

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4 RICHARD BOEKEN, )  
5 PLAINTIFF, )  
6 )  
7 VS. ) CASE NO. BC226593  
8 PHILIP MORRIS, ) VOLUME 38  
INCORPORATED, A )  
9 CORPORATION; INTERNATIONAL )  
HOUSE OF PANCAKES )  
10 INCORPORATED, A )  
CORPORATION. )  
11 DEFENDANTS. )

12 \_\_\_\_\_ )  
13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
14 FRIDAY, MAY 18TH, 2001

15 APPEARANCES:  
16 (FOR PLAINTIFF) LAW OFFICES OF  
MICHAEL J. PIUZE  
17 11755 WILSHIRE BLVD.  
SUITE 1170  
18 LOS ANGELES, CA 90025  
19 (FOR DEFENDANTS) ARNOLD & PORTER  
BY: MAURICE A. LEITER  
20 JOHN CARLTON  
777 S. FIGUEROA ST.  
21 44TH FLOOR  
LOS ANGELES, CA 90017

22 LISA C. RIDLEY  
23 OFFICIAL REPORTER  
600 S. COMMONWEALTH AVE.  
24 ROOM 308  
LOS ANGELES, CA 90005

25 VOLUME 38 OF  
26 PAGES 5952 THROUGH 6036

27  
28

1 LOS ANGELES, CALIFORNIA; FRIDAY, MAY 18TH, 2001

2 9:00 A. M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS

6 WERE HELD IN OPEN COURT IN

7 THE PRESENCE OF THE JURY.)

8

9 THE COURT: GOOD MORNING, LADIES AND

10 GENTLEMEN. GOOD TO SEE ALL OF YOU.

11 GOOD MORNING, GOOD COUNSEL.

12 ALL RIGHT, OUR JURY PANEL IS WITH

13 US AND WE ARE READY TO PROCEED.

14 MR. PIUZE, YOUR JURY.

15

16 OPENING ARGUMENT (CONTINUED)

17

18 BY MR. PIUZE:

19 SO THIS IS ONE OF THE TWO LONGEST

20 CLOSING ARGUMENTS I HAVE EVER GIVEN IN ALMDST 30

21 YEARS OF DOING THIS. AND ON THE ONE HAND, I

22 APOLOGIZE FOR THE LENGTH OF TIME IT IS TAKING, AND

23 ON THE OTHER HAND, I MADE MY DECISION THAT IT IS

24 WORTHWHILE.

25 AND AGAIN, THANK YOU FOR LISTENING

26 AND THANK YOU FOR YOUR ATTENTION TODAY, YESTERDAY,

27 ALL THE WAY THROUGH THIS TRIAL.

28 AND THIS IS MY OPPORTUNITY TO NOW

1 THANK THE COURT, THE STAFF. GREAT JUDGE, GREAT  
2 STAFF. SO HERE WE ARE.

3 YESTERDAY AT THE END OF THE DAY, I  
4 WAS GOING THROUGH THIS TIME LINE. THIS WILL  
5 PROBABLY BE THE LAST TIME YOU SEE THE TIME LINE.  
6 SO I WOULD JUST LIKE TO START TODAY BY FINISHING IT  
7 UP AND I NEED MR. GOLDSTEIN'S HELP ON THAT.

8 YOU HAVE HEARD FROM VARIOUS PEOPLE,  
9 MR. BOEKEN, HIS WIFE, ELVIS MENDEZ, DR. BENOWITZ,  
10 DR. BECKSON, THE LAST DOCTOR, AND DR. TRABULUS, I  
11 THINK, ABOUT SOME OF MR. BOEKEN'S ATTEMPTS TO QUIT  
12 SMOKING.

13 AND YESTERDAY WE TALKED ABOUT THIS  
14 ATTEMPT HERE, FOR THE LADY, AND WE ALSO TALKED  
15 ABOUT THE FACT THAT IN 1974 AND 1976, MR. BOEKEN  
16 ATTEMPTED TO QUIT A COUPLE OF TIMES AND IT HAD TO  
17 DO WITH BRONCHITIS AND HIS WIND AND HIS WANTING TO  
18 RUN.

19 I BELIEVE IN THAT VIDEO-TAPED  
20 DEPOSITION, I HAVEN'T GONE BACK AND LOOKED AT IT,  
21 BUT I BELIEVE HE PUT SOME PARAMETERS ON HOW LONG  
22 THOSE QUIT ATTEMPTS LASTED. I MAY BE WRONG. BUT I  
23 THOUGHT THEY WERE A COUPLE DAYS APIECE.

24 I DON'T KNOW IF THAT'S OF ANY  
25 SIGNIFICANCE, BUT THIS LAST WITNESS, BECKSON, SAID  
26 MR. BOEKEN WAS A LITTLE VAGUE ON IT.

27 I THINK HE WAS ASKED ABOUT THAT BY  
28 MR. CARLTON IN DEPOSITION. I MAY BE WRONG.

1                   IN 1980, AFTER HE SAW DR. TRABULUS  
2 FOR THE FIRST TIME AND HE WAS COMPLAINING AGAIN  
3 ABOUT BRONCHITIS, MR. BOEKEN WENT TO A HYPNOTIST  
4 WITH HIS SISTER. HE STOPPED SMOKING FOR  
5 APPROXIMATELY 35 TO 40 DAYS. AND NOW AFTER MORE  
6 THAN A MONTH OF NON-SMOKING, HE FELL BACK INTO THE  
7 PATTERN OF SMOKING.

8                   I TELL YOU THAT MR. BOEKEN, AS WE  
9 ALL KNOW, IS ABLE TO QUIT HEROIN, WHICH HE KNEW WAS  
10 BAD FOR HIM, HE WAS ABLE TO GET OFF OF METHADONE,  
11 HE WAS ABLE TO QUIT ALCOHOL, BECAUSE HE THOUGHT  
12 THAT WAS BAD FOR HIM, AND HE WAS NEVER ABLE TO QUIT  
13 CIGARETTES.

14                   AND I THINK THE PRIME QUESTION IS,  
15 IF HEROIN CAN BE QUIT, WHY CAN'T CIGARETTES BE  
16 QUIT?

17                   THERE WAS TESTIMONY HERE FROM NEAL  
18 BENOVMITZ AND AT LEAST ONE OF THESE DOCUMENTS THAT  
19 WILL BE ENTERED INTO THE JURY ROOM THAT QUITTING  
20 NICOTINE IS AS HARD AS QUITTING HEROIN OR ONE OF  
21 THEM SAID MAYBE HARDER.

22                   AND CERTAINLY DR. BENOVMITZ TOLD YOU  
23 THAT HE HAS TREATED ADDICTS UP IN SAN FRANCISCO AT  
24 THE GENERAL HOSPITAL WHERE PEOPLE HAVE BEEN ABLE TO  
25 GET OFF OF HEROIN, OFF OF COKE, CRACK, STUFF LIKE  
26 THAT, BUT NOT OFF CIGARETTES.

27                   I THINK THE REASON THAT MR. BOEKEN  
28 IS ABLE TO QUIT TWO SUBSTANCES AND NOT THE THIRD

1 SUBSTANCE IS SIMPLE, HE DOES NOT PERCEIVE THE THIRD  
2 SUBSTANCE TO BE AS HARMFUL AS THE FIRST TWO.

3                   HEROIN, ILLEGAL. HEROIN, CAN KILL  
4 YOU, LIKE THAT. HEROIN IS A BAD THING. AND  
5 MR. BOEKEN, AS A YOUNG MAN, WHO WANTED TO BE A ROCK  
6 AND ROLL DRUMMER, IN A DIFFERENT TIME AND A  
7 DIFFERENT PLACE IN OUR SOCIETY, EXPERIMENTED FOR  
8 THREE MONTHS. HE CHICKENED OUT IN A BIG HURRY.  
9 FOR THREE MONTHS HE SAID THIS IS NOT FOR ME. I AM  
10 AFRAID OF THIS, I WANT OUT OF THIS.

11                   HE STOPPED IT. HE WENT ON A  
12 METHADONE PROGRAM

13                   AND AFTER APPROXIMATELY THREE YEARS  
14 FROM '71 TO '74, HE GOT HIMSELF OFF OF THE  
15 METHADONE PROGRAM AND WAS CLEAN.

16                   AND IN 1976 HE WENT TO A. A. , GOT  
17 HIMSELF OFF OF ALCOHOL AND WAS SOBER.

18                   AND SINCE 1976, HE'S BEEN CLEAN AND  
19 SOBER.

20                   HE PERCEIVED THOSE TWO THINGS TO BE  
21 A BIG RISK FOR HIM

22                   HE DID NOT PERCEIVE CIGARETTE  
23 SMOKING TO BE AS BIG A RISK FOR HIM

24                   AND THE ISSUE IN THIS CASE, OF  
25 COURSE, AND THE ISSUE IN THIS CASE IS, WHY?

26                   WELL, THERE WEREN'T ANY PEOPLE OUT  
27 THERE FROM THE HEROIN MANUFACTURERS' ASSOCIATION  
28 SAYING, HEY, THIS STUFF ISN'T SO BAD FOR YOU, THIS

1 STUFF REALLY WON'T HURT YOU. HEY, WE ARE GOING TO  
2 CREATE A LITTLE DOUBT ABOUT THIS IN YOUR MIND SO  
3 YOU ARE GOING TO KEEP USING IT.

4 AND SIMILAR, THERE WAS NO ONE FROM  
5 SEAGRAMS AND THERE WAS NO ONE FROM MILLER, WHICH  
6 PHILIP MORRIS OWNS, GIVING MESSAGES LIKE THAT.

7 THERE WAS ONLY ONE GROUP THAT WAS  
8 GIVING HIM MESSAGES TO KEEP HIM IN. AND THERE WAS  
9 ONLY ONE GROUP THAT WAS GIVING HIM MESSAGES TO KEEP  
10 HIM INTERESTED.

11 THIS STUFF ISN'T AS BAD AS THEY  
12 SAY.

13 WE ARE NOT REALLY SURE IT CAUSES  
14 CANCER. THERE ARE PLENTY OF OTHER CAUSES OF CANCER  
15 AND AS RECENTLY AS WITHIN THE LAST TWO WEEKS, YOU  
16 ALL HEARD A BIOLOGIST UP HERE WHO HAS HAD HER  
17 RESEARCH FUNDED BY THE TOBACCO INDUSTRY SAYING WE  
18 DON'T KNOW WHAT THE CAUSES ARE. 80 PERCENT OF  
19 PEOPLE DON'T GET IT.

20 WHY DON'T ALL THESE SMOKERS NOT GET  
21 IT, WHY DO SOME PEOPLE WHO DON'T SMOKE GET IT?

22 THE SAME OLD THING THAT WE HEARD  
23 AGAIN AND AGAIN AND AGAIN AND AGAIN.

24 ANYWAY, MR. BOEKEN, IN 1980, WENT  
25 TO SEE DR. TRABULUS, FIRST TIME. THERE'S A BIG  
26 NOTE IN DR. TRABULUS'S NOTES BECAUSE IT'S A FIRST  
27 VISIT. HE LAYS OUT HIS HISTORY. HERE'S WHAT I DID  
28 FOR A LIVING. I WAS A CONSTRUCTION WORKER. I DID

1 THESE THINGS. HERE'S MY HISTORY.

2 I USED TO DRINK, I DON'T DRINK ANY  
3 MORE. I USED TO DO THIS DRUG. I DON'T DO THIS  
4 DRUG ANY MORE. I DO SMOKE.

5 AND AFTER THAT, HE QUIT. AND HE  
6 FAILED.

7 AND TWO YEARS LATER HE TRIED TO  
8 QUIT AGAIN AND FAILED.

9 ONE, TWO, THREE, FOUR, FIVE, SO  
10 FAR.

11 IN 1984, THE TOBACCO INDUSTRY GOES  
12 TO CONGRESS AND GIVES THEM A DOCUMENT WHICH I HAVE  
13 ALREADY SHOWED YESTERDAY WHICH YOU ARE GOING TO  
14 HAVE IN THE JURY ROOM, AND THE TOBACCO INDUSTRY  
15 TELLS THE UNITED STATES CONGRESS, AND THE WORLD, WE  
16 DON'T KNOW THAT SMOKING CAUSES LUNG DISEASE, WE  
17 DON'T KNOW THAT AT ALL.

