

# **Boeken v. Philip Morris USA, Inc.**

Case No. BC 226593

Los Angeles County Superior Court

## ATTORNEYS:

For Plaintiff: Michael J. Piuze, Esq.  
LAW OFFICES OF MICHAEL J. PIUZE  
11755 Wilshire Blvd., Suite 1170  
Los Angeles, CA 90025  
TEL (310) 312-1102  
FAX (310) 473-0708

For Defendant: Maurice A. Leiter, Esq.  
John L. Carlton, Esq.  
ARNOLD & PORTER  
777 South Figueroa Street, 44<sup>th</sup> Floor  
Los Angeles, CA 90017  
TEL (213) 243-4000  
FAX (213) 243-4199

FACTS: Richard Boeken, 56 years old, was diagnosed with lung cancer in October 1999. Mr. Boeken had started smoking cigarettes at age 13 in 1957. He smoked 2 packs of Marlboros per day for over 40 years.

Mr. Boeken had previously been addicted to heroin, methadone and alcohol. He has been clean and sober since 1976. He attempted to quit smoking on numerous occasions, but was unsuccessful. He switched from Marlboro Reds to Marlboro Golds to Marlboro Lights to Marlboro Ultra Lights believing the lower tar cigarettes were less harmful.

INJURIES: Lung cancer which involved lymph nodes. Partial lobectomy, chemotherapy and radiation therapy did not eradicate the cancer, which metastasized to his spine in August 2000. Further radiation therapy did not eradicate the cancer, which metastasized to his brain in December 2000. Mr. Boeken has a terminal disease and a limited life expectancy.

DAMAGES: Past Medical - \$270,000  
Loss of Earnings and Earning Capacity - \$2,118,599

## PLAINTIFF'S CONTENTIONS:

Philip Morris never tested its product for biologic activity for over fifty years;  
Philip Morris conducted a misinformation/disinformation campaign over forty-five years aimed at addicted smokers;  
Philip Morris fraudulently concealed the degree of danger of its product;  
Philip Morris failed to warn or instruct (prior to the 1969 preemption) that light cigarettes were as hazardous as full-strength cigarettes; and  
Philip Morris was able to manufacture an almost safe cigarette, but did not want to endanger Marlboro's dominant market position by properly promoting ultra-low tar cigarettes.

DEFENDANT'S CONTENTIONS:

There is no such thing as a safe cigarette;  
Everyone, including Mr. Boeken, has long known of the dangers of cigarettes; and  
It was Mr. Boeken's personal choice to smoke.

PLAINTIFFS' EXPERTS:

Sir Richard Doll, M.D.	Epidemiologist	Oxford, England
William Farone, Pd.D.	Ex-Philip Morris Chemist	Anaheim, CA
Neal Benowitz, M.D.	Biopharmaceutical Sciences	San Francisco, CA
Allan Feingold, M.D.	Pulmonologist	Miami, FL
Marvin Goldberg, Ph.D.	Marketing	Penn State Univ.
Samuel Hammar, M.D.	Pulmonary Pathologist	Bremerton, WA
Gary Strauss, M.D.	Oncologist/Public Health	Providence, RI
Don Ferree	Pollster	Madison, WI
Gregory Sarna, M.D.	Medical Oncologist	Los Angeles, CA
Peter Formuzis, Ph.D.	Economist	Santa Ana, CA
Bernard Lewak	Accountant	Encino, CA
Robert Johnson	Economist	Los Altos, CA

DEFENDANT'S EXPERT

Elizabeth Cobbs Hoffman, Ph.D.	Historian	San Diego, CA
Ellen Merlo	Philip Morris Executive VP	New York, NY
Richard Carchman, Ph.D.	Philip Morris Pharmacologist	Richmond, VA
Deborah Hoshizaki, Ph.D.	Biogenitics	Las Vegas, NV
W. Kip Viscusi, Ph.D.	Economist/Polling	Cambridge, MA
Kenneth Ludmerer, M.D.	Medical Historian	St. Louis, MO
Jerry Whidby, Ph.D.	Philip Morris Chemist	Richmond, VA
Mace Beckson, M.D.	Addiction Psychiatrist	Los Angeles

