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1 REPRESENTATIVE WAGLE: We
2 announced earlier that we were going to have
3 informational and investigative hearings
4 over tobacco litigation issues. On
5 Wednesday we were to have a specific hearing
6 on a bill that is to be introduced that
7 would be a 50 percent tax on attorney fees
8 for litigation that the state enters into
9 that is of a national scope. I have been in
10 communication with the AG's office about our
11 intentions, and on Friday, the speaker of
12 the house authorized for this committee that
13 we have a court reporter in attendance so we
14 can document every word as it is spoken. In
15 addition, the court reporter can take an
16 oath because the people that will be
17 speaking to this issue have different
18 viewpoints. We wanted to make sure all

19 sides are represented fairly and their words
20 are documented on the record.

21 I had in the past couple weeks been in
22 communication with the AG's office. It was
23 my understanding the deputy general would be
24 here today, John Campbell, to address the
25 history of the tobacco litigation. I don't

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1 feel like this committee can enter into
2 decisions about taxes litigation until they
3 have the history. I was going to have two
4 days of history and questions with the
5 deputy and Tony Powell and the attorney
6 general here on Wednesday to state their
7 positions on the income tax bill. As it
8 turned out the AG has decided to come in on
9 Monday. I wanted to give her a chance to
10 speak. With the understanding that what we
11 wanted to address, first, was the history of
12 the litigation. So since we do have a court
13 reporter present I do want to place you
14 under oath.

15 GENERAL STOVALL: Because you
16 don't think I would tell the truth
17 otherwise? I find this a very unusual
18 procedure.

19 REPRESENTATIVE WAGLE: It's not
20 an unusual procedure. We've done this a
21 number of times in the legislature. If the
22 court reporter would take a minute and place
23 the general under oath.

24

25 CARLA STOVALL,

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1 called as a witness on behalf of the
2 Committee, was sworn and testified as
3 follows:

4

5 REPRESENTATIVE WAGLE: Since we
6 do have a court reporter here, we do have to
7 be careful about how the dialogue goes. I
8 only want one person speaking at the time.
9 It's up to the lady present with us today to
10 record it verbatim. If we all start talking
11 attitude once, she will interrupt us. I've

12 given her permission to do that so we can
13 have an accurate record of what's being
14 spoken. General Stovall, well item to the
15 committee. We do hope what you'll start
16 with is give us a brief history of how we
17 came about. You understand we are
18 particularly interested in how you
19 contracted with Entz and Chanay to do the
20 work.

21 GENERAL STOVALL: I've been made
22 aware of that.

23 REPRESENTATIVE WAGLE: Okay. The
24 floor is yours.

25 GENERAL STOVALL: Thank you very
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1 much. I appreciate that. I would wish you
2 all a happy Valentine's Day. It's certainly
3 where I wanted to be on Valentine's Day.
4 After having listened to the first little
5 bit of your testimony this morning, I
6 realize this is why it's the first time I've
7 come to the tax committee, not that what I
8 find you do is riveting and fascinating.
9 However, yeah. You have difficult work to
10 do. Madam Chairman, I appreciate the
11 opportunity for you to allow me to visit
12 today. As you know, you did not invite me
13 to come until Wednesday. On Wednesday you
14 wanted me to take a particular position on a
15 tax bill that is introduced. It's not my
16 position to take a position on a tax bill.

17 I rarely take positions on tax bill. I
18 would suggest if you think about taxing the
19 attorneys that battled big battle, you might
20 consider taxing the attorneys that defended
21 they were in the mix as well. While John
22 Campbell and my senior deputy was asked to
23 come and give two days of testimony, it's my
24 thought you certainly have the right to have
25 any questions answered by me directly. I

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1 wanted to come today. My hope is we can
2 comes and spend as much time as I talk about
3 the litigation history itself. Certainly I
4 understand your concern over the hiring of

5 counsel. Legislative post audit I think did
6 a pretty conclusory examination of that in
7 1997. Nonetheless, I'm happy to provide any
8 information you want answer any question you
9 have. The committee is to end at 10:30.

10 You don't go into session until eleven.
11 I'll stay until then. Perhaps we can wrap
12 up a lot of this today. I know the entire
13 week has been said set aside for hearings on
14 this. You have other important things to do
15 and other tax bills to deal with instead of
16 dragging this out all week long. We'll see
17 how far we get. Let me begin with the
18 landscape of the tobacco lawsuits. It was
19 in the 1950's rigidly tobacco lawsuits were
20 being filed. They all lost without
21 exception. There weren't any successful.
22 No plaintiff until 1997 had ever recovered
23 money against big tobacco. In 1993,
24 Mississippi attorney general Mike Moore
25 filed the very first medical reimbursement

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1 lawsuit on behalf of his state. Soon after
2 that Florida, Massachusetts, Louisiana and
3 West Virginia entered -- I want these
4 distributed now. If somebody from my staff.
5 What we've prepared in the last week since
6 we knew we were asked to testify is a
7 history of the tobacco litigation.

8 REPRESENTATIVE WAGLE: Would you
9 help -- Edith, help so we can get this
10 around so we can all see what she's
11 discussing. I'm sorry to interrupt.

12 GENERAL STOVALL: Nationally as
13 well as within the state, what I'm going to
14 do is certainly not read all this. It's
15 incredibly lengthy document. John and I
16 have spent a tremendous amount of time this
17 last week on this document, so I would say
18 if you have interest, if you have questions,
19 please take the time to read that, because
20 it is very thorough. What I would like to
21 do, then, is to simply summarize from that
22 document. When I took office in 1995, I was
23 vaguely aware of these Medicaid lawsuits

24 that had been filed in 1993, as a new
25 attorney generalized enough on my plate not
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1 worrying about getting anything I viewed at
2 that time as being so far afield as the
3 Medicaid cases. By 1996, I was beginning to
4 change my mind. I became pretty intrigued
5 at the lawsuits, especially as I became to
6 know the particular attorneys general
7 involved that had filed those suits over the
8 years. Additionally, in March of 1996,
9 Liggett one was entered. Liggett is a very
10 small tobacco company. Has the smallest
11 percent of the market share of those that
12 are considered the majors. Liggett had been
13 sewed with all the tobacco companies. They
14 settled in March of 1996 with the states
15 then that were on file. About five of them.
16 Shortly after that then other states,
17 Washington, Maryland, Connecticut and
18 Louisiana filed suits in 1996. And after
19 attending lots of meetings, reading a lot,
20 talking to a lot of people involved, I
21 decided it was in the best interest of
22 Kansas to get involved in this tobacco
23 litigation. My rationale was twofold. No.
24 1, Kansas' estimate of Medicaid expenditures
25 for smoking related is about 800 billion
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1 dollars a year. The state didn't get to say
2 whether or not our indigent citizens smoked
3 or whether or not we would pay those costs.
4 Secondly, 30 children in Kansas begin
5 smoking every day and ten of them will die,
6 ten to 12 years prematurely if they continue
7 smoking. That was higher than the national
8 average. Those were the two reasons for the
9 suit. Once having made the decision to file
10 the suit, we had to decide how it was
11 actually going to take place. At that point
12 in time in the spring of 1996, no state was
13 handling the case in house, that means
14 within their own staff. All of them had
15 national law firms and local counsel. We
16 tried to estimate what it would cost us

17 internally to do this case in-house. Our
18 estimate about 7 million dollars over three
19 years. Hiring about 15 lawyers, 10 to 15
20 paralegals and secretaries and other support
21 staff. I think I was pretty accurate in
22 predicting that that level of funding would
23 not be coming from the legislature, so we
24 ruled out that possibility. Certainly some
25 of the states have handled the case