18 IT'S ALL UP IN THE AIR, NOTHING IS  
19 PROVEN, WE DON'T KNOW ANYTHING.

20 IT WAS A LIE. IT WASN'T WRONG, IT  
21 WASN'T A MISSTATEMENT, THEY DIDN'T JUST HAPPEN TO  
22 BE OFF ON THAT. IT WAS A FLAT OUT LIE. AND THAT'S  
23 WHY I SPENT ALL THAT TIME WITH ALL THOSE DOCUMENTS  
24 YESTERDAY TO SHOW YOU WHAT THEY KNEW WHAT THEY  
25 KNEW, WHAT THEY WERE SAYING BEHIND CLOSED DOORS AND  
26 WHY THEY WERE GOING TO DO IT. THEY LIED.

27 NOW, MR. BOEKEN JOINED SMOKERS  
28 ANONYMOUS TWICE IN HERE IN THE LATE 1980'S.

1                   AND ON THOSE TWO OCCASIONS, I DON'T  
2 BELIEVE ON THOSE TWO OCCASIONS THAT HE EVER  
3 ACTUALLY PUT THE CIGARETTES DOWN.

4                   HE WENT TO THE MEETINGS, AND HE  
5 LISTENED AND I THINK HE WENT WITH HIS WIFE AT LEAST  
6 ONE SET OF MEETINGS, BUT HE NEVER PUT THE  
7 CIGARETTES DOWN.

8                   HE WAS GETTING READY, HE WAS  
9 GETTING READY, HE WAS GETTING READY AND HE DIDN'T.

10                  IN HERE, WE START RED, AND WE GO  
11 GOLD, AND WE GO A DIFFERENT KIND OF GOLD, AND  
12 FINALLY WAY UP HERE AT THE END, THIS IS ULTRA  
13 LIGHTS, WE GO PLATINUM

14                  AND HE SMOKED DOWN, JUST LIKE THE  
15 MILLIONS AND MILLIONS AND TENS OF MILLIONS OF OTHER  
16 PEOPLE IN THIS COUNTRY, BECAUSE HE THOUGHT THESE  
17 THINGS WEREN'T AS BAD. LOW TAR, WHATEVER TAR IS,  
18 CAN'T BE GOOD, LOW TAR, EVERYONE ADVERTISES IT, I  
19 AM GOING TO GO WITH IT.

20                  SO HE GOES DOWN, DOWN, DOWN.

21                  I AM GOING TO TALK ABOUT LOW TAR AS  
22 SOON AS WE PUT THIS BOARD DOWN.

23                  IN 1994, THAT'S WHEN CAMPBELL GOT  
24 UP AND WE HAVE SEEN HIM AT LEAST FOUR TIMES DURING  
25 THIS TRIAL. HE'S THE GUY WHO WINDS UP WITH THAT  
26 LITTLE SMIRK ON HIS FACE, WHAT ARE YOU GOING TO DO  
27 ABOUT IT?

28                  WHAT ARE YOU GOING TO DO ABOUT IT

1 CONGRESS MAN WAXMAN? WHAT ARE YOU GOING TO DO  
2 ABOUT IT?

3                   THERE' S SOMETHING ON HERE,  
4 SOMETHING NOT ON HERE. I WILL JUST REMIND YOU THAT  
5 ACCORDING TO DR. SAM HAMMAR, IN 1989 IS WHEN  
6 MR. BOEKEN HAD CANCER, AND THE DYE WAS CAST AT THAT  
7 POINT.

8                   NO ONE COULD KNOW IT. IT' S NO  
9 ONE' S FAULT THAT NO ONE KNEW IT. IT' S NO DOCTOR' S  
10 FAULT THAT NO ONE KNEW IT. IT IS JUST THE WAY IT  
11 IS.

12                   THE CELLS START DIVIDING, THE CELLS  
13 GET SCREWED UP. IT TAKES A LONG, LONG, LONG TIME.  
14 AND ON DOUBLING TIME IT TOOK TEN YEARS BEFORE IT  
15 ACTUALLY SHOWED UP ON AN X-RAY.

16                   AND THIS WAS CAUGHT EARLY. MR.  
17 BOEKEN' S WAS CAUGHT EARLY.

18                   BUT THE DYE WAS CAST BACK HERE IN  
19 1989.

20                   SO THIS PLAYS OUT WITH THIS GUY AND  
21 THE SEVEN C. E. O. ' S IN FRONT OF CONGRESS.

22                   AND THEN WE GET TO 1999 HERE. IT' S  
23 SORT OF IRONIC, AND TWO THINGS HAPPEN IN OCTOBER OF  
24 1999, PHILIP MORRIS PUTS ON ITS NEW PUBLIC FACE.  
25 ONE OF THE "L. A. TIMES" ARTICLES THAT I THINK YOU  
26 ARE GOING TO SEE, AND THAT I DISCUSSED EXTENSIVELY  
27 WITH ELLEN MERLO, THAT' S WHEN PHILIP MORRIS CAME  
28 OUT AND MADE IT' S PUBLIC RELATIONS ANNOUNCEMENT,

1 WHERE WE ARE NO LONGER GOING TO DENY THAT SMOKING  
2 CAUSES DISEASE, THEY DIDN' T ADMIT IT YET, THAT TOOK  
3 ONE MORE YEAR.

4 BUT WE ARE NO LONGER GOING TO DENY  
5 IT.

6 AND THAT' S WHEN THEY PUT ON THEIR  
7 SUPPOSED NEW FACE, THAT' S WHEN THEY HAD A CORPORATE  
8 NEW POSITION.

9 THERE WAS NO NEW SCIENCE. THERE  
10 WAS NO MEDICAL BREAK THROUGH. NO ONE CAME FORWARD  
11 WITH THEM AND GAVE THEM ANYTHING THEY DIDN' T  
12 ALREADY KNOW. THEY JUST TOOK THE INFORMATION THAT  
13 THEY ALWAYS HAD AND SAID, GEE, OKAY, BUT I WANT YOU  
14 TO REMEMBER, THE END OF 1997, THAT' S WHEN THEY WERE  
15 PUT IN THE CORNER. AND THAT' S THE SETTLEMENT THAT  
16 MR. CARLTON -- DID THEY HAVE A CORPORATE CHANGE OF  
17 POSITION JUST BECAUSE THEY WERE GOOD GUYS, OR DID  
18 THEY HAVE A CORPORATE CHANGE OF POSITION BECAUSE  
19 THEY HAD NO PLACE TO GO OR DID THEY HAVE A  
20 CORPORATE CHANGE OF POSITION FOR US?

21 BECAUSE YOU SEE, MS. MERLO SAID, WE  
22 TEST MARKET EVERYTHING, EVERYTHING. WE RUN FOCUS  
23 GROUPS ON EVERYTHING. WE DO PUBLIC OPINION POLLS  
24 ON EVERYTHING. WE WANT TO KNOW WHAT THE PUBLIC  
25 THINKS ABOUT US. WE GO OUT AND ASK THE PEOPLE,  
26 WHAT DO YOU THINK ABOUT THIS, WHAT DO YOU THINK  
27 ABOUT THAT, WHAT DO YOU THINK ABOUT THIS, WHAT DO  
28 YOU THINK ABOUT THAT.

1                   AND SO THE CHANGE IN CORPORATE  
2 POSITION AT THE END OF 1999 WAS JUST THAT, IT  
3 WASN' T SCIENCE, IT WASN' T MEDICINE, THEY DECIDED  
4 FOR SOME REASON, EITHER HAVING TO DO WITH  
5 LITIGATION THEY HAD BEEN IN OR PUBLIC OPINION THAT  
6 THEY ARE GOING TO PUT ON A NEW FACE, NEW POSITION.

7                   WELL, PUTTING ON A NEW FACE IS  
8 PUTTING ON A MASK.

9                   SO HERE WE HAVE THE NEW PHILIP  
10 MORRIS STARTING IN OCTOBER OF 1999.

11                   AND IRONICALLY ONE OTHER THING  
12 HAPPENED IN 1999 IN OCTOBER, RICHARD BROKEN GOT  
13 DIAGNOSED WITH LUNG CANCER.

14                   SO THE NEW FACE, THE NEW POSITION,  
15 ALL THAT NEW STUFF WAS TOO LATE FOR HIM BY TEN  
16 YEARS. AND IF 400,000 PEOPLE A YEAR, IT WAS TOO  
17 LATE FOR THAT 400,000 PEOPLE BY TEN YEARS.

18                   FINALLY, HERE, IN THE YEAR 2001 --  
19 THE PRESIDENT HERE IS HARRY TRUMAN. THE WAR IN  
20 KOREA HASN' T STARTED. NO ONE HAS TELEVISION IN  
21 THIS COUNTRY. FORGET CELL PHONES AND FAXES, NO ONE  
22 HAS TELEVISION IN THIS COUNTRY.

23                   THE DODGERS ARE IN BROOKLYN, THE  
24 LAKERS ARE IN MINNEAPOLIS.

25                   THE RAMMS, CLEVELAND.

26                   50 YEARS. IT TOOK THEM 50 YEARS  
27 FOR A CONSUMER PRODUCT COMPANY THAT SELLS STUFF TO  
28 PEOPLE TO BE PUT INTO THEIR BODIES AND IT TOOK THEM

1 50 YEARS TO COME FORTH AND ADMIT WHAT HAD BEEN, BY  
2 THEIR OWN RECKONING, BY THEIR OWN EXPERT'S  
3 RECKONING, A CONSENSUS OF SCIENCE AND MEDICINE  
4 SINCE 1964 IN JANUARY. SO THAT'S 35 OR SIX YEARS'  
5 WORTH OF LOST TIME.

6 BUT AS I TRIED TO POINT OUT  
7 YESTERDAY, AND I WILL SAY ONE MORE TIME, IF THERE'S  
8 A QUESTION ABOUT A CONSUMER PRODUCT, BE IT A  
9 FIRESTONE TIRE, BE IT BAD CHEESE, ALL CONSUMER  
10 PRODUCT COMPANIES, THEY DON'T WAIT -- THEY TAKE IT  
11 OFF THE MARKET -- UNTIL IT'S TESTED AND YOU KNOW  
12 IT'S GOOD, THEY DON'T WAIT UNTIL IT IS PROVEN BAD.

13 WHAT DR. FARONE SAID, AMONG OTHER  
14 THINGS, OVER AT LEVER BROTHERS WHERE HE WAS THE  
15 YEAR OR SO BEFORE HE WENT TO PHILIP MORRIS, THAT'S  
16 A CONSUMER PRODUCT COMPANY, HE WAS EITHER THE CHIEF  
17 CHEMIST OR ONE OF THE CHIEF CHEMISTS THERE, HE WAS  
18 IN CHARGE OF SAFETY THERE, THEY TESTED EVERYTHING  
19 ON ANIMALS. SHAMPOO, TOOTHPASTE, ANYTHING THAT  
20 PEOPLE ARE GOING TO BREATHE, ANYTHING THAT WAS  
21 GOING TO GO IN PEOPLE'S MOUTHS, ANYTHING GOING TO  
22 TOUCH PEOPLE'S SKIN, THEY TESTED THAT FIRST ON  
23 ANIMALS.

