

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE
4
5

6 RICHARD BOEKEN,)
7)
8) PLAINTIFF,)
9)
10) VS.) CASE NO.
11)) BC226593
12) PHILIP MORRIS,)
13)
14) DEFENDANT.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, APRIL 24, 2001

VOLUME 22-B.
PAGES 3545 THROUGH 3581.

LISA RIDLEY, CSR NO. 5886
CARMEN J. GARROD, CSR NO. 4009, RPR
OFFICIAL COURT REPORTERS

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APPEARANCES:

FOR THE PLAINTIFF:

**LAW OFFICES OF MICHAEL J. PIUZE
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ATTORNEYS AT LAW
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EXHIBITS
FOR THE DATE OF APRIL 24, 2001
VOLUME 22 B

EXHIBITS MARKED FOR IDENTIFICATION PAGE/VOLUME

(NO EXHIBITS WERE OFFERED.)

1 CASE NUMBER: BC226593
2 CASE NAME: BOEKEN VS. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA TUESDAY, APRIL 24, 2001
4 DEPARTMENT NO. 308 HON. CHARLES W MC COY, JR., JUDGE
5 REPORTER: CARMEN J. GARROD, CSR NO. 4009
6 TIME: 1: 40 P. M

7 (APPEARANCES AS HERETOFORE NOTED.)
8

9 THE COURT: OUR JURY PANEL IS WITH US.

10 THE WITNESS IS ON THE STAND.

11 SIR, YOU UNDERSTAND YOU' RE STILL UNDER OATH?

12 THE WITNESS: YES, I DO.

13 THE COURT: THANK YOU, SIR.

14 PROCEED, MR. CARLTON.

15 MR. CARLTON: THANK YOU, YOUR HONOR.
16

17 BERNARD LEWAK, C. P. A.

18 CALLED BY THE PLAINTIFF AS A WITNESS, HAVING BEEN
19 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
20 AS FOLLOWS:
21

22 CROSS-EXAMINATION (CONTINUED)

23 BY MR. CARLTON:

24 Q. MR. LEWAK, JUST TO RETURN FOR A MOMENT TO THE
25 BALANCE SHEET THAT WE WERE TALKING ABOUT, THIS LISTS
26 ASSETS, LIABILITIES AND EQUITY; RIGHT?

27 A. THAT' S RIGHT.

28 Q. AND SO THE EQUITY, ISN' T THAT REALLY BASICALLY

1 THE NET WORTH OF NOVA L. L. C. ?

2 A. IT'S THE NET WORTH BASED UPON THE TRANSACTIONS

3 FOR 1998.

4 Q. AS OF THAT DATE, DECEMBER 31ST?

5 A. RIGHT. I DON'T HAVE TRANSACTIONS IN THERE

6 FROM PRIOR YEARS.

7 Q. SO THAT WOULD BE ASSETS MINUS LIABILITIES?

8 A. CORRECT.

9 Q. I'D LIKE TO TURN TO THE 1997 TAX RETURN THAT

10 YOU TALKED ABOUT.

11 DO YOU HAVE A COPY OF THAT?

12 A. YES, I DO.

13 Q. AND DO YOU HAVE IT IN FRONT OF YOU?

14 A. YES, I DO.

15 Q. WHAT AMOUNT OF MONEY DOES THAT SHOW, IF

16 ANYTHING, THAT MR. BOEKEN EARNED FROM NOVA L. L. C. ?

17 A. IT SHOWED THAT HE EARNED 230,000 OH SEVEN

18 SEVEN FROM NOVA L. L. C.

19 Q. \$230,000?

20 A. CORRECT.

21 Q. AND HAVE YOU SEEN A NOVA L. L. C. RETURN FOR

22 1997?

23 A. ARE YOU REFERRING TO A PARTNERSHIP RETURN,

24 BECAUSE --

25 Q. YES.

26 A. -- THIS IS ALSO DESCRIBED AS NOVA L. L. C. ON

27 THE SCHEDULE C.

28 Q. A PARTNERSHIP RETURN. I'M SORRY.

1 A. YES, I HAVE.

2 Q. AND DO YOU HAVE THAT -- DO YOU HAVE A COPY OF
3 THAT?

4 A. I BELIEVE SO. LET ME FIND IT HERE. YES, I DO.

5 Q. WHAT DOES THE NOVA L. L. C. PARTNERSHIP RETURN
6 FOR 1997 SHOW AS ITS NET INCOME?

7 A. IT SHOWS A NET LOSS OF 25,305.

8 Q. SO MR. BOEKEN'S RETURN SHOWED \$230,000 FROM
9 NOVA L. L. C. ?

10 A. IT SHOWED \$230,000 ON ONE PAGE CALLED A
11 SCHEDULE C.

12 Q. HOW WAS THAT CHARACTERIZED?

13 A. IT WAS CHARACTERIZED AS PROFIT OR LOSS FROM A
14 BUSINESS IN THE NAME OF NOVA L. L. C. IN THE BUSINESS OF
15 INDEPENDENT SALES.

16 Q. AND YET NOVA L. L. C. 'S RETURN SHOWED A \$25,000
17 LOSS FOR THE SAME YEAR?

18 A. THAT PARTNERSHIP RETURN SHOWS A LOSS OF 25,000
19 FOR THE SAME YEAR.

20 Q. ALL RIGHT.
21 DO YOU HAVE AN EXPLANATION FOR THAT?

22 A. NO, I DON'T. I DIDN'T PREPARE THE RETURN SO I
23 DO NOT HAVE AN EXPLANATION.

24 Q. THE 1992 RETURN THAT YOU TALKED ABOUT, I THINK
25 YOU STATED MR. BOEKEN REFERENCED A NET INCOME OF \$234,389?

26 A. 1992, \$234,389.

27 Q. YOU WERE AWARE THAT HE FILED BANKRUPTCY IN
28 JUNE OF 1992, WEREN'T YOU?

1 A. I ' M AWARE THAT HE FILED BANKRUPTCY, BUT I
2 DON' T KNOW WHAT YEAR HE FILED.

3 Q. DO YOU HAVE ANY INFORMATION AS TO WHERE HE
4 EARNED \$234, 389 IN THAT YEAR?

5 A. I ' D HAVE TO LOOK AT THE TAX RETURN. I ' M
6 LOOKING AT MY LETTER, BUT I DON' T HAVE THE TAX RETURN FROM
7 IT.

8 Q. I SEE. OKAY. DO YOU HAVE IT WITH YOU?

9 A. YES, I DO.

10 I HAVE THE TAX RETURN WITH ME.

11 Q. WHAT DOES IT SAY ABOUT THE SOURCE OF THAT
12 INCOME?

13 A. IT SHOWS THAT IT CAME FROM A SCHEDULE C, AGAIN
14 FROM A BUSINESS CALLED RICHARD BOEKEN ENTERPRISES, AND IN
15 THE DEVELOPMENT, SLASH, ENERGY PROPERTIES; AND IT SHOWED
16 GROSS INCOME LESS EXPENSES FOR A NET INCOME OF \$234, 389.

17 Q. SO ACCORDING TO THE INFORMATION YOU HAVE THEN
18 MR. BOEKEN MADE THAT AMOUNT OF MONEY IN THE SAME YEAR THAT
19 HE FILED BANKRUPTCY?

20 A. WELL, THIS IS THE INFORMATION I HAVE ON THE
21 TAX RETURN. I DON' T KNOW WHAT YEAR HE FILED BANKRUPTCY.

22 Q. ALL RIGHT.

23 NOTHING FURTHER. THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU, COUNSEL.

25 MR. PIUZE: I ' VE GOT SOME.

26 (CONTINUED ON FOLLOWING PAGE.)

27 / / /

28 / / /

1 REDIRECT EXAMINATION

2 BY MR. PIUZE:

3 Q. WHAT DO YOU MEAN BY OVERDRAW ON THE BOOKS?
4 IS THAT A TERM OF ART FOR ACCOUNTANTS?

5 A. OVERDRAWN ON THE BOOKS AS OPPOSED TO OVERDRAWN
6 ON THE RECORDS OF THE BANK. THERE IS A DIFFERENTIAL.

7 OVERDRAWN ON THE BOOKS MEANS THE CHECKS WERE
8 PREPARED AND RECORDED ON THE BOOKS BUT NOT NECESSARILY
9 ISSUED AND NOT YET CLEARED BY THE BANK.

10 Q. SAY THAT DIFFERENTLY.

11 A. IT MEANS THAT CHECKS HAD BEEN PREPARED AND
12 RECORDED AS CHECKS FOR THAT YEAR BUT NOT YET CLEARED THE
13 BANK, SO THE BOOKS WILL SHOW A FIGURE OF A BANK BALANCE
14 WHICH IS MAYBE OVERDRAWN, AND THE BANK DOESN'T HAVE THAT
15 FIGURE BECAUSE THE CHECKS HAVE NOT YET BEEN PRESENTED FOR
16 PAYMENT YET.

17 Q. GOT IT. THE CHECKS WERE WRITTEN BUT NOT
18 CASHED?

19 A. CORRECT.

20 Q. SO OVERDRAWN ON THE BOOKS DOESN'T MEAN
21 OVERDRAWN?

22 A. NOT OVERDRAWN AT THE BANK.

23 Q. RIGHT.

24 IS THAT RIGHT?

25 A. THAT'S WHAT IT MEANS, IT'S NOT OVERDRAWN AT
26 THE BANK, IT'S OVERDRAWN ON THE BOOKS.

27 Q. I THINK THAT CAME UP IN REGARD TO SOMETHING
28 YOU AND MR. CARLTON WERE TALKING ABOUT, A WASH. AND ALL OF

1 THIS IS PARTIALLY OVER MY HEAD, AND I WANT TO GO THROUGH
2 IT.

3 I'LL PLUG YOU IN. THERE WAS \$481,000 FROM A
4 NOVA PINON IN, AND THERE WAS \$440,000 OUT, AND YOU CALLED
5 THAT A WASH.

