to better warn our young people about the dangers of smoking.

I pledge today that we will work tirelessly to ensure that justice is done.

I now want to introduce David W. Ogden, the acting assistant attorney general of the Civil Division, who will discuss the lawsuit in greater detail.

David?

MR. OGDEN: Good morning.

As the attorney general has indicated, we allege that four and a half decades of misconduct by the cigarette companies has, not only harmed the public health, but it has cost the American taxpayer billions of dollars. That is why we are bringing this lawsuit today. The misconduct we allege spans more than 45 years.

Based on internal documents, we allege that the chief executives of the cigarette companies met at the Plaza Hotel in New York City, in January 1954, and agreed there to wage a long-term public-relations campaign based on fraud and based on deception.

We allege that, in carrying out that campaign, they pulled no punches. For decades, they repeatedly and consistently denied that smoking cigarettes causes disease, despite their knowledge that it does. They repeatedly and consistently denied that cigarettes are

addictive, even though they have long known, and deliberately exploited, the addictive properties of nicotine.

And they repeatedly and consistently stated that they do not market cigarettes to children, despite using marketing strategies that ensure minors continue to serve as their major source of "replacement smokers," a phrase actually used by cigarette company officials in their internal memoranda to describe America's youth.

We allege that the unlawful campaign went further than simple fraud. Under the campaign, we allege that the tobacco companies agreed to assure the public of their concern about issues of smoking and health. And we allege that, as part of that campaign, they promised to conduct independent objective research to safeguard the public health and to divulge whatever they learned.

In fact, however, we allege that they designed a research campaign to ensure that damaging conclusions were not reached and to generate faulty studies to cast doubt on the truth. And when they did not like the conclusions they reached, those conclusions never saw the light of day.

Based on their internal documents, we also allege that they agreed not to do research to make cigarettes safer and not to compete with each other through safer cigarettes.

As our complaint alleges, the tobacco companies targeted this campaign at existing smokers, who they have understood to be addicted to nicotine, and to young people, who are the companies' major source of new smokers.

Based on the companies' internal documents, we allege that their goal was to create doubt in the minds of the American public and to maintain an open controversy and public debate.

If they could raise false doubt in addicted smokers about the risks of smoking, few would muster the strength to quit.

The alleged campaign was very effective, as the death toll and staggering health bills attest.

Today's suit relies upon three federal statutes. The first statute is

the Medicare Care Recovery Act, or MCRA. MCRA provides that the United States government may sue to recovery medical costs when three conditions are met. First, a person is injured or suffers a disease; second, a circumstance exists where a third party is legally responsible for that injury or disease; and third, the United States is authorized by law to provide or pay for the medical treatment. Here we believe that millions of people have sustained injuries or suffered disease as a result of the unlawful conduct alleged in our suit. And the United States, through many federal programs, including Medicare, Defense Department health programs, Veterans Administration health programs, and others, has paid for their medical treatment.

The secondary payer provisions of the Medicare statute provide a second independent basis for recovery. Both this statute and MCRA, which I've already discussed, give the government a right to seek these funds separate and apart from any claims the individual patients might have. We allege that the tobacco companies violated tort law in several ways, including fraud, failure to warn, product defect, and voluntary undertaking, as well as violating state consumer protection statutes.

Finally, we are also relying on the civil provisions of the Racketeer Influence and Corrupt Organizations statute, or RICO. Under RICO, we allege that the tobacco companies committed numerous acts of fraud. As a result, we are seeking remedies, including disgorgement of ill-gotten profits, full disclosure of all documents on smoking and health, and funds for public education and smoking cessation campaigns.

In bringing this action, we owe a major debt to the state attorneys general, who brought and pursued similar lawsuits against the tobacco companies, lawsuits which settled for more than $200 billion over 25 years. Those suits forced the companies to disclose millions of pages of previously secret documents that have revealed the scope of the tobacco companies' misconduct we allege in our complaint. While extremely successful, those lawsuits concerned only Medicaid payments, payments made on behalf of lower-income Americans, which are borne both by the states as well as the federal government. But those state suits did not seek the billions of dollars the federal government spends on medical programs other than Medicaid.

That's what today's suit seeks to do.

I want to publicly thank and acknowledge the extraordinary efforts of our career Justice Department attorneys, who have worked since February to put together this case. The lawsuit that we have brought today is the result of their careful review of the facts and their recent analysis of the law. I am profoundly grateful for their efforts and their assistance. And I believe that, upon the conclusion of this litigation, the American people will owe them a debt of gratitude.