24 THE TOBACCO INDUSTRY HERE DID NOT  
25 TEST ITS PRODUCTS. IT DIDN'T TEST IT'S PRODUCT ON  
26 ANIMALS.

27 THE GENTLEMEN'S AGREEMENT WHICH I  
28 AM GOING TO JUST TOUCH ON A LITTLE BIT WHEN I PUT

1 THIS CHART DOWN HERE, THE GENTLEMEN'S AGREEMENT  
2 CALLED FOR ANY KIND OF BIOLOGICAL TESTING TO BE  
3 DONE OVERSEAS WHERE IT WAS OUT OF REACH OF THE U. S.  
4 GOVERNMENT.

5 THE GENTLEMEN'S AGREEMENT CALLED  
6 FOR THE TOBACCO INDUSTRY AND PHILIP MORRIS, AS PART  
7 OF THE TOBACCO INDUSTRY, NOT TO CONDUCT ANY KIND OF  
8 TESTING HERE ON OUR SHORES.

9 SOME OF THESE COMPANIES CHEAT A  
10 LITTLE BIT AMONG THEMSELVES. SO, FOR INSTANCE, WE  
11 KNOW THAT PHILIP MORRIS WAS DOING NICOTINE  
12 ADDICTION TESTS WITH RATS. THEY WERE BREAKING THE  
13 GENTLEMEN'S AGREEMENT. BUT IT WAS DONE IN SECRECY  
14 THERE. THE RATS' CAGES WERE BROUGHT IN IN THE  
15 DARKNESS AND COVERED UP AND IT WAS A BIG SECRET.

16 BUT THAT STILL ISN'T CANCER TESTS.  
17 THAT ISN'T BIOLOGICAL ACTIVITY.

18 AND WE KNOW FROM THE DOCUMENTS, WE  
19 TALKED ABOUT YESTERDAY, NOT ONLY DID THEY NOT TEST  
20 FOR CANCER, THEY PURPOSELY HAD A COMPANY POLICY TO  
21 AVOID TESTING FOR CANCER.

22 SO HERE'S A 50-YEAR SPAN, WHY DO,  
23 WHY ARE COMPANIES SUPPOSED TO USE, IT'S NOT A  
24 GOVERNMENT REGULATION, BUT IT'S COMMON SENSE, WHY  
25 DO COMPANIES USE ANIMALS TO TEST RATHER THAN  
26 PEOPLE?

27 BECAUSE THE COMPANIES DON'T WANT TO  
28 HURT PEOPLE WITH THEIR PRODUCT.

1                   WHAT HAPPENED HERE IS THAT THIS  
2   TURNED OUT TO BE THE LARGEST ANIMAL EXPERIMENT EVER  
3   DONE, BUT IN THIS TEST, RABBITS WEREN' T USED, MICE  
4   WEREN' T USED, RATS WEREN' T USED, PEOPLE WERE USED.  
5                   AND FOR US EX-SMOKERS, PEOPLE WERE  
6   USED.

7                   IT IS THE -- IT' S BREATHTAKING TO  
8   ME THAT IN THE YEAR 2001, WHEN PHILIP MORRIS NOW  
9   HAS DECIDED THAT THEY ARE GOING TO ADMIT THAT THEIR  
10   TOBACCO CAUSES CANCER, LOOK AT THE POSSIBILITIES  
11   THAT OPENS UP.

12                  IF WE ADMIT THAT, WE CAN NOW TEST  
13   OUR PRODUCTS.

14                  IF THEY ADMITTED THAT BACK IN 1964,  
15   THEY COULD HAVE STARTED TESTING THEIR PRODUCTS IN  
16   1964.

17                  IF THEY, IN 1955, LOOKED AT THIS  
18   CONTROVERSY AND SAID, GEE WHIZ, OUR STUFF IS REALLY  
19   HURTING PEOPLE, THERE ARE REPUTABLE SCIENTISTS OUT  
20   THERE THAT SAY OUR STUFF IS HURTING PEOPLE, RATHER  
21   THAN HIRE A PUBLIC RELATIONS FIRM, LET' S TEST THIS  
22   STUFF.

23                  DR. CARCHMAN -- YOU HAD THREE  
24   SPOKESMEN HERE FROM PHILIP MORRIS, DR. CARCHMAN SAT  
25   UP RIGHT THERE AND SAID, TO THE BEST OF MY  
26   KNOWLEDGE, WE HAVE NEVER, EVER ONCE TESTED ANY  
27   MARLBORO CIGARETTE FOR BIOLOGIC ACTIVITY, MEANING  
28   CANCER, UNTIL WITHIN THE END OF 2000 OR 2001. IT' S

1 OUT OF THEIR MINDS.

2 IT'S AN UNBELIEVABLE THING.

3 AND IT TAKES MY BREATH AWAY WHEN HE  
4 SAYS, YEAH, NOW THAT WE ARE TESTING THIS STUFF, WE  
5 HAVE GOT TO GET PEOPLE TO SIGN OFF IN ADVANCE.

6 WELL, SON OF A GUN, WHAT ABOUT THE  
7 60 MILLION AMERICAN MEN THAT WERE SMOKING THIS  
8 STUFF AT THE TIME, 60 MILLION AMERICAN MEN THAT  
9 WERE SMOKING THIS STUFF, THEY DIDN'T GET ANYONE TO  
10 SIGN OFF IN ADVANCE.

11 50 YEARS, SO SOMEONE SAID HERE, I  
12 DON'T CARE WHAT ANYONE SAID HERE, I AM PRETTY GOOD  
13 AT MATH, TAKE ANY ONE OF THOSE YEARS, JUST IN ROUND  
14 NUMBERS, 400,000 PEOPLE, YOU TAKE ANY ONE OF THOSE  
15 DECADES, 4 MILLION PEOPLE, YOU TAKE ANY 25 YEAR  
16 BLOCK OF TIME, TEN MILLION PEOPLE. IT BOGGLES THE  
17 MIND, BOGGLES THE MIND. THEY DIDN'T TEST THEIR  
18 PRODUCT, THEY AVOIDED TESTING THEIR PRODUCTS.

19 THEY GAVE UP ALL OF THIS TIME IN  
20 WHICH THEY COULD HAVE, ACCORDING TO DR. FARONE,  
21 MADE A SAFE CIGARETTE. BECAUSE HE SAYS, YOU CAN  
22 MAKE A SAFE CIGARETTE.

23 BUT THEY LOST ALL OF THIS TIME  
24 TRYING, BECAUSE THEY DIDN'T ACKNOWLEDGE THERE WAS A  
25 PROBLEM

26 AND IF YOU DON'T ACKNOWLEDGE  
27 THERE'S A PROBLEM, YOU CAN'T FIX IT.

28 SIX-YEAR-OLD RICHARD BOEKEN.

1 TEN-YEAR-OLD RICHARD BOEKEN. FRANK STATEMENT COMES  
2 OUT. YOUR HEALTH IS THE MOST IMPORTANT THING TO  
3 US.

4 13-YEAR-OLD RICHARD BOEKEN GETS  
5 HOOKED ON NICOTINE.

6 AND THE RIDE IS ON.

7 AND HE'S JUST ONE OF 10 MILLION, 15  
8 MILLION, 20 MILLION, HOWEVER MILLION.

9 ANYWAY, THIS CHART IS GOING TO BE  
10 PUT AWAY NOW I JUST SAY THAT THIS, IN ROUND  
11 NUMBERS, THAT'S RESPONSIBLE FOR MILLIONS AND  
12 MILLIONS AND MILLIONS AND MILLIONS AND MILLIONS OF  
13 LOST LIVES IN THIS COUNTRY, SLOW, AGONIZING, CRUMMY  
14 DEATHS THAT COST A LOT OF MONEY. BECAUSE INSTEAD  
15 OF TRYING TO FIX THE PROBLEM, THE PUBLIC RELATION  
16 FIRM IS HIRED, AND A STRATEGY CAME THAT WE ARE  
17 GOING TO CREATE DOUBT ABOUT THE HEALTH CHARGE  
18 WITHOUT ACTUALLY DENYING ANYTHING.

19 OKAY.

20 1975, MARLBORO, 85 IS THIS.

21 "MARLBORO 85 SMOKERS DID NOT  
22 ACHIEVE ANY REDUCTION IN SMOKE INTAKE  
23 BY SMOKING MARLBORO LIGHTS. "

24 HOW ABOUT THAT?

25 THIS IS 1975, 26 YEARS AGO. PHILIP  
26 MORRIS KNEW THAT PEOPLE THAT WERE GOING TO SMOKE  
27 THEIR LOWER TAR CIGARETTE WERE GETTING EXACTLY AS  
28 MUCH TAR AS PEOPLE THAT WERE SMOKING THIS

1 CIGARETTE. THIS, THIS, SAME.

2 TAR IS BAD; RIGHT? EVERYONE KNOWS  
3 THAT TAR IS BAD. TAR IS THE POTENTIAL BAD THING.  
4 GEE WHIZ, IF TOBACCO DOES CAUSE A PROBLEM, TAR IS  
5 THE BAD THING, SO YOU KNOW WHAT WE ARE GOING TO DO,  
6 WE ARE GOING TO REDUCE THE TAR.

7 WELL, THEY KNEW SOMETHING THAT THE  
8 AMERICAN PUBLIC DIDN'T KNOW. AND WHAT THEY KNEW IS  
9 THAT BY REDUCING TAR, YOU DON'T REDUCE -- EXCUSE  
10 ME -- THEY KNEW THAT BY GIVING YOU A LIGHT  
11 CIGARETTE, YOU DON'T REDUCE ANYTHING.

12 WHO TOLD YOU THAT? DR. FARONE.  
13 DR. BENOWITZ, DR. DOLL,  
14 DR. STRAUSS, DR. CARCHMAN, I BELIEVE, TESTIFIED TO  
15 THAT.

16 AND WHAT HAPPENS AS A RESULT OF  
17 THIS? WHY DOES THAT HAPPEN? IT HAPPENS BECAUSE OF  
18 SOMETHING CALLED COMPENSATION. BREATHING IN MORE  
19 DEEPLY, TAKING MORE PUFFS, INADVERTENTLY COVERING  
20 UP THE HOLES.

21 WHAT'S HAPPENED AS A RESULT OF  
22 THAT?

23 A BRAND KNEW KIND OF CANCER OF THE  
24 LUNG WHICH WAS ALMOST, WHICH WAS VERY SMALL  
25 POTATOES 30 YEARS AGO, ADENOCARCINOMA, THAT'S WHAT  
26 RICHARD BROKEN HAS.

27 WENT FROM BEING A SMALL LITTLE  
28 PERCENTAGE OF THE LUNG CANCERS TO BEING A HUGE

1 PERCENTAGE.

2 ADENOCARCINOMA FLOATS OUT IN THE  
3 LUNG, AS YOU INHALE THE STUFF MORE DEEPLY TO GET  
4 YOUR NICOTINE, IT GOES FURTHER INTO THE LUNG.

5 AND YOU HAD THE STRING OF REALLY,  
6 TRULY, EXCELLENT, WORD CLASS DOCTORS IN HERE TO  
7 EXPLAIN THAT THE CURRENT MEDICAL THINKING IS,  
8 PEOPLE SMOKING THOSE LIGHT CIGARETTES INHALE WAY  
9 MORE DEEPLY IN ORDER TO GET THE SAME AMOUNT OF  
10 PLEASURE, THE SAME AMOUNT OF NICOTINE, AND WIND UP  
11 GETTING JUST AS MUCH OF THE BAD STUFF AND THEY GET  
12 IT IN A DIFFERENT PLACE, FURTHER OUT IN THE LUNG.