6 TO ME A WASH WOULD MEAN ZERO, BUT OBVIOUSLY
7 THE ARITHMETIC DOESN'T ADD UP TO ZERO.

8 A. BY "WASH" I MEAN THE MONEY WASHED THROUGH THE
9 BANK ACCOUNT OF NOVA L. L. C. MONEY CAME IN, BUT A LESSER
10 AMOUNT OF MONEY WENT OUT ON BEHALF OF THAT OTHER ENTITY.

11 Q. WHAT YEAR ARE WE TALKING ABOUT HERE?

12 A. WE'RE TALKING ABOUT 1998.

13 Q. 1998 WAS THE YEAR WHERE YOU DID -- WHERE YOU
14 PREPARED THE ACCOUNTING AT MY REQUEST?

15 A. THAT'S CORRECT.

16 Q. WHY NOT TAKE INTO ACCOUNT THE \$481,000 THAT
17 CAME IN -- IT'S A HECK OF A LOT OF MONEY -- AND THE
18 \$440,000 THAT WENT OUT?

19 A. IT WASN'T INCOME OR EXPENSE OF NOVA L. L. C., IT
20 WAS INCOME AND EXPENSE OF ANOTHER ENTITY.

21 Q. WHAT?

22 A. PARDON ME?

23 Q. WHAT?

24 A. WHY?

25 Q. WHAT ENTITY?

26 A. WHAT ENTITY? I'M SORRY. NOVA PINON PARTNERS.

27 Q. WHAT'S THE DIFFERENCE?

28 A. THEY ARE DIFFERENT ENTITIES. NOVA PINON HAS

1 AN ENTIRELY DIFFERENT OWNERSHIP THAN NOVA L. L. C. DOES.

2 Q. IT'S GETTING THICK.

3 WHY DON'T YOU TELL THE JURY WHAT THE
4 DIFFERENCE IS BETWEEN NOVA L. L. C. , NOVA PINON, AND
5 SOMEPLACE IN THERE I HEARD YOU MENTION J. P. K. , PLEASE.

6 A. OKAY. NOVA PINON IS A PARTNERSHIP THAT WAS
7 FORMED BETWEEN NOVA L. L. C. WHICH HELD A 1 PERCENT INTEREST
8 AND J. P. K. PARTNERS WAS THE OTHER PARTNER IN NOVA PINON
9 WHICH HELD A 99 PERCENT INTEREST.

10 Q. STOP RIGHT THERE, PLEASE.

11 MR. AND MRS. BOEKEN OWNED NOVA L. L. C. ?

12 A. IT APPEARS THEY OWNED IT 50 PERCENT EACH.

13 Q. SO MR. AND MRS. BOEKEN OWN 1 PERCENT OF NOVA
14 PINON?

15 A. CORRECT.

16 Q. AND SOME OUTSIDE PARTNERSHIP OWNS 99 PERCENT
17 OF NOVA PINON?

18 A. CORRECT.

19 Q. THIS \$481,000, DOES THAT BELONG TO NOVA
20 PINON?

21 A. IT BELONGS -- IN MY OPINION IT BELONGS TO NOVA
22 PINON.

23 Q. AND THEREFORE \$4,800 OF THAT MONEY BELONGS TO
24 MR. AND MRS. BOEKEN?

25 A. I DON'T KNOW

26 Q. ISN'T THAT 1 PERCENT?

27 A. WELL, IT'S 1 PERCENT, BUT IT MAY NOT
28 NECESSARILY BE THE CAPITAL CONTRIBUTION THAT NOVA MADE TO

1 THE NOVA PINON PARTNERSHIP. THEY MAY HAVE MADE A SEPARATE
2 CONTRIBUTION. I DON'T KNOW

3 Q. \$481,000 IN, \$440,000 OUT?

4 A. CORRECT.

5 Q. WHAT DOES THAT LEAVE?

6 A. \$41,000.

7 Q. ISN'T THAT INCOME?

8 A. I DIDN'T TREAT IT AS INCOME; I TREATED IT AS A
9 LIABILITY, I. E., MONEY OWED BY NOVA L. L. C. TO NOVA PINON.

10 Q. WHY CALL IT A WASH?

11 A. WELL, IT'S NOT A WASH IN THE SENSE THAT THE
12 TWO AMOUNTS EXACTLY OFFSET EACH OTHER, BUT THEY COME
13 SOMEWHAT CLOSE TO OFFSETTING EACH OTHER.

14 Q. THE FIRST PIECE OF PAPER WE SAW ON THE ELMO
15 WHEN WE CAME BACK FROM LUNCH.

16 A. ON THE WHAT?

17 Q. ELMO. (INDICATING.)

18 A. OKAY.

19 Q. SCREEN.

20 A. I DIDN'T KNOW YOU CALLED THAT "ELMO."

21 Q. I COULD HAVE CALLED IT A CAPITAL CONTRIBUTION,
22 BUT I FIGURED THAT WOULD BE TOO -- WHAT'S A CAPITAL
23 CONTRIBUTION?

24 A. A CAPITAL CONTRIBUTION IS AN INVESTMENT BY AN
25 INVESTOR IN A VENTURE WHICH MAY BE A CORPORATION, IT MAY BE
26 AN L. L. C., IT MAY BE A PARTNERSHIP, IT MAY BE A JOINT
27 VENTURE, IT MAY BE ANY DIFFERENT TYPE OF NUMBER OF
28 ENTITIES.

1 Q. SO HERE WE GO BACK TO WHERE I WAS. THE PIECE
2 OF PAPER THAT WAS DISPLAYED UP ON THE SCREEN RIGHT AFTER
3 LUNCH WAS A BALANCE SHEET FOR NOVA AND IT SHOWED A MINUS
4 \$103,000. DO YOU REMEMBER THAT?

5 A. A MINUS 103-, YOU MEAN AS A NET WORTH?

6 Q. YES.

7 A. UH-HUH. OKAY.

8 Q. IS THAT A BAD THING, NEGATIVE NET WORTH?

9 A. IT MAY OR MAY NOT BE.

10 Q. ALL RIGHT. I CAN GUESS WHY IT MAY BE.
11 WHY DO YOU SAY IT MAY NOT BE?

12 A. I'M SORRY, SAY THAT AGAIN. WHY IT MAY NOT BE?

13 Q. YES.

14 A. WELL, IT MAY SIGNIFY THAT THE COMPANY IS IN
15 FINANCIAL TROUBLE OR IT MAY NOT.

16 Q. WHY NOT?

17 A. BECAUSE THERE MAY BE OTHER SOURCES OF INCOME
18 OR CAPITAL WHICH COULD BE INVESTED SUBSEQUENT.

19 Q. WELL, AT THE END OF DECEMBER 1998, IS THIS
20 WHAT YOU PUT TOGETHER THEN, (INDICATING)?

21 A. YES.

22 Q. AT THE END OF DECEMBER 1998, WHAT IS MINUS
23 103-?

24 A. IT SAYS TOTAL EQUITY, SO IT'S THE NEGATIVE NET
25 WORTH OF THE TRANSACTIONS AS OF THAT DATE.

26 Q. HOW CAN THAT BE GOOD?

27 A. I DIDN'T SAY IT WAS GOOD. I SAID IT MAY OR
28 MAY NOT BE GOOD.

1 Q. I' M SAYING IT' S BAD.
2 A. I DON' T KNOW
3 Q. YOU DON' T KNOW
4 SEE WHERE IT SAYS "TOTAL LIABILITIES" --
5 A. YEAH.
6 Q. -- MINUS 62?
7 A. OH, THE LIABILITIES EXCEED THE ASSETS AT THAT
8 POINT. THERE ARE NO ASSETS. THERE IS ONLY LIABILITIES.
9 Q. SO AT THE END OF A YEAR FOR A SMALL BUSINESS,
10 IF YOU SHOW A NEGATIVE NET WORTH, IS THAT GOOD?
11 A. GENERALLY NOT.
12 Q. WHAT DO YOU DO ABOUT IT?
13 A. WELL, YOU EITHER BRING IN MDRE CAPITAL OR YOU
14 MAKE MORE MONEY AND WIPE OUT YOUR NEGATIVE NET WORTH.
15 Q. WAS MR. BOEKEN BORROWING FROM THE BANK THAT
16 YEAR?
17 A. HE WAS IN THE SENSE THAT HE HAD A BOOK
18 OVERDRAFT AT THE END OF THE YEAR.
19 Q. AND WAS \$40,000 OF THAT NEGATIVE THIS
20 DIFFERENCE IN THIS NOVA PINON MDNEY?
21 A. YES.
22 Q. SO \$40,000 WAS THE DIFFERENCE BETWEEN --
23 EXCUSE ME. WE DO IT DIFFERENTLY.
24 NOVA PINON, 481- IN, 440- OUT; RIGHT?
25 A. RIGHT.
26 Q. AND YOU DIDN' T COUNT THAT?
27 A. WELL, I COUNTED IT AS -- IT' S ON THE BALANCE
28 SHEET AS A LIABILITY. I DIDN' T COUNT IT AS INCOME AND

1 EXPENSE.

2 Q. IT WAS IN THE BANK, THOUGH?

3 A. IT WAS IN THE BANK -- IN THE BANK AND OUT OF
4 THE BANK.

5 Q. WELL, THAT 103-, HOW MUCH WAS THE BANK'S, HOW
6 MUCH WAS THE NOVA PINON'S?

7 A. NOVA PINON WAS 41,000 AND THE BANK'S WAS
8 62,000.

9 Q. YOU WERE SHOWN ANOTHER PIECE OF PAPER EARLIER,
10 AND I THINK IT SHOWED THAT THE WITHDRAWALS WERE
11 APPROXIMATELY 100 MORE THAN WHAT WENT IN; DO YOU REMEMBER
12 THAT?