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1 internally, didn't hire outside counsel.
2 Those-- let me be very, very clear, they
3 sued when national suit was eminent, get a
4 petition on file, never have to do
5 discovery, never try the case because
6 everybody knew about the settlement. It was
7 in all of the papers. Had those attorney's
8 general miscalculated and we not settled,
9 you better believe they would have hired
10 outside counsel or put a significant number
11 of staff on their own office payroll. But
12 in 1996, nobody was doing it in-house.
13 Knowing that we needed outside counsel, I
14 wanted to have Mississippi's lead counsel
15 Dick Skruggs, coincidentally he was the best
16 friend of the Mississippi general. They had
17 gone to law school together. Their level of
18 trust was such there wasn't even a contract
19 between the state of Mississippi and that
20 law firm. The understanding always was and
21 what they had always told us was that
22 whatever the court determined is what the
23 lawyers would be paid. Any fees would have
24 to be judged reasonable by a court. Well,
25 John and I my senior deputy and I had come

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1 to know Dick through some of these meetings
2 on tobacco, certainly had a belief if we
3 were going to take on big tobacco, we wanted
4 to do it with the expertise and the
5 knowledge that Dick Skruggs brought to the
6 table. He was the first plaintiff's lawyer
7 to sue on behalf of a state in any of these
8 cases, so that was very important to us. At
9 that time, though, Dick's firm was not

10 willing to front expenses for the Kansas
11 litigation. It's pretty understandable,
12 because they had fronted expenses for
13 Mississippi and Florida and they were
14 running about 15 million dollars at that
15 time. Discussions then began with a firm
16 you've heard a lot about in Wichita called
17 Hutton and Hutton. Actually in March of
18 1996, before I had even made up my mind that
19 I was going to sue, we had a letter from
20 Hutton and Hutton expressing their interest.
21 And we subsequently met with them once I
22 decided to sue. What they expressed to John
23 and I was they would be willing to front the
24 expenses of the litigation, but they wanted
25 a 25 percent contingency fee. Well, John

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1 and I believed very strongly in the merits
2 and the rightness of our case, we didn't
3 know whether or not we would prevail.
4 Remember, nobody had ever collected against
5 big tobacco before, but even with that
6 dismal climate, we weren't willing to
7 guarantee a percent of anything because this
8 was absolutely untested and untried and
9 there were absolutely too many things nobody
10 knew. We weren't willing to guarantee a
11 percentage. Hutton and Hutton started at 25
12 percent, and they indicated they would come
13 down from that percentage. It wouldn't be
14 stuck there necessarily, but that they would
15 not sign a contract if a particular percent
16 was guaranteed to them. When they were
17 interviewed by the legislative post audit in
18 1997, one of the brothers, either Andy or
19 Mark, I don't remember which, made the
20 phrase to the post audit interviewer that
21 says "having the phrase up to in the
22 contract was akin to not having a contract,
23 that there was no guarantee of what you
24 would be paid." So that was the
25 distinction the problem between our office

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1 and Hutton and Hutton. There was another
2 law firm, Morrison and Hecker. They are

3 from Kansas City. They express the interest
4 in the case and they came and visited with
5 John and I. John and I told them they would
6 have to front the expenses, and they sort of
7 heard that with one ear but on the other
8 hand presented a couple scenarios to us,
9 neither of which involved fronting expenses.
10 One they would take a ten percent
11 contingency fee but bill us on a discounted
12 hourly rate for all their work. The second
13 option was there would be no contingency but
14 simply a discounted hourly rate. Their
15 estimate was that would run about a million
16 dollars reach year for five years. Again,
17 there wasn't anyway that my office had the
18 budget for that or that I thought the
19 legislature would appropriate it. One of
20 the lawyers then called Morrison and Hecker
21 -- from Morrison Hecker called us to be very
22 clear they'd gone back and talked to their
23 firm, but the firm was unwilling to front
24 those expenses that "could potentially run
25 so high." And that was the phrase that was

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1 used to legislative post audit. That left
2 us then only with Hutton and Hutton who
3 again were willing to front expenses with a
4 consortium of plaintiff's firms they would
5 put together. John continued to visit with
6 them by telephone to see if they could get
7 them off an insistence of a particular
8 percent. Then in June of 1996, at the
9 summer meeting of attorney's general in St.
10 Louis, John and I met with Dick Skruggs and
11 his partner with another law firm by the
12 name of Ron Motley. They were both
13 representing Mississippi. For the first
14 time at that June meeting, Dick and Ron
15 Motley agreed they would to get Kansas in
16 the litigation front the expenses for our
17 lawsuit. That changed things dramatically
18 as you would imagine for us. So John came
19 back, talked again to Morrison and Hecker.
20 We were hopeful now that somebody would be
21 fronting expenses that they would be willing

22 to get involved because that had been their
23 sticking point. In that call, though, the
24 attorney indicated since their last
25 conversation with us, they had determined

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1 they had a conflict of interest and could
2 not represent us against the tobacco
3 companies. That information was provided to
4 legislative post audit as well. While
5 Hutton and Hutton are fine lawyers, they
6 didn't have experience in tobacco with the
7 exception of one case. They had been
8 involved in the Castano case, case involving
9 60 law firms. That was a pretty innovative
10 lawsuit, filed as a class action. In May of
11 1996, the class was decertified. It wasn't
12 one big case which had been their master
13 plan. The single case they have tried with
14 regard to tobacco resulted in a loss. But
15 nonetheless, we were still -- we had been
16 discussing the cases with them. After all
17 of these issues, though, it became apparent
18 to me that what I needed in this litigation
19 was somebody that I really trusted. It was
20 becoming very clear from the state media,
21 the national media and comments from people
22 in general that I was taking an enormous
23 legal risk and political risk in filing this
24 lawsuit. So I wanted frankly somebody that
25 I knew and that I trusted. Bob Vancrum who

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1 is an associate with Morrison and Hecker
2 would have fit that bill, but Bob's firm was
3 not interested any longer. So one morning I
4 picked up the phone and called Jeff Chanay.
5 I had worked for Jeff and his partner Stu
6 Entz for approximately two years in the
7 early 1990s. Jeff and I were in rotary
8 together and after I left the parole board
9 in 1992 he offered me a job. Shortly after
10 I took a position with them they ran for
11 attorney general. They allowed me to work
12 part time while I campaigned and establish
13 the campaign office in the basement of their
14 office building. As some of you may

15 remember in 1994, I had no statewide name,
16 identification, nor any personal or family
17 money. Unfortunately the latter two have
18 not changed. This was in very sharp craft
19 to my principal opponent in the primary. My
20 parents, my friends and my employers
21 contributed generally to my campaign in
22 1994, and I did manage to win the primary
23 and the general election. When I turned to
24 Stu and Jeff in the summer of 1996 to
25 consider representing the state and tobacco

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1 litigation, it was not as some have
2 suggested to reward them for having
3 supported me in the campaign. Instead, I
4 was once again calling upon friends who had
5 would come through for me in the past who I
6 knew could be trusted for their personal
7 loyalty and for their professional
8 abilities. On the phone I asked Jeff if he
9 would take the case for me as a favor. The
10 terms forego any hourly payment, receive
11 nothing if we don't prevail. If we prevail,
12 take whatever it is that the judge sets and
13 go up against big tobacco has never paid a
14 dime to a plaintiff in their history.

15 That's what we asked them to do. There was
16 no thought members of this committee that
17 this lawsuit would eventually result in the
18 largest commercial settlement in the history
19 of the world. No one knew that in August of
20 1996. After that conversation then with
21 Jeff in which they agreed to consider taking
22 this case under those terms, I sent an
23 E-mail to John confirming that discussion.
24 We ended up and did get a contract with Stu
25 and Jeff as well as two national law firms.

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1 Ness Motley out of North Carolina and the
2 Dick Skruggs firm out of the Mississippi.
3 The contract did not require counsel to
4 record hours. This was insisted upon by the
5 national counsel who were plaintiff's
6 lawyers, and they had no mechanism to keep
7 track of hours. When you do plaintiff's

8 work and only take contingency fees, I am
9 told, I certainly am not a plaintiff's
10 lawyer, there is no reason to keep track of
11 hours. It doesn't matter. You can work a
12 jillion hours on a case, but if you don't
13 win it doesn't matter how many hours you
14 spent. You only get a percent of the
15 recovery. That provision was insisted upon
16 not by local counsel but by national
17 counsel. That was consistent with their
18 contracts. The contract by the way Hutton
19 and Hutton had offered us had no requirement
20 for them to keep track of hours, either.