13 LUNG CANCER USED TO BE MORE CENTRAL  
14 BEFORE LIGHT CIGARETTES CAME ALONG.

15 NOW, ONE OF THE WITNESSES IN HERE  
16 WAS -- A QUESTION TO DR. FARONE, I BELIEVE, IT  
17 STARTED THIS WAY, BY MR. LEITER WAS, WELL, THAT'S  
18 NO SECRET, GOVERNMENT HAS KNOWN THAT FOR 20, 30  
19 YEARS.

20 THAT'S TRUE, GOVERNMENT HAS. THAT  
21 IS.

22 THAT'S NO SECRETE, INDUSTRY HAS  
23 KNOWN THAT FOR 20, 30 YEARS.

24 FOR SURE.

25 IT'S ONLY A SECRET FROM THE PEOPLE  
26 WHO USED IT.

27 AND THE PEOPLE WHO SMOKED DOWN OVER  
28 THE COURSE OF TIME, BECAUSE THESE THINGS WERE

1 PERCEIVED TO BE Milder, BECAUSE THEY WERE PERCEIVED  
2 TO BE LESS HARMFUL, OR BECAUSE THEY WERE PERCEIVED  
3 TO BE WHATEVER, THEY ARE ALL WRONG.

4 THE GOVERNMENT KNEW, PHILIP MORRIS  
5 NEW, TOBACCO INDUSTRY KNEW, THE ONLY THING, THE  
6 ONLY PEOPLE THAT DIDN'T KNOW WERE THE PEOPLE THAT  
7 WERE USING THESE CIGARETTES.

8 AND THIS INFORMATION HAS BEEN OUT  
9 THERE FOR AT LEAST 25 YEARS NOW I THINK THERE ARE  
10 EARLIER DOCUMENTS THAT SHOW THIS.

11 WELL, WHAT ABOUT THIS?

12 ONE OF THE CAUSES OF ACTION HERE  
13 HAS TO DO WITH A FAILURE TO INSTRUCT, A FAILURE TO  
14 INSTRUCT ON HOW TO USE A PRODUCT.

15 IF THESE THINGS REALLY WERE FOR  
16 LOWER TAR, SHOULDN'T THE CONSUMERS HAVE BEEN TOLD  
17 WHEN THESE THINGS CAME OUT, WHEN THEY CAME OUT IN  
18 THE '60'S, SHOULDN'T THE CONSUMERS HAVE BEEN TOLD,  
19 HEY, IF YOU ARE GOING TO USE THESE THINGS, WATCH  
20 WHERE YOU PUT YOUR HANDS. IF YOU ARE GOING TO USE  
21 THESE THINGS, DON'T PUFF SO DEEPLY.

22 IF YOU ARE GOING TO USE THESE  
23 THINGS, DON'T PUFF MORE OFTEN.

24 IF THESE THINGS ARE GOING TO BE OF  
25 ANY VALUE, I MEAN, IF YOU ARE GOING TO BOTHER USING  
26 THESE, INSTEAD OF THESE, YOU HAVE TO SMOKE THEM IN  
27 A DIFFERENT WAY.

28 EVERYONE NEW, EXCEPT THE CONSUMER.

1                   AND SO ONE OF THE CLAIMS IN THIS  
2 CASE IS THAT PHILIP MORRIS, WHEN THEY MARKETED  
3 THESE CIGARETTES, SHOULD HAVE TOLD THE CONSUMER  
4 WHAT PHILIP MORRIS KNEW AND WHAT THE GOVERNMENT  
5 KNEW

6                   AND THEY SHOULD HAVE DONE IT WHEN  
7 THESE THINGS FIRST CAME OUT IN THE '60'S. AND IT  
8 DOESN'T MATTER, IN THIS CASE, THAT MR. BOEKEN  
9 DIDN'T START USING THESE THINGS UNTIL THE '70'S,  
10 BECAUSE IF THAT INFORMATION HAD BEEN PUT OUT, AND  
11 IF THAT INFORMATION HAD BEEN PUT OUT COMMONLY, AT  
12 LEAST EVERYONE WOULD HAVE KNOWN WHAT THEY WERE  
13 DOING WHEN THEY BOUGHT THESE THINGS. THAT WAS  
14 NEVER, EVER, EVER DONE.

15                   THE SECOND CLAIM IN THIS CASE IS  
16 WHAT'S CALLED A FAILURE TO WARN.

17                   THE FAILURE TO WARN ONLY APPLIES  
18 BEFORE 1969 ON JULY 1ST.

19                   I SAY, I AM GOING TO QUOTE  
20 MR. BOEKEN, IF SOMEONE -- I ASKED HIM A QUESTION IN  
21 HIS DEPOSITION, AND IN THE DEPOSITION -- I KNEW THE  
22 DEPOSITION WOULD PROBABLY BE PLAYED AT THIS TRIAL.  
23 SO IF YOU EVER GET TO REWATCHING THAT, AND I AM NOT  
24 SUGGESTING YOU DO, IF YOU EVER GET TO REWATCHING  
25 IT, THE PART THIS COMES IN IS WHERE I AM ASKING THE  
26 QUESTIONS AT THE BEGINNING.

27                   THE QUESTION IS, IF SOMEONE HAD  
28 TOLD YOU, REALLY, THE MANUFACTURER HAD COME UP TO

1 YOU AND SAID, FORGET THIS CREATING DOUBT STUFF,  
2 FORGET THIS, IT HASN'T REALLY BEEN -- FORGET THIS,  
3 IT REALLY HASN'T BEEN PROVEN WRONG. IT REALLY  
4 HASN'T BEEN PROVEN THAT THIS CAUSES DISEASE. IT  
5 REALLY HASN'T BEEN PROVEN THAT THIS CAUSES CANCER.  
6 THERE IS SUBSTANTIAL DOUBT.

7 WE HAVE GOT GREAT SCIENTISTS WHO  
8 SAY THIS IS WRONG. WE HAVE GOT GREAT DOCTORS WHO  
9 SAY THIS IS WRONG.

10 THERE ARE MANY CAUSES OF CANCER.

11 IT COULD BE THE TAR, IT COULD BE  
12 THE SMDG, IT COULD BE YOUR GENES, IT COULD BE  
13 YOU'RE GENETICALLY DISPOSED, IT COULD BE STRESS,  
14 AND ALL THOSE THINGS WE HEARD ABOUT.

15 IF, INSTEAD OF SAYING THAT TO  
16 MR. BOEKEN, WHAT IF THE MANUFACTURER OF MARLBORO  
17 HAD SAID, LISTEN, NO B. S. , THIS WILL KILL YOU. NO  
18 JOKING. THIS WILL KILL YOU. WOULD YOU HAVE QUIT?  
19 THIS WILL KILL YOU.

20 HIS ANSWER WAS YES, BUT I HAVE GOT  
21 A BETTER QUESTION.

22 WHAT IF THEY HAD SAID THAT IN 1956,  
23 BEFORE YOU STARTED SMOKING, WHAT IF THEY HAD TOLD  
24 AMERICA, IN 1955 OR 1954 WHEN THIS RESEARCH WAS ALL  
25 OVER THE PLACE, THIS STUFF WILL KILL YOU, WELL,  
26 THEY WOULDN'T BE IN BUSINESS TODAY.

27 WE WOULDN'T BE HERE TODAY AND  
28 MR. BOEKEN WOULD BE GOING ON ABOUT HIS BUSINESS

1 TODAY ALONG WITH ABOUT 15 MILLION OTHER PEOPLE IN  
2 THIS COUNTRY.

3 SO THERE IS A FAILURE TO WARN IN  
4 1954, '5, '6, '7, '8, '9, '60.

5 DON'T FORGET, EVER SINGLE DAY,  
6 ALONG THE LINE, A COUPLE THOUSAND KIDS, 13-YEAR-OLD  
7 KIDS, 14-YEAR-OLD KIDS, KIDS THAT DON'T KNOW ANY  
8 BETTER, KIDS THAT WANT TO BE COOL, KIDS THAT WANT  
9 TO BE LIKE THEIR PARENTS, EVERY SINGLE DAY, ALONG  
10 THE LINE, FROM '55, 2,000, 3,000 GET HOOKED ON  
11 CIGARETTES.

12 ON MONDAY, JANUARY 1ST, 2 OR 3,000,  
13 TUESDAY; JANUARY 2ND, ANOTHER 2 OR 3,000. AND  
14 FEBRUARY, WE WILL GO TO 1953, '4, '5, '6.

15 1963, MAYBE 20,000 KIDS GET HOOKED  
16 IN A WEEK.

17 NO WARNINGS. NO WARNINGS. NO  
18 WARNINGS. NO WARNINGS, NOTHING.

19 AND 1964, WHEN THE SURGEON GENERAL  
20 MADE HIS REPORT, THERE WERE STILL NO WARNINGS OF  
21 ANY KIND FOR TWO YEARS. AND WHEN THAT WARNING WENT  
22 UP, AND YOU KNOW, I GUESS THE SURGEON GENERAL JUST  
23 DOESN'T GET TO WRITE EXACTLY WHAT HE WANTS ON THE  
24 WARNINGS. I'D LIKE YOU TO REMEMBER THAT THE  
25 COMMITTEE THAT WAS CHOSEN TO DO THE SURGEON  
26 GENERAL'S REPORT, THEY WEREN'T JUST BIG TIME  
27 SCIENTISTS OUT THERE. COULDN'T DO THAT. HAD TO  
28 FIND PEOPLE THAT HADN'T EXPRESSED AN OPINION YET.

1                   SEE, THE TOP SCIENTISTS THAT HAD  
2 BEEN WORKING IN THIS FIELD AND THAT HAD ALREADY  
3 COME TO THE CONCLUSION THAT TOBACCO CAUSED LUNG  
4 CANCER, THEY WERE KEPT OFF THE SURGEON GENERAL'S  
5 PANEL.

6                   THE ONLY PEOPLE ALLOWED ON THE  
7 SURGEON GENERAL'S PANEL, BECAUSE THERE IS A LITTLE  
8 INPUT THERE, WERE PEOPLE THAT WERE TOTALLY NEUTRAL  
9 AT THAT TIME.

10                  WELL, IN THE SAME MANNER, WHEN  
11 THOSE WARNINGS WENT OUT, THE ONLY WARNINGS DIDN'T  
12 SAY, DANGEROUS, THEY SAID MAY BE. AND THAT  
13 REFLECTED THE CONTROVERSY OF THE TIME.

14                  THAT WAS 1966.

15                  AND 1969, THERE WAS A CAVE OF  
16 SORTS. AND IN 1969 WAS THE YEAR THE STRONGER  
17 WARNINGS WENT ON.

18                  AND IN 1969, RIGHT AFTER THAT  
19 THAT'S WHEN THE TELEVISION SHOWS STOPPED. THAT'S  
20 WHEN THE ADS CAME OFF OF TELEVISION. THAT'S WHEN A  
21 LOT OF STUFF CHANGED.

22                  BUT BETWEEN 1954 WHEN ALL OF THIS  
23 INFORMATION HAD BEEN AMASSED, AND 1969, 15 YEARS  
24 LATER, TREMENDOUS, I MEAN, THINK ABOUT IT, A COUPLE  
25 THOUSAND KIDS A DAY GETTING HOOKED, UNBELIEVABLE.  
26 PEOPLE GOT HOOKED AND STATED HOOKED.

27                  SO ANOTHER, ANOTHER ISSUE IN THIS  
28 CASE IS A FAILURE TO WARN, AND THAT GOES RIGHT UP

1 TO JULY 1, 1969, AND ENDS RIGHT THERE.

2 AND I SAY THAT IF THESE THINGS, IF  
3 THE INDUSTRY HAD COME OUT, AND INSTEAD OF DUELING  
4 WITH GOVERNMENT, INSTEAD OF CREATING DOUBT, INSTEAD  
5 OF UNDERCUTTING THE SURGEON GENERAL, INSTEAD OF  
6 B.S. 'ING THE POPULOUS, SAID, YEAH, LIKE THEY HAVE  
7 NOW IN THE YEAR 2001, YEP, WE DID IT, IT'S RIGHT,  
8 IT'S TRUE.