13 A. I BELIEVE SO. IT SHOWS THERE, I THINK, DRAW
14 R. BOEKEN, 267,000.

15 Q. AND SO THAT MINUS 103- WAS THE DIFFERENCE
16 BETWEEN WHAT HE TOOK OUT -- OR WHAT THEY TOOK OUT AND WHAT
17 WENT IN?

18 A. THE DIFFERENCE BETWEEN THE PROFIT OF THE
19 BUSINESS AND WHAT HE WITHDREW FROM THE BUSINESS.

20 Q. GOT IT.
21 WAS THERE A PROFIT FROM THE BUSINESS?

22 A. YES. ACCORDING TO MY FIGURES THERE IT'S
23 \$167,000.

24 Q. AND THAT'S WHERE I'M CIRCLING BACK TO. I WANT
25 YOU TO TAKE THIS DOCUMENT INTO ACCOUNT. IN 1998 DID THAT
26 BUSINESS MAKE 167-?

27 A. YES. IN MY OPINION IT MADE \$167,000.

28 MR. PIUZE: THEN I'M DONE, TOO.

1 RE-CROSS-EXAMINATION

2 BY MR. CARLTON:

3 Q. IN ORDER TO UNRAVEL ALL OF THAT YOU BASICALLY
4 HAD TO RELY ON THE BANK'S STATEMENTS; RIGHT?

5 A. I RELIED ON THE BANK'S STATEMENTS, BUT I DID
6 HAVE ANOTHER DOCUMENT WHICH I WAS ABLE TO LOOK AT WHICH LED
7 ME TO RAISE CERTAIN QUESTIONS WITH MR. BOEKEN.

8 Q. BUT BASICALLY IT WAS THE BANK'S STATEMENT AND
9 THAT'S IT?

10 A. PRIMARILY THE BANK STATEMENTS.

11 Q. THANK YOU.

12 A. YOU'RE WELCOME.

13 MR. PIUZE: I HAVE NO FURTHER QUESTIONS.

14 THE COURT: SIR, YOU MAY STEP DOWN AND YOU ARE
15 EXCUSED.

16 MR. PIUZE: I HAVE NO MORE LIVE WITNESSES THIS
17 AFTERNOON BECAUSE MR. JOHNSON, AS WE KNOW, IS ELSEWHERE.
18 AND IF WE COULD MAYBE HAVE TWO OR THREE MINUTES OF THE
19 COURT'S TIME TO FIGURE OUT WHERE WE ARE.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL
21 TAKE A BREAK UNTIL 2:15 OF THIS AFTERNOON.

22 STAY WITH US. WE'LL SEE WHERE WE ARE IN A FEW
23 MINUTES.

24 THE JURY: (COLLECTIVELY:) STAY HERE OR GO OUT?

25 THE COURT: STEP OUTSIDE.

26 (CONTINUED ON FOLLOWING PAGE.)

27 / / /

28 / / /

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUTSIDE THE PRESENCE
3 OF THE JURY:)

4 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE JURY AT
5 THE PRESENT TIME. WE HAVE COMPLETED AN INVENTORY OF THE
6 BOXES OF DOCUMENTS, AND WE HAVE ATTEMPTED TO PREPARE IT IN
7 THE MANNER IN WHICH IT DIDN'T DISCLOSE THE CONTENTS OF ANY
8 OF THE PARTICULAR DOCUMENTS, SUCH AS NAMES OF THE CLIENTS
9 OR ANYTHING LIKE THAT. ACTUALLY, JUST THE SUBJECT MATTER
10 OF THE DOCUMENTS.

11 AND I THINK AT THIS POINT, I THINK, AT LEAST
12 THIS LIST SHOULD BE GIVEN TO THE DEFENSE AS WELL AS TO
13 COUNSEL FOR THE PLAINTIFF.

14 SO IF MR. CLERK -- AND I DON'T EXPECT ANY
15 COMMENTS ON IT RIGHT NOW, JUST A CHANCE TO REVIEW AND I
16 WOULD EXPECT THAT THE DEFENSE WOULD BE GETTING BACK TO
17 ME --

18 MR. CARLTON: ALL RIGHT.

19 THE COURT: -- WITH SOME INDICATION WHAT IT IS THEY
20 WOULD WANT TO SEE AND WHY.

21 MR. CARLTON: THANK YOU, YOUR HONOR.

22 THE COURT: ARE WE READY TO DISCUSS THE PUNITIVE
23 DAMAGE ISSUE OR DO WE WANT TO POSTPONE THAT DISCUSSION FOR
24 A WHILE?

25 MR. PIUZE: I AM

26 BUT I'D LIKE TO ASK THE COURT, WHAT IS THIS
27 AGAIN, THIS DOCUMENT?

28 THE COURT: THIS IS AN INVENTORY. WHAT WE DID IS WE

1 TOOK THE TWO BOXES OF MATERIALS THAT WE WERE GIVEN AND
2 PREPARED AN INVENTORY OF WHAT WAS IN THOSE BOXES BY LINE
3 ITEM AND CATEGORY. IT DOESN'T DESCRIBE IN DETAIL ANY OF
4 THE INFORMATION IN THE DOCUMENTS OTHER THAN TO THEIR
5 GENERAL SUBJECT MATTER.

6 MR. PIUZE: OKAY. I UNDERSTAND. THANK YOU.

7 HERE IS THE ANSWER TO THE COURT'S QUESTION.
8 I'M READY TO DO THAT. IN ADDITION, I'LL JUST LET THE COURT
9 KNOW THAT WE HAVE TRIED TO GET TOGETHER TO AGREE ON WHAT
10 CAN BE READ FROM GEOFFREY BIBLE'S -- HE IS THE C. E. O. OF
11 PHILIP MORRIS -- TESTIMONY IN MINNESOTA VERSUS -- WHATEVER
12 THE OFFICIAL NAME IS -- MINNESOTA VERSUS THE TOBACCO
13 INDUSTRY, 1997 TESTIMONY.

14 WE WILL NEED SOME INPUT FROM THE COURT BEFORE
15 WE CAN DO THAT. I DON'T KNOW IF IT'S WISE -- I DON'T WANT
16 TO KEEP THE JURY HANGING AROUND HERE UNNECESSARILY. I
17 WOULD SAY THE READING WOULD PROBABLY TAKE AN HOUR.

18 I DON'T KNOW IF WE SHOULD TRY TO RESOLVE THIS
19 THIS AFTERNOON AND LET THEM GO AND RESOLVE IT AFTER THEY'VE
20 GONE -- I'M JUST INFORMING THE COURT.

21 THE COURT: ABOUT HOW MUCH OF MY TIME DO YOU THINK
22 YOU'LL NEED?

23 MR. PIUZE: I THINK WE'VE SHOWN WHAT WE WANTED TO
24 READ. THEY'VE SHOWN THEIR OBJECTIONS. I THINK THE COURT
25 WOULD HAVE TO RULE -- IT MAY NOT TAKE A LONG TIME, BUT THE
26 COURT WOULD HAVE TO RULE.

27 MR. LEITER: IF I CAN HAVE JUST A MOMENT. BASICALLY,
28 AS WE DISCUSSED YESTERDAY, THIS IS THE ACCORDION

1 DESIGNATION. WE GOT A MUCH SMALLER ONE THIS MORNING WHICH
2 MR. LE BERTHON HAS BEEN REVIEWING WHILE WE'VE BEEN HERE IN
3 COURT.

4 IF I COULD HAVE JUST A MOMENT.
5 (PAUSE IN PROCEEDINGS.)

6 MR. LEITER: YOUR HONOR, HERE IS MY UNDERSTANDING OF
7 WHERE WE STAND. WE GOT A REVISED, MUCH SHORTER DESIGNATION
8 THIS MORNING. THERE HAS BEEN SOME BACK AND FORTH OVER
9 OBJECTIONS, AND THEN TAKING THINGS OUT AND PUTTING BACK
10 THINGS IN.

11 MY CONCERN AT THIS MOMENT -- AT LEAST AT OUR
12 SIDE OF THE TABLE, WE'RE NOT ENTIRELY SURE WHAT'S IN AND
13 WHAT'S OUT, WHAT OBJECTIONS REMAIN, WHAT WE WOULD WANT TO
14 COUNTERDESIGNATE, WHICH MIGHT BE FROM THE MATERIALS THE
15 PLAINTIFF JUST TOOK OUT. AND WE'RE A LITTLE UNCOMFORTABLE
16 PROCEEDING WITH A READING AT THIS MOMENT BECAUSE WE'RE NOT
17 ENTIRELY SURE WHERE WE ARE.