21 From day one, I have been very, very
22 open about who I hire to represent Kansas.
23 The day we filed the lawsuit, I distributed
24 a Q and A sheet. It was put together with
25 questions that we thought would be asked by
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1 people, members of the media and the public
2 to understand what this tobacco litigation
3 was all about. One of those questions dealt
4 with who it was that I had hired as counsel,
5 and I indicated that I had hired Entz and
6 Chanay of Topeka, that I had formerly worked
7 for them and one of the important reasons I
8 hired them was because of my level of trust
9 with them personally and professionally.
10 Who I hired to do this case for us was a
11 non-issue for almost a year. Only when it
12 appeared that Kansas would get money and
13 that our lawyers might get paid did anybody
14 care who was doing the work for us. When it
15 looked like Kansas would get any money,
16 nobody cared who lawyers weren't going to
17 get paid.

18 Let me talk to you in particular now
19 about the litigation in Kansas what those
20 lawyers for us actually did. There were
21 three separate cases. The first one and I
22 might add these are all the pleadings from
23 the cases that have been provided to your
24 committee. It's fascinating reading, about
25 as fascinating as your earlier discussion
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1 when I came in this morning. The RJR case
2 is what I call it in short form. It really
3 involved a lawsuit against RJR which is R.
4 J. Reynolds, Philip Morris, Brown &
5 Williamson and Lorillard. Our petition
6 contains 262 paragraphs and 7 causes of
7 action. We alleged violations of the
8 Consumer Protection Act, Restraint of Trade,
9 Unjust Enrichment, Indemnity, Breach of
10 Voluntarily Undertaken Duty, Civil
11 Conspiracy to Commit Breach of a Voluntarily
12 Undertaken Duty, Injunctive and Declaratory
13 Relief and Interference with Obligation.
14 The crux of our complaint was medical
15 reimbursement for tobacco-related costs to
16 Kansas based upon the morbidity and
17 mortality of indigent citizens. It was a
18 taxpayer recovery suit. Not a product
19 liability case as some have suggested.
20 After we filed our lawsuit against those
21 four defendants, you might emergency they
22 very quickly obtained counsel and dozens and
23 dozens of lawyers were hired nationally and
24 locally to defend tobacco. The first
25 substantive pleading they filed was a motion

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1 to dismiss. I argued it on behalf of the
2 state along with Steve Bozeman and a Chicago
3 lawyer, Dan Webb. The judge took it under
4 advisement and did not rule on it the entire
5 18 months the case remained on the case.
6 The second case, though, is the really
7 important one. Is that the Liggett case.
8 Liggett was who the first five attorneys
9 general that sued settled with in March of
10 1996 before our case. Although the RJR case
11 in Kansas was very quiet during the
12 remaining 18 months developments were
13 occurring on other fronts. The five states
14 had settled before we filed. So when we
15 sued RJR in August of 1996, we did not sue
16 Liggett because we calculated since they had
17 settled with five states before, they
18 probably would settle with anybody that came
19 later. Well, indeed, that is what happened.

20 On March the 20th a settlement called
21 Liggett two, the second settlement was
22 announced. It provided a minuscule amount
23 of money but other concessions that were
24 much more important. The CEO of Liggett
25 publicly conceded that smoking causes lung
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1 cancer and other diseases and that the
2 cigarette companies intentionally marketed
3 to youth all in contradiction that tobacco
4 executives had said for years. Even more
5 staggering than those admissions from an
6 insider was the release of documents in
7 Liggett's possession. All of the tobacco
8 litigation was essentially a battle over
9 documents. And for the first time now we
10 have a tobacco company agreeing to turn over
11 their documents to the plaintiffs. Not
12 surprisingly, though, immediately after that
13 settlement the other companies RJR, Philip
14 Morris and the others raced to the
15 courthouse to get a decision from the judge
16 saying no, no, no, no, Liggett you cannot
17 turn over those documents. They got their
18 decision from a court in North Carolina.
19 But because we had sued Liggett separately,
20 we had a direct avenue to those documents.
21 And shortly after Liggett 2 was settled, we
22 filed a motion to enforce the settlement
23 provisions which would give us access to
24 those documents. When the RJR defendants in
25 Kansas realized what they accomplished, they
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1 obtained an emergency ex parte order
2 blocking the release. They claimed the
3 joint defense privilege allowed them to keep
4 Liggett from releasing those documents. Our
5 local counsel was familiar with Kansas
6 constitutional, statutory and common law,
7 and they believed that Kansas did not
8 recognize this joint defense privilege. On
9 August the 1st, 1997, Jeff Chanay argued
10 that position for the state and Tom Wright
11 of Write, Henson, Somers, Sebelius, Clark
12 and Baker, local counsel for Philip Morris

13 argued on the other side. The defendants
14 were very confident about their position and
15 they alleged "the state engages in a
16 mistaken and misguided game of semantics."
17 Despite the arguments of counsel in October
18 of 1997, Judge Jackson ruled that on this
19 case of first impression, meaning it's never
20 been decided in Kansas before, the state was
21 correct and that the common law joint
22 defense privilege is not recognized in our
23 state. That was a huge decision, folks.
24 The news of that decision hit both coasts at
25 the same time. The Washington Post and the
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1 L. A. Times both wrote about the decision.
2 The ruling could have implications, one
3 paper said for other shielded documents
4 including a million pages in dispute in
5 Minnesota's case against the industry. The
6 decision marks a crucial moment in tobacco
7 litigation said Matt Meyers of the tobacco
8 free kits. This breaks the log jam on the
9 documents the industry has fought the
10 hardest to keep secret. If there is a
11 smoking gun in it for the first time in
12 history, a plaintiff's lawyer will know it.
13 The ruling by Shawnee County District Court
14 Judge Fred S. Jackson further ratchets up the
15 pressure on a battered industry who hid the
16 dangers and health effects of smoking of the
17 American public for several decades. Well,
18 not surprisingly a decision like that was
19 appealed. And even someone writing in
20 support of the tobacco companies wrote "like
21 chicken little, appellate lawyers should be
22 cautious about claiming the sky is falling,
23 and yet we respectfully suggest allowing the
24 district court's ruling to stand here would
25 have truly staggering consequences." This
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1 was a big decision. We were the only state
2 in the country to break the joint defense
3 privilege. You may have heard a lot about
4 Minnesota and the documents that they got,
5 but the biggest portion of documents were

6 denied to Minnesota because they could not
7 break the joint defense privilege. Had this
8 decision ultimately been decided by the
9 Supreme Court and from all accounts we
10 believe would have been decided in our
11 favor, Kansas would have been able to open
12 up 680,000 documents to the public. The own
13 state to get into a position to do that.