9 I AM SAYING TO YOU THAT RICHARD  
10 BOEKEN, AND UNTOLD TENS OF MILLIONS OF OTHER PEOPLE  
11 WOULD NEVER HAVE SMOKED.

12 NOW, ANOTHER CAUSE OF ACTION ON  
13 THIS CASE HAS TO DO WITH FLAW

14 I PUT SOME OF THESE JURY  
15 INSTRUCTIONS UP THERE YESTERDAY. THERE ARE A LOT  
16 OF DIFFERENT KINDS OF FRAUD. THEY ALL FIT. I AM  
17 NOT GOING TO DO IT AGAIN.

18 THIS LAW HERE THAT WE HAVE GOT IS  
19 CALLED THE COMMON LAW AND I'D LIKE TO THINK IT  
20 COMES FROM COMMON SENSE. IT'S DISTILLED FROM MAYBE  
21 300 YEARS, STARTING IN ENGLAND, DISTILLED OVER A  
22 PERIOD OF TIME. IT SORT OF CHANGE WITH THE TIMES.

23 BUT I THINK IF WE JUST THINK OF IT,  
24 COMMON LAW, COMMON SENSE, IT'S A WAY TO GO.

25 SO DR. COBB HOFFMAN, I THINK,  
26 HADN'T HEARD OF THE SCORPION AND THE FROG AND SO I  
27 AM GOING TO TELL YOU ABOUT THE SCORPION AND THE  
28 FROG.

1 THE FROG WAS TAKING IT EASY,  
2 MINDING ITS OWN BUSINESS ON THE SIDE OF THE RIVER,  
3 STREAM, NOT HURTING ANYBODY.

4 AND THE SCORPION APPROACHED, AND  
5 THE FROG WAS A LITTLE APPREHENSIVE.

6 THE SCORPION SAYS, "HOW ABOUT  
7 GIVING ME A RIDE TO THE OTHER SIDE OF THE STREAM?"

8 THE FROG SAYS, "NOW, WHY WOULD I DO  
9 THAT? YOU ARE A SCORPION, YOU COULD HURT ME. "

10 THE SCORPION SAYS, "YEAH, BUT I AM  
11 RIGHT HERE, RIGHT CLOSE TO YOU, I AM NOT HURTING  
12 YOU. I COULD HURT YOU AND I AM NOT HURTING YOU, SO  
13 I AM NOT GOING TO HURT YOU. DON'T WORRY ABOUT IT,  
14 GIVE ME A RIDE ACROSS THE STREAM I CAN'T SWIM  
15 YOU ARE FROG, YOU CAN SKIM I AM A SCORPION, I  
16 CAN'T SWIM GIVE ME A RIDE OVER THERE. "

17 "I DON'T KNOW ABOUT THAT. "

18 THE SCORPION SAID, "LISTEN, YOU ARE  
19 GOING TO GIVE ME A RIDE. I CAN'T SWIM WE ARE  
20 GOING TO BE IN THE WATER. I WON'T STING YOU, I  
21 WILL DROWN. GIVE ME A RIDE. "

22 THE FROG SAYS, "WHAT THE HECK, IT  
23 SOUNDS LOGICAL TO ME. "

24 THE SCORPION JUMPS ON THE FROG'S  
25 BACK. THE SCORPION CAN'T SWIM HE WANTS TO GET  
26 ACROSS THE RIVER, THE STREAM THE FROG GETS HIM TO  
27 THE OTHER SIDE. THE SCORPION STINGS HIM THE FROG  
28 IS DYING. HE CAN'T BELIEVE THIS. HE SAID, "WHAT

1 THE HELL DID YOU DO THAT FOR? I GAVE YOU A RIDE,  
2 YOU PROMISED ME. "

3 HE SAID, "I AM A SCORPION. "

4 NOW, THAT'S WHAT THE DEFENSE OF  
5 THIS CASE IS. PHILIP MORRIS ADMITS IT HAS SOLD A  
6 DANGEROUS PRODUCT HERE IN THIS COUNTRY FOR OVER 50  
7 YEARS. PHILIP MORRIS ADMITS THAT ITS PRODUCT MAKES  
8 PEOPLE SICK. ANOTHER ONE OF ITS CORPORATE FAITH,  
9 ELLEN MERLO, HAD A LITTLE BIT OF TROUBLE. AND I AM  
10 SURE YOU ALL REMEMBER THAT, WHEN I SAID, WELL,  
11 OKAY, YOUR PRODUCT IS DANGEROUS, YEAH.

12 YOUR PRODUCT MAKES PEOPLE SICK,  
13 YEP.

14 YOUR PRODUCT KILLS PEOPLE. AND SHE  
15 WENT (INDICATING), BECAUSE SHE FORGOT THERE WAS THE  
16 NEW SCRIPT. THIS WAS THE NEW PHILIP MORRIS. THIS  
17 WAS THE NEW STORY. AND SHE TOOK A LONG, HARD, LONG  
18 PAUSE AND WENT, "YEP, RIGHT, IT KILLS PEOPLE. "

19 ALL RIGHT. WELL, READ SOME OF  
20 THESE JURY INSTRUCTIONS. YOU HAVE A PRODUCT THAT  
21 KILLS PEOPLE.

22 NOW, MR. BOEKEN WAS REASSURED BY  
23 THEM, AGAIN AND AGAIN AND AGAIN THAT THEY DIDN'T  
24 KNOW THIS WAS DANGEROUS. THEY DIDN'T THINK IT WAS  
25 DANGEROUS.

26 HERE IS AN OPEN QUESTION, MEDICAL  
27 RESEARCH WAS OPEN, DOCTORS DISAGREE, SCIENTISTS  
28 DISAGREE, IT COULD BE THE TAR, IT COULD BE THE

1 CARS, IT COULD BE THE AIR POLLUTION, IT COULD BE  
2 THE STRESS, IT COULD BE THE GENES, IT COULD BE  
3 SOMETHING ABOUT YOU, WE DON'T KNOW THIS FOR SURE.

4 SO MR. BOEKEN IS ON THE OTHER SIDE  
5 OF THE STREAM ALMOST, JUST LIKE THAT FROG, AND  
6 PROFESSOR COBBS HOFFMAN SAYS, ANYONE THAT TRUSTED  
7 THOSE GUYS ARE STUPID.

8 AND IT SORT OF REMINDS ME OF THE  
9 SCORPION SAYING, HEY, TOUGH LUCK, CHARLIE, I AM A  
10 SCORPION, TOUGH LUCK.

11 WELL, ON BEHALF OF THE FROG, HERE'S  
12 WHAT I SAY. THE FROG IS AN INNOCENT BYSTANDER.  
13 BUT IF THERE ARE PEOPLE AND SOME OF YOU MAY BE  
14 THOSE PEOPLE WHO THINK, YOU KNOW WHAT, MAYBE  
15 PROFESSOR COBBS HOFFMAN WAS A LITTLE BLUNT ABOUT IT  
16 BUT MAYBE THERE IS SOMETHING TO WHAT SHE IS SAYING,  
17 MAYBE PEOPLE SHOULD HAVE KNOWN, MAYBE PEOPLE SHOULD  
18 HAVE, WHEN THEY HEARD A CHIEF EXECUTIVE OFFICER OF  
19 THESE COMPANIES SAY SOMETHING, MAYBE THEY SHOULD  
20 HAVE SAID, B. S.

21 OR MAYBE WHEN THEY BIT FOR THE  
22 DISINFORMATION, THEY SHOULD HAVE BEEN A LITTLE  
23 SMARTER, ALL FIVE MILLION, TEN MILLION, TWENTY  
24 MILLION, HOWEVER MANY OF THE -- I THINK THERE ARE  
25 FORTY MILLION PEOPLE NOW OKAY, SO MAYBE SOME OF  
26 YOU THINK MR. BOEKEN WASN'T CYNICAL ENOUGH AND  
27 MAYBE SOME OF YOU THINK MR. BOEKEN GOT BLINDERS ON,  
28 WHICH HE MAY HAVE. AND I ACKNOWLEDGE THAT. I

1 ACKNOWLEDGE THAT SOME OF YOU MAY THINK THAT.

2 AND SO I SAY TO YOU, IF THAT FROG  
3 WASN' T THE SMARTEST FROG IN THE WORLD, DOES THAT  
4 MEAN THE SCORPION WINS?

5 OR DOES THAT MEAN, OKAY, THE FROG,  
6 HE MIGHT HAVE BEEN PARTIALLY RESPONSIBLE, BUT THAT  
7 SCORPION, THAT SCORPION CAN' T ESCAPE  
8 RESPONSIBILITY.

9 SO TAKE A LOOK AT THIS, PLEASE.  
10 THIS IS A JURY INSTRUCTION. THE JUDGE IS GOING TO  
11 READ IT TO YOU. IT' S GOING TO GO IN THE JURY ROOM  
12 YOU ARE GOING TO SEE IT AND THIS IS WHAT CAUSES,  
13 WHAT' S THE CAUSE OF DAMAGE? WHAT' S THE CAUSE OF AN  
14 INJURY?

15 THE LAW DEFINES CAUSE IN ITS OWN  
16 PARTICULAR WAY.

17 "A CAUSE OF INJURY, DAMAGE,  
18 LOSS OR HARM IS SOMETHING THAT IS A  
19 SUBSTANTIAL FACTOR IN BRINGING ABOUT  
20 AN INJURY, DAMAGE, LOSS OR HARM "  
21 SUBSTANTIAL FACTOR.

22 AND THIS IS THE NEXT INSTRUCTION.

23 AND FOR THOSE OF YOU THAT THINK, IF  
24 ANY OF YOU DO, THAT THE FROG SHOULD HAVE KNOWN  
25 BETTER, OKAY.

26 "THERE MAY BE MORE THAN ONE  
27 CAUSE OF AN INJURY. WHEN NEGLIGENCE  
28 OR WRONGFUL CONDUCT OF TWO OR MORE

1 PEOPLE OR NEGLIGENT OR WRONGFUL  
2 CONDUCT AND A DEFECTIVE PRODUCT  
3 CONTRIBUTE CONCURRENTLY, " AT THE SAME  
4 TIME, CONCURRENTLY, "AS CAUSES OF AN  
5 INJURY, THE CONDUCT OF EACH IS A CAUSE  
6 OF THE INJURY, REGARDLESS OF THE  
7 EXTENT TO WHICH EACH CONTRIBUTES TO  
8 THE INJURY. A CAUSE -- " THIS IS  
9 LEGALESE. I APOLOGIZE FOR THE PEOPLE  
10 THAT WROTE THIS NEXT SENTENCE. "A  
11 CAUSE IS CONCURRENT IF IT WAS  
12 OPERATIVE AT THE TIME OF THE INJURY  
13 AND ACTED WITH ANOTHER CAUSE TO  
14 PRODUCE THE INJURY. IT IS NO DEFENSE  
15 THAT THE NEGLIGENT OR WRONGFUL CONDUCT  
16 OF A PERSON NOT JOINED AS A PARTY WAS  
17 A CAUSE OF AN INJURY. "

18 SO HERE' S THE TRANSLATION. IF TWO  
19 PEOPLE -- DON' T FORGET, PHILIP MRRIS IS A PERSON  
20 IN THE EYES OF THE LAW, PHILIP MRRIS CORPORATION,  
21 PERSON IN THE EYES OF THE LAW IF TWO PEOPLE, FOR  
22 THOSE OF YOU WHO THINK THE FROG SHOULD HAVE KNOWN  
23 BETTER, IF THE FROG SHOULD HAVE KNOWN BETTER, THE  
24 SCORPION DOESN' T WIN, THE SCORPION STAYS.