I would be happy to answer any questions you may have.

Q You are really talking about -- I mean, taking all the factors, when you take in how long this has been going on, recovery on the part of others, triple RICO damages, disgorging of the legal profits -- you are really talking about trillions of dollars, not billions of dollars. And if you are successful, you are talking about the possible end of the American tobacco industry. Do you see this suit in those terms?

MR. OGDEN: I do not. It is certainly not a goal of the litigation -- nor do I expect that this will bring about an end of the tobacco industry or the bankrupting of any companies.

In fact, just to clarify, we are not seeking treble damages under the RICO statute. We are invoking the equitable provisions of the civil RICO statute under which we can seek disgorgement of ill-gotten gains; that is -- we can require the payment of those profits that the tobacco companies made as a result of the fraud we allege. And we are also seeking injunctive relief.

Yes?

Q The major complaint talks about "all past actions, current actions and future actions." You are talking about a tremendous amount of money here, not the $200 billion that the states are given to 2020; you are talking about a huge chunk of money that could cripple this industry.

MR. OGDEN: I think it conceivably could be a large amount. The amount will have to be proved as a result of the proof that's adduced in the case. We are not suing with respect to future actions. We are seeking to stop the conduct. We are seeking future damages based on the past

actions.

Yeah?

Q (Inaudible.)

Q Will you -- (inaudible) -- an outside lawyer to try the case? Or why haven't you hired that person yet?

MR. OGDEN: We have made no final decision on that question.

The career lawyers in the department have done a superb job preparing the case. They are a very, very talented group of lawyers.

It's certainly possible that we would go outside the department to bring someone in, as a Justice Department employee, to work this case. We certainly would not proceed based on any contingent arrangement. But no final decision has been made about that.

Back here?

Q This is a question for the attorney general.

The tobacco companies and their representatives say that this is "regulation by prosecution" and that this is a political act; that the president raised this in his State of the Union address in January, that the Justice Department had testified before Congress in 1997 that it didn't think it had a cause of action.

What is your response to the notion that this is a political act, following through on the wishes of the White House, as opposed to something that has a sound legal basis?

ATTY GEN. RENO: First of all, with respect to the 1997 testimony, that related to Medicaid, which is a cause of action that the states hold. And our lawyers advised us at the time that we must look to the states to recover any federal monies that were expended and that we stood behind the states in that regard.

That does not relate to the issue of Medicare and other payments made by the United States government.

And we have continually looked at that, because this has been a matter of real concern to me over the years as people first told me that we did not have a cause of action with respect to Medicaid. Then we looked carefully at the statutes, went through all our possible causes of action, and in December of last year reached the conclusion that there was a basis for framing some litigation, but that it was going to require a tremendous effort. We advised the White House that we thought we could perfect a cause of action, but that it would have to be our determination after reviewing the facts. And we did so based on the evidence and the law and reached the conclusion that we could file this cause of action.

Q Mr. Ogden, the industry in the last couple of decades hasn't fooled anybody, or very many people, and certainly not the federal government, which puts warning labels on cigarette packages. The government has said it believes cigarettes are dangerous and addictive. So do you have -- is one of the big obstacles for you all to prove that the damages you seek to recover for are for those people who had no clue that smoking was dangerous, who were duped by this campaign, or can you include everybody, even those who already knew that smoking was dangerous and did it anyway?

MR. OGDEN: You have to realize a number of things about the lawsuit.

The first is it's dealing with a 45-year campaign over which time the amount of information that was in the public was radically different over that time. What we can -- what we believe we can show, what we've alleged is that the tobacco companies throughout that period and even on to the present time had superior knowledge to anything that the rest of us had about the properties of their cigarettes, both in terms of the threat that they pose to the public health, in terms of their addictiveness, in terms of what they might do to make a safer product, and the like, and that they deliberately withheld that information from the American public. What we hope to be able to show and what we expect to be able to show is that their deliberate falsehoods about their knowledge and what they knew and their attempt to create a controversy caused a large number of people to continue smoking, and that, indeed, was the very purpose of the disinformation campaign that they waged. They tried to get people to rely on them, to get to the bottom of the smoking and health controversy, and they created that.

Their goal was to create doubt. Remember, the key constituency for this campaign was addicted smokers, people who they knew, but it was not publicly understood, were chemically dependent on a substance. And they believed that if they could create enough doubt, that would dissuade large numbers of people from quitting, and that was the nature of the fraud.

