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State Tobacco Counsel Share $625 Million Fee

Three New York Firms Awarded $281 Million

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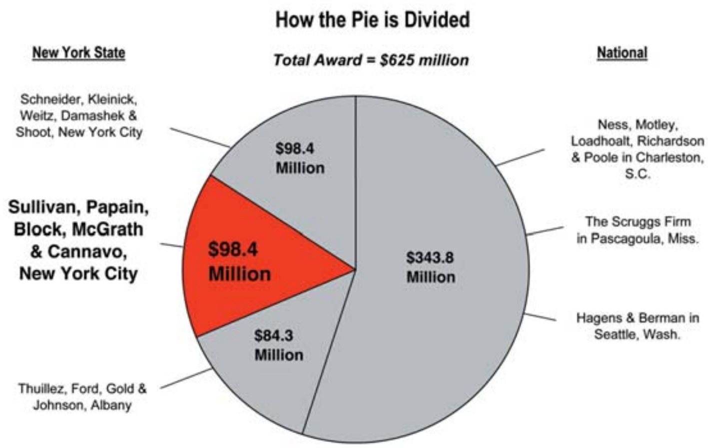

AN ARBITRATION panel has awarded $625 million in attorneys' fees to the six firms that were hired by New York State to sue the tobacco industry, sources close to the arbitration report.

The fee award is for the work the six firms did in securing $25 billion as New York State's share of the historic $208 billion pact reached between 46 states and the tobacco industry in 1998.

Former State Attorney General Dennis C. Vacco hired six outside firm's to handle the case for the State — three from New York and three out-of-state firms that had been active in the tobacco litigation throughout the country.

The three New York-based firms will receive 45 percent of the award, or a total of $281.1 million. Under a percentage formula worked out by the three firms, Schneider, Kleinick, Weitz, Damashek & Shoot will receive $98.4 million, as will **Sullivan, Papain, Block, McGrath & Cannavo**. The third New York firm, Thuillez, Ford, Gold & Johnson, which is based in Albany, will receive a slightly smaller amount, $84.3 million.

Robert G. Sullivan, a senior partner at Sullivan Papain, said "on balance the New York award was the right award." Because of the "big risk," legal work was "handsomely rewarded," he added.

Dale Thuillez, of Thuillez Ford, added that a huge amount of legal work had been involved. His firm, in responding to industry interrogatories, had collected so many documents that if the "pages were laid end-to-end, a paper trail would stretch from New York to within 21 miles of Houston."

The three national firms will share $343.8 million between them. They are Ness, Motley, Loadhoalt, Richardson & Poole from Charleston, S.C.; The Scruggs Firm from Pascagoula, Miss., and Hagens & Berman from Seattle, Wash.

The Ness Motley and Scruggs firms were a part of the legal teams from about 30 states that negotiated the settlement with the tobacco industry. Since the settlement, the Schneider Kleinick firm has affiliated with one of the nation's best known litigators, Johnnie L. Cochran Jr.

$11.8 Billion in Fees

The $625 million New York was awarded by the three-member panel, which conducted a three-day hearing in Houston from Dec. 5-8, was the sixth-highest to date. The three highest fee awards went to three pioneer states that settled with the industry prior to the nationwide settlement in November 1998: Florida, $3.4 billion; Texas, $3.3 billion and Mississippi, $1.4 billion.

Lawyers for both California and Massachusetts also received higher fee awards. California's share of the $208 billion fund was only marginally higher than New York's, while Massachusetts' was substantially less at $8.3 billion. Other factors, particularly the extent of litigation within a state prior to the settlement, were key in forming the awards, attorneys familiar with the process said.

In all, 16 states and Puerto Rico have completed the arbitration process and received fee awards totalling $11.8 billion. Only Missouri, Maryland and Washington, D.C., have outstanding, unresolved fee requests.

Lawyers for an additional 21 states directly negotiated their fees with the industry and received payment from a $1.25 billion fund, which was set aside by the industry to cover legal fees.

The process for setting fee awards was negotiated as a part of the overall November 1998 national settlement. Those rules set a limit of $500 million a year on the amount of fees the industry must pay out to meet arbitration awards.

Because of that cap, it is estimated that it will take 20 to 25 years before the firms receive the full amount of their awards. Each year, attorneys from each state are paid a percentage of the $500 million that reflects the ratio of what attorneys in that state received to the total fee award nationwide.

The Bond Option

Because of the long payout periods, some firms have considered using the revenue stream from the tobacco companies to back a bond issue, which would allow them to take a substantial portion of their fees up front.

A group of lawyers from Florida, Massachusetts, Hawaii and Illinois in February issued bonds worth $1.3 billion based upon the fees they had been awarded.

Richard Scruggs, of the Scruggs firm, said that his firm is considering raising funds through a bond issue. He said that he had not participated in the earlier effort because a large number of firms were involved and he would have had to make representations about those firms without knowing them well enough. He also said that, with interest rates now down, bonds were a more attractive fund-raising vehicle.

Mr. Thuillez, of Thuillez Ford in Albany, said the primary consideration in a decision to float bonds is whether the firms should take the money up front at a discount because of a risk that the tobacco industry might run into financial difficulties and have problems making payments in the future. It is a question of whether the firms should assume the risk of a default or shift that risk to the bondholders and accept less than the full value of their awards, he said.

Mr. Sullivan said that as far as he is concerned, the payout from the tobacco industry over time is "a great annuity" because "you could build an ark" before the tobacco companies are likely to "go belly up."

The arbitration panel has yet to issue its written decision, though it was required to provide the lawyers with the amount of the fee award within roughly 30 days after the hearing concluded on Dec. 8. To date, the firms have received two payments on their awards, sources said.

The panel consists of three members. The "neutral" member who was selected as a result of negotiations by the two sides is John Calhoun Wells, a former director of the Federal Mediation and Conciliation Service. The industry representative is Charles B. Renfrew, a former U.S. district judge.

The third member —Harry Huge, a litigator at Powell, Goldstein, Frazer & Murphy in Washington, D.C. — was selected by the lawyers representing New York.

Mr. Wells and Mr. Renfrew sit on all fee arbitrations, no matter which state's lawyers are seeking fees. The lawyers in each separate state, however, are authorized to select their own representative. Nonetheless, lawyers in many states have selected Mr. Huge, who comes highly recommended by the Ness Motley firm.