25 NOW, YOU WILL NOT BE INSTRUCTED  
26 ANYTHING ABOUT MR. BOEKEN' S NEGLIGENCE. THERE WILL  
27 BE NO INSTRUCTION ABOUT THAT BECAUSE PHILIP  
28 MRRIS --

1 MR. LEITER: OBJECTION.

2 MR. PIUZE: CORRECT ME IF I AM WRONG.

3 MR. LEITER: I AM ASSERTING AN OBJECTION,  
4 YOUR HONOR.

5 THE COURT: JUST ONE SECOND.

6 EXCUSE US, LADIES AND GENTLEMEN.  
7 AS YOU KNOW, THIS DOESN'T HAPPEN VERY OFTEN.

8

9 (A DISCUSSION WAS HELD IN  
10 CHAMBERS, NOT REPORTED.)

11

12 THE COURT: OKAY, LADIES AND GENTLEMEN,  
13 JUST TAKE A DEEP BREATH AND IMAGINE THAT NEVER  
14 HAPPENED. OKAY.

15 MR. PIUZE.

16 MR. PIUZE: THAT NEVER HAPPENED.

17 PHILIP MORRIS DOES NOT CLAIM  
18 MR. BOEKEN IS NEGLIGENT.

19 PHILIP MORRIS DOES NOT CLAIM THAT  
20 MR. BOEKEN WAS NEGLIGENT.

21 SO BACK TO THIS INSTRUCTION.

22 EVEN THOUGH PHILIP MORRIS DOESN'T  
23 CLAIM THAT MR. BOEKEN WAS NEGLIGENT, EVEN THOUGH  
24 THEY DON'T EVEN MAKE THAT CLAIM, I AM SHOWING YOU  
25 THAT BECAUSE IF THE FROG WAS PARTIALLY RESPONSIBLE  
26 FOR ITS GETTING STUNG, BECAUSE THE FROG WAS  
27 TRUSTING, THE SCORPION DOES NOT GET OFF THE HOOK.  
28 BECAUSE IF TWO DIFFERENT PEOPLE, PHILIP MORRIS AND

1 MR. BOEKEN, THE SCORPION AND THE FROG, IF TWO  
2 DIFFERENT PEOPLE OR IF TWO DIFFERENT SCORPION AND  
3 FROG, ANIMALS, ARE RESPONSIBLE AT THE SAME TIME FOR  
4 WHAT'S GOING ON, THEY ARE BOTH RESPONSIBLE.

5 AND THIS INSTRUCTION, 377, TELLS  
6 YOU THAT.

7 IT TELLS YOU THAT IF ANY OF YOU  
8 THINK THAT MR. BOEKEN, LIKE THE FROG, WAS TOO  
9 TRUSTING, IF HE, IF WE WANT TO ADOPT A LIGHTER  
10 VERSION OF WHAT PROFESSOR COBBS HOFFMAN SAID, THAT,  
11 YOU KNOW, INSTEAD OF SAYING, IN EFFECT, WHO IN THE  
12 WORLD WOULD TRUST THESE BOZOS, WHO IN THE WORLD  
13 WOULD TRUST THESE BOZOS, IF WE TAKE A WATERED DOWN  
14 VERSION, A LIGHTER VERSION OF THAT, AND WE SAY, YOU  
15 KNOW, MAYBE THEY WEREN'T TELLING THE TRUTH, MAYBE  
16 WE SHOULD HAVE FIGURED OUT THEY WEREN'T TELLING THE  
17 TRUTH AND IF YOU THINK THAT APPLIES TO MR. BOEKEN,  
18 OKAY, THAT SHOULD END IT. BUT THAT DOESN'T DEPRIVE  
19 HIM OF COMPENSATION.

20 BECAUSE JUST LIKE THE SCORPION,  
21 PHILIP MORRIS DOESN'T WALK, IF SOMEONE WAS GULLIBLE  
22 ENOUGH TO BELIEVE, AND I SAY, FROM A MORAL POINT OF  
23 VIEW, LET'S STOP THERE FOR A SECOND TOO, I'D JUST  
24 LIKE TO TAKE MAYBE A MINUTE OR TWO ON THIS, STILL  
25 WITH PROFESSOR COBBS HOFFMAN.

26 I HOPE, I AM NOT GOING TO COME BACK  
27 TO THIS AGAIN. BUT I HOPE, TRULY, EVEN PUTTING,  
28 EVEN PUTTING THIS CASE ASIDE, I HOPE, TRULY, THAT

1 IT HASN'T COME TO THAT, THAT WE CAN'T TRUST  
2 ANYTHING THAT ANYONE SAYS ABOUT ANYTHING ANY TIME,  
3 ANY PLACE, ANYHOW

4 IF MR. BOEKEN WAS TOO GULLIBLE OR  
5 IF MR. BOEKEN WAS SO ADDICTED THAT HE RATIONALIZED,  
6 THAT HE WOULD GRAB ONTO WHAT THEY TOLD HIM, THAT HE  
7 WOULD BITE FOR THIS, HOOK, LINE AND SINKER, THAT  
8 DOESN'T ELIMINATE HIM FROM COMPENSATION IN THIS  
9 CASE AT ALL.

10 I READ SOME OF THESE MEMOS HERE.  
11 THEY ARE SO CYNICAL. AND I SEE IT LIKE, ONE IN  
12 PARTICULAR YESTERDAY THAT SAID WE ARE GOING TO  
13 TARGET THIS TO TOBACCO STATE CONGRESSMEN AND TO  
14 HEAVY SMOKERS.

15 THIS IS THE ROPER PROPOSAL, EXHIBIT  
16 330, ROPER PROPOSAL, WE ARE GOING TO TARGET TOBACCO  
17 STATE CONGRESSMEN AND HEAVY SMOKERS.

18 AND I SEE IT AS A FISHERMAN  
19 THROWING, THROWING A BUNCH OF LINES OVERBOARD.

20 AND SOME OF THE FISH ARE GOING TO  
21 BITE AND SOME OF THE FISH AREN'T GOING TO BITE.

22 AND SO HERE'S THE FISHERMAN  
23 THROWING THE LINE OVERBOARD, AND FOR THE ONES THAT  
24 BITE, THE FISHERMAN, IN THIS CASE, PHILIP MORRIS,  
25 SAYS, DUMB S. O. B. , YOU DON'T DESERVE ANYTHING,  
26 SHOULDN'T HAVE BIT.

27 SO I THINK I AM DONE WITH THAT.  
28 THAT'S WHAT CAUSES, THERE CAN BE MORE THAN TWO

1 CAUSES GOING AT THE SAME TIME.

2 AND NOW ANOTHER ISSUE IN THIS CASE,  
3 ANOTHER LEGAL ISSUE IN THIS CASE HERE, ANOTHER  
4 THEORY HAS TO DO WITH DESIGN DEFECT.

5 AND THIS IS WHAT'S KNOWN AS PRODUCT  
6 LIABILITY, SOMETIMES STRICT LIABILITY.

7 HERE'S A LITTLE BIT OF LEGALESE BUT  
8 I WOULD JUST LIKE TO GO THROUGH IT WITH YOU  
9 QUICKLY.

10 AND LET ME SAY SOMETHING ELSE IF I  
11 COULD.

12 THE JUDGE WILL TELL YOU ABOUT  
13 BURDEN OF PROOF. HE MIGHT HAVE MENTIONED IT  
14 EARLIER IN THE CASE.

15 BUT THERE IS SUCH A THING AS BURDEN  
16 OF PROOF. I HAVE WATCHED SOME OF YOU LADIES  
17 SITTING OUT ON THE BENCH THERE AND RIGHT ABOVE  
18 WHERE YOU HAVE BEEN SITTING EVERY DAY IS THIS SEAL.  
19 AND IT'S GOT LADY JUSTICE UP THERE.

20 AND LADY JUSTICE HAS SOME SCALES IN  
21 ONE HAND WHICH I WANT TO TALK ABOUT NOW AND LADY  
22 JUSTICE HAS A BIG OLD SWORD IN THE OTHER HAND WHICH  
23 I WANT TO TALK ABOUT IN A LITTLE WHILE.

24 BUT THE SCALE OF JUSTICE, THE  
25 BURDEN OF PROOF, HERE'S HOW I VISUALIZE IT.

26 EVERYONE STARTS OUT EVEN. AND THIS  
27 IS A CIVIL CASE RIGHT HERE. IT'S NOT A CRIMINAL  
28 CASE.

1                   AND IN A CRIMINAL CASE, IN THE  
2 UNITED STATES OF AMERICA, WHEN THE PROSECUTOR WHO  
3 SITS OVER HERE, STANDS UP, AND HE IS TRYING TO PUT  
4 SOMEONE OR SHE IS TRYING TO PUT SOMEONE IN PRISON  
5 OR TAKE THEIR LIFE, THE BURDEN OF PROOF IS BEYOND A  
6 REASONABLE DOUBT. AND THE WAY I VISUALIZE THIS IS  
7 SORT OF 99 TO 1, LIKE THAT, BEYOND A REASONABLE  
8 DOUBT.

9                   THIS IS AMERICA. LIFE, LIBERTY,  
10 PURSUIT OF HAPPINESS. LIFE, LIBERTY, MORE  
11 IMPORTANT THAN PROPERTY. LIFE, LIBERTY, MOST  
12 IMPORTANT. IF WE ARE GOING TO TAKE SOMEONE'S  
13 LIBERTY BY PUTTING THEM IN PRISON, TAKE SOMEONE'S  
14 LIFE, THERE BETTER BE DARN WELL PROOF BEYOND  
15 REASONABLE DOUBT BEFORE YOU DO IT.

16                   THIS IS A CIVIL CASE HERE. NO ONE  
17 IS GOING TO JAIL. NO ONE IS GOING TO PRISON. NO  
18 ONE'S LIFE IS BEING TAKEN. NO ONE IS GOING TO  
19 PRISON. THERE HAVE BEEN ENOUGH LIVES BEING TAKEN  
20 ALREADY.

21                   MAYBE THIS WILL STOP SOMEONE ELSE'S  
22 LIVE FROM BEING TAKEN.

23                   BUT AS THE COURT WILL SAY, IN A  
24 CIVIL CASE, IT'S THE PREPONDERANCE OF THE EVIDENCE.

25                   WHAT IT MEANS IS ONE SIDE TIPS THE  
26 SCALES A LITTLE, 51, 49.

27                   SO I HAVE, ON BEHALF OF MR. BOEKEN,  
28 THE BURDEN OF PROOF ON MOST ISSUES IN THIS CASE.

1                   AND THE BURDEN OF PROOF IS BY A  
2 PREPONDERANCE OF THE EVIDENCE.

3                   51, 49. WHAT IS MORE LIKELY THAN  
4 NOT.

5                   NONE OF THIS, NO ONE IS GOING TO  
6 PRISON, NO ONE IS GETTING THE DEATH PENALTY. 51,  
7 49.

8                   THERE IS ANOTHER ISSUE I AM GOING  
9 TO COME BACK LATER ON AND SAY SOMETHING DIFFERENT  
10 ABOUT, AND THAT'S THE SWORD ISSUE.

11                  BUT ON WHETHER THERE WAS A FRAUD,  
12 WHETHER PHILIP MORRIS DEFRAUDED, WHETHER PHILIP  
13 MORRIS MADE FALSE PROMISES, WHETHER PHILIP MORRIS  
14 CONCEALED, WHETHER PHILIP MORRIS WAS NEGLIGENT, ON  
15 THE STRICT LIABILITY THING I AM ABOUT TO TALK  
16 ABOUT, 51, 49, IS IT MORE LIKELY THAN NOT.