18 THE COURT: COULD YOU GET YOUR END OF IT DONE IN AN
19 HOUR SO I COULD WORK WITH YOU FROM 3:00 TO 4:00 TO GET IT
20 FINALIZED?

21 MR. LEITER: I THINK AS TO THE TRANSCRIPT WE HAVE
22 HERE WE COULD GET THAT FINALIZED THIS AFTERNOON. THE
23 REMAINING QUESTION WOULD BE WHETHER WE WANT TO
24 COUNTERDESIGNATE SOMETHING ELSE IN ADDITION TO THIS
25 TRANSCRIPT WHICH WE HAVE NOT HAD A CHANCE TO DO. WE JUST
26 GOT THIS MORNING THE PLAINTIFFS' PORTION. BUT WE COULD
27 RESOLVE THIS TRANSCRIPT THIS AFTERNOON AND THEN TONIGHT
28 DECIDE WHETHER THERE IS ANYTHING ELSE WE WANT TO

1 COUNTERDESIGNATE THAT WASN' T INCLUDED IN THE TRANSCRIPT.

2 THE COURT: SO I THINK WHAT WE NEED TO DO IS LET THE
3 JURY GO UNTIL TOMORROW MORNING. BUT THEN MAYBE YOU' RE
4 GOING TO COUNTERDESIGNATE, MAYBE BRING THEM BACK NOT AT
5 8: 45, MAYBE SOMETHING LIKE 9: 45.

6 MR. PIUZE: THERE IS GOING TO BE A WITNESS HERE, TOO,
7 YOUR HONOR, MR. JOHNSON.

8 THE COURT: AND MR. JOHNSON IS?

9 MR. PIUZE: THE ECONOMIST ON THE PUNITIVE DAMAGE
10 ISSUE.

11 THE COURT: ALL RIGHT. OKAY.

12 MR. LEITER: AND I WOULD ASSUME THAT IF THE
13 PLAINTIFF' S DESIGNATION IS GOING TO TAKE ABOUT AN HOUR TO
14 READ, I' LL ASSUME WE' RE NOT GOING TO HAVE ANY KIND OF
15 DESIGNATION THAT IS DRAMATICALLY LONGER THAN THAT.

16 THE COURT: HAVE THE JURY -- INFORM THE JURY WE' LL
17 SEE THE JURY TOMORROW MORNING AT 8: 45 A. M

18 THE CLERK: SAME TIME.

19 THE COURT: ALL RIGHT. THEN WE DO NEED TO GET DOWN
20 TO THE ISSUE OF THE METHOD OF CALCULATION FOR THE PUNITIVE
21 DAMAGES.

22 MR. PIUZE: CAN I JUST BACK UP JUST SO THE COURT
23 WON' T THINK WE' VE BEEN SLEEPING ON THE JOB. THERE HAVE
24 BEEN VARIOUS DESIGNATIONS AND COUNTERDESIGNATIONS GOING
25 BACK AND FORTH ON THIS GEOFFREY BIBLE THING FOR A WHILE.
26 WHAT WE DID WAS LOP OFF THE TREMENDOUS MAJORITY OF IT FOR
27 SPEED PURPOSES, SO THE ANSWER IS, YES, I' M READY TO TALK
28 ABOUT THAT.

1 WOULD YOU LIKE ME TO TALK, OR WOULD YOU LIKE
2 TO START?

3 THE COURT: MAYBE I SHOULD SPEAK FIRST, JUST TO GIVE
4 COUNSEL SORT OF THE SENSE OF THE TERRAIN FROM THE COURT'S
5 PERSPECTIVE.

6 THOMAS ELIE (PHONETIC) IS A CASE WHERE THE
7 COURT OF APPEAL REVERSED A PUNITIVE DAMAGE AWARD ON THE
8 GROUNDS THAT AN ANNUAL REPORT INCLUDED ASSETS, REVENUES,
9 AND PROFITS FROM A HOST OF BUSINESSES WHICH WERE NOT
10 RELATED TO THE CORE BUSINESS WHICH HAD BEEN SUED. AND
11 THERE WAS REALLY NO OBJECTION BELOW

12 THE REPORT APPARENTLY WENT INTO EVIDENCE, NO
13 OBJECTION BY THE DEFENSE. BUT THEN THE ISSUE WAS RAISED ON
14 APPEAL, AND THE COURT REVERSED IT AND IT REVERSED THE
15 ENTIRE PUNITIVE DAMAGE AWARD, BASICALLY SAYING THAT THERE
16 IS A VERY STRONG PUBLIC POLICY INTEREST AT STAKE HERE SUCH
17 THAT THE COURT SHOULD HAVE INTERVENED BELOW EVEN IF THE
18 PARTIES DID NOT OBJECT.

19 THE CLERK: WE HAVE SOME JURORS TO GET SOME STUFF
20 OUT OF THE JURY AREA.

21 THE COURT: SURE.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: THERE ARE ALTER EGO ARGUMENTS THAT ARE
24 MADE, BUT THE COURT REJECTED IT AND BASICALLY WAS VERY
25 CONCERNED ABOUT SOME DUE PROCESS CONSIDERATIONS INVOLVED
26 THERE.

27 IT'S MY UNDERSTANDING THAT IF THE PLAINTIFF IN
28 THIS CASE WERE TO BE ABLE TO REACH THE PARENT CORPORATION'S

1 NET WORTH FOR THE PURPOSES OF A CALCULATION OF PUNITIVE
2 DAMAGES, THERE WOULD HAVE TO BE A SHOWING ALONG THE LINES
3 OF AN ALTER EGO, SOME WAY TO SHOW THAT THE REAL CONTROL
4 IS -- OF PHILIP MORRIS, IS COMING FROM SOME OTHER ENTITY,
5 AND IT WOULD HAVE TO BE A FAIRLY STRONG SHOWING.

6 SO I GUESS I HAVE TO TURN TO THE PLAINTIFF AND
7 SAY IS THE COURT CORRECT ON THE LAW? AND SECONDLY, IF THE
8 COURT IS CORRECT ON THE LAW, WHAT IS THE OFFER OF PROOF?

9 MR. PIUZE: I DON'T KNOW -- CAN I HAND THIS TO THE
10 COURT DIRECTLY?

11 MR. LEITER: CAN WE SEE WHAT IT IS?

12 MR. PIUZE: IT'S WHAT I JUST GAVE MR. CARLTON.

13 ANSWER NUMBER ONE, IS YOUR HONOR CORRECT?

14 YES.

15 QUESTION NUMBER TWO -- WHAT DO I HAVE? I'VE
16 HANDED COUNSEL IN COURT A FIVE-PAGE DOCUMENT OFF OF PHILIP
17 MORRIS'S WEB SITE WHICH IS ITS HISTORY OUT OF ITS MOUTH,
18 AND I DIRECT THE COURT'S ATTENTION TO 1985, WHICH IS THEIR
19 HISTORY, IN WHICH THEY BASICALLY SAY THAT THE CHILD BEGAT
20 THE PARENT. PHILIP MORRIS TOBACCO BUILT A HOLDING COMPANY
21 AROUND IT IN 1985. AND THAT'S THE EXTENT OF MY OFFER OF
22 PROOF.

23 THE COURT: SO IT'S THIS ONE SENTENCE, "THE CORPORATE
24 FRAMEWORK OF PHILIP MORRIS IS RESTRUCTURED AND PHILIP
25 MORRIS COMPANIES, INC., A HOLDING COMPANY, BECOMES THE
26 PUBLICLY HELD PARENT OF PHILIP MORRIS, INC. "?

27 MR. PIUZE: YES.

28 THE COURT: I'M AFRAID IT WOULD REQUIRE A LOT MORE

1 THAN THAT, IN THE COURT'S VIEW

2 MR. PIUZE: THEN I LOSE.

3 THE COURT: FAIR ENOUGH.

4 NOW, THERE WAS SOME DISCUSSION ABOUT THE
5 AMOUNT, AND THERE WAS AN OFFER FROM THE DEFENSE TO
6 STIPULATE TO A NET WORTH OF 6 BILLION.

7 IT'S MY UNDERSTANDING THAT THERE IS A
8 SUBSTANTIAL DISAGREEMENT OVER THAT ISSUE.

9 MR. PIUZE: YES, SUBSTANTIAL IS CORRECT.

10 MR. JOHNSON -- WOULD THE COURT LIKE ME TO GO?

11 THE COURT: I DON'T KNOW HOW MUCH YOU NEED TO GO INTO
12 IT IN DETAIL. COULD I JUST HAVE A VERY TOP LEVEL, TWO OR
13 THREE SENTENCE DESCRIPTION OF WHAT THE COURT MIGHT EXPECT
14 ON THAT?

15 MR. PIUZE: YES.

16 IN EVALUATING A PORTION OF A PUBLICLY HELD
17 COMPANY HERE, PHILIP MORRIS, THE HOLDING COMPANY, IS A
18 PUBLICLY HELD COMPANY. WE KNOW MANY, MANY THINGS ABOUT IT.
19 BY PICKING UP THE WALL STREET JOURNAL WE KNOW WHAT THE
20 CAPITALIZATION OF THE COMPANY IS, \$105 BILLION. WE GET
21 THAT BY FIGURING OUT THE OUTSTANDING SHARES AND MULTIPLYING
22 BY THE STOCK PRICE. WE NOTE FOR THE COURT THIS IS NO
23 FLY-BY-NIGHT DOT COM COMPANY. OBVIOUSLY EVERYBODY KNOWS
24 THAT THIS IS REAL MONEY WE ARE TALKING ABOUT HERE.

