

THE PRINCIPLE that the polluter should pay has suffered another setback in the struggle to make the tobacco industry responsible for its injurious activities. For the prospect of insurance companies around the world being saddled with a huge compensation bill, for smoking-related deaths is doubly bad news. Not only would it let the industry off the financial hook (and rescue its shares) but it would shift the burden on to the shoulders of ordinary people buying new insurance – many of whom have never touched a cigarette in their lives.

The industry has so far been very coy about revealing the fine print of product liability policies taken out over many decades. It would weaken the defence that smoking does no harm to say, in effect, “anyhow, we’re insured”. It would also result in the conduct of its defence being handed over to the insurers if they were bought into the action.

But if a comprehensive settlement of the type being discussed in Washington were reached, giving the industry immunity for the future in return for setting up a vast fund for victims now, then it would become worth its while to invoke the secret policies. The insurers would undoubtedly contest liability and further complicate the process. It is being suggested that when most of these policies were written in the 1960s and 1970s, their exclusion clauses were not sufficiently tight to exclude healthcare reimbursement. But the insurers could argue that by that time the tobacco industry was well aware of the harmful effect of their product and that such information should have been disclosed. Whoever won the argument, it could drag on in the courts for years. Most of those now eligible to claim might well be dead before it was sorted out.

The basic proposition now under discussion by attorney generals from more than 20 US states is fundamentally unsound. It would allow the companies to shift the problem of compensation on to the shoulders of governments in return for limited regulation of their product coupled with unlimited immunity from any further claims. It would be all the worse if the cash which the industry put up – estimated at between \$200 and \$300 billion – came ultimately from insurance companies and through them from the general public.