14 While this was under way in Kansas, events
15 on the national scene were progressive
16 dramatically. In a never anticipated
17 occurrence, the attorneys general and big
18 tobacco negotiated a settlement that has
19 been called June 23rd after the date of its
20 accomplishment. The settlement would have
21 resulted in 368.5 billion dollars to the
22 states. The companies would have agreed to
23 bury Joe Camel and the Marlboro man and
24 regulation of nicotine by the food and drug
25 administration. In exchange with

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1 congressional approval, the companies would
2 be relieved of liability in class, suits and
3 further punitive damage awards. The
4 settlement was unimaginable in August of
5 1996 when our case was filed. Big tobacco
6 had never paid a dime to any plaintiff, and
7 now they were agreeing to pay 368.5 billion
8 dollars. It was truly unbelievable. Not
9 everyone, however, was enamored with the
10 settlement, and it eventually failed to win
11 congressional approval. It looked as though
12 all the lawsuits were going to go to trial
13 after all. And indeed Minnesota's case
14 began in 1998 and then in May after four
15 months of trial it settle had with the
16 tobacco defendants and with unprecedented
17 financial terms. Another round of
18 settlement talks, though, began led by
19 different attorney's general and after
20 several months of wrangling behind close
21 doors the final proposal was presented in
22 mid November with a clear-cut in or out
23 decision for each attorney general. After
24 consulting with the governor, key

25 legislators and the interim budget committee
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1 I announced on November 20, 1998 that Kansas
2 was in the settlement. This proposal called
3 a master settlement agreement provided the
4 certainty of injunctive relief and monetary
5 payment that was not guaranteed at trial.
6 Indeed, much of the injunctive relief, the
7 changes in behavior the companies agreed to
8 could never have been awarded by a court
9 even after a successful trial. The only way
10 to get rid of the Marlboro man and Joe Camel
11 and the other insidious elements of the
12 tobacco industry was a settlement like this.
13 The master settlement agreement, in addition
14 to other things made possible the payment of
15 attorney fees of the states lawyers by the
16 defendants. This is a departure from the
17 norm in which lawyer fees are almost always
18 subtracted from their client's recovery.
19 The costs of Kansas' in-house counsel which
20 was essentially John and myself plus our
21 outside lawyers were going to be paid by the
22 tobacco defendants. That mean's Kansas's
23 1.6 billion dollars would not be reduced by
24 a dime for the cost of getting it. All of
25 that money was free and clear with no

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1 obligation for any costs or any expenses.
2 To date, you may know you have already
3 received in Kansas 38 million dollars
4 representing the first two payments under
5 the settlement. The bill that John and I
6 submitted for our work has already been paid
7 and gone into the children's trust fund
8 where you directed last year all these
9 monies were to go. An additional
10 calculation of about 159 million dollars
11 that will come to Kansas labeled a strategic
12 contribution payment. That is in
13 recognition of the role Kansas played in the
14 national scene on this issue. It won't
15 start to be paid, however, until the year
16 2008 and be made in installments through the
17 year 2017. As part of the settlement,

18 though, a mechanism for the tobacco industry
19 to pay was through a three member
20 arbitration panel. The tobacco industry
21 would choose a member, the state's lawyers
22 would choose a member and the third one
23 would be mutually agreed upon by the other
24 two groups, the lawyers for both sides.
25 Each side, the tobacco industry and the

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1 lawyers for the state would have an
2 opportunity to present their case to the
3 panel, and the panel, those three people,
4 then, would determine a reasonable fee.
5 While the agreement did not require the
6 state's lawyers to walk away from the
7 contract they had with each state, it didn't
8 require that, it certainly gave that
9 opportunity to happen and was very much in
10 the state's favor for that to happen. If
11 the lawyers took under their contract, then
12 that meant it came out of the state's share.
13 If they walked away from their contract and
14 took away from the arbitration panel, big
15 tobacco pays out of the pot they set for it
16 the attorney fees, the three firms Kansas
17 had released the state from its contract and
18 they agreed to take whatever it was that the
19 arbitration panel said was reasonable. They
20 signed the release giving away any rights
21 under the contract before they had even
22 presented their case to the arbitration
23 panel and had any idea of what they would
24 get. So they gave up the contract in my
25 mind that is a tremendous show of good

0030

1 faith. Some states you should know have
2 been sued by their lawyers who say, no, I
3 don't want to take under the arbitration. I
4 want my guaranteed percent under the
5 contract. And there are states that had
6 guarantees in their contract unlike us.
7 Those states are now having to litigate
8 against their lawyers who are suing the
9 states and attaching liens to the state's
10 share of the tobacco money. That is not

11 what we're looking at in Kansas. As you
12 know, in Kansas, the fee was determined just
13 last month by the arbitration panel as --
14 and the decision was 54 million total. As
15 per the very first contract between -- among
16 the parties, the national, local and my
17 office, local counsel was going to receive
18 half and national counsel would receive
19 half. That is still the way its been
20 decided. The arbitration panel decision for
21 Kansas was unanimous. It was a 3-0 vote and
22 one of the few cases I'm told decided
23 without a dissent. The same afternoon that
24 I got the decision from big tobacco -- from
25 the arbitration panel, I'm sorry, I made the

0031

1 decision public as I promised I would from
2 the very beginning. Local counsel, Entz and
3 Chanay, will receive \$27 million over 25
4 years with no interest. This is about 1 and
5 a half percent of the state's 1.6 billion
6 dollars share. In actuality, it will turn
7 out to be much less because the state's
8 share as you know is increased for inflation
9 and volume adjustment. The lawyer's fees
10 are not increased by nothing. It will turn
11 out to be smaller than 1.5 percent. But as
12 often seems to be in case over Topeka, the
13 most frequently asked question in, for
14 example, the Kansas v. Colorado lawsuit is
15 how much money are we going to get from
16 Colorado. When the lawsuit was filed in
17 1985 in that case, we didn't even ask for
18 money. All we wanted was Colorado to comply
19 with the compact. But two years later the
20 Supreme Court made the decision one state
21 could ask for money for another state so we
22 amended our petition and asked for money.
23 It wasn't the reason the suit was filed but
24 seems to be the only thing that people focus
25 on now. That is certainly how it is in the

0032

1 tobacco case. Injunctive relief has been
2 overshadowed entirely by the money.
3 Stopping the overt and covert market to

4 children is an incredible feet. 86 percent
5 of the young people that smoke smoke the
6 three most heavily advertised brands of
7 cigarettes. I don't find that to be a
8 coincidence. We have failed to recognize
9 the significant accomplishments of the
10 lawsuit, ones that make me proud and always
11 make me proud regardless of what criticism
12 comes from my detractors over this lawsuit.
13 I would ask you to remember some points.
14 The settlement resulted in the largest
15 settlement of commercial litigation in the
16 history of the world. The firms signed on
17 to represent Kansas at a time when big
18 tobacco had never paid a dime to any
19 plaintiff. Kansas counsel released the
20 state from its contract without knowing what
21 the arbitrators would decide to award them.
22 Kansas counsel never considered suing the
23 state or attaching liens against the state's
24 share as they did in over states. I do not
25 believe I could have gotten Hutton and

0033

1 Hutton or any law firm to sign a contract
2 with me in August of 1996 entitling them to
3 only 1.5 percent of whatever would come.
4 Kansas isn't having to defend a contract
5 against a lawyer that has a guaranteed
6 percent in the contract. The Kansas firms
7 did outstanding work, winning an argument of
8 first impression, refuting the joint defense
9 privilege. The fees for the counsel in
10 Kansas were determined in the same manner
11 and the same method as the lawyers for every
12 other law firm that went the route of
13 arbitration. Yes, Entz and Chanay
14 contributed to my 1994 campaign, but I
15 suggested it would have been more telling if
16 my employers at that time had not
17 contributed to the campaign I was running
18 for public office. In 1998, to avoid any
19 appearance of impropriety, I did not accept
20 campaign contribution from Entz and Chanay
21 but they could have amounted to 12,000 plus
22 an additional 8,000 if their wives had

23 contributed, and I didn't take a dime from
24 them in 1998. The independent objective
25 arbitration panel determined the reasonable
0034

1 fee for Kansas lawyers. Legislative post
2 audit examined this entire issue in
3 September of 1997 and determined nothing had
4 been done wrong. The state did not pay a
5 dime for its legal representation, it's 1.6
6 billion dollars is free and clear from any
7 expenses, costs or fees. There are those, I
8 acknowledge that despite the success of the
9 litigation still believe I shouldn't have
10 filed it.

