

# N.O. lawyers lead victory for smokers



Attorney Wendell Gauthier, right, Ken Carter, left, and other members of the legal team announce their victory in the class-action lawsuit against a tobacco company Wednesday.

STAFF PHOTO BY G. ANDREW BOYD

## Historic deal to help plaintiffs kick the habit

By MIKE HUGHLETT

A squad of 67 lawyers, including a host of New Orleans trial lawyers, has broken the tobacco industry's solidarity against litigation, announcing Wednesday that for the first time, a cigarette maker has agreed to pay smokers for damages.

Tabacco stocks tumble, see C-1

Liggett Group, a subsidiary of the Miami-based Brooke Group Ltd., will settle a class-action suit in federal court in New Orleans by paying up to 5 percent of its pre-tax income annually over the next 25 years to help smokers quit. Liggett also agreed to comply with proposed federal Food and Drug Administration rules to halt programs, including advertising, that cater to minors.

Two years ago, four New Orleans residents,

### WHEN THE SMOKE CLEARS

*What the Liggett Group, makers of Chesterfield, Eve and Lark cigarettes, agreed to:*

▶ Pay 5 percent of its pre-tax income each year for the next 25 years to finance

bers of the class action suit. Liggett had \$11 million in pre-tax profits from cigarettes last year. Under the settlement, it would have contributed about \$550,000.

▶ Pay up to \$1 million to help notify the class of 50 million smokers about the terms of the settlement.

▶ End tobacco advertising on T-shirts, hats and other clothing.

▶ Eliminate all billboards within 1,000 feet of schools and municipally owned playgrounds.

▶ Run only black-on-white advertising in magazines with a five-year phase-in period.

▶ Eliminate free distribution of cigarettes anywhere children are present.

### HOW TO JOIN THE LAWSUIT

▶ If you think you should be in the class,

## Settlement not always so sweet

By MICHAEL PERLSTEIN

If history is any guide, smokers should wait before uncorking the champagne over Wednesday's partial settlement of a Louisiana-based lawsuit against the tobacco industry.

Class-action lawsuits — especially large, complicated ones like the smokers' suit led by local attorney Wendell Gauthier — often result in miniscule benefits to the plaintiffs, but handsome payoffs for their attorneys.

In one widely watched case in federal court in New Orleans, a settlement was so bad for the plaintiffs that it was rejected by U.S. District Judge Morey Sear.

In that case, 680,000 Ford Bronco owners were offered a free

# Suit: Tobacco firm to pay damages

Page 1

cluding a smoker's widow and other smokers who say they were misled, sued the nation's tobacco firms. They claimed the industry knew nicotine is addictive and manipulated cigarette's nicotine levels to hook smokers. Recent documents leaked from tobacco companies indicate the industry may have known tobacco was addictive, while saying it wasn't.

Liggett neither denied nor admitted any claims in the suit, but is pursuing settlements in suits filed by four other states — Mississippi, Florida, Massachusetts and West Virginia. The states want the nation's tobacco companies to pay Medicaid costs for smoking-related sicknesses.

The settlement will not be a financial boon to the 50 million smokers that might be in the class: The Liggett proceeds will finance programs to help them quit smoking, including partially funding for smoking patches.

The deal affects only part of the cigarette industry: Liggett, maker of Chesterfield, Eve and Park cigarettes, controls just over 10 percent of the U.S. market.

The 67 lawyers — including 19 from New Orleans — said their firms have invested up to \$1 mil-

lion each in the effort. They've been led by New Orleans trial lawyer Wendell Gauthier.

The lawyers' fees will be decided later by the court, and will be paid out separately.

"This really has destroyed the tobacco's industry's invincibility," said Ken Carter, a New Orleans attorney representing the plaintiffs. "No longer can they claim they never lost a lawsuit."

The plaintiffs' attorneys believe the Liggett agreement will pressure other tobacco companies to settle.

Also named in the suit are RJR Nabisco Holdings Corp., Phillip Morris Cos., American Tobacco Co., Loews Corp., UST Corp. and B.A.T. Industries.

They vowed to fight the litigation and claimed Liggett's offer is a ploy designed by Liggett's chairman in a takeover fight for cigarette giant RJR Nabisco.

The New Orleans suit will continue against them. Liggett will cooperate with the plaintiffs' attorneys.

"We intend to fight and win all of the cases in which we are involved," Phillip Morris Co., the nation's biggest cigarette maker, said in a news release.