17                  SO HERE IT IS. FOR MR. BOEKEN, I  
18 HAVE TO PROVE THAT MR. BOEKEN HAS TO PROVE THAT  
19 PHILIP MORRIS WAS THE MANUFACTURER OF MARLBOROS,  
20 THAT MARLBOROS POSSESSED A DEFECT IN DESIGN, THAT  
21 THE DEFECT WHICH -- WHICH I AM GOING TO TALK  
22 ABOUT -- THAT THE DEFECT IN DESIGN EXISTED AT THE  
23 TIME IT LEFT DEFENDANT'S POSSESSION.

24                  AND WHAT THIS ONE MEANS IS, YOU  
25 KNOW, FOR SOME PRODUCTS WE GET THEM TO OUR HOUSE  
26 AND WE ALTER THEM AND MODIFY THEM AND DO SOMETHING  
27 TO IT AND IT CHANGES THEM WE ARE TALKING ABOUT A  
28 STRAIGHT CIGARETTE RIGHT OUT OF THE BOX HERE.

1                    THAT THE DEFECT IN DESIGN WAS A  
2 CAUSE OF INJURY TO PLAINTIFF.

3                    SO LET' S STOP THERE.

4                    AS IT TURNS OUT, PHILIP MORRIS DOES  
5 NOT DISPUTE, IN THIS CASE, THAT MR. BOEKEN' S  
6 ADENOCARCINOMA WAS CAUSED BY SMOKING THE MARLBOROS,  
7 AS IT TURNS OUT.

8                    HERE' S THE PATHOLOGY REPORT.  
9 PAPILLARY ADENOCARCINOMA OF THE LUNG, MODERATELY  
10 WELL-DIFFERENTIATED.

11                   WE HAD A LITTLE TALK ALONG THE WAY  
12 ABOUT SOMETHING CALLED BRONCHIOALVEOLAR  
13 CARCINOMA. BUT NOTHING EVER MATERIALIZED ON THAT.

14                   EVERY DOCTOR IN THIS CASE WHO CAME  
15 HERE SAID MR. BOEKEN' S LUNG CANCER WAS CAUSED BY  
16 SMOKING CIGARETTES.

17                   THAT INCLUDED HIS TREATING  
18 PHYSICIAN, DR. SARNA. DR. SARNA JUST HAPPENED TO  
19 BE A FULL PROFESSOR OF ONCOLOGY OVER AT UCLA. IT  
20 ALSO INCLUDED DOCTOR -- YOU KNOW, THESE PEOPLE THAT  
21 I HAD IN HERE, THESE UNBELIEVABLE GREAT DOCTORS.

22                   ANYWAY, IT' S NO DISPUTE. THE  
23 PRODUCT CAUSED THE CANCER.

24                   PLAINTIFF' S INJURY RESULTED FROM A  
25 USE OF THE PRODUCT THAT WAS REASONABLY FORESEEABLE,  
26 SMOKING.

27                   SO OF THE ONE, TWO, THREE, FOUR,  
28 FIVE OF THE FIVE ISSUES, THE ONLY ONE THAT' S GOING

1 TO BE IN DISPUTE HERE IS NUMBER 2, THAT THE PRODUCT  
2 POSSESSED A DEFECT IN ITS DESIGN.

3 AND WHAT' S THAT?

4 A DESIGN DEFECT IS ONE OF TWO, A OR  
5 B. IT DOESN' T HAVE TO BE BOTH. IT CAN BE A, IT  
6 CAN BE B. IT CAN BE B. IT CAN BE A. IT CAN BE  
7 BOTH. IT DOES NOT HAVE TO BE BOTH.

8 "A, A PRODUCT IS DEFECTIVE  
9 IN DESIGN: IF IT FAILS TO PERFORM AS  
10 SAFELY AS AN ORDINARY CONSUMER WOULD  
11 EXPECT WHEN USED IN AN INTENDED OR  
12 REASONABLY FORESEEABLE MANNER. "

13 SO LET' S STOP THERE.

14 LET' S JUST TALK ABOUT A.

15 IN 1954, WHEN MR. BOEKEN PICKED UP  
16 THAT BUTT OUT OF THE ASHTRAY, IN 1957, WHEN HE  
17 STARTED SMOKING, PHILIP MORRIS HAS SAID IN ITS  
18 INTERNET WEBB, MEDIA PRESS RELEASE, THAT MR. BOEKEN  
19 SHOULD HAVE KNOWN THEN, BEFORE HE PICKED UP THAT  
20 FIRST CIGARETTE. AND I TAKE DIRECT ISSUE WITH  
21 THAT.

22 AND I WILL ONLY TAKE A MINUTE TO  
23 OBSERVE, I TALKED ABOUT IT YESTERDAY. IT' S A  
24 PRETTY AMAZING SITUATION WHERE THEY COME IN. WE  
25 PIONS SHOULD HAVE KNOWN ALL THIS STUFF, BUT THEIR  
26 SCIENTISTS DIDN' T HAVE TO KNOW THEIR DOCTORS  
27 DIDN' T HAVE TO KNOW IT. THEIR EXECUTIVES DIDN' T  
28 HAVE TO KNOW IT, BUT WE HAVE TO KNOW IT. STUPID

1 BEYOND BELIEF.

2 ALL THE WAY FROM 1954, WHEN HE  
3 PICKED UP THAT FIRST PUFF, TO 1957, WHEN HE STARTED  
4 SMOKING, IMMEDIATELY WENT TO TWO PACKS A DAY, OR  
5 ONE TO TWO PACKS A DAY, ALL THE WAY UP UNTIL 1964  
6 IN JANUARY -- LET'S STOP THERE. I AM GOING TO USE  
7 THEIR MEDICAL EXPERT, DR. LUDMERER. DR. LUDMERER  
8 SAYS, EVEN SMART, PH. D., GENIUS, PROFESSORS,  
9 DOCTORS, THE BEST PEOPLE OUT THERE, EVEN THEY  
10 WEREN'T SUPPOSED TO KNOW THAT THIS STUFF CAUSED  
11 CANCER UNTIL JANUARY 1ST, 1964 WHEN THERE WAS A  
12 CONSENSUS.

13 SO LET'S JUST USE THAT FOR  
14 STARTERS.

15 AND I WANT YOU TO JUST ASSUME FOR A  
16 SECOND THAT ON JANUARY 1ST, 1964, PHILIP MORRIS  
17 STOOD BEHIND THE SURGEON GENERAL AND SAID, RIGHT,  
18 WE AIN'T WAITING FOR 2001, RIGHT, WE AGREE.

19 FOR THOSE YEARS UP UNTIL 1964, THAT  
20 PRODUCT UNDOUBTEDLY FAILED TO PERFORM AS AN  
21 ORDINARY CONSUMER WOULD EXPECT BECAUSE THE CONSUMER  
22 WAS PLUNKING DOWN HIS OR HER GOOD MONEY BUYING  
23 POISON.

24 NOW LET'S LOOK AFTER 1964.

25 LET'S LOOK ALL THE WAY, I WILL GIVE  
26 YOU ANOTHER CHUNK OF TIME, LET'S GO ALL THE WAY UP  
27 INTO 1969 WHEN A WARNING WENT ON THERE THAT SAYS  
28 THIS STUFF DOES CAUSE DISEASE, FIVE YEARS LATER.

1                   FOR THOSE FIVE YEARS, THAT PRODUCT  
2 FAILED TO PERFORM AS AN ORDINARY CONSUMER WOULD  
3 EXPECT WHEN THEY SMOKED IT.

4                   AND NOW LET'S TAKE ANOTHER BLOCK OF  
5 TIME. AND THIS BLOCK OF TIME ENDED LAST YEAR.

6                   I DON'T KNOW WHAT AN ORDINARY  
7 CONSUMER IS, BUT HALF THE PEOPLE HAVEN'T STOPPED  
8 SMOKING.

9                   AS LONG AS THERE WAS DOUBT OUT  
10 THERE THAT WAS BEING CREATED, AS LONG AS THEY WERE  
11 SENDING THEIR EXECUTIVES BEFORE CONGRESS, AS LONG  
12 AS THEY WERE TURNING IN PROPAGANDA TO THE UNITED  
13 STATES CONGRESS IN '84, AS LONG AS THEY WERE  
14 CREATING DOUBT, AS LONG AS THEY HAD PROFESSOR  
15 HOSHIZAKIS AROUND TO SAY WE STILL DON'T KNOW, WE  
16 STILL DON'T KNOW IF THIS REALLY IS TRUE.

17                  AS LONG AS THERE WERE DOUBTS  
18 CREATED ABOUT THE HEALTH CHARGE, NICE WAY OF  
19 PUTTING IT, THE HEALTH CHARGE, YOUR LIFE, AS LONG  
20 AS THERE WERE DOUBTS CAUSED ABOUT THE HEALTH  
21 CHARGE, I SAY THAT AN ORDINARY CONSUMER COULD  
22 EXPECT OTHERWISE.

23                  BUT I CAN SEE WHERE SOME OF YOU  
24 WILL DISAGREE ON THAT.

25                  NEXT, DIFFERENT ISSUE.

26                  UP UNTIL SIX WEEKS AGO,  
27 APPROXIMATELY, OR EIGHT WEEKS AGO, ORDINARY  
28 CONSUMERS DID NOT KNOW THAT RED EQUALED GOLD,

1 EQUALED PLATINUM ORDINARY CONSUMERS DIDN' T KNOW  
2 THAT. ORDINARY CONSUMERS WOULD EXPECT AND WERE LED  
3 TO BELIEVE, AND DID BELIEVE, THAT RED DID NOT EQUAL  
4 THESE OTHERS, AND THAT IT WAS BETTER TO SMOKE THESE  
5 OTHERS, AND IT WAS ALWAYS WRONG FROM DAY ONE.

6 NOW, IF A PRODUCT FAILS TO PERFORM  
7 AS SAFELY AS AN ORDINARY CONSUMER WOULD EXPECT,  
8 WHEN THE CIGARETTE IS USED IN AN ORDINARY, INTENDED  
9 OR REASONABLY FORESEEABLE MANNER, WE HAVE JUST RUN  
10 THE BOARD AND ALL FIVE THINGS HAVE BEEN  
11 ESTABLISHED.

12 THEY WERE THE MANUFACTURER. IT WAS  
13 DEFECTIVE. THE DEFECT EXISTED WHEN IT LEFT THE  
14 FACTORY IN THE PACKAGE. IT WAS A CAUSE OF INJURY  
15 TO PLAINTIFF. AND THE INJURY RELATED FROM A USE OF  
16 THE PRODUCT THAT WAS REASONABLY FORESEEABLE;  
17 NAMELY, YOU LIT IT AND SMOKED IT.

18 AND THAT' S A WRAP. ALTERNATIVELY,  
19 AND THIS IS AN ALTERNATIVE, WE DON' T NEED BOTH.

20 "A PRODUCT IS DEFECTIVE IN  
21 DESIGN: IF THE RISK OF DANGER  
22 INHERENT IN THE DESIGN -- EXCUSE ME --  
23 IF THERE IS A RISK OF DANGER INHERENT  
24 IN THE DESIGN WHICH OUTWEIGHS THE  
25 BENEFITS OF THE DESIGN.