25 PHILIP MORRIS HAS PUBLISHED, IN ITS 2000
26 ANNUAL REPORT, SIGNED BY MR. BIBLE, ITS PROFIT AND LOSSES
27 FOR ITS SUBSIDIARIES, SO I KNOW FROM THEIR DOCUMENT THAT
28 PHILIP MORRIS'S DOMESTIC TOBACCO AMOUNTS FOR 28 PERCENT OF

1 PHILIP MORRIS' S HOLDING COMPANY' S TOTAL SALES.

2 AND I ALSO KNOW FROM THEIR DOCUMENT THAT
3 PHILIP MORRIS' S DOMESTIC TOBACCO ACCOUNTS FOR APPROXIMATELY
4 33 PERCENT OF THE TOTAL PROFITS OF THE ENTIRE SHEBANG.

5 MY ECONOMIST, USING THE 28 PERCENT NUMBER --

6 THE COURT: YOUR ECONOMIST IS GOING TO BE?

7 MR. PIUZE: MR. JOHNSON.

8 THE COURT: MR. JOHNSON.

9 MR. PIUZE: -- USING THE 28 PERCENT NUMBER AND
10 APPLYING THAT TO THE \$105 BILLION CAPITALIZATION OF THE
11 CORPORATION COMES UP WITH A NET VALUE OF \$30 BILLION.

12 THE COURT: AND HE IS GOING TO STATE THAT AS A
13 QUALIFIED OPINION -- AS AN OPINION AFTER BEING QUALIFIED AS
14 AN EXPERT?

15 MR. PIUZE: YES.

16 AND THEN TAKING THE PROFITS OF PHILIP MORRIS' S
17 DOMESTIC TOBACCO -- I SHOULD JUST INTERJECT HERE, THERE IS
18 AN INTERNATIONAL TOBACCO COMPANY, TOO. WE' RE SPECIFICALLY
19 LEAVING THAT OUT. THIS IS DOMESTIC ONLY NOW

20 PHILIP MORRIS' S DOMESTIC TOBACCO' S PROFITS
21 LAST YEAR WERE \$5.35 BILLION. IT WAS JUST A HAIR SHY OF
22 \$5 BILLION THE YEAR BEFORE. DOMESTIC TOBACCO ONLY.

23 USING THE 33 PERCENT NUMBERS, THE FACT THAT
24 THE DOMESTIC TOBACCO COMPANY ACCOUNTED FOR 33 PERCENT OF
25 THE PROFITS OF THE UMBRELLA ORGANIZATION, THEN THE VALUE
26 COMES OUT TO \$35 BILLION.

27 SO ON THE ONE HAND, SALES RATIO, 30 BILLION.
28 ON THE OTHER HAND, PROFIT RATIO, 35 BILLION. MR. JOHNSON

1 HAS A THIRD --

2 THE COURT: YOU DON'T NEED TO GO ANY FURTHER. ALL
3 RIGHT. WHERE IS THE \$6 BILLION FIGURE GOING TO COME FROM?

4 MR. LEITER: LET ME FIRST START WITH WHAT THE
5 \$6 BILLION FIGURE IS. THAT WAS AS OF A YEAR AGO IN THE
6 LIGHTLY (PHONETIC) TRIAL, THE STIPULATED AMOUNT. MY
7 UNDERSTANDING IS THE NUMBER WOULD BE A LITTLE HIGHER THIS
8 YEAR, AS OF A YEAR LATER.

9 BUT MY UNDERSTANDING IS IT IS BASICALLY A
10 STANDARD NET WORTH ANALYSIS WHICH IS ASSETS MINUS
11 LIABILITIES, SIMILAR TO WHAT WE JUST HEARD TESTIMONY ABOUT
12 WITH CONNECTION TO MR. BOEKEN'S BUSINESS. THE NOTION THAT
13 NET WORTH IS A FRACTION OF THE AMOUNT OF MONEY THAT
14 STOCKHOLDERS HAVE INVESTED, THE CAPITALIZATION IS, WE
15 THINK, A COMPLETELY INAPPROPRIATE MEASURE OF NET WORTH. IF
16 WE HAVE TO CROSS-EXAMINE ON IT, WE'LL CROSS-EXAMINE ON IT.
17 BUT THAT'S THE ISSUE.

18 IT SHOULD BE NOT UNACKNOWLEDGED THAT WHEN
19 MR. JOHNSON WAS PREPARED TO TESTIFY ABOUT THE NET WORTH OF
20 PHILIP MORRIS COMPANIES HIS NUMBER WAS ABOUT \$15 BILLION,
21 WHICH WAS BASED ON AN ANALYSIS SIMILAR TO THE ONE I JUST
22 DESCRIBED, ASSETS AND LIABILITIES.

23 NOW, AT THE LAST MINUTE THERE IS A COMPLETELY
24 NEW ANALYSIS WHERE MIRACULOUSLY HIS NET WORTH FOR THE ONE
25 PORTION OF PHILIP MORRIS COMPANIES IS GOING TO BE THREE
26 TIMES, FOUR TIMES AS MUCH.

27 THE COURT: I WON'T HAVE TO MAKE THE DECISION AS TO
28 WHICH IS THE CORRECT ANALYSIS?

1 MR. LEITER: I'M NOT ASKING YOU TO MAKE THAT. THAT'S
2 WHAT'S GOING ON, AND AS TO THE DETAILS OF HIS CALCULATION,
3 WE'RE DEPOSING HIM LATER THIS AFTERNOON AND THAT'S ALL WE
4 KNOW

5 CAN I MAKE ONE OTHER MENTION WITH REGARD TO
6 THIS TESTIMONY? WE ANTICIPATE THAT ONE OF THE REASONS THAT
7 PLAINTIFF WANTS MR. JOHNSON TO TESTIFY IS TO GET INTO A
8 WHOLE BUNCH OF OTHER NUMBERS THAT HAVE NOTHING TO DO WITH
9 NET WORTH, JUST TO THROW A BUNCH OF OTHER IRRELEVANT
10 NUMBERS OUT IN FRONT OF THE JURY, WHICH COULD INCLUDE
11 ANYTHING FROM HOW MUCH THE C. E. O. MAKES TO HOW MUCH THEY
12 SPEND FOR ADVERTISING TO HOW MUCH THEY SPEND FOR THIS,
13 THAT, AND THE OTHER THING, WHICH I JUST MENTION NOW AS AN
14 ISSUE THAT WILL PROBABLY ARISE WHEN HE TESTIFIES.

15 THE COURT: THANK YOU FOR ALERTING ME.

16 MR. PIUZE: COULD I -- I DON'T WANT TO WASTE WORDS,
17 IF I DON'T HAVE TO.

18 THE ADAMS VERSUS MORIKAM (PHONETIC), JUST AS
19 A LITTLE HISTORICAL FOOTNOTE, EXISTS BECAUSE THE TRIAL
20 LAWYER IN ADAMS CALLED ME PERSONALLY AND SAID I'M ABOUT TO
21 ARGUE PUNITIVE DAMAGES, DO I HAVE TO PUT ON ANY EVIDENCE OF
22 DR. MORIKAM'S FINANCIAL CONDITION? AND BECAUSE I'D DONE A
23 LOT OF BAD FAITH AT THAT POINT, A LOT OF PUNITIVE DAMAGE
24 WORK, I SAID, NO, WHICH WAS THE CORRECT ANSWER, BY THE WAY,
25 BUT THE CALIFORNIA SUPREME COURT THOUGHT THAT IN THE FUTURE
26 THE ANSWER SHOULD BE YES.

27 SO I'M FAMILIAR WITH ADAMS VERSUS MORIKAM.
28 IT TALKS ABOUT FINANCIAL CONDITION. IT ISN'T JUST NET

1 WORTH, IT ISN'T JUST PROFIT. THERE IS EVIDENCE OF
2 FINANCIAL CONDITION, HISTORICAL CITE.

3 THE COURT: THANK YOU VERY MUCH FOR THAT ANECDOTE.

4 THEN WHAT YOU DO IS YOU TAKE A LOOK AT THE
5 DOCUMENT LIST AS MUCH AS YOU WANT TO. SAY AT 4:00 O'CLOCK
6 WE'LL GET BACK ON THE DEPOSITION DESIGNATIONS, AND I'LL
7 WORK WITH YOU FOR AN HOUR TO SEE HOW MUCH I CAN GET DONE,
8 WITHOUT PREJUDICE, OF COURSE, TO THE DEFENSE TO DESIGNATE
9 FURTHER INFORMATION OVER THE EVENING.

10 I'LL SEE YOU IN 45 MINUTES.

11 MR. LEITER: WE COULD POTENTIALLY START A LITTLE
12 EARLIER.

13 THE COURT: I'LL BE AVAILABLE TO YOU.

14 MR. LEITER: THANK YOU, YOUR HONOR.

15

16 (RECESS.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUTSIDE THE PRESENCE
3 OF THE JURY:)

4
5 THE COURT: IF WE CAN HAVE THE PROBLEM PRESENTED TO
6 ME WE'LL SEE IF WE CAN GET IT SOLVED.

7 MR. LE BERTHON: ADAM LE BERTHON FOR PHILIP MORRIS.
8 WE HAVE SEVERAL ISSUES WITH RESPECT TO THE
9 TRANSCRIPT OF MR. BIBLE'S TESTIMONY ON MARCH 2ND, 1998.