SETTLEMENT NEGOTIATIONS:

Demand: None  
Offer: None

RESULT:

Plaintiff verdict -	\$2,289,127	- Economic Damages
	\$3,250,000	- Non-Economic Damages
	\$3,000,000,000	- Punitive Damages

**Boeken v. Philip Morris****SCHEDULE OF WITNESSES**

Monday	Tuesday	Wednesday	Thursday	Friday
<p><b>4/2</b> am Michael Piuze's Opening Statement</p>	<p><b>4/3</b> am <i>Sir Richard Doll</i></p>	<p><b>4/4</b> am <b>Dr. William Farone</b></p>	<p><b>4/5</b> am <b>Paul Mele's</b> Deposition <b>Engle v. RJR</b> 12-15-98</p>	<p><b>4/6</b> am <b>Ian Uydess'</b> Deposition <b>Dr. Neal Benowitz</b></p>
<p>pm Maury Leiter's Opening Statement</p>	<p>pm <i>Sir Richard Doll</i> <b>Dr. William Farone</b></p>	<p>pm <b>Dr. William Farone</b></p>	<p>pm <b>Ian Uydess'</b> Deposition <b>Engle v. RJR</b> 11-24-98</p>	<p>pm <b>Dr. Neal Benowitz</b></p>
<p><b>4/9</b> am <b>NOT IN SESSION</b></p>	<p><b>4/10</b> am <b>Dr. Allan Feingold</b></p>	<p><b>4/11</b> am <b>Dr. Allan Feingold</b> <b>Richard Boeken's</b> Videotaped Deposition</p>	<p><b>4/12</b> am <b>Richard Boeken's</b> Videotaped Deposition</p>	<p><b>4/13</b> am <b>Richard Boeken's</b> Videotaped Deposition <b>David Petralli</b></p>
<p>pm <b>Dr. Allan Feingold</b></p>	<p>pm <b>Dr. Neal Benowitz</b></p>	<p>pm <b>Richard Boeken's</b> Videotaped Deposition</p>	<p>pm <b>Richard Boeken's</b> Videotaped Deposition</p>	<p>pm <b>NOT IN SESSION</b></p>
<p><b>4/16</b> am <b>NOT IN SESSION</b></p>	<p><b>4/17</b> am <b>Dr. Marvin Goldberg</b></p>	<p><b>4/18</b> am <b>Dr. Marvin Goldberg</b> <b>Dr. Samuel Hammar</b></p>	<p><b>4/19</b> am <b>Dr. Gary Strauss</b></p>	<p><b>4/20</b> am <b>Don Ferree</b></p>
<p>pm <b>David Petralli</b> <b>Dr. Marvin Goldberg</b></p>	<p>pm <b>Dr. Marvin Goldberg</b></p>	<p>pm <b>Dr. Samuel Hammar</b></p>	<p>pm <b>Don Ferree</b></p>	<p>pm <b>Elvis Mendes</b> <b>Judy Boeken</b></p>
<p><b>4/23</b> am <b>NOT IN SESSION</b></p>	<p><b>4/24</b> am <b>Dr. Gregory Sarna</b></p>	<p><b>4/25</b> am <b>Robert Johnson</b> <b>Geoffrey Bible's</b> Deposition <i>Florida v. Am Tob State of Minnesota &amp; Blue Cross v. Philip Morris</i></p>	<p><b>4/26</b> am <b>Elizabeth Cobbs Hoffman</b></p>	<p><b>4/27</b> am <b>NOT IN SESSION</b></p>
<p>pm <b>Judy Boeken</b> <b>Peter Formuzis</b></p>	<p>pm <b>Bernard Lewak</b></p>	<p>pm Present various PM documents, Commercials &amp; 1994 Hearing - video</p>	<p>pm <b>Elizabeth Cobbs Hoffman</b></p>	<p>pm <b>Evidentiary Hearing</b></p>