26 "IN DETERMINING WHETHER THE  
27 BENEFITS OF THE DESIGN WOULD OUTWEIGH  
28 SUCH RISKS, YOU MAY CONSIDER, AMONG

1 OTHER THINGS, THE GRAVITY OF THE  
2 DANGER. "

3 WELL, YOU CAN'T GET MUCH MORE GRAVE  
4 THAN DYING SLOWLY AND PAINFULLY FROM LUNG CANCER.

5 "THE LIKELIHOOD THAT SUCH  
6 DANGER WOULD CAUSE DAMAGE. "

7 WELL, THE BODY COUNT IS 17 MILLION  
8 PEOPLE SINCE 1964.

9 "THE MECHANICAL FEASIBILITY  
10 OF A SAFER ALTERNATIVE DESIGN AT THE  
11 TIME OF MANUFACTURE. "

12 AND THAT'S WHERE WE ARE GOING TO  
13 SPEND A COUPLE MINUTES. I WILL COME BACK.

14 "THE EXISTENCE OR  
15 NON-EXISTENCE OF WARNINGS. THE  
16 FINANCIAL COST OF AN IMPROVED DESIGN,  
17 AND THE ADVERSE CONSEQUENCES TO THE  
18 PRODUCT AND THE CONSUMER THAT WOULD  
19 RESULT FROM THE ALTERNATIVE DESIGN. "

20 THE LAST THING, ADVERSE  
21 CONSEQUENCES, AND THE MECHANICAL FEASIBILITY GO  
22 TOGETHER.

23 I READ YOU A PORTION OF  
24 DR. FARONE'S DEPOSITION YESTERDAY WHERE HE SAID  
25 THERE CAN BE A SAFE CIGARETTE, THERE AREN'T ANY ON  
26 THE MARKET NOW BUT THERE CAN BE.

27 AND I WANT TO -- THIS WILL EITHER  
28 BE THE LAST OR THE NEXT TO LAST THING I READ OUT OF

1 THIS DEPOSITION.

2 MR. LEITER: PAGE, PLEASE.

3 MR. PIUZE: 1520.

4 MR. LEITER: THANK YOU.

5 MR. PIUZE: OKAY. HE IS TALKING ABOUT  
6 POTASSIUM NITRATE ALSO KNOWN AS SALT PETER.

7 THE NOD PROGRAM, N-O-D, PROGRAM  
8 THAT YOU HEARD ABOUT HAS TO DO WITH NITRATES.

9 "WHEN YOU BURN THAT, IT  
10 GIVES OFF OXIDES OF NITROGEN, THE  
11 STUFF THAT CAUSES THE BROWN HAZE ON  
12 BAD POLLUTION DAYS IN L. A. WHEN YOU  
13 LOOK OUT OVER THE HORIZON, THAT'S THE  
14 NASTY STUFF WE DON'T WANT.

15 "THAT STUFF ALSO REACTS WITH  
16 NICOTINE IN THE SMOKE TO MAKE THINGS  
17 CALLED NITROSAMINES WHICH ARE DEADLY  
18 CARCINOGENS.

19 "SO THE IDEA WAS, IF WE  
20 REMOVED NITRATE FROM THE SHEET, THIS  
21 ARTIFICIAL RECONSTITUTED TOBACCO, AND  
22 WE USED THAT IN THE CIGARETTES, THAT  
23 WE COULD REDUCE THE AMOUNT OF BAD  
24 STUFF.

25 "IN FACT, WE PREPARED SOME  
26 OF THAT SHEET. IT WAS MADE INTO  
27 MARLBORO TYPE CIGARETTES AND THAT'S  
28 THE ONLY TIME IN MY EIGHT-YEAR CAREER

1 WHERE I ACTUALLY SAW THE RESULT OF A  
2 TEST ON MARLBORO WAS A MARLBORO TEST  
3 RUN WITH THE NORMAL WAY WE MAKE IT  
4 PLUS THIS MODIFIED, RECONSTITUTED  
5 SHEET. AND THAT WAS TESTED IN  
6 GERMANY, AS I UNDERSTAND IT. THERE  
7 DR. OSDENE, WHO SHOWED ME A DOCUMENT,  
8 THAT SHOWED THAT IT WAS LESS  
9 CARCINOGENIC.

10 THE MODIFICATION, THAT NITRATE  
11 REMOVED MATERIAL, ALL OF THE NITRATES REMOVED.  
12 THAT WAS AROUND 1979.

13 THE MODIFICATION WAS NEVER PUT INTO  
14 EFFECT.

15 AND WHERE HE GOES ON TO DISCUSS WHY  
16 THIS TESTING WAS DONE OVERSEAS, BECAUSE THERE WAS A  
17 GENTLEMAN'S AGREEMENT THAT PREVENTED THEM FROM  
18 DOING IT. THERE WAS ALSO THE IDEA THAT THEY DIDN'T  
19 WANT THE DOCUMENTS. HE TALKS ABOUT SENDING HOME  
20 AND DESTROYING THEM

21 "THE DOCUMENT I JUST TALKED  
22 ABOUT WHERE I SAID THAT I SAW THE  
23 RESULT OF THE MARLBORO VERSUS -- HE  
24 TOOK THAT DOCUMENT BACK FROM ME AND  
25 SAID I SHOULDN'T HAVE SHOWN YOU THIS,  
26 I HAVE TO DESTROY IT.

27 "AND HE TOLD ME HIS GENERAL  
28 POLICY WAS TO HAVE ALL THE DOCUMENTS



1 HERE, AND ONLY THIS SITUATION, THE DEFENDANT HAS,  
2 PHILIP MORRIS HAS A BURDEN OF PROOF IN THIS ONE  
3 SITUATION IN THE CASE.

4 THE ESSENTIAL ELEMENTS OF A CLAIM  
5 BASED UPON A DESIGN DEFECT FROM FAILURE TO WARN,  
6 THIS IS THE THIRD PRODUCTS LIABILITY ISSUE.

7 PHILIP MORRIS WAS THE MANUFACTURER;  
8 NAMELY CIGARETTES. PRODUCT WAS DEFECTIVE. THE  
9 DEFECT CAUSED AN INJURY TO THE PLAINTIFF, AND THE  
10 PLAINTIFF'S INJURY RESULTED FROM THE USE OF THE  
11 PRODUCT THAT WAS REASONABLY FORESEEABLE.

12 IN THIS CASE, A PRODUCT IS  
13 DEFECTIVE IF THE MANUFACTURER HAD A DUTY TO WARN OF  
14 DANGERS AND FAILS TO PROVIDE AN ADEQUATE WARNING OF  
15 THE DANGER BEFORE JULY 1, 1969.

16 AND IT GOES ON TO TALK ABOUT IT.

17 THE PRODUCT WAS DEFECTIVE UNDER THE  
18 LAW, UNDER ALL THREE.

19 UNDER CONSUMER EXPECTATION, IT'S A  
20 DEAD BANG.

21 UNDER FAILURE TO WARN, IT'S AN  
22 ABSOLUTE DEAD BANG UP UNTIL JULY 1ST, 1969.

23 AND THE DESIGN DEFECT, IT'S A  
24 CLOSER CALL BECAUSE I REALIZE, THIS IS THE ONLY  
25 THING THAT'S CONTESTED.

26 THEY SAY THEY CAN'T -- THEY SAY  
27 THEY CAN'T MAKE A SAFER CIGARETTE.

28 AND MY WITNESS, WHO USED TO WORK

1 FOR THEM, AND WAS A HIGH-RANKING BOSS SAYS,  
2 BOLONEY.

3                   AND THE QUANDARY, BECAUSE THEY  
4 WOULDN'T ADMIT THAT THIS STUFF CAUSED CANCER, THEY  
5 DIDN'T DO BIOLOGIC TESTS, THEY LOST 35 VALUABLE  
6 YEARS, MINIMUM, TESTING THIS STUFF, 35 VALUABLE  
7 YEARS MINIMUM, GAVE UP 35 YEARS' WORTH OF TESTING  
8 TO MAKE A CIGARETTE SAFE.

9                   AND PLAINTIFF ALSO CLAIMS IN THIS  
10 CASE THAT PHILIP MORRIS WAS NEGLIGENT, AND THAT'S  
11 ANOTHER REASON WHY THEY ARE NEGLIGENT BECAUSE THEY  
12 DIDN'T TEST.

13                   NOW, I WANT TO TALK ABOUT  
14 MR. BOEKEN.

15                   HERE, IN THIS HIGH TECH CASE OF  
16 OURS, HERE'S EXHIBIT 80508.2, WHICH YOU WON'T HAVE  
17 IN THE JURY ROOM

18                   DR. DOLL'S COLLEAGUE, DR. PETO,  
19 FROM CAMBRIDGE, ENGLAND, HAS THIS CHART IN ONE OF  
20 HIS LATEST SCIENTIFIC PAPERS.

21                   DR. FEINGOLD FROM MIAMI, DREW THIS  
22 CHART FOR YOU. IT'S RIGHT OUT OF, I BELIEVE IT'S  
23 RIGHT OUT OF DR. PETO'S PAPER.

24                   AND THIS CHART SHOWS WHAT HAPPENS  
25 IF YOU SMOKE AND IF YOU QUIT. AND UNFORTUNATELY,  
26 ONE OF THE THINGS THIS CHART SHOWS IS THAT IF YOU  
27 QUIT, YOUR RISKS OF GETTING LUNG CANCER DON'T GO  
28 DOWN, THEY STAY WHERE THEY WERE, WHEN YOU QUIT.

1 BUT THEY DON'T GO DOWN.

2 AND SO, FOR INSTANCE, THIS 75, THE  
3 END OF THE CHART IS SOMEONE WHO IS 75 YEARS OLD.

4 AND IF SOMEONE KEEPS SMOKING RIGHT  
5 UP UNTIL THE TIME THEY ARE 75 YEARS OLD, THEIR RISK  
6 IS HIGHER THAN SOMEONE WHO QUILTS AT 65 OR 55, OR  
7 WHEREVER.

8 BUT WHAT HAPPENS IS, WHEN SOMEONE  
9 GETS OFF THE TRAIN, AND SOMEONE QUILTS, WHEN SOMEONE  
10 CAN KICK THE HABIT, THEIR ODDS OF GETTING LUNG  
11 CANCER DO NOT GO DOWN. THEY STAY WHERE THEY ARE.

12 AND THAT'S NOT CONTESTED IN THIS  
13 TRIAL.

14 SO ANYWAY, NOT A NICE THOUGHT.

15 BUT MR. BOEKEN, IF HE HAD TO QUIT  
16 IN 1989, WHEN HE WAS 45 YEARS OLD, HE ALREADY HAD  
17 CANCER. IT WAS TOO LATE FOR HIM

18 IF MR. BOEKEN HAD QUIT WHEN HE WAS  
19 45, ANY TIME AFTER 45, WOULDN'T HAVE MATTERED TO  
20 HIM, BECAUSE HE ALREADY HAD CANCER. IT WAS JUST A  
21 MATTER OF MANIFESTING.

22 PEOPLE WHO GOT THE MESSAGE, AS SOME  
23 OF THE DEFENSE WITNESSES SAY, AND QUIT, ARE NOT OUT  
24 OF THE WOODS.

25 THERE'S HIS TUMOR. NOT VERY BIG  
26 TUMOR. RIGHT UPPER LOBE. THAT TUMOR METASTASIZED.  
27 THE MEDICAL CARE HE GOT WAS ABSOLUTELY FINE. SOME  
28 OF THE FINEST PEOPLE IN THIS CITY TREATED HIM

1 COULDN' T HELP HIM PROLONGED HIS LIFE. AND ONCE  
2 THAT SPREAD TO HIS LOWER BACK, THE HANDWRITING WAS  
3 DEFINITELY ON THE WALL.

4 WHEN IT WAS FOUND THAT THERE WERE  
5 LYMPH NODES, RIGHT AWAY, WITHIN THE FIRST COUPLE  
6 WEEKS, HE WAS TOLD THE LYMPH NODES WERE INVOLVED,  
7 HANDWRITING WAS ON THE WALL. HANDWRITING WENT TO  
8 CAPITAL LETTERS. AND METASTASIZED TO HIS LOW BACK  
9 IN AUGUST OF 2000, AND THE HANDWRITING BECAME  
10 OVERWHELMING, AROUND NOVEMBER OR DECEMBER OF 2000,  
11 WHEN HE WAS DIAGNOSED WITH METASTASIS TO THE BRAