

The Administration continues preparations for the unveiling of the **President's health care reform package**, which is now expected to occur at a joint session of Congress during the latter part of September. The President and his senior advisors are in the process of making the final major decisions on the scope of his plan, including how to pay for it. The President touched on the broad outlines of his plan in a speech before the National Governors Association on August 16, where he revealed that an employer mandate will be the central component of his package. He made no mention of new taxes during his speech, but Health Care Task Force Executive Director Ira Magaziner told the Governors in private briefings that increased **tobacco taxes**, which will likely be used to finance a long term care program for the elderly, will be the only new major tax needed. The Administration has been highlighting tobacco taxes as the sole new tax needed as a part of a broader political effort to play down the costs of its program and other financing sources such as the employer mandates and insurance premium cap price controls. Reports continue to indicate, however, that higher **beer taxes** will not be included in the Administration's final package.

The business community is using the August recess to gear up for a possible Senate floor vote on **striker replacement legislation** in September. The measure passed the House in June, but proponents are still several votes shy of the 60 necessary to beat back an expected filibuster. Organized Labor and its supporters have not yet decided whether to advance compromise legislation in an effort to gain the necessary votes. The business community is unified against the bill, and has indicated it will not accept any compromises offered by Labor. The

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WRO, working with KGF, has developed a compromise proposal acceptable to PM that may be put forward quietly behind the scenes if it appears that Labor is gaining momentum in the fight.

The full Senate is expected shortly after returning from the August recess to vote on an **FTC reauthorization bill** passed by the Commerce Committee on August 3. In contrast to the House-passed bill, the Senate measure would permanently ban the use of the **FTC's unfairness rulemaking authority** and codify a pro-advertiser definition of "unfairness" that would apply to unfairness proceedings the FTC brings under its case-by-case authority. Upon passage by the Senate, efforts will be made in conference by both House Energy and Commerce Committee Chairman John Dingell (D-MI) and Senate Commerce Committee Chairman Ernest Hollings (D-SC) to reach a compromise on whether and under what circumstances the FTC would be permitted to use its unfairness rulemaking authority against commercial advertising. The WRO has worked with the PM operating companies to develop a consensus fallback position in the event that it appears possible a compromise can be reached. We have opened discussions with key staff and will unveil our fallback position to them and to friendly Members at the appropriate time.

**Limiting the deductibility of general advertising expense** will be the subject of a hearing before the House Ways and Means Committee's Select Revenue Measures Subcommittee on September 8. The hearing is focusing on revenue sources that may be looked to fund tax bills being proposed by various individual members of the Ways and Means

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Committee. The WRO is working with the advertising trade associations and the rest of the advertising community to educate Members concerning why such a proposal is unwarranted.

On **federal tort reform issues** the House Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration marked up a bi-partisan bill supported by PM that would delete a **mandatory, pre-discovery disclosure rule** from a package of changes to the Federal Rules of Civil Procedure that will become law automatically on December 1, 1993. The full House Judiciary Committee is expected to set a markup for this bill shortly after Congress returns from its August recess. It is expected that a similar bill will be introduced in the Senate sometime in September. The WRO is working behind the scenes with major elements of the business community to push this legislation through Congress in the face of the December 1, 1993 deadline and a tight legislative calendar for the fall. On another federal tort reform front, Senator Herb Kohl (D-WS) introduced a bill on August 6 that would severely limit the availability of **protective order and sealed settlements** in federal court cases. Senator Kohl's staff has indicated that he will seek hearings on his measure this fall. The WRO will be working behind the scenes with major elements of the business community to oppose Kohl's legislation.

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### FTC Reauthorization Bill

- As Congress adjourned, House and Senate conferees had not yet met to try to resolve their differences concerning the circumstances under which the FTC should be able to utilize its controversial "unfairness" authority against commercial advertising. The WRO will be working over the recess to convince conferees and their staffs to include in any final bill a provision agreed to by all of our operating companies that would provide reasonable protections for our advertising in the years to come through the establishment of a statutory definition of "unfairness" that would rein in the FTC's power.

### Federal Tort Reform Issues

- Despite intensive efforts by the business community, the Department of Justice, and the trial lawyers, the Senate failed prior to adjournment to pass a House-approved bill that would have deleted the controversial "mandatory disclosure" rule from an extensive package of changes to the Federal Rules of Civil Procedure that will automatically become law on December 1, 1993. Due to the Senate's failure to act, civil litigants generally will be required to disclose "relevant" categories of documents, witnesses, and other information at the outset of a lawsuit without formal discovery requests. The WRO is involved with the rest of the business community in assessing whether

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legislation to repeal the new "mandatory disclosure" rule could be passed early next year.