11 I will tell you in conclusion that I am
12 proud and I will always be proud of the role
13 Kansas played in the national tobacco
14 litigation. My initial decision to file
15 that lawsuit was met with more criticism
16 than praise as I anticipated, but I pursued
17 the litigation because I believed it was the
18 right thing to do. The settlement will
19 bring more than 1.6 billion dollars to our
20 state. It is a historic opportunity if we
21 stay true to what you determined last year
22 was right for that money, to dedicate it to
23 children. Kit make qualitative changes in
24 the lives of Kansas unlike anything we've
25 ever had the opportunity to do before. The
0035

1 injunctive relief will allow the next
2 generation of Kansas children to grow up
3 without even know who Joe Camel and the
4 Marlboro man are and won't be supposed to
5 advertisements on bill boards next to their
6 schools or in magazines with a teen reared
7 ship. One of the three firms I hired to
8 represent Kansas formerly employed me. It's
9 being treated no differently than anybody
10 else. The arbitration panel determined 1.5
11 percent was reasonable. Nobody would have
12 signed a contract for that in 1996. There
13 was an editorial in April of 1998 from the
14 Salina journal. "When state lawsuits
15 against tobacco companies began a few years

16 ago, few people thought there was a chance
17 in heck of getting any money out of them.
18 For a quality law firm to join in tilting at
19 those wind mills, it would have had to have
20 been offered a healthy contingency fee."
21 In August of 1996, I don't know of anybody
22 that would have told you 1.5 was a healthy
23 contingency fee.

24 I have determined after lots of
25 examination of this case I have made two
0036

1 transgressions, and I want to share those
2 with you. No. 1, I failed to have a quality
3 crystal ball because if I had had one I
4 could have done things differently. I
5 wouldn't have had to file the lawsuit in
6 August of 1996. I could have waited until
7 the die was cast, settlement a foregone
8 conclusion, victory obvious and simply
9 cashed in on the settlement letting me more
10 courageous colleagues take the legal risks
11 and do the heavy lifting. This would have
12 allowed me to hire any lawyers whether
13 in-house or outside lawyers. 2, doing
14 business with people I know, that I trusted
15 and this I respected because that's resulted
16 in cries of unethical conduct. I believe I
17 was elected in 1994 and reelected in 1998 to
18 exercise my judgment, to take Kansas on the
19 legal courses that I believe are in our best
20 interests and not to sit on the side lines
21 and be reactive only. I believe that
22 fighting for the sexually violent predator
23 case in the United States Supreme Court was
24 appropriate. I believe taking on the ill
25 conceived decisions of the federal energy
0037

1 regulatory commission against our natural
2 gas producers was appropriate. I believe
3 continuing the battle against Colorado and
4 Nebraska over water is appropriate. I
5 believe designating methamphetamine as KBI's
6 No. 1 priority is appropriate. I believe
7 advocating for children with all of our
8 energy and money is appropriate. I believe

9 in speaking out to support the death penalty
10 for me is appropriate. And I believe
11 criticizing the decision to pay money to a
12 convicted felon who's conviction was
13 reversed on appeal was appropriate. I
14 believe charging public officials who have
15 violated the law is appropriate. And I
16 believed that taking on big tobacco in the
17 manner that I did and when I did it was
18 appropriate. It is quite obvious that I
19 have made political enemies in pursuing the
20 courses that I have. Nonetheless, I would
21 not have made decisions differently just to
22 have a smoother Pat now. I was not elected
23 to sit on the side lines and let the values
24 and preferences of my political enemies
25 dictate the course of the attorney general's

0038

1 office. I never have and I never will. I'd
2 be happy to answer any questions that you
3 might have.

4 REPRESENTATIVE WAGLE: Thank you,
5 general Stovall. We are quickly approaching
6 10:30. I think what I'm going to do is just
7 ask you a couple questions and then would
8 you mind coming back tomorrow so the whole
9 committee could ask you some questions. I'd
10 like for the whole committee ask me
11 questions until you go into session at 11.
12 I think what we're going to do is just ask a
13 couple questions and would you mind coming
14 back tomorrow.

15 GENERAL STOVALL: I've got
16 meetings scheduled in the morning. I'll
17 try. I would have assumed we'd be able to
18 start at nine o'clock when John was coming
19 and give us more time. I regret doing that.
20 I'll try to make available tomorrow, and
21 John will be here for sure.

22 REPRESENTATIVE WAGLE: On January
23 26th, I wrote you a letter and asked you for
24 all your documents regarding the hiring of
25 outside counsel for tobacco litigation. I

0039

1 asked that you would give us copies so that

2 the committee could look at these documents
3 within seven days. On February 4th, I was
4 -- I received a letter from your senior
5 deputy, John Campbell with a number of
6 reasons why you didn't have to turn over
7 these documents.

8 REPRESENTATIVE WAGLE: But.
9 GENERAL STOVALL: But, we did.
10 You have everything with the exception of
11 one. John found one last night dated July
12 31, 1996. It was not initially turned over
13 to you. I would like to make it available.
14 Everything else you've asked representative
15 has been made available despite -- I don't
16 know what else you think might be there. I
17 think the disappointment is that we've not
18 providing incriminating documents to you. I
19 want to be very clear I can't give you what
20 never existed and to my knowledge the only
21 incriminating documents in this entire case
22 belong to the tobacco companies and not the
23 attorney general's office.

24 REPRESENTATIVE WAGLE: On
25 February 4th I had to send you a second
0040

1 letter asking for all documents, all memos
2 all conversations you had as you were out
3 cracking for the tobacco litigation
4 representing the State of Kansas. I must
5 say I'm not sure what day, this was the
6 document you returned to me with all your
7 communications regarding the hiring of
8 outside counsel. Is that correct?

9 GENERAL STOVALL: John would have
10 done it. I wouldn't have.

11 REPRESENTATIVE WAGLE: Actually, I
12 put a couple pink sheets in there.

13 GENERAL STOVALL: The letters
14 also, Madam Chairman have always said if
15 there's anything that you want to ask for if
16 there's something you think exists that
17 wasn't provided, your staff was invited in
18 those letters to come over and look at
19 absolutely everything. There is nothing to
20 hide despite what it is that you think is

21 out there. We've given you everything
22 that's in your files.

23 REPRESENTATIVE WAGLE: I find it
24 hard to believe, general stove all, I'm a
25 business woman, I enter into contracts, I've
0041

1 been involved in litigation, I enter into
2 contract for services. When I go out and
3 contract object behalf of my business for a
4 service, I enter into negotiations in order
5 to get the best product for the cost I'm
6 going to pay. I find it very hard to
7 believe that this is all the documents that
8 you have regarding outside counsel and who
9 you are going to hire. Certainly the first
10 thing you said when you address this had
11 committee that you knew the Medicaid
12 payments were worth about 800 million
13 dollars.

14 GENERAL STOVALL: If we got them.

15 REPRESENTATIVE WAGLE: If you got
16 them. You knew we were talking about big
17 money, not small money.

18 GENERAL STOVALL: They never paid
19 anybody.

20 REPRESENTATIVE WAGLE: I have a
21 request today for all your documents.

22 GENERAL STOVALL: You've got
23 everything, representative.

24 REPRESENTATIVE WAGLE: Do I have
25 everything.

0042

1 GENERAL STOVALL: You have
2 everything that we have that has to do with
3 the retention of counsel. We certainly have
4 drawers of information that relates to the
5 lawsuit, and that's what John said come over
6 and open up his file cabinets. You are
7 welcome and your staff, members of the
8 committee are welcome to anything. We are
9 not hiding anything with the exception of
10 the July 30, 1996 letter.

11 REPRESENTATIVE WAGLE: We'd like
12 a copy of that.

13 MR. CAMPBELL: We found last

14 night.

15 REPRESENTATIVE WAGLE: This is
16 all your communications with law firms that
17 you entered into to hire the best counsel of
18 the State of Kansas.

19 GENERAL STOVALL: I didn't just
20 now look at it. Is that everything we send
21 over in that regard.

22 MR. CAMPBELL: That is the
23 written material I have found to date.

24 REPRESENTATIVE WAGLE: Okay.

25 GENERAL STOVALL: Lots of the

0043

1 conversations with Hutton and Hutton to try
2 to get them off of the particular percent
3 were phone conversations between John and
4 them, so there aren't recordings. There is
5 nothing in writing about those. You have
6 everything that we have.