10 IF YOU'VE GOT A COPY THERE, I WANTED TO TURN
11 YOUR ATTENTION TO PAGES 5711, LINE 6. AND OUR OBJECTIONS
12 RUN ALL THE WAY THROUGH 5714, LINE 7.

13 THE COURT: GIVE ME A MOMENT TO READ THIS.

14 MR. LE BERTHON: CERTAINLY.

15 (PAUSE IN PROCEEDINGS.)

16 THE COURT: AND THIS GENTLEMAN IS WHO?

17 MR. LE BERTHON: HE IS THE C. E. O. -- I BELIEVE HE IS
18 STILL THE C. E. O. OF PHILIP MORRIS COMPANIES.

19 THIS WHOLE LINE OF QUESTIONING REGARDING THESE
20 VARIOUS DUTIES TO MAKE A SAFE PRODUCT, TO MAKE
21 MISREPRESENTATIONS, TO WARN CONSUMERS ABOUT KNOWN RISKS AND
22 SO FORTH, AND MORE IMPORTANTLY THE FOLLOW-UP QUESTIONS
23 ABOUT WHETHER A COMPANY SHOULD BE HELD ACCOUNTABLE FOR ANY
24 BREACH OF THESE DUTIES THERE, IS REALLY A LEGAL
25 CONCLUSION. IT IS UNDULY PREJUDICIAL AND IT'S MISLEADING.

26 IT'S MISLEADING IN THE CONTEXT OF THIS LAWSUIT
27 WHERE THESE VERY DUTIES, LEGAL DUTIES, ARE AT ISSUE. THERE
28 IS MANY MORE ELEMENTS THAT GO TO WHETHER THE COMPANY SHOULD

1 BE HELD LIABLE FOR BREACH OF SOME OF THESE DUTIES, AND IT'S
2 PARTICULARLY MISLEADING IN THIS INSTANCE.

3 IF YOU LOOK BACK AT PAGE 5704 THERE IS A PRIOR
4 LINE OF QUESTIONING ABOUT VARIOUS DUTIES, AND HE
5 ACKNOWLEDGES -- HE ACKNOWLEDGES THAT PHILIP MORRIS HAS
6 DUTIES UNDER THE LAW, DUTIES TO PUBLIC HEALTH, DUTIES TO
7 SHAREHOLDERS. IT'S NOT AT ALL CLEAR WHAT DUTIES WE'RE
8 TALKING ABOUT HERE.

9 I THINK THE JURY WILL BE MISLED INTO BELIEVING
10 THAT THESE ARE EFFECTIVELY ADMISSIONS IN THE EVENT THAT THE
11 JURY WOULD FIND THE PRODUCT WAS NOT AS SAFE AS IT COULD
12 HAVE BEEN, OR THAT FALSE STATEMENTS MIGHT HAVE BEEN MADE,
13 THAT IT OUGHT TO FIND LIABILITY, AND THAT'S SIMPLY NOT
14 APPROPRIATE. WE OBJECTED FOR THOSE REASONS.

15 THE COURT: THANK YOU.

16 YES, SIR.

17 MR. PIUZE: YOUR HONOR, THESE QUESTIONS ARE BEING PUT
18 DIRECTLY TO THE TOP DOG IN PHILIP MORRIS. HE STATES THE
19 COMPANY'S POSITION. HE IS AN AUTHORIZED REPRESENTATIVE OF
20 THE COMPANY. HE SPEAKS FOR THE COMPANY. NO ONE CAN BE
21 MORE AUTHORIZED THAN HIM TO STATE THE COMPANY'S POSITION.

22 NOT ONLY DOES THIS STATE HIS STATE OF MIND,
23 BUT THE COMPANY'S STATE OF MIND. HE IS SPEAKING DIRECTLY
24 FOR THE COMPANY. HE IS TELLING WHOEVER IS ASSEMBLED,
25 WITHOUT OBJECTION, WHAT THE COMPANY'S STATE OF MIND IS,
26 WHAT HIS STATE OF MIND IS.

27 THE COURT: WHAT ABOUT THE ARGUMENT THAT THESE ARE
28 REALLY QUESTIONS HAVING TO DO WITH LEGAL DUTY?

1 MR. PIUZE: THEY ARE NOT QUESTIONS HAVING TO DO WITH
2 LEGAL DUTY, AND I DON'T SEE ANY QUESTION THAT ASKS ABOUT
3 LEGAL DUTY. BUT IF THEY ARE -- AND HE IS STATING WHAT HE
4 THINKS PHILIP MORRIS'S LEGAL DUTY IS -- THAT STILL GOES TO
5 STATE OF MIND, AND I THINK -- STILL THINK IT'S FAIR GAME
6 FROM THE HORSE'S -- I DON'T MEAN THIS IN A DEROGATORY
7 SENSE TO MR. BIBLE. THIS GUY RUNS ONE OF THE LARGEST
8 CORPORATIONS, ONE OF THE HEAVIEST FINANCIAL INSTITUTIONS IN
9 THE ENTIRE WORLD. HE DIDN'T GET UP THERE IN A VACUUM, AND
10 OBVIOUSLY HE HAS BEEN WELL BRIEFED AND HE IS STATING WHAT
11 HE BELIEVES THIS COMPANY'S OBLIGATIONS TO -- THE DUTIES AND
12 OBLIGATIONS TO THE PUBLIC ARE.

13 THE COURT: THE DATES OF TESTIMONY?

14 MR. LE BERTHON: 1998.

15 THE COURT: HE IS STILL THE PRESIDENT?

16 MR. PIUZE: C. E. O.

17 THE COURT: CHIEF EXECUTIVE OFFICER.

18 MR. LE BERTHON: OF PHILIP MORRIS COMPANIES. IT'S
19 THE UMBRELLA.

20 THE COURT: I'VE HEARD ARGUMENT ON THIS. I'M GOING
21 TO TAKE THAT UNDER SUBMISSION.

22 WHAT ELSE DO WE HAVE?

23 MR. LE BERTHON: THANK YOU, YOUR HONOR.

24 LET ME TURN YOUR ATTENTION TO PAGE 5718, LINE
25 24, THROUGH 5719, LINE 14.

26 THE COURT: ALL RIGHT.

27 MR. LE BERTHON: WE BELIEVE THAT THE TESTIMONY ABOUT
28 MEETINGS WITH LAWYERS -- AND WE HAVE DISCUSSIONS -- THE

1 QUESTION HAD TO DO WITH COURTROOM TACTICS. THAT'S SIMPLY
2 NOT APPROPRIATE. IT'S UNDULY PREJUDICIAL. IT HAS NOTHING
3 TO DO WITH THIS CASE.

4 THE COURT: WHAT IS THE RELEVANCE ABOUT WHEN THE
5 FIRST TIME IT IS THAT THIS PARTICULAR PERSON SAW THE FRANK
6 STATEMENT?

7 MR. LE BERTHON: PARDON ME, YOUR HONOR?

8 THE COURT: AM I READING THIS RIGHT, 57 -- MAYBE I
9 STARTED AT THE WRONG PAGE -- 5715 IS WHERE I STARTED.

10 MR. LE BERTHON: PERHAPS I MISSPOKE. 5718 THROUGH
11 5719.

12 THE COURT: OKAY. STARTING AT?

13 MR. LE BERTHON: LINE 24.

14 THE COURT: OKAY. NOW I'M GOING TO READ IT.

15 ALL RIGHT. WHAT'S THE RELEVANCE OF THIS
16 PARTICULAR TESTIMONY FROM THE PLAINTIFFS' PERSPECTIVE?

17 MR. PIUZE: THAT WHEN HE TOOK OVER THE REINS IN 1994
18 AS THE C. E. O. AND HE WAS ABOUT READY TO WRITE THE ANNUAL
19 REPORT -- THAT'S IN PARENTHESES -- HE TOOK OVER THE REINS
20 OF PHILIP MORRIS'S C. E. O. IN 1994. HE DID NOT WANT TO BE
21 THINKING ABOUT PAST PROBLEMS. HE WANTED TO LOOK FORWARD.
22 IT WAS HIS GOAL TO LOOK FORWARD.

23 SO WHAT HE DID AS FAR AS THE SO-CALLED HEALTH
24 ISSUE WAS CONCERNED IN LOOKING FORWARD WASN'T TO TALK TO
25 SCIENTISTS, IT WASN'T TO TALK TO HIS HEALTH OFFICIALS, IT
26 WASN'T TO TALK TO PEOPLE ABOUT THE SAFETINESS OF THE
27 CIGARETTE; IT WAS TO GET TOGETHER ALL OF THE ATTORNEYS TO
28 FIGURE OUT WHAT WAS GOING TO HAPPEN WITH LITIGATION. SO

1 THAT'S THE RELEVANCE OF THIS PORTION HERE.

2 MR. LE BERTHON: I THINK, YOUR HONOR, THAT'S NOT WHAT
3 IT SAYS AT ALL.

4 THE COURT: IT SEEMS TO ME THERE WAS QUITE A BIT OF
5 ARGUMENT IN THAT. OFTENTIMES IN DESCRIBING RELEVANCE YOU
6 HAVE TO GIVE AN ARGUMENT TO THE COURT.

