

New tobacco deal would aid counties

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AUSTIN — The tobacco industry would pay \$2.2 billion to Texas' 254 counties for health care costs associated with smoking under a tentative agreement reached Tuesday between negotiators for the counties and state lawmakers.

The payments to the counties would be in addition to the \$15.3 billion settlement the state won from the tobacco industry, said lawyers for Harris and Dallas counties.

Harris County Attorney Mike Fleming said that of the counties' total settlement, about 20 percent would go to Harris County and the Harris County Hospital District.

Sources familiar with the negotiations said that would amount to \$440 million out of a total \$2.2 billion settlement for all the counties.

Houston lawyer Richard Mithoff, who negotiated for Harris County and the hospital district, said he believes with "99 percent certainty" that the deal will hold together and be approved by U.S. District Judge David Folsom in Texarkana next week.

Tuesday's settlement occurred after two days of closed-door sessions in Folsom's courtroom.

"It's a substantial accomplishment, and it would be a tremendous benefit to everyone in Texas," Mithoff said.

Robert Ries, a lawyer representing Dallas County, described the deal as an "agreement in principle, with some fine points to be determined." Ries said lawyers representing the counties in the negotiations will advise their governing boards to accept the deal.

The Harris County Commissioners Court is expected to meet in special session early next week to hear the details, Fleming said.

State Sen. Bill Ratliff, R-Mount Pleasant, called the agreement "a good solution."

Ratliff, the chairman of the Senate Finance Committee, and House Appropriations Committee Chairman Rob Junell, D-San Angelo, originally had wanted to pay the counties just \$400 million out of the original settle-

Additional \$2.2 billion expected

ment the state won earlier this year.

But then, led by Harris County, the state's counties threatened to sue the tobacco industry separately to recover unreimbursed health care costs related to tobacco use. That threat raised the possibility that Texas would not be able to bring its settlement with the tobacco industry to closure.

Mithoff and Ries said the counties' money would come from additional state claims against the tobacco industry.

The state's original settlement with the industry provided that Texas can match any better deals that other states negotiate. Minnesota won a better deal than Texas, triggering the enhanced payments clause.

Under the agreement reached Tuesday, the state would keep its original settlement, while the counties would receive the additional payments, Mithoff and Ries said.

Attorney General Dan Morales is in New York today working out the details of the additional settlement with the tobacco industry, said spokesman Ron Dusek.

Sources who asked not to be named said the tobacco industry had not wanted to make an additional payment in the Texas tobacco case until it was sure the counties would not file a separate lawsuit against the industry.

The county settlement apparently clears the way to resolving another sticking point in the state's settlement — an agreement on how private attorneys' fees in the case will be handled.

Gov. George W. Bush and seven legislators had taken action to halt Morales' agreement that private lawyers who handled the state's case would receive \$2.3 billion in contingency fees from the tobacco industry. Bush and the lawmakers argued that the payment to the lawyers was too high and that ultimately, the state could be liable for part of it.

Under a tentative deal with Morales, Bush and the legislators agreed to allow the lawyers' fee issue to be separated from the rest of the lawsuit so that the state's settlement with the tobacco industry could be finalized. But Morales on Monday re-

fused to go along with that until the counties reached their settlement.

Mike McKetta, the lawyer representing the legislators, said his clients were "disappointed" that Morales refused to sever the lawyers' fee issue until the rest of the lawsuit was settled. Dusek said Morales did not want to conclude the lawsuit in a "piecemeal" fashion.

The agreement between Bush and Morales calls for the lawyers who represented the state to go into arbitration to set a fair payment. If the lawyers believe that the amount awarded by the arbitrator is too small, they can return to court to seek a higher amount. Bush and the legislators would then be free to oppose the increased payments.

In the course of the fight over the lawyers' fees, Morales filed a motion asking Judge Folsom to assess \$25 million in sanctions against Bush and the seven legislators for holding up the final lawsuit settlement.

Ratliff, one of those legislators, said the deal with the counties requires Morales to drop the sanctions motion.

"No dropping of that sanctions motion, no deal with the counties," Ratliff said.

Ratliff said he and Junell only negotiated with the counties on what the total amount of their settlement would be. He said it is up to the counties to decide how the money will be divided.

For negotiating the settlement for Harris County, Mithoff's contract calls for him to be paid approximately \$25 million. But Fleming said Mithoff and the county will work out an agreement under which Mithoff would receive substantially less than that figure.

"The fee has never been an issue to Mr. Mithoff," Fleming said. "And we'll work out something reasonable with Commissioners Court."