On addiction, I think there's -- in terms of what is understood and what has been known, there's a very interesting story there. The tobacco companies have known, we believe and we allege, since the early 1960s that nicotine is a chemical substance that causes physical dependency and addiction. One of the companies -- we have internal records -- made a decision not to disclose their information in that regard to the surgeon general in 1963, and the surgeon general's report in 1964 did not find that nicotine was an addictive substance. The tobacco companies continued to deny that fact, and in fact, the surgeon general did not find that nicotine was addictive until 1988. Subsequent to that time, the tobacco companies continued to deny it, and even to this day have not squarely acknowledged it. Their withholding of that information and their continuing to create a debate about this issue, we believe, has had a significant effect.

Q But doesn't fraud have to be perpetrated against somebody in this case? I mean, I presume it would be the federal government. I mean, are you alleging that the federal government was the target of this fraud, or was it the public generally?

MR. OGDEN: Under the Medical Care Recovery Act, the federal government recovers when the federal government has had to pay out money when a third party has injured the recipient of the medical care in a way that's actionable under state law. So the fraud that we're dealing with is a fraud against smokers -- against addicted smokers, against new smokers who came to smoke. This statute allows the federal government to recover back its share of what was wrongfully imposed on it.

Q How far back can you go?

Q (Off mike) -- person by person?

MR. OGDEN: I'm sorry?

Q Won't you have to try the case person by person, which the courts have suggested is unlikely?

MR. OGDEN: Under both the Medical Care Recovery Act and the Medicare Secondary Payer Act, the United States has a cause of action independent of the rights of individual patients to sue. And what that will allow us to do is to prove directly what the federal government's harms are. This is not a class action situation, which courts have dealt with before, where you have multiple claimants seeking to recover their individual damages. We have a single plaintiff, the federal government, which has suffered a single injury as the result of a single course of conduct. And it is that single injury that we're seeking to recover for.

Q How far back in time can you go?

MR. OGDEN: Under the Medical Care Recovery Act, there's a three- year statute of limitations. Under the Medicare Secondary Payer Act, there is a six-year statute of limitations.

Yes?

Q Were there any attempts to initiate settlement discussions before you filed? And if there were not, could you explain why there were not?

MR. OGDEN: We have not had -- well, I would not comment on the question of settlement discussions.

Yes?

Q What are the chances this would be resolved before the end of the Clinton administration?

MR. OGDEN: We filed a lawsuit and we'll seek to pursue the lawsuit as expeditiously as we can, and it's really up to the court and the litigation to determine that.

Q Does the filing under civil RICO give you an ability to seek expedited handling of the lawsuit?

MR. OGDEN: That's not -- was not any factor in our bringing the cause

of action under the civil RICO provisions.

The important thing about civil RICO is that it allows us to obtain injunctive relief and to address not only -- that is, orders from the court to put an end to the fraud and to provide relief; it allows us to ask for, in addition to the payment of ill-gotten gains, it allows us to ask the court to order public education, to attempt to counter the effect of the tobacco industry's campaign, it allows us to seek to compel the tobacco industry to disclose all the information they have at this point about smoking and health, it allows us to seek programs to help the people who've become addicted as a result of the fraud. So the important thing about civil RICO from the standpoint of this litigation is that it allows us to address the fact that we've had this 45-year concerted activity and have the court put an end to it.

Here.

Q Would you be able to use of the testimony or any of the evidence that was gathered during the criminal investigation?

MR. OGDEN: There is a Federal Rule of Criminal Procedure, Rule 6e, which prohibits anybody other than the government lawyers who have been conducting the criminal matter to have access to that information absent an order of the court. And absent an order of a court, we would not be able to get that information. If a court were to order it, then that's the only circumstance under which we would.

Yes? Here.

Q Will you seek that order?

MR. OGDEN: I don't have any comment on that right now.

Q Could you go back to this aggregation question? Haven't the courts -- I mean, you are basically aggregating, I assume, millions of individual claims that the government has paid on behalf of smoking illnesses. And haven't the courts been reluctant to allow that kind of aggregation in single suits in recovery in private lawsuits? So in effect what I'm asking is, isn't this an unprecedented kind of a effort to get them to allow a single lawsuit to recover millions of claims?

MR. OGDEN: No, it's certainly not unprecedented. The state lawsuits, more than 40 states --

Q I think it's federal court. I'm sorry.

MR. OGDEN: Well, I'll point out that as a matter of precedent in general, the state lawsuits which proceeded on very similar theories to the theories that we are advancing, really, the theories that we're putting forward are the same theories that the states brought forward and that they relied upon to recover more than $200 billion for state taxpayers.

They face those same issues.

The cases I think you were referring to involve class actions or the bringing together of the claims of multiple individuals. And as I said earlier, this is a lawsuit by a single plaintiff -- the United States -- to recover its damages from this course of conduct.

Q The number must have come from something. It must have come from your looking at individual cases. Where did you get this figure from, what you used, except by looking at individual cases and except looking at the -- you know, those that died? Don't you have to show where the number came from.

MR. OGDEN: I'm sorry, when you say "the number" --

Q Dollar amount.

MR. OGDEN: The number that's in the complaint is not a number that reflects a particular demand for payment. What we have alleged is that each year the federal government expends in excess of $20 billion on tobacco-related medical costs. What we would actually recover would be our portion of that annual toll that is the result of the illegal conduct that we allege occurred, and it will simply be a matter of proof for the court which will be developed through the course of discovery what that amount will be. So we have not put out a specific figure, and we'll simply have to develop that as the case goes forward.

Over here.

Q You allege in your complaint that in 1954 meeting in New York City the companies essentially pledged not to compete against each other with lower tar cigarettes? Is that right?

MR. OGDEN: We allege that that was part of the agreement.

Q Wouldn't that be a violation of antitrust laws? And if so, why are you not pursuing it through that angle?

MR. OGDEN: Well, I'm not going to comment on any claims that we might not have brought. So I'm not going to respond to that.

Over here. Yeah.

Q Is there a criminal investigation -- (off mike)?

MR. OGDEN: There are no -- it is my understanding that there are no criminal investigations that are open at this time. That's what I've been told. I've read it in the press releases, you did, and that's my understanding.

Right here.

Q It appears the principal economic impact of the state lawsuits was to raise the price of cigarettes rather than to cut into the tobacco companies' profits. Is there any reason to expect maybe yours would be different if you succeed?

MR. OGDEN: Well, what we're doing is seeking the remedies for the American taxpayer that are available to us under the law. And what the consequences of that would be in terms of profits or prices I think I'm not in a position to speculate on.

Here.

Q Mr. Ogden, has the federal government ever used the statutes that you're mentioning to file such a claim before in which you -- and basically aggregating claims?

MR. OGDEN: The statutes have certainly been used in tort claims, large tort claims. There are cases involving bone screws, there are

cases involving breast implants, there are cases involving blood fractionators, in which the statutes have been used in large tort contexts.

Q Successfully?

MR. OGDEN: Yes.

Q What about the statute of limitations three to six years? Hasn't that tolled? Hasn't that expired since this fraud -- since the government caught onto this fraud?

MR. OGDEN: The statute of limitations under these federal statutes is triggered when the federal government makes a payment. Now, it's different than state statutes of limitations that apply in a case that a smoker would bring, for example, and so in our case we will be bringing claims with respect to payments that have been made during that period of time.

Here.

Q Is there a statute of limitations on RICO in connection with the distortion of the ill-gotten gains?

MR. OGDEN: There is no statute of limitations with respect to the equitable aspects of the RICO statute.

Yes?

Q Congress has so far not given the $20 billion -- maybe that figure's wrong -- that you've requested --

MR. OGDEN: Did you say 20 billion?

Q Yeah. (Laughter.) (Inaudible) -- the $20 million that the Justice Department requested to pursue this litigation?

How will you find the resources to do this?

MR. OGDEN: Well, we intend to continue to work with Congress to work with them to get the funding that we need.

It is $20 million that we requested. That sounds like a lot of money, but when you compare it to the amount of money that the state lawyers were paid to pursue their claims, it is a tiny, minuscule fraction; when you compare it to the amount of money that the tobacco companies will spend defending against this lawsuit, it is a tiny, tiny fraction. And when you compare it to what one state, California, did, California followed a similar course.

California decided to pursue their state claims with state lawyers, through their attorney general's office, and their budget was in the range of 13 to 14 million a year for a single state.

So we think the request is very reasonable, and we're optimistic that Congress will fund the lawsuit.

Here?

Q Is this the largest suit brought by the Justice Department in its history?

MR. OGDEN: Gee, I wouldn't even know how to go about measuring that. I don't know.

Q How optimistic are you for cooperation with Congress? I mean, Congress and the Justice Department aren't exactly getting along these days.

MR. OGDEN: Well, we will work with them as well as we can, and I am optimistic that we'll get the funding we need.

Here.

Q Do you have the funds right now to proceed with this?

MR. OGDEN: We have base funding in the Civil Division's budget, but we will work with Congress to get the funding we need.

Back here.

Q Did the state lawsuits use RICO at all?

MR. OGDEN: Certain of the state lawsuits did. They did not use the equitable portions. The attorney general has an exclusive right under the RICO statute to seek equitable -- this particular form of equitable relief.

Yes?

Q I know you said your goal wasn't to put the tobacco industry out of business; but, based on what you allege, if you're successful in proving what you allege, don't you leave the industry with an illegal product, in effect?

MR. OGDEN: No, absolutely not. What this lawsuit is about is about a 45-year course of conduct during which the industry withheld, suppressed and otherwise kept from the American people the information that they knew about addictiveness, about smoking and health, and it is fundamentally about those frauds. We also allege that the industry did everything it could, essentially, to prevent the development of a safer cigarette, but that doesn't mean that they have an illegal product. It simply means that they violated state tort law, if we can prove these claims, and they'll have to pay damages for that.

Yes? Here.

Q The U.S. is seeking recovery of health care expenditures as well as the disgorgement of ill-gotten gains. With respect to the ill-gotten gains, what percentage of tobacco company profits do you consider as ill-gotten? Is it all of it, a portion of it?

MR. OGDEN: That will be for the court to determine. It will be a question of proof as to what portion of their profits were attributable to the acts that the court ultimately finds were wrongful. And at this point, we'll have to develop that through the course of the litigation.

Here.

Q My understanding is that this case, and correct me if I'm wrong, has been grouped with a number of other cases in the dockets, in the court docket here in D.C.; that those cases are filed by foreign governments, and that would bring this case before Judge Friedman

(sp)? Is that correct? Do you know anything about that?

MR. OGDEN: I don't know what the court has decided to do. I do know that under the local rule here in Federal District Court, we have an obligation to identify any cases that are pending in this court that are related to this litigation.

And we have identified a number of cases that are. And I don't know what the court did because I have not seen, and I haven't talked to the folks who went down to the court to file the action.

Here.

Q David, what about a settlement offer? Did you get one before this was filed? Have you been in negotiations with the industry?

MR. OGDEN: I can't comment on settlement.

Q Mr. Ogden, can we come back to the tolling question for a moment? What is the statute of limitations? Clearly, I would assume, you can't go back and look at all the payments you've made since the meeting in the Plaza Hotel. When does it start?

MR. OGDEN: Under the Medical Care Recovery Act, the statute of limitations is triggered by the payment that the federal government makes. The federal government's claim is key to the payment that it makes. If the conduct occurred at a remote time, as it does for this type of offense, from the time that the payment is necessary, then we can bring a lawsuit within three years of the time, under MCRA, that that payment is made. It wouldn't make any sense for the federal government to have any other obligation, since the notice to the federal government is triggered by the obligation to make the payment. So we have the ability to go back three years under the MCRA and six years under the Medicare secondary payers provisions to seek the payments that we made.

Q Do you have any sense how many smokers that is?

MR. OGDEN: I really -- it's a large number of smokers, but I don't have a number or even an order of magnitude.

Q I just want to be clear on the grand jury documents. You're saying

that this complaint was not developed with any documents obtained originally through the criminal probe?

MR. OGDEN: That's correct.

Q If tobacco is so dangerous, why you don't prohibit tobacco sales?

MR. OGDEN: Well, the Department of Justice doesn't have responsibility for prohibiting tobacco sales. What we've done is to look at this long-term course of conduct that has been revealed just in the last few years as a result of the state attorney generals' lawsuits. And what we have determined is that we have a basis to seek damages for the American taxpayer for that conduct, and that we have a basis under the RICO statute to stop the unlawful conduct. This is not about banning a product; this is about stopping fraud, this is about stopping illegal behavior, and it's about getting compensation for it, but it is not about banning any product.

Yes?

Q One more. How are you going to go about proving causation; I mean, what caused the illnesses in these many smokers? I mean, the industry is inevitably going to say you have to prove it one at a time. I assume you don't believe that, and that you can -- I mean, how are you going to prove what caused the expenditures that the government made in each individual case?

MR. OGDEN: Well, those kinds of issues, as I said before, are similar issues to those that the states faced in their cases. Under the federal statutes that we're proceeding under, we have a right and a cause of action that's independent of the rights of any individual smoker. And we suffered a single harm as a single entity, the government did, the taxpayers did, as a result of a single course of conduct, and we intend to prove the harm directly.

Down here.

Q Has the Justice Department ever filed such a lawsuit before, where it's basically sued an entire industry, for the most part, for what essentially is a legal product?

MR. OGDEN: Well, first of all, I wouldn't say that we're not -- this

lawsuit isn't about an illegal product. As I said before, this lawsuit is fundamentally about intentional misleading and fraudulent behavior. And I guess I'm not really in a position to answer the question because it's difficult to characterize what would be unique about this. There certainly have been lawsuits brought against groups of companies before, I'm confident. But obviously this is an extraordinary situation. We have a history of 45 years that's been revealed, just released just over the last few years in these documents of a group of companies that got together and planned a disinformation campaign to keep their product in use while they knew that the consequences of that would be to make people sick and to get people addicted. And that is itself a situation in which I know no similar example.

Yeah.

Q Is it clear to you that smoking actually costs Medicaid (sic) money? Because if a person dies of lung cancer at the age of 60, it may never cost Medicare a dime. And if that person instead lived until the age of 90, died of heart disease, Medicare has to pay out a lot of money. Can you say clearly that you think that smoking costs Medicare money?

MR. OGDEN: Under the tort law of all 50 states, a tortfeasor, somebody who commits a tort, is responsible for the consequences of that tort. And it is not a defense or something that you can offer in litigation that in addition to causing injury you killed the individual.

Q What is your legal obligation to show the connection to the payments, between the payments and the fraud? Do you have to demonstrate that the people who got sick and that caused the government to make payments thought smoking was safe based on this deception campaign? Or do you have to discount those people who knew smoking was dangerous and decided to do it anyway?

MR. OGDEN: Well, this lawsuit is brought under the laws of all the different states of the United States because that is the way the federal law is set up. It depends on state law, exactly what the requirements of proof may be. The critical factor is that there be a causal connection between the fraud and the injury. And that is what we will hope to show.

Q I have a question, please?

Q Can I ask that question again? Because I don't think you answered it. I said you gave me a legal answer, you didn't give me a factual answer. Are you -- can you tell us that smoking doesn't -- actually costs Medicare money?

MR. OGDEN: I think that there are a number of different studies of that question. It's not legally relevant to the lawsuit.

Q Will you file it in one place?

MR. OGDEN: We have filed in one place. We filed in the District of Columbia.

Q No, I mean, will you file elsewhere?

MR. OGDEN: We don't expect to.

Q What changed? There were pressures from Mike Moore, there were pressures from Senator Kennedy, and there were other pressures from other people before for the Justice Department to act and to file suit. Why are you doing it now after -- when you wouldn't do it before?

MR. OGDEN: Well, the lawsuit's not a response to pressure, it's a response to analysis of the facts and the law.

I think the first thing to understand is that much of the evidence on which this lawsuit is based was brought to light as a result of the lawsuits filed by the state attorneys general. Millions of pages of previously secret documents were released for the first time just over the course of the last few years.

As those documents were being released and as an increased awareness was in the public about what had occurred, there was a significant prospect of comprehensive legislation that would have resolved not only the states' claims, but also the claims of the federal government and would have wrapped this up in a legislative result. Because this is obviously a very resource-intensive lawsuit and because there were good prospects for that being resolved, the

department didn't initiate suit at that time. Once that legislative package failed, the department began very seriously looking at this, and this lawsuit is the result of that.

STAFF: Just -- this is the last question.

Q But why should Congress give you the $20 million if they didn't see fit to pass legislation that would effectively do the kind of things that you asked for earlier?

MR. OGDEN: Well, the legislation in question would have done a whole lot of things, and it wasn't specifically legislation that was designed to recover for the United States damages. It involved a series of payments, it involved various kind of regulatory matters. But Congress is the body that passed the statutes, the Medical Care Recovery Act, Congress passed the Medicare secondary payer provisions, Congress passed the civil provisions of the RICO. And it's those provisions that we're relying on I think that we can work with Congress, and Congress will provide the funding.

STAFF: Thank you very much.

Q Thank you.

MR. OGDEN: Thank you all.

END.