7 REPRESENTATIVE WAGLE: This is
8 all your communications with Hutton and huh
9 tunnel.

10 GENERAL STOVALL: Everything that
11 we have.

12 MR. CAMPBELL: Let me suggest
13 something that may help this.

14 REPRESENTATIVE WAGLE: Okay.

15 MR. CAMPBELL: When I'm doing a
16 litigation file or a contract file, I keep
17 what I need up front and the rest I have
18 clerks file it. Let me suggest this. If
19 there is no objection of the committee, I'd
20 like -- the secretaries are done with this
21 project, get the secretaries, get the
22 clerks, convert the tobacco litigation file
23 into historical filing. What I mean by
24 that, hey, if it's January 1, 1996, we start
25 here and we just build a chronological date.

0044

1 It's not the way we normally do litigation.
2 Like that letter, I found last night in a
3 correspondence file on one particular case.
4 What I'd like to do just so we're sure, I
5 have given you everything I've found. But I
6 want to get the clerical staff, I'll pull

7 half the secretaries. That's only two. We
8 don't have any paralegals. We'll pull them
9 and start building this historical file
10 unless there is an objection. Normally when
11 one is under investigation, you shouldn't
12 really mess with a files. If there's no
13 objection, we won't throw anything away and
14 start that chronology.

15 REPRESENTATIVE WAGLE: I think
16 that would be a good idea. And don or
17 whoever come on with us. For the last three
18 weeks, I've even saved the trash. I'm still
19 getting tobacco stuff.

20 REPRESENTATIVE WAGLE: What we're
21 interested in primarily is how the contract
22 negotiations that your office went through
23 to determine which firm could best handle
24 the outside counsel for the tobacco
25 litigation.

0045

1 GENERAL STOVALL: Is there
2 something in particular you think we have
3 that we have not provided.

4 REPRESENTATIVE WAGLE:
5 Specifically, I have seen a number of
6 letters that were in communication with your
7 office and Hutton and Hutton, and they are
8 in excess of what you've given to me.

9 GENERAL STOVALL: Then that means
10 we don't have them.

11 REPRESENTATIVE WAGLE: So where
12 would they have gone.

13 MR. CAMPBELL: Well, you know,
14 we've moved, and I've had four or five
15 clerks. The fact is no litigation firm
16 normally just has four secretaries and
17 paralegals. I do the best I can with the
18 resources. We hire lawyers instead of
19 paralegals. I hope there is more stuff
20 there.

21 REPRESENTATIVE WAGLE: When I
22 enter into a contract and I'm on the phone
23 and I'm negotiating the contract and I have
24 a fax, a letter, a telephone call, if I have
25 something that is dealing with that contract

0046

1 that is going to cost me money, I turn
2 around in my file cabinet and I stick that
3 communication in that file.

4 GENERAL STOVALL: We should only
5 be so lucky to have someone with your
6 abilities as a paralegal in the attorney
7 general.

8 REPRESENTATIVE WAGLE: You're
9 saying you don't have all the documents.

10 GENERAL STOVALL: We've given you
11 what we have that we have located but have
12 told you your staff and anybody else is
13 welcome to come and look at anything. We
14 would have brought the file cabinets over if
15 we had the dollies to do that. It was hard
16 enough to do this. There is nothing anyone
17 is intentionally hiding from this committee.
18 Absolutely not.

19 REPRESENTATIVE WAGLE: You gave
20 to me a copy of a contract you entered into
21 with Entz and Chanay. That has been public
22 to the legislature.

23 MR. CAMPBELL: You've got the
24 signed contract I'll tell you.

25 REPRESENTATIVE WAGLE: Why is
0047

1 there not a date on the contract.

2 MR. CAMPBELL: Okay. There is.
3 I think the reason one normally shouldn't
4 save drafts and stuff. You have different
5 versions of it, because we went through a --
6 okay. This is a February 8 letter. Is that
7 a copy of the actual contract and see.

8 REPRESENTATIVE CAMPBELL: Speak
9 up.

10 MR. CAMPBELL: And the signature
11 page.

12 REPRESENTATIVE WAGLE: Is this a
13 copy of the actual contract?

14 MR. CAMPBELL: Actual contract, a
15 copy sent to you.

16 REPRESENTATIVE WAGLE: The copy
17 you sent to me was not dated. This says you
18 entered into the contract on the first of

19 August.

20 GENERAL STOVALL: Well, it was
21 effective the first of August. It actually
22 took till October to get it. See. You got
23 the post audit thing. You've got about
24 three or four versions of that contract if
25 you want everything in there. This is the
0048

1 contract -- I'm sorry. It is a copy of the
2 contract.

3 REPRESENTATIVE WAGLE: This is a
4 copy of the contract.

5 GENERAL STOVALL: Yes.

6 REPRESENTATIVE WAGLE: It took
7 until October to get four signatures is that
8 what you said.

9 MR. CAMPBELL: Yes.

10 REPRESENTATIVE WAGLE: Okay. So
11 officially you engaged with business with
12 Entz and Chanay on August first.

13 MR. CAMPBELL: No. The first
14 meeting I remember with them we started
15 going over the draft petition mid July of
16 '96.

17 GENERAL STOVALL: We started work
18 without a signed contract.

19 MR. CAMPBELL: We started work
20 without the contract.

21 REPRESENTATIVE WAGLE: Do you
22 have a date at which time you decided not to
23 negotiate with any other firms and that you
24 determined that you wanted Entz and Chanay
25 to work.

0049

1 GENERAL STOVALL: June 28th is the
2 date I would have called Jeff. When the
3 meeting was in St. Louis is when we learn
4 that had Dick Skruggs would front the
5 expenses. So that was-- it's probably then
6 we made the decision we wouldn't involve
7 Hutton and Hutton because we had someone who
8 would front expenses. That's why we had
9 been continuing discussion with them because
10 they were the only people at that time that
11 would be willing to do that.

12 REPRESENTATIVE WAGLE: General
13 Stovall, did you enter into any other
14 negotiations with any other law firms
15 besides Morrison Hecker, Hutton and Hutton
16 and Entz and Chanay regarding this issue.

17 GENERAL STOVALL: John had lunch
18 one time with Don bury. That's mentioned in
19 the legislative post audit.

20 MR. CAMPBELL: Two meetings.

21 GENERAL STOVALL: Two meetings. I
22 don't think I ever talked with don. Is
23 there somebody I'm forgetting.

24 REPRESENTATIVE WAGLE: No. I
25 just wanted to make sure as we -- this

0050

1 committee investigates what happens, as they
2 decide whether or not they want to tax the
3 27 million at 50 percent, I want to make
4 sure they have all the documents and the
5 track record for the negotiations that you
6 went through to make sure you had the best
7 firm representing Kansas.

8 GENERAL STOVALL: Okay. I don't
9 know how that relates to a tax.
10 Nonetheless, you have everything that we
11 have and you have access to the files.
12 Anybody can come over eight to 5 Monday
13 through Friday, week ends if you make
14 appointments, and see anything that you want
15 to see. Representative Campbell.

16 REPRESENTATIVE CAMPBELL: Thank
17 you. Just clarify something I just heard.
18 Did the law firm begin work without a
19 contract.

20 GENERAL STOVALL: They did.

21 REPRESENTATIVE CAMPBELL: They
22 worked from August till October without a
23 contract.

24 MR. CAMPBELL: I'd say from July.

25 GENERAL STOVALL: It was signed in
0051

1 October. I don't know when the local
2 counsel signed it. The final signature
3 wasn't done until October.

4 REPRESENTATIVE CAMPBELL: Is that

5 highly unusual or does that happen all the
6 time.