7 MR. PIUZE: I APOLOGIZE IF I ARGUED. I DIDN'T REALLY
8 MEAN TO. THAT'S THE WAY I SAW WHAT MR. CIRESI WAS AFTER
9 HERE.

10 THE COURT: HE IS GETTING TOGETHER WITH HIS LAWYERS
11 AND ASKING THEM TELL ME WHAT THIS IS ALL ABOUT. I MEAN,
12 WHY SHOULD THE COURT INTERFERE WITH THE RIGHT OF A PARTY
13 THAT GET TOGETHER WITH THEIR LAWYERS AND TALK ABOUT
14 EXPOSURE AND THINGS LIKE THAT?

15 MR. PIUZE: I'M NOT ASKING THE COURT TO INTERFERE
16 WITH ANYTHING. THERE IS NOTHING IN HERE ABOUT THE COURT
17 INTERFERING.

18 I THINK WHAT CIRESI WAS GOING AFTER, THE WAY I
19 READ THIS -- AND IF I WERE TO ARGUE THIS TO THE JURY, WHAT
20 I WOULD SAY IS THIS GUY'S PRIORITIES ARE IN THE WRONG ORDER
21 BECAUSE WHEN HE TOOK OVER, ONE OF THE FIRST THINGS HE DOES
22 ISN'T TO SAY WHAT CAN WE DO TO ALLEVIATE THE PROBLEM OUR
23 PRODUCT IS CAUSING? WHAT HE DOES IS TAKE OVER AND SAY,
24 WHERE DO WE STAND LITIGATIONWISE?

25 THE COURT: GOES AND GETS SOME LEGAL ADVICE.

26 MR. PIUZE: WHERE DO WE STAND LITIGATIONWISE?

27 THE COURT: THAT'S WRONG -- WHAT COUNSEL IS GOING TO
28 ARGUE IS IT'S WRONG TO GO TO YOUR LAWYER AND GET LEGAL

1 ADVICE?

2 MR. PIUZE: I DON'T THINK IT'S WRONG TO GO TO A
3 LAWYER, BUT I THINK THAT WHEN WE'RE FACED WITH QUESTIONS OF
4 HEALTH, THAT THE LAWYERS PROBABLY SHOULDN'T COME FIRST,
5 THAT THE SCIENTISTS, DOCTORS, AND HEALTH PEOPLE SHOULD COME
6 FIRST, NOT THE LAWYERS.

7 THE COURT: OBJECTION SUSTAINED AS TO THIS MATERIAL.
8 352 AS WELL AS THE LEGAL BASIS ARGUED.

9 MR. PIUZE: CAN MR. LE BERTHON REPEAT THE LINES SO I
10 CAN GET THEM TOTALLY OUT OF HERE?

11 MR. LE BERTHON: IT WAS PAGE 5718, LINE 24, THROUGH
12 5719, LINE 14.

13 MR. PIUZE: LINE 14. OKAY.

14 MR. LE BERTHON: NEXT, YOUR HONOR, PAGE 5721, LINE
15 11, THROUGH 5721, LINE 24.

16 THE COURT: WHY NOT?

17 MR. LE BERTHON: WHY IS THIS OBJECTIONABLE, YOUR
18 HONOR?

19 THE F. D. A. HAS NOTHING TO DO WITH THIS.
20 REGULATION OR POTENTIAL REGULATIONS OF THE TOBACCO INDUSTRY
21 BY THE F. D. A. IS NOT INVOLVED IN THIS LAWSUIT. INDEED, THE
22 F. D. A. 'S PRIOR EFFORTS TO REGULATE THE TOBACCO INDUSTRY
23 WERE FOUND TO BE UNLAWFUL AND WERE STRICKEN. THIS HAS
24 NOTHING TO DO WITH WHAT'S GOING ON HERE. IT'S IRRELEVANT.
25 IT'S UNDULY PREJUDICIAL. I BELIEVE IN THE PAST, YOUR
26 HONOR, YOU SUSTAINED SOME OF OUR OBJECTIONS TO OTHER
27 LAWSUITS, F. D. A. , THINGS OF THAT NATURE.

28 THE COURT: THE PLAINTIFF?

1 MR. PIUZE: LET ME HAVE A SECOND TO THINK ABOUT THE
2 LAST PART OF WHAT HE JUST SAID, PLEASE.

3 WELL, THE OTHER LAWSUITS CUT A COUPLE OF WAYS
4 BECAUSE IT'S SEEMS TO ME THAT ALTHOUGH THERE WAS A MOTION
5 IN LIMINE BY THE DEFENSE NOT TO BRING UP OTHER LAWSUITS,
6 THE DEFENSE DID THAT, JUST OUT OF THE BOX ON
7 CROSS-EXAMINATION, VIRTUALLY WITH ALL OF MY EXPERTS. I'D
8 JUST MAKE THAT COMMENT TO START WITH.

9 I THINK THIS IS FAIR GAME. I DON'T KNOW WHY
10 THIS IS IRRELEVANT. I DON'T KNOW WHY THIS HAS, AS HE SAYS,
11 NOTHING TO DO WITH OUR CASE.

12 THE COURT: IT'S NOT HIS BURDEN TO SHOW RELEVANCE.

13 MR. PIUZE: I THINK IT DOES HAVE TO DO WITH THE CASE
14 BECAUSE THIS CASE HAS TO DO WITH PRODUCT SAFETY. AND
15 AGAIN, THIS CUTS INTO THE THREE-PRONGED ATTACK OR THE
16 THREE-PRONGED STRATEGY THAT THE INDUSTRY HAD GOING BACK TO
17 1952, WHICH WAS LITIGATION, POLITICS, AND PUBLIC OPINION.

18 AND WHAT THEY ARE TRYING TO DO HERE IS KEEP
19 THE GOVERNMENT AT BAY, I BELIEVE. SO THAT'S MY ANSWER.

20 MR. LE BERTHON: YOUR HONOR, TO THE EXTENT THAT HE
21 BELIEVES WE WERE WORKING TO KEEP THE GOVERNMENT AT BAY,
22 IT'S PROBABLY ALSO SUBJECT TO A NOERR-PENNINGTON OBJECTION
23 AS WELL.

24 THE COURT: I DEALT WITH THAT EARLIER. THAT'S
25 SUBMITTED.

26 NEXT?

27 MR. LE BERTHON: THANK YOU, YOUR HONOR.

28 THE FINAL OBJECTION --

1 MR. PIUZE: I DIDN'T HEAR THE RULING.

2 THE COURT: SUBMITTED.

3 I WANT TO LOOK AT SOME OF MY PRIOR NOTES ON
4 NOERR-PENNINGTON.

5 MR. LE BERTHON: FINALLY, 5731, LINE 23, THROUGH
6 5732, LINE 13. AND IT'S REALLY QUITE SIMILAR.

7 THE COURT: 5731 BEGINNING AT WHAT LINE, SIR?

8 MR. LE BERTHON: LINE 23.

9 THE COURT: THROUGH?

10 MR. LE BERTHON: 5732, LINE 13.

11 THE COURT: OKAY. LET ME READ THAT.

12 I DON'T HAVE THE FULL CONTEXT OF THIS. IS
13 THIS WITH REFERENCE TO AN ANNUAL REPORT OR SOMETHING ALONG
14 THOSE LINES?

15 MR. LE BERTHON: I BELIEVE IT'S A LETTER TO
16 SHAREHOLDERS.

17 THE COURT: A LETTER TO SHAREHOLDERS.

18 ALL RIGHT.

19 MR. LE BERTHON: AGAIN, YOUR HONOR, WE OBJECT TO THIS
20 ON THE GROUNDS OF RELEVANCE, UNDUE PREJUDICE, AND PERHAPS
21 NOERR-PENNINGTON. IT'S A DISCUSSION OF THREAT OF F. D. A.
22 REGULATION, NEGATIVE MEDIA COVERAGE, OTHER LITIGATION, NOT
23 THIS LAWSUIT. IT REALLY HAS NOTHING TO DO WITH THIS CASE.

24 MR. PIUZE: I MAKE THE SAME COMMENTS AGAIN. THIS
25 MATTER TAKES OVER THE REINS OF THIS GIANT CORPORATION AND
26 TELLS HIS SHAREHOLDERS EXACTLY WHERE HIS PRIORITIES ARE FOR
27 THE CORPORATION. I COULDN'T SAY IT BETTER THAN HE HAS
28 ALREADY DONE.

1 AS TO BOTH, I'LL TAKE MR. LE BERTHON ON HIS
2 WORD, THE LAST OF THESE TWO DEALS WITH THE SAME SUBJECT
3 MATTER. I THINK THAT'S A PROPER CHARACTERIZATION.

4 WITH THAT IN MIND, JUMPING BACK TO THE LAST
5 ONE, IT'S JUST BEEN BROUGHT TO MY ATTENTION -- AND I'D LIKE
6 TO BRING IT TO THE COURT'S ATTENTION, FOR WHATEVER IT'S
7 WORTH -- THAT IN THAT PORTION BETWEEN 5721, LINE 11, AND
8 5722, LINE 23, THERE IS TALK IN THERE --

9 (COUNSEL CONFERRED SOTTO VOCE.)

10 MR. PIUZE: GIVE ME A SECOND, PLEASE.

11 (PAUSE IN PROCEEDINGS.)

12 MR. LE BERTHON: IF I COULD INTERJECT WHILE THEY ARE
13 LOOKING FOR A PAGE.

14 THE UNITED STATES SUPREME COURT HAS HELD THAT
15 THE F. D. A. DID NOT HAVE JURISDICTION TO REGULATE THE
16 TOBACCO INDUSTRY, AND THE IMPLICATION THAT THEY ARE TRYING
17 TO MAKE THAT PHILIP MORRIS AND THE TOBACCO COMPANIES WERE
18 DOING SOMETHING WRONG BY CHALLENGING THAT IS SIMPLY WRONG
19 AND UNFAIR.

