By this point the interest of many in the press had been piqued. Yet, astoundingly, many of the lawyers proceeded to take the position that the details of their fees were none of the press’s or public’s affair, even though the fees had supposedly been earned by representing the public on official business. The *Fort Worth Star-Telegram*, *Baltimore Sun*, and *Milwaukee Journal Sentinel* all had to resort to legal action under open-records laws before they could get copies of the billing records for the suits in their states. The Wisconsin law firms, trying to keep the records secret, poignantly cited “ethical issues.” Many lawyers asserted that since their fees were officially being paid directly by tobacco companies rather than deducted from states’ settlements, no one had the right to object. “The attorneys’ fees issue is really a non-issue,” as Scruggs put it later.11

When the Milwaukee paper’s open-records-law battle revealed the billing records for the state’s lawyers, it became even more apparent why the lawyers had fought so hard to keep them private. The three private law firms representing the state had demanded $847 million plus expenses, based on a promised 20 percent of the $4 billion the state was slated to receive over twenty-five years. Although the Wisconsin lawyers had done very little of the heavy lifting in the national suit, they claimed to have spent a staggering 26,284 hours on the case. Even taking that claim at face value, their initial fee demand had worked out to an average rate exceeding $32,000 an hour—which was more, as the Ashland *Daily Press* in northern Wisconsin pointed out, than the typical family in that part of the state earned in well over a year. All three of the firms had political associations, two Republican and one Democratic, a partner in one of them being GOP governor Tommy Thompson’s personal attorney (Democratic attorney general James Doyle had pushed the suit, with Governor Thompson coming on board after some initial reluctance). The governor had chosen to follow what his spokesman described as a less formal process of selection; and, in fact, an inquiry under the open-records law revealed that the state had spurned a law firm that had been interested in taking on the work for a lower fee.

Of the claimed hours, how many were reasonable and necessary? They included time spent purportedly by lawyers on matters more often handled by office administrators, such as setting up bank accounts and securing office space, furniture, and parking. By the lawyers’ own accounting, their bill also included ample amounts of time spent on fee negotiations themselves, on working the press and scoping out the governor and other political players, and in preparing a constitutional challenge to proposed legislation in the state capital that would have curbed their fees (yes, they were getting paid for that, too). And expenses? Those turned out to include $7,800 for a chartered plane to fly attorney Robert Habush, former president of the Association of Trial Lawyers of America (ATLA), round-trip from Florida to Washington (coach fare: $906) and a stack of limo bills typified by an $851 entry to whisk Habush from Milwaukee to Madison and back on May 5, 1997.

As public outcry mounted, the Wisconsin lawyers agreed to accept a mere $75 million instead of the originally demanded $847 million—a remarkable 90-percent-plus stand-down, rather as if a used-car dealer had initially tagged a vehicle at $8,470 and then preemptively offered to
slice its asking price to $750. Even at the lower figure, they were still set to make $2,853 an hour based on their own report of hours worked. Meanwhile, the state had asked $209 an hour as compensation for its own lawyers, the ones who worked full time for the government. In Texas, an official estimated that the fee award in his state exceeded $105,000 an hour.

The Wisconsin lawyers were not alone in demanding a fortune in fees even though their state had basically just hitched a ride in the national tobacco litigation parade. Of the fifty states’ cases, only two had reached trial (both settled before a verdict), which meant that in the other forty-eight states the lawyers generally did not face the biggest source of costs in an ordinary lawsuit. On the matter of legal research and pretrial paperwork, Minnesota and a few other lead states had put intense efforts into developing the case. By contrast, Illinois was a classic tag-along state: It hadn’t taken any depositions and had done “relatively little” to advance its claims toward trial. That didn’t stop arbitrators from awarding Illinois’ lawyers $121 million. Lawyers for New Jersey got $350 million, though the New Jersey Law Journal found that they hadn’t been involved in national settlement talks and had relied on a national law firm representing the state for “most of the substantive legal work, including court arguments” on their behalf.

In Missouri, another tag-along state, lawyers demanded $480 million, then said they would settle for $100 million. Attorneys for Michigan were given $450 million, although arbitrators conceded: “Private Counsel’s work in the Michigan state-specific litigation was modest” and that “there was not substantial discovery taking place in the Michigan case at the time the National settlement occurred.”

Even lawyers for states that joined the action at a late stage—well after a critical mass had formed, making it clear that some deal to resolve the case was likely to be forthcoming—claimed that their legal representation had been unusually risky, thus supposedly justifying a fee enhancement. And while many lawyers also claimed that their contributions had been supercreative—the analogy of top Hollywood stars or rock singers at the peaks of their careers was often put forth—the reality was that much of the effort had been the same sort of crashingly routine scutwork that goes on in other litigation. The Baltimore Sun’s successful open-records demand, for example, revealed that of the legal work Peter Angelos wanted Maryland taxpayers to reimburse at $30,000 an hour, nearly a quarter had actually been performed by lawyers he’d hired from a temp agency at $21 an hour. It was like reselling tap water at the price of French perfume.

The fee demands were even closer to pure profit because lawyers could write off so many of the costs of prosecuting the suit as separately reimbursable expenses. These could be made to include not only meals and travel, hired experts, and jury consultants but also simple office overhead, given that a separate office with phones and staff could be established to handle the tobacco work. The Texas lawyers billed more than $30 million in expense claims that included charter aircraft, a $952 lunch and $300 coffee service, and more than $100,000 for the services of a PR firm. They had also quietly hired many of the nation’s best-known law profes-


33. Sheila R. Cherry, "Litigation Lotto," Insight (March 11, 2000), quoting state senator Troy Fraser.


37. Susan Borreson, "Making Pennzoil Look Paltry," Texas Lawyer (January 26, 1998), and Sanchez, above.


40. See references in fn 39.