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Self Ex ly

RICHARD J. LEIGHTON
KENNETH E. CONKLIN
MICHAEL R. LEMOV
JERALD A. JACOBS
JEREMIAH S. BUCKLEY
RONALD D. COLEMAN
LYNDA S. ZENGERLE
GARY ETHAN KLEIN
RICHARD F. MANN
JULIE HUNT BLAIR
RONALD M. STRONG
WALTER B. MCCORMICK, JR.
SCOTT D. ANDERSEN
DON ROBERT LONGANO

LAW OFFICES
LEIGHTON CONKLIN LEMOV AND JACOBS
CHARTERED
2033 M STREET, NORTHWEST
WASHINGTON, D. C. 20036

September 14, 1980

TELEPHONE: (202) 785-4800
CABLE: LECON
INTLX: 197622
WUD 89659

OF COUNSEL
WILLIAM R. NOBLE
ROBERT E. STEIN

BY HAND

Mr. Frederick Panzer
Vice President
The Tobacco Institute
1875 Eye Street, N.W.
Suite 800
Washington, D.C. 20006

Re: Cigarette Safety Legislation

Dear Fred:

Thank you for your letter of November 5, 1980, with regard to the above matter. We have reviewed the materials you furnished us, including the House and Senate bills, newspaper editorials and articles, correspondence from the Institute stating your position regarding these matters, and related statistical data on residential fires. We have the following proposal for consideration of a program by this law firm in cooperation with The Tobacco Institute with regard to cigarette safety.

Our comments on the legislation and a related program are as follows:

1. The Legislation

We have carefully reviewed H.R. 6675 and S.2215. We note that there are approximately 33 sponsors for the House bill in the present Congress. While we understand the good intentions of the sponsors of the legislation, from the point of view of legislative draftsmanship, Congressional priorities and public safety, we do not think this is good legislation.

The legislative draftsmanship of H.R. 6675 is flawed primarily in that the legislation does not provide for adequate research and investigation prior to the initiation of any standard-setting

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proceedings. In other words, the bill assumes the hazard and directs a standard-setting proceeding be commenced. In addition, the legislation appears to be inaccurate (Section 3(a)(3)) in its assumption of 20-45 minutes as a "reasonable" ignition time for residential fires. It is our understanding that such fires can ignite in a much shorter period of time, leaving the question of feasibility of a self-extinguishing cigarette unresolved.

Also, the draftsmanship of the bill completely ignores the question of the impact of toxic elements in a cigarette which might result from the addition of self-extinguishing characteristics.

Similarly, from the point of view of public safety, we do not believe the single hazard approach mandated by Congress in H.R. 6675 is an appropriate legislative solution. In 1972, Congress created an expert agency to evaluate unreasonable risks and set priorities. While the Consumer Product Safety Act does not apply to cigarettes, the basic fact-finding and research role of the Consumer Product Safety Commission remains. Furthermore, other government agencies, such as the National Bureau of Standards and the National Fire Prevention and Control Administration, also have comprehensive mandates to investigate and determine priorities. For Congress to select a specific alleged hazard itself and direct a questionable solution is simply not good public safety policy. In establishing the Consumer Product Safety Commission, the House of Representatives emphasized:

In addition to the need to establish comprehensive and effective regulation over the safety of unreasonably hazardous consumer products, there is a need to insure that the procedures relating to consumer products are fair to both industry and consumers. The Committee heard extensive testimony from manufacturers and trade associations documenting some of the potential difficulties that might be faced in complying with the regulations of a product safety agency. This testimony convinces the Committee that it is essential to establish both an effective and fair product safety program, impacting to the minimum extent practicable on the manufacturing process.... House Report 92-1153, page 26.

It is clear that the approach adopted by the pending bills is inconsistent with the comprehensive and balanced approach enunciated in 1972.

Finally, from the perspective of Congressional priorities, this legislation is flawed. With Congressional attention essential to such major issues as energy supplies, communications reform and the cost of health care, focusing on a single hazard seems an unwise allocation of Congressional effort. It would be far better to delegate overall responsibility for residential fire research to one or more government agencies and to weigh their findings on need and appropriate action before Congressional action is taken.

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with
a
signature*

2. The Residential Fire Problem

Notwithstanding our negative appraisal of H.R. 6675 and related legislation, it is clear to us that the tobacco industry has a significant problem in connection with residential fires. Whether this problem is real or perceived is immaterial. The Washington Post article of June 1 ("Life Savers: Self-Extinguishing Cigarettes") and the Louisville Courier Journal article of June 12 ("Self-Extinguishing Cigarette Could Save Lives") are merely illustrative of a broader problem.

There is a public perception that cigarettes are a major cause of residential fires and that a fix is technologically possible. From the point of view of the tobacco industry, it is essential not to adopt and maintain a wholly negative attitude. It is simply not worth the negative publicity and ultimate economic and political damage. The preferred approach seems to us to involve an affirmative position. Some type of support for broad-based research into the overall causes of residential fires and a willingness to do something about those causes (if they are confirmed) is what we have in mind.

We doubt whether the public is aware of the fact that smoking-related residential fires involve only 13 percent of all residential fires. See, Fire in the United States, Department of Commerce, 1978, page 7. Other major causes of residential fires include cooking (18 percent); heating (13 percent); and appliances (7 percent).

It is true that if deaths caused by residential fires are calculated, smoking apparently increases to 29 percent as a cause. Id., page 8. Nonetheless, smoking is clearly only one of a series of causes and cannot be dealt with in isolation.

3. Recommendations

We believe that the legislation in question must be modified in two ways. First, it should not pre-judge the factual questions of need for a standard and technological feasibility of a fix.

Only a true scientific study would furnish a sound basis for such distinction. Such a study cannot be made by the Congress, since it does not have the capability for this type of effort. It probably should not be done by the CPSC because of jurisdictional limitations with regard to cigarettes.

Second, we believe that a study of residential fire hazards should not isolate any single cause such as smoking, or wiring, or appliances. It must start in an impartial way by considering all potential causes and the most cost-effective solutions.

We think it would be useful, therefore, for the industry to develop a legislative alternative to be used in the next Congress and thereafter.

Apart from the legislative problem, the industry faces the broader question of public image. Only by developing and maintaining an affirmative public image can the residential cigarette safety problem be permanently resolved. We think the methods of attaining such an image must be developed in concert with the industry's position on the pending legislation. A combined effort to convert the legislative approach into a useful research effort and, at the same time, to gain public credit for the tobacco industry is the type of program we think would work.

If you believe such an approach is worthwhile, we would be pleased to meet with you to discuss this matter further. Some of the issues which we think we should focus on in our meeting are as follows:

1. Does a real problem, or merely a perceived safety problem, exist in connection with cigarettes?
2. Is legislation likely?
3. If legislation is not likely, are there other negative results which can be anticipated?
4. Is an alternative to the legislation the best approach?
5. If so, should it be voluntary, legislative or administrative?
6. Are there allies who can be enlisted in reaching a solution to this problem?
7. What is the appropriate timing for such an effort?

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We are appreciative of the opportunity to give you our preliminary views on this matter. We are enclosing a list of some of the clients of this firm and the biographies of the principal attorneys. Myself and my partner, Dick Leighton, would be happy to meet with you to discuss this matter further.

With best regards,

LEIGHTON CONKLIN LEMOV & JACOBS



Michael R. Lemov

MRL/sde

Enclosures

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