#### Tobacco Advertising/Promotion

- On November 23, Rep. Henry Waxman (D-CA) held a press conference to announce the introduction of the "Tobacco Education and Child Protection Act." The bill would delete the tobacco industry's "preemptive" defense in product liability actions, establish 9 new rotating health warnings that would have to be displayed more prominently than the current warnings on cigarette packages and in advertisements, and require that the new health warnings be placed on utilitarian items such as jackets, pens, etc. The bill would also ban various other activities, such as free sampling, vending machine sales in places frequented by minors, and tobacco industry sponsorship of athletic and cultural events. Rep. Waxman will likely try to advance his measure next year out of his Health and Environment Subcommittee along with a bill introduced by Rep. Synar (D-OK) that would subject tobacco to the jurisdiction of FDA.
- Separately, Senator William Cohen (R-ME) introduced a bill on November 18 that would require all utilitarian cigarette promotional items to carry the four rotating warning labels currently required on cigarette packages and in advertisements. In introducing the bill, Cohen specifically criticized Philip Morris

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and RJR for the merchandise "giveaway" promotions they have utilized with respect to their Marlboro and Camel brands that do not contain warning label.

### **Health Care Reform**

- The Clinton health care reform bill, with its proposed tobacco tax increases, was formally introduced just before Congress adjourned at the end of November. Of all of the major Democratic and Republican health care reform bills introduced last session, the Clinton bill is the only one that contains a tobacco tax increase. The Congress held numerous hearings on the Clinton plan last month, and various congressional panels plan to hold further hearings over the recess. In addition, but the Republicans and Democrats are planning a series of town hall meetings and other grassroots events over the recess to develop support for their respective health care reform proposals. The WRO is working with PMUSA to begin implementing a grassroots plan designed to demonstrate opposition to the Administration's proposed tobacco taxes.

### **Miles Report - Backup Narratives**

#### **Tobacco Advertising And Promotion Practices**

- On November 23, Rep. Henry Waxman (D-CA) held a press conference to announce the introduction of H.R. 3614, the

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"Tobacco Education and Child Protection Act." The bill is designed to strengthen the warning labels on tobacco products and to severely restrict the advertising and promotion of tobacco products. Waxman was joined at the press conference by co-sponsors Mike Synar (D-OK), Dick Durbin (D-IL) and Pat Schroeder (D-CO), along with Surgeon Joycelyn Elders and representatives from the Coalition on Smoking OR Health (COSH) and Stop Teenage Addiction to Tobacco (STAT). The bill contains the following major provisions that would: 1) eliminate the industry's "preemption" defense in product liability actions; 2) establish 9 new rotating warning labels that would have to be placed on cigarette packages and in cigarette advertisements and promotional materials; 3) establish new label formats for cigarette packages and cigarette advertisements; 4) require the placement of warning labels on utilitarian products bearing the name of a tobacco brand or brand family; 5) establish new rotation requirements for warning labels on product packages and utilitarian items, as well as for billboard and non-billboard advertising; 6) permit the Secretary of HHS to revise any of the 9 new health warnings, and/or their format for display, if the Secretary finds that such revisions would promote greater understanding of the alleged risks of tobacco; 7) ban the advertisement of cigarettes: on audio tape, audio discs, videotape and film/in any facility where sporting activities are performed/within 2000 feet of any school that minors attend; 8) ban any representations concerning the level of or removal, reduction, or addition of ingredients, tar, nicotine, carbon

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monoxide, or filters or any other mechanism, device or constituent; 9) severely restrict sales and promotional activities by: banning free sampling/prohibiting the sale of cigarettes through vending machines unless the machine is located in a facility that bans entry to people under 18/banning the sponsorship of athletic, music, artistic or other events in the name of a tobacco brand or in a manner where a tobacco brand is "in any way" associated with the event/banning paid product placements in any form of entertainment/prohibiting the placement of a tobacco trademark on race cars, boats or other equipment or clothing used in sports unless they contain warning labels pursuant to regulations established by HHS; 10) give non-profit entities a private right of action to sue anyone who violates the provisions of the bill and permit them to seek injunctive relief, a civil penalty of not more than \$100,000 per day for each violation, and recover reasonable attorneys' fees and expenses if they "substantially prevail" in the action.. Rep. Waxman will likely try to advance his measure next year out of the Health and Environment Subcommittee that he chairs along with a bill introduced by Rep. Synar (D-OK) that would subject tobacco to the jurisdiction of the FDA.