20 MR. PIUZE: HERE IS WHAT I WANTED TO ADD. AND I
21 APOLOGIZE FOR NOT HAVING IT IMMEDIATELY AT HAND.

22 5721, PART OF THE STUFF THAT'S IN AND NOT
23 CHALLENGED IS A QUESTION STARTING AT LINE 7, WHERE CIRESI
24 ASKS HIM ABOUT DEFENDING THE COMPANY AGAINST OUTSIDE
25 THREATS. AND NOW IN THE PORTION THAT IS BEING CHALLENGED
26 ON RELEVANCY, AMONG OTHER GROUNDS, THE QUESTION AT 14
27 STARTS OFF: "AND WHAT ABOUT THESE OUTSIDE THREATS?"

28 ONE OF THESE OUTSIDE THREATS IS REGULATION.

1 SO IT DOES MATCH UP TO WHAT WAS SAID ABOVE.

2 THE COURT WAS ASKING ME FOR RELEVANCE, AND I'M
3 SHOWING THE COURT HOW THIS HOOKS UP WITH WHAT HAD ALREADY
4 BEEN DISCUSSED ABOVE. THAT'S ALL I WANTED TO SAY.

5 THE COURT: ALL RIGHT. THANK YOU FOR POINTING THAT
6 OUT.

7 I'M GOING TO ASK SOMETHING. THE PORTION
8 STARTING AT 5721 IS LINE WHAT?

9 MR. LE BERTHON: LINE 11. ALTHOUGH, ACCORDING TO
10 MR. PIUZE, PERHAPS IT SHOULD START AT LINE 7.

11 MR. PIUZE: AS LONG AS I'VE GOT MR. LE BERTHON HERE,
12 MAY I SUGGEST THE STIPULATION AS TO LIABILITY?

13 MR. LE BERTHON: GIVE THAT A LOT OF THOUGHT.

14 THE COURT: ALL RIGHT. ANYWAY, SO LINE 11 THROUGH
15 AND INCLUDING --

16 MR. LE BERTHON: THROUGH AND INCLUDING LINE 24, YOUR
17 HONOR.

18 THE COURT: THAT'S WHAT I THOUGHT. OKAY.

19 ALL RIGHT. LET ME THINK ABOUT THOSE. I'LL
20 THINK ABOUT THEM OVER THE EVENING, AND THEY'LL BE EASY TO
21 HANDLE TOMORROW

22 MR. PIUZE: AS TO THE FIRST ONE, I NEGLECTED TO SAY
23 AUTHORIZED ADMISSION.

24 THE COURT: I UNDERSTAND. YOU DIDN'T NEED TO MAKE
25 THAT ARGUMENT. I WAS VERY MUCH AWARE OF THE POSITION.
26 OKAY.

27 NOW, TOMORROW, WHAT IS ON THE AGENDA FOR
28 TOMORROW?

1 MR. PIUZE: TOMORROW IS JOHNSON, READING THIS, A
2 SHORT -- TWO SHORT CLIPS FROM "DEATH IN THE WEST," WHICH
3 WE'VE AGREED TO. THOSE TWO SHORT CLIPS WON'T TAKE MORE
4 THAN SEVEN MINUTES TOTAL RUNNING TIME. AND THAT'S THE
5 EXTENT OF THE LIVE STUFF FROM THE PLAINTIFF.

6 BUT I'VE ALERTED -- I'VE ASKED MR. LEITER TO
7 THINK ABOUT THE FOLLOWING: THERE IS ALL KINDS OF DOCUMENTS
8 HERE WHICH ARE SELF-AUTHENTICATING DOCUMENTS -- WE DON'T
9 HAVE TO WORRY ABOUT WITNESSES TO AUTHENTICATE THEM THEY
10 RISE OR STAND ON THEIR OWN -- WHICH I WANT TO PUT IN, THAT
11 HAVEN'T YET BEEN DISCUSSED. THERE MAY BE AS MANY AS THREE
12 OR FOUR DOZEN OF THESE DOCUMENTS. WE USED 50 AS A ROUND
13 NUMBER.

14 AND I ASKED MR. LEITER WHETHER HE WANTED TO GO
15 FORWARD WITH HIS LIVE TESTIMONY IMMEDIATELY AND WE CAN DEAL
16 WITH THESE THINGS AS WE GO ALONG, OR WHETHER HE THOUGHT IT
17 BETTER TO SQUARE AWAY THE DOCUMENT ISSUE BEFORE HE PUTS ON
18 TESTIMONY.

19 THE BALL IS IN MY COURT BECAUSE HE WANTS A
20 LIST OF EXACTLY WHICH DOCUMENTS THEY ARE BEFORE HE
21 RESPONDS. ALL OF THAT IS A LONG WAY OF SAYING I'LL
22 PROBABLY TAKE THE MORNING, AND PROBABLY NO MORE, WITH LIVE
23 TESTIMONY; AND THEN WE DON'T KNOW WHETHER THE AFTERNOON
24 SHOULD BE DEVOTED TO THRASHING OUT DOCUMENTS YET OR WHETHER
25 HE HAS GOT A WITNESS WHO IS STANDING BY, A LOCAL WITNESS.
26 IT'S UP TO US TO SQUARE IT AWAY OVERNIGHT.

27 THE COURT: I WOULD LIKE -- I KNOW YOU HAVEN'T HAD A
28 CHANCE TO SAY ANYTHING, MR. LEITER. EXCUSE ME.

1 LET ME EXPRESS MYSELF. I'D LIKE TO GET RIGHT
2 ON WITH SOME LIVE TESTIMONY.

3 DO YOU HAVE ANY MOTIONS?

4 MR. LEITER: THAT'S WHAT I WAS GOING TO MENTION. WE
5 WILL HAVE MOTIONS. THEY DON'T NECESSARILY HAVE TO BE DEALT
6 WITH IMMEDIATELY. WE'LL HAVE MOTIONS THAT FOLLOW THE
7 PLAINTIFF'S CASE.

8 THE COURT: WHAT I CAN DO WITH YOUR MOTIONS --
9 ANTICIPATING IN MY MIND WHAT THEY MIGHT BE -- IS JUST ALLOW
10 YOU TO START YOUR CASE WITHOUT PREJUDICE TO THOSE AND FIND
11 A CONVENIENT TIME TO GIVE YOU A REAL CHANCE TO DISCUSS THEM
12 WITH ME.

13 ARE YOU GOING TO BE READY TO START WITH A LIVE
14 WITNESS TOMORROW?

15 MR. LEITER: IF THAT'S YOUR HONOR'S WISH, WE'LL BE
16 READY TO START WITH A LIVE WITNESS TOMORROW AFTER LUNCH.

17 THE COURT: WHAT I'D LIKE TO DO, THEN, IS START WITH
18 A LIVE WITNESS TOMORROW, GIVE YOU ALL DAY THURSDAY --
19 FRIDAY MORNING YOU KNOW MY SITUATION -- AS FAR AS THE 25
20 DOCUMENTS, WE'LL JUST DO IT. WE'LL DO IT IN AN EVENING OR
21 AN AFTERNOON, SOMETHING LIKE THAT -- YOU KNOW MY SITUATION
22 FRIDAY MORNING.

23 I'M MORE THAN WILLING TO GIVE YOU FRIDAY
24 AFTERNOON, IF YOU WANT IT. HAVE YOU ALL DECIDED WHAT YOU
25 WANT TO DO FRIDAY?

26 MR. LEITER: THERE THE BALL IS IN OUR COURT. WE HAVE
27 BEEN WAITING TO GET A SENSE OF EXACTLY WHEN OUR CASE WOULD
28 BEGIN, WHAT OUR SITUATION IS WITH WITNESSES FROM OUT OF

1 TOWN.

2 ONCE WE GET PAST TOMORROW I THINK WE'LL BE IN
3 A POSITION TO MAKE A RECOMMENDATION AS TO WHETHER WE OUGHT
4 TO BE DARK FRIDAY AFTERNOON.

5 THE COURT: IT'S UP TO YOU, THE BALL IS IN YOUR
6 COURT.

7 ON THAT, I'LL LET YOU MAKE THE CALL ON THAT.
8 I'LL SEE YOU TOMORROW MORNING. AND MEANWHILE, LET ME THINK
9 ABOUT THIS.

10 THANK YOU, COUNSEL.

11

12 (AT 3:45 P.M AN EVENING ADJOURNMENT WAS TAKEN
13 UNTIL WEDNESDAY, APRIL 25, 2001 AT 8:45 A.M.)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE
4
5

6 RICHARD BOEKEN,)
7)
8) PLAINTIFF,)
9)
10) VS.) CASE NO.
11)) BC226593
12) PHILIP MORRIS,)
13)
14) DEFENDANT.)
15)
16 _____)

17 REPORTER'S CERTIFICATE

18 STATE OF CALIFORNIA)
19) SS.
20 COUNTY OF LOS ANGELES)

21 I, CARMEN J. GARROD, CSR NO. 4009, OFFICIAL COURT
22 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
23 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
24 FOREGOING PAGES COMPRISE A FULL, TRUE AND CORRECT
25 TRANSCRIPTION OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED
26 MATTER ON APRIL 24, 2001.

27 DATED THIS 24TH DAY OF APRIL 2001.

28 _____ CSR NO. 4009

OFFICIAL COURT REPORTER