<p><b>4/30</b> am <b>NOT IN SESSION</b></p>	<p><b>5/1</b> am <b>Juror sick</b></p>	<p><b>5/2</b> am <b>Elizabeth Cobbs Hoffman</b></p>	<p><b>5/3</b> am <b>Ellen Merlo</b></p>	<p><b>5/4</b> am <b>Ellen Merlo Richard Carchman</b></p>
<p>pm <b>Elizabeth Cobbs Hoffman</b></p>	<p>pm <b>Juror sick</b></p>	<p>pm <b>Ellen Merlo</b></p>	<p>pm <b>Ellen Merlo</b></p>	<p>pm <b>Richard Carchman</b></p>
<p><b>5/7</b> am <b>Richard Carchman</b></p> <p>pm <b>Richard Carchman</b></p>	<p><b>5/8</b> am <b>Richard Carchman Joshua Trabelus</b></p> <p>pm <b>Deborah Hoshizaki</b></p>	<p><b>5/9</b> am <b>W. Kip Viscusis</b></p> <p>pm <b>W. Kip Viscusis</b></p>	<p><b>5/10</b> am <b>Kenneth Ludmerer</b></p> <p>pm <b>Kenneth Ludmerer</b></p>	<p><b>5/11</b> am <b>Deborah Hoshizaki</b></p> <p>pm <b>Jerry Whidby</b></p>
<p><b>5/14</b> am <b>Jerry Whidby</b></p> <p>pm <b>Mace Beckson</b></p>	<p><b>5/15</b> am <b>Mace Beckson</b></p> <p>pm</p>	<p><b>5/16</b> am</p> <p>pm</p>	<p><b>5/17</b> am Michael Piuze's Closing Argument</p> <p>pm Michael Piuze's Closing Argument</p>	<p><b>5/18</b> am Michael Piuze's Closing Argument</p> <p>pm Maury Leiter's Closing Argument</p>
<p><b>5/21</b> am Maury Leiter's Closing Argument Michael Piuze's Rebuttal (11:48 - 12:00)</p> <p>pm Michael Piuze's Rebuttal</p>	<p><b>5/22</b> am Jury Instructions <b>Deliberations</b></p> <p>pm <b>Deliberations</b></p>	<p><b>5/23</b> am <b>Deliberations</b></p> <p>pm <b>Deliberations</b></p>	<p><b>5/24</b> am Juror dismissed, 1<sup>st</sup> alternate came in <b>Deliberations restarted</b></p> <p>pm <b>Deliberations</b></p>	<p><b>5/25</b> am <b>Deliberations</b></p> <p>pm <b>Deliberations</b></p>

<p><b>5/28</b> am</p> <p><b>MEMORIAL DAY HOLIDAY</b></p> <p>pm</p> <p><b>MEMORIAL DAY HOLIDAY</b></p>	<p><b>5/29</b> am</p> <p><b>Deliberations</b></p> <p>pm</p> <p><b>Deliberations</b></p>	<p><b>5/30</b> am</p> <p><b>Deliberations</b></p> <p>pm</p> <p><b>Deliberations</b></p>	<p><b>5/31</b> am</p> <p><b>Deliberations</b></p> <p>pm</p> <p><b>Deliberations</b></p>	<p><b>6/1</b> am</p> <p><b>Deliberations</b></p> <p>pm</p> <p><b>Deliberations</b></p>
<p><b>6/4</b> am</p> <p><b>Jurors not in</b></p> <p>pm</p> <p><b>Deliberations</b></p>	<p><b>6/5</b> am</p> <p><b>Deliberations</b></p> <p>pm</p> <p><b>Deliberations</b></p> <p><b>VERDICT at 2:00 pm</b> sealed until 1:30 pm on 6/6/01</p>	<p><b>6/6</b> am</p> <p><b>D-DAY</b></p> <p><b>Jurors not in</b></p> <p>pm</p> <p><b>VERDICT!</b> \$2,289,127.00 - Economic Damages \$3,250,000.00 - Non-Economic Damages \$3 Billion - Punitive Damages</p>	<p><b>6/7</b> am</p> <p>pm</p>	<p><b>6/8</b> am</p> <p>pm</p>