- On November 18, Senator William Cohen (R-MA) introduced S. 1671, the "Cigarette Promotional Product Labeling Act." Cohen's bill would mandate that the warning labels currently required on cigarette packages also be placed on all utilitarian items such as pens, clothing and sporting goods if those items bear the

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brand name, logo or "selling message" of any cigarette product. In introducing the bill, Senator Cohen specifically criticized Philip Morris and RJR for the merchandise "giveaway" campaigns they have utilized with respect to their Marlboro and Camel brands that do not contain warning labels. Senator Cohen's bill, which currently has no co-sponsors, has been referred to the Senate Commerce Committee. No hearings have been scheduled to date.

#### Federal Tort Reform Issues

- Despite intensive efforts on the part of the business community, the Department of Justice and the trial lawyers, the Senate failed to pass a House-approved bill which would delete the controversial "mandatory disclosure" provision (Rule 26) from an extensive package of changes to the Federal Rules of Civil Procedure that will automatically become law on December 1, 1993. Due to the Senate's failure to act before the recess on the measure, civil litigants as of December 1 will be required to disclose "relevant" categories of documents, witnesses, and other information at the outset of a lawsuit without formal discovery requests. To move the measure through the Senate, the business community, the trial lawyers, the Department of Justice and the legislation's principal House and Senate sponsors agreed to a compromise that would have solved the trial lawyers' concerns with a provision in the Rules Change package that would have limited their ability to take depositions and issue interrogatories. At the eleventh hour, however, civil rights groups, with the

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support of Senator Howard Metzenbaum (D-OH), objected to the compromise and blocked the Senate from proceeding with the bill. When a later compromise was brokered to deal with the concerns of Senator Metzenbaum and the civil rights groups, Senator Charles Grassley (R-IA) announced his objection, which effectively killed the bill since the Congress was adjourning. The WRO is involved with the business community in assessing legislative options for passage of legislation early next year.

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Senior Administration officials have indicated that the **President's health care reform package** will not be publicly released until sometime in September. Indications to date are that only an outline or "narrative" of the plan will be released at that time and that actual legislation may not be sent to Congress until January. The President reportedly has not made several decisions concerning the major components of his plan, including the financing package. However, both Hillary Rodham Clinton, and Ira Magaziner, the Director of the President's Health Care Task Force, have publicly indicated that **tobacco taxes** will likely be the only "new" major tax that will be used to fund the Administration package. Their focus on tobacco taxes is part of a broader political effort by the Administration to play down the much larger tax increases that are also included in the Clinton plan at this stage. Specifically, the Administration does not characterize the payments based on payroll that employers and employees will have to make to regional health alliances as "new taxes" since they technically will not be paid directly to the federal government. These payments will amount to scores of billions of dollars per year. Nor does the Administration apparently count as "new taxes" the billions of dollars it hopes to raise by limiting the deductibility of health care costs, imposing surcharges on self-insured plans that opt out of the regional health alliances, and "recapturing" windfall profits that hospitals would receive as a result of health care reform. **Beer taxes**, however, continue to be reported to date as not being included in the Administration health care plan.

**Striker replacement legislation**, which passed the House in June, will not see action on the Senate floor until at least September. Proponents are still

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several votes shy of the 60 votes necessary to beat back an expected filibuster.

The Senate Commerce Committee is expected to markup the Senate's version of an **FTC reauthorization bill** immediately before or soon after the August recess. In contrast to the House-passed bill, the Senate measure would permanently ban the use of the **FTC's unfairness rulemaking authority** and codify a pro-advertiser definition of "unfairness" that would apply to unfairness proceedings the FTC brings under its case-by-case authority. The Commerce Committee is expected to move the bill to the Senate floor shortly after markup in an effort to reach conference with the House on the measure. Efforts will be made in conference by both Energy and Commerce Committee Chairman John Dingell (D-MI) and Commerce Committee Chairman Ernest Hollings (D-SC) to reach a compromise on whether and under what circumstances the FTC would be permitted to use its unfairness rulemaking authority against commercial advertising. The WRO has worked with the PM operating companies to develop a consensus fallback position in the event that it appears possible a compromise can be reached. We have opened discussions with key staff in an attempt to position us favorably on the issue, and we will unveil our fallback position to them and to friendly Members at the appropriate time.

Nine members of the House anti-tobacco caucus, led by Rep. Michael Huffington (R-CA), introduced a bill that would **deny the tax deductibility of advertising and promotion expenses for tobacco products**. The legislation would take away the deductions currently permitted for tobacco advertising expenses, along with expenses incurred as a result of travel, entertainment,

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gifts, and promotions that are related to tobacco advertising. The revenue generated by the bill would be used for "deficit reduction purposes." The bill has been referred to the Ways and Means Committee, but no action has been scheduled.