7 GENERAL STOVALL: John deals with
8 the actual.

9 MR. CAMPBELL: Well, actually, it
10 does. Almost all of our attorney contracts
11 are defense. So, you know, you've got 20
12 days to answer the lawsuit. They almost all
13 start working before the contracts are
14 signed.

15 GENERAL STOVALL: We have an oral
16 contract.

17 MR. CAMPBELL: We have a
18 commitment. They'd have a quantum merit
19 claim.

20 REPRESENTATIVE CAMPBELL: There
21 was a verbal understanding and verbal
22 agreement to --

23 MR. CAMPBELL: No. There was a
24 verbal agreement of representation. I think
25 that's the best way to put it. I'm trying

0052

1 to think back. I believe it was August.
2 The problem, they wanted to word things one
3 way. I wanted to word them another. But I
4 would say definitely when we filed the suit
5 and they entered their appearance August
6 20th, then there is no doubt.

7 REPRESENTATIVE CAMPBELL: Thank
8 you. I was just curious about that. That
9 seems unusual.

10 REPRESENTATIVE WAGLE:
11 Representative Johnston.

12 REPRESENTATIVE JOHNSTON: Thank
13 you, Madam chair. A couple things. First,
14 I'd like to make sure that members of the
15 committee are as soon as possible provided
16 copies of whatever you're battering the AG
17 for. I'd like to see them. Second of all,
18 I wanted to ask a question of procedure. Is
19 everybody this week going to be under oath.

20 REPRESENTATIVE WAGLE: Yes.

21 REPRESENTATIVE JOHNSTON: Great.
22 Personally, I would like to state an
23 objection. I think putting everything under

24 oath is really not necessary. This is not a
25 trial of the attorney general, and I think
0053

1 it unnecessarily raises the intensity of the
2 level of discussion, and I really don't
3 think it was necessary. I wanted to state
4 that objection. But having said that and
5 listening today, I think the testimony
6 provided by the general is a stellar example
7 of why we need a law to require competitive
8 bidding on professional contracts. And part
9 of this quite honestly is a very strenuous
10 criticism of the legislature to do that.

11 Part of this is a criticism of the general.
12 I'm looking at page 10 of your testimony you
13 provided. The middle paragraph that starts
14 with suing an industry like tobacco.

15 GENERAL STOVALL: I'm with you.

16 REPRESENTATIVE JOHNSTON: You go
17 on and says remember I'm a Republican. They
18 are versed to plaintiff's lawyers, et
19 cetera. Basically, it sounds like you were
20 making a decision on how to essentially
21 determine an issue of state concern based on
22 partisan concerns. And it seems to me
23 pretty clear here that in essence and
24 discriminating is too strong a term, you
25 were discriminating against a heck of a lot
0054

1 of attorneys from even giving them the
2 option of bidding on something like this,
3 because they are Democrats.

4 GENERAL STOVALL: Certainly not
5 bidding. Anybody was welcome to get ahold
6 of us, and certainly that's what Morrison
7 and Hecker and Hutton and Hutton did. There
8 isn't any question one of my considerations
9 was who is going to do the best job not just
10 legally, you have to remember what it was
11 like -- I was the first Republican attorney
12 general to sue big tobacco. It very much
13 was a concern if we had a traditional
14 plaintiff's firm that typically goes
15 Democratic, what other Republicans were
16 going to say. It was a big limb I was out

17 on a limb as a Republican attorney general.
18 REPRESENTATIVE JOHNSTON: I want
19 to congratulate you on getting out on the
20 limb. I think the end result is a
21 tremendous achievement for you and for the
22 State of Kansas. But, you know, this
23 paragraph tells better than I ever could why
24 we need a law requiring competitive bidding.
25 That should not be a partisan consideration.

0055

1 The consideration should be who is the best
2 qualified, who meets the contract
3 obligations and so forth and you've
4 addressed some of those issues obviously in
5 your testimony, but that's what so is
6 disturbing to me about this whole problem.

7 GENERAL STOVALL: I understand.
8 It's very discretionary. There are no
9 rules. You can be assured someone had they
10 not had the expertise and had they not
11 agreed to the terms we needed, it was a
12 certainly an added benefit from my view.

13 REPRESENTATIVE JOHNSTON: I think
14 I made my point.

15 REPRESENTATIVE WAGLE:
16 Representative Wilk.

17 REPRESENTATIVE WILK: Mr.
18 Campbell, this is a process question. I
19 have not been involved in filing extensive
20 lawsuit and all the contracts that go along
21 with that. I have had some experience in
22 other business contractual issues and have
23 found them to be most enlightening. We've
24 had like three different entities. We'd
25 start out with a contract and then we'd go

0056

1 to the red line versions. We may have 15
2 different versions before we'd actually get
3 to the signatures. And I gained a whole new
4 appreciation for 1, 2, 3, 4. We had three
5 different entities. I was on version 5 and
6 somebody else didn't get that and they were
7 on version 4. How do you when you -- I
8 assume you do like red line versions.
9 Procedurally how do you keep track of it.

10 Do you keep each one of those or try to get
11 rid of them so when you get down to the
12 final draft the one that actually gets the
13 signatures.

14 MR. CAMPBELL: In all candor, 99
15 percent of the contracts, here it is. My
16 way or the highway. Take it or leave it.

17 REPRESENTATIVE WILK: You don't
18 do a whole lot of that.

19 MR. CAMPBELL: We really don't.
20 I, in all candor, I'm surprised I have any
21 of those drafts. I try to get rid of drafts
22 because I don't want and I'm sorry the other
23 side, I don't mean the legislature, I mean
24 when I'm in litigation defending the state,
25 I don't want the other side to have any

0057

1 chance of getting my thoughts or the process
2 or what not. The contract that we have, the
3 first thing it says under the attachment,
4 the 146 that all state contracts have, the
5 first thing it says anything that conflicts
6 with this written agreement, out, forget it.
7 It doesn't exist. We can't conflict. I do
8 like to get down to the one thing. Yes, we
9 were trading back and forth. The Huttons
10 sent the first contract. It's a letter
11 agreement. I think it's more standard
12 plaintiff. Most of the time we don't have
13 big disagreements. And when we do we trade
14 versions.

15 REPRESENTATIVE WILK: Thank you.

16 REPRESENTATIVE WAGLE:

17 Representative Jenkins.

18 REPRESENTATIVE JENKINS: The
19 primary concern here today is that you hired
20 a firm that you used to work for and gave
21 them some sweet heart deal, but in your
22 testimony you mentioned that post audit did
23 some work. Does that mean the legislature
24 has already looked into that particular
25 issue and if so.

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1 GENERAL STOVALL: This was all
2 raised -- these are all old issues. All

3 this has been discussed before. Legislative
4 post audit was asked by somebody in the
5 legislature, I don't remember who to take a
6 look at this. In October of 1997, they
7 would have issued their report. We've
8 certainly referenced that. I assume the
9 chair woman has a copy. We can make that
10 available too. It was bigger than tobacco.
11 We looked at the lawsuit in Colorado as well
12 as how we award contracts in general and
13 this case in particular. Legislative post
14 audit concluded there was certainly no
15 violation of the law, no violation of any
16 ethical code.

17 REPRESENTATIVE JENKINS: Is there
18 any legislation proposed due to that, the
19 findings in that audit?

20 GENERAL STOVALL: Not to my
21 knowledge. I guess maybe -- there always
22 are professional bidings of contract bills
23 that are in the legislature. They float I
24 think every year. Somebody may have
25 introduced one because of that. I'm not
0059

1 aware that was anybody's motivation, but
2 that's possible it was motivation for
3 somebody to do that.

4 REPRESENTATIVE WAGLE: General
5 Stovall, when we did authorize the post
6 audit, wasn't the purpose of the post audit
7 to look into water litigation and not
8 specifically tobacco litigation.

9 GENERAL STOVALL: They looked at
10 tobacco litigation. I don't know what the
11 purpose was. I think it was all.

12 REPRESENTATIVE WAGLE: I think
13 the purpose was to look into contracts from
14 your office, and specifically there was
15 concern in the legislature about water
16 litigation, and while the post audit was
17 being conducted, the tobacco litigation did
18 become an issue. I don't think the tobacco
19 litigation was the target of the post audit.
20 I'll be glad to get copies of the post audit
21 for every member of the committee.

22 GENERAL STOVALL: I don't know
23 what the target was. I know they looked at
24 it very thoroughly. They interviewed people
25 with Hutton and Hutton and Morrison and
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1 Hecker and determined there was no
2 wrongdoing. I don't know what the target
3 was initially except for me.

4 REPRESENTATIVE WAGLE: Are there
5 further questions. Representative Flora?

6 REPRESENTATIVE FLORA: Thank you
7 Madam chair. In regard to water litigation,
8 did you use outside counsel?

9 GENERAL STOVALL: We did.

10 REPRESENTATIVE FLORA: And how
11 were those decisions made?

12 GENERAL STOVALL: I simply kept
13 the attorney that my predecessor bob Stephan
14 had hired on that. His name is John Draper
15 out of New Mexico. The post audit was
16 started because there was some great
17 conspiracy theory there that he had either
18 contributed to campaigns or getting money
19 under the table or something. It was a
20 particular representative who asked for that
21 part of it. I think all of that proved
22 pretty bogus.

23 REPRESENTATIVE FLORA: Is there
24 anyway to compare the compensation to the
25 outside lawyer, tobacco to water?

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1 GENERAL STOVALL: No. The outside
2 lawyer in the water is paid by the hour.
3 We've spent 13 million dollars on it today.
4 Not all of that, of course, women to the
5 lawyer. It's a strict hourly basis.

6 REPRESENTATIVE FLORA: And what
7 would be the amounted -- we don't know for
8 sure exactly how much we're going to get in
9 money from Colorado.

10 GENERAL STOVALL: We absolutely
11 don't know how much money at all from
12 Colorado if money.

13 REPRESENTATIVE FLORA: We can't
14 really make a comparison.

15 REPRESENTATIVE WAGLE:

16 Representative Johnston.

17 REPRESENTATIVE JOHNSTON: Thank
18 you, general I started making a little chart
19 here, Hutton and Hutton versus Entz and
20 Chanay. You said I probably missed it. Let
21 me know. Hutton and Hutton had done one
22 tobacco case which they had lost. Is that
23 correct.

24 GENERAL STOVALL: To my knowledge,
25 they were in one at the time. It was the

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1 major Castano litigation which was
2 decertified in May of 1996. It was sometime
3 after that that they tried the only one I
4 know that they tried, and that one wasn't
5 victorious.

6 REPRESENTATIVE JOHNSTON: Did
7 they agree at some point to front expenses
8 if they were to pursue this for the state?
9 They did agree.

10 GENERAL STOVALL: They had always
11 agree to front expenses.

12 REPRESENTATIVE JOHNSTON: Entz
13 and Chanay obviously agreed to front
14 expenses.

15 GENERAL STOVALL: But the expenses
16 by that time were being picked up by
17 national counsel, though.

18 REPRESENTATIVE JOHNSTON: Okay.
19 Had Entz and Chanay done any tobacco work.

20 GENERAL STOVALL: No, they had
21 not. They had done Medicaid reimbursement
22 cases.

23 REPRESENTATIVE JOHNSTON: Which
24 is a related issue.

25 GENERAL STOVALL: This was a
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1 Medicaid reimbursement case.

2 REPRESENTATIVE JOHNSTON: What
3 other qualifications did Entz and Chanay
4 have over Hutton and Hutton aside from your
5 personal and professional relationship from
6 them?

7 GENERAL STOVALL: Their general

8 legal abilities, they were a fine firm as
9 I'm sure Hutton and Hutton is, too. They
10 agreed of the contract term of up to 25
11 percent. We could not get Hutton and Hutton
12 to agree any up to language. They wanted a
13 guarantee percent, and I just did not think
14 that was in the best about. If I had, we
15 would now-- we'd be talking about whether
16 they should get 25 percent of a billion six
17 because that's where they were in the
18 contract negotiations.

19 REPRESENTATIVE JOHNSTON: So that
20 was essentially --

21 GENERAL STOVALL: That was the
22 deal breaker.

23 REPRESENTATIVE JOHNSTON: That
24 was the deal breaker. Thank you.

25 REPRESENTATIVE WAGLE:

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1 Representative Tedder?

2 REPRESENTATIVE TEDDER: Thank
3 you, Madam Chairman. Can you kind of
4 translate for me you were saying that the
5 settlement equals one and a half percent of
6 the 1.6 billion. Can you translate that
7 into dollars per billable hour.

8 GENERAL STOVALL: I cannot. The
9 contract didn't require them to keep hours.
10 National counsel didn't want that. I think
11 there is some discussion in the arbitration
12 decision about an estimate that the tobacco
13 companies put forth for what local counsel
14 -- what hours they might have worked, but
15 that was between the arbitration panel
16 decided there. What these guys were getting
17 was simply something on a contingency basis.

18 REPRESENTATIVE TEDDER: Okay.
19 Thank you.

20 REPRESENTATIVE WAGLE:

21 Representative Wilk.

22 REPRESENTATIVE WILK: Thank you.
23 Can you give us an idea where the national
24 arbitration board is at with settlements of
25 other states? Do you have --

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1 GENERAL STOVALL: I do on page 32
2 of the document that we handed out, it's a
3 listing of the arbitration decisions that
4 have been made thus far. The first four are
5 pretty astronomical. They were the first
6 four suits filed and settled before the
7 First National settlement. 34 percent, 26
8 percent, 19 percent, they are very, very big
9 numbers. From Hawaii on down then are
10 states that would have arbitrated after 1998
11 and since -- in 1998 and sense. Hawaii, for
12 example, their lawyers get a little over six
13 and a half, Illinois, a little over one
14 percent, Louisiana 12 percent, Iowa, 4.4%.
15 The total Kansas fee is 3 percent. When I
16 speak of 1 and a half, that's the local fee.
17 We're in the ballpark. Almost the lowest.
18 All the rest have yet to be decided.

19 REPRESENTATIVE WILK: Those other
20 percentages, are they also having to split
21 with the national counsel?

22 GENERAL STOVALL: Absolutely.
23 REPRESENTATIVE WILK: Is it
24 pretty much 50/50.

25 GENERAL STOVALL: I don't know.

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1 Just depends on the arrangements with the
2 firms. I would say for the ones that are
3 represented by Ness Motley and Skruggs, it
4 would be half and half.

5 REPRESENTATIVE WILK: They are
6 just really getting started settling
7 individual states.

8 GENERAL STOVALL: True.

9 REPRESENTATIVE WILK: How many
10 states do they have to go through.

11 GENERAL STOVALL: 46.

12 REPRESENTATIVE WILK: 46. Thank
13 you.

14 REPRESENTATIVE WAGLE:
15 Representative Ray?

16 REPRESENTATIVE RAY: Ray I have a
17 question for staff. Does any of the staff
18 know whether any of the state agencies take
19 bids on professional services.

20 THE SPEAKER: I don't know.
21 REPRESENTATIVE RAY: Where would
22 I find out?
23 THE SPEAKER: There is a
24 suggestion budget division might know. We
25 can look into it for you.

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1 REPRESENTATIVE RAY: Thank you.
2 REPRESENTATIVE WILK: Department
3 of Administration has that information.
4 It's readily available.

5 GENERAL STOVALL: The legislative
6 post audit looked at other state agencies
7 and how they handled contracts as well. So
8 there is some more information in that post
9 audit, too.

10 REPRESENTATIVE WAGLE: Committee,
11 it's ten till. We do have to leave the room.
12 General Stovall if you would come back
13 tomorrow, I think we will have some
14 questions.

15 GENERAL STOVALL: I'm sure you
16 will. Thank you very much for the
17 opportunity to be here today.

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