If the cigarette makers change their minds, they won't be able to settle on the terms Liggett did,

Gauthier said. Liggett's agreement requires that future settlements will cost competitors still in the lawsuit at least 15 percent of pre-tax income — three times as much.

The Liggett settlement will be extended to RJR, maker of Marlboro cigarettes, if Bennett LeBow, the Brooke Group's majority shareholder, is successful in a proxy fight to take over the tobacco giant.

"We wouldn't have entered this with Liggett unless we thought RJR could be part of it," Carter said.

LeBow plans to split RJR Nabisco into two companies, one for cigarettes, one for food products. Nabisco makes Oreo cookies. He had feared that the class-action plaintiffs would fight such a move. So in return for a cut of Liggett's profits, class-action plaintiffs agreed not to oppose any spin-off at RJR.

RJR called the settlement an "irresponsible and reckless ploy."

If he wins RJR, LeBow has already agreed to pay \$25 million to establish a trust to help smokers quit and keep minors from smoking. In addition, RJR would pay 5 percent of its pre-tax income annually up to \$50 million for 25 years.

LeBow said the agreement

means Liggett's assets will "no longer be held hostage by the tobacco litigation."

The settlement also contains several escape clauses. The biggest: If any of the other defendants in the case beat the plaintiffs, the deal is off.

Liggett had \$11 million in pre-tax profits last year, so it would have had to pay only \$550,000 — a trifling amount per potential claimant — under the agreement for one year. Plaintiffs would use the cash to cover half the cost of a bonafide smoking-cessation program.

A comprehensive eight- to 12-week smoking-cessation program through a clinic would cost \$300 to \$500, said Dr. David Burns of the University of California-San Diego's School of Medicine and a consultant to the lawyers' group. Smoking patches cost about \$60 to \$90 per month, and must be worn for two or three months.

"Financially, it's not doing anything for me," said plaintiff Ernie Perry of New Orleans. A five-pack-a-day smoker for more than 20 years, Perry, 47, gave up cigarettes Jan. 1.

But Perry approves of the settlement because it will limit promotion of smoking to children.

## Plaintiffs: Wait until the smoke clears

Page 1

protection, flashlight and safety gear to settle claims that their bicycles were unsafe. The attorneys were slated to receive \$4 million. Sear threw out the agreement.

Attorney Brian Wolfman of the Public Citizen Litigation Group stepped in on behalf of tobacco owners to oppose the deal, stating, "Some of these settlements are a joke."

Most attorneys say it is too early to judge Wednesday's settlement of the Castano class-action lawsuit, named for Peter Castano, a smoker and friend of Gauthier who died of lung cancer in 1994.

The deal calls for the Liggett

Group to pay millions toward programs to help people stop smoking. Individuals could be eligible to get back up to half of the money they spend on anti-smoking efforts.

Lawyer Anne Bloom, of the Washington, D.C.-based Trial Lawyers for Public Justice, said class-action settlements like this one require careful scrutiny because they involve the long-term interests of so many people.

"Unlike an individual lawsuit, a class action may involve people who don't even realize they're being represented," Bloom said.

Sometimes, Bloom said, the settlement of a class-action suit can benefit defendants even more than plaintiffs.

For example, the 1994 set-

tlement of an airline price-fixing suit entitled plaintiffs to coupons good for future air travel. While the total settlement amounted to \$438 million, individuals were eligible for only \$10 off on a \$240 ticket. Meanwhile, the law firms pocketed \$16 million.

For the airlines, the settlement amounted to a marketing tool that generated business. The deal was so favorable, a company that was not an original defendant, Alaska Airlines, asked to be included in the settlement.

"A sweet settlement deal for the defendants can be cut, and the plaintiffs can get their huge attorneys fees, then everybody is happy — except for the class," said lawyer Cornish Hitchcock, a consumer activist who argued for lower legal fees in the airline case.

But Joseph Bruno, a New Orleans lawyer who is part of Gauthier's team in the tobacco suit, said there does not appear to be a downside to Wednesday's deal.

Because the settlement addresses nicotine addiction, it does not rule out future lawsuits by smokers who may suffer smoking-related illness, Bruno said.

"The way I understand it, if you have an individual claim for lung cancer or leukemia, you can still pursue that," he said. "This claim is for addiction only. This settlement will help people to break the habit."

Furthermore, attorneys fees are not part of the announced settlement and will be negotiated separately, he said.