On **federal tort reform issues**, the Supreme Court transmitted to Congress for its consideration in April an extensive package of changes to the Federal Rules of Civil Procedure developed by the U.S. Judicial Conference. Included in that package is an extremely controversial amendment to Rule 26 opposed by Philip Morris that would require **mandatory, pre-discovery disclosure** of relevant documents, witnesses and other information at the outset of a lawsuit without formal discovery requests. This amendment is also opposed by the rest of the business community, the Department of Justice, and the overwhelming majority of the plaintiff and defense bars. Despite this widespread opposition, the mandatory disclosure amendment will become law automatically on December 1 unless Congress passes legislation before that date that deletes the provision from the broader package. Substantial progress has been made to date. The House Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration has held a hearing and is expected to mark up a bi-partisan bill on August 5 that would delete the mandatory disclosure amendment. In the Senate, the Judiciary Committee's Subcommittee on Courts and Administrative Practice held a hearing on the issue July 28, and a bill to delete Rule 26 is expected to be introduced. The WRO is working behind the scenes with a broad-based business coalition to push this legislation through the Congress in the face of a tight legislative calendar.

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President Clinton delivered his 1300-plus page **health care reform** bill to Capitol Hill on October 27, and the Congressional Leadership expects to formally introduce it shortly after determining the various committees to which the bill will be referred. **Clinton's bill proposes raising the FET on cigarettes by 75¢, effective 1/1/94**, in an effort to raise \$65 billion from 1995-2000. **The bill proposes no new taxes on alcohol products**, but does contain a host of "preventive health" measures designed to discourage the consumption of both alcohol and tobacco products. Clinton's plan would provide a comprehensive package of health benefits to all Americans by 1998, and includes an employer mandate that would require all businesses to pay for at least 80% of the cost of their employees' health insurance. Employees will have to pay up to 20%, depending upon how much beyond 80% of the premium costs their employers cover. The President's plan will require approximately \$400 billion in additional federal spending over the next six years primarily due to the new prescription drug and long term care benefits in the package and the subsidies the Administration will provide to small businesses and low wage employees to help them purchase health insurance. The President proposes to pay for that total through cuts in Medicare/Medicaid and other current federal health programs, increased tax collections from expected higher corporate profits and employee wages due to his reforms, and through the **higher tobacco taxes** and a 1% "corporate payroll assessment" on large companies that choose to self-insure. Congress has already begun holding extensive hearings on health care reform, which will continue for the remainder of this year and well into next year. The Clinton legislation is the only major health care bill introduced to date that includes a tobacco tax. The various other major bills, including some with bi-partisan support, are expected to be seriously considered by the Congress along with the Clinton plan during the remainder of this Congress.

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On **federal tort reform issues**, the House Judiciary Committee unanimously approved a bi-partisan bill supported by PM that would delete a **mandatory, pre-discovery disclosure rule** from a package of changes to the Federal Rules of Civil Procedure that will otherwise become law automatically on December 1, 1993. This rule would require mandatory, pre-discovery disclosure of "relevant" document, witnesses, and other information at the outset of a lawsuit, without formal discovery requests, and its deletion is also supported by the Justice Department, the ABA, and the rest of the business community. In the face of the December 1, 1993 deadline, intensive efforts are being made to secure prompt passage by the full House and then move the measure on to the Senate, where hearings that developed a favorable record have already been held. The trial lawyers, however, have emerged with concerns about the bill, which has slowed its progress in the House. The WRO is working behind the scenes to deal with the trial lawyers' concerns so that the bill can advance.

Congress approved the Commerce, State, Justice and Related Agencies appropriations bill, which included a provision that extends through October 1, 1994, the current ban against the FTC using its controversial "**unfairness**" **rulemaking authority to regulate commercial advertising**. Such a ban was included in the 1980 FTC reauthorization bill, and Congress has been unable to pass an FTC reauthorization bill since that time. As a result, the Senate has placed this restriction in the annual FTC appropriations bill each year, including this one, to keep the prohibition in effect until a new authorization bill can be passed. In that regard, the conference on an **FTC reauthorization bill** has begun where the House and Senate will try to finally resolve their differences concerning the FTC's unfairness authority. Going into the conference, the Senate wants to eliminate the

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FTC's unfairness rulemaking authority and codify a pro-advertiser definition of "unfairness" to govern FTC case-by-case proceedings, while the House wants neither of these provisions. The advertising community supports the Senate position, while the National Association of Attorneys Generals (NAAG) is lobbying against the Senate position, particularly its proposed codification of an unfairness definition. Negotiations to reach a compromise on the manner in which the FTC can utilize its "unfairness" authority are expected to be protracted. The WRO has worked with the operating companies to develop a consensus position that focuses on the importance of an unfairness definition and is working to have that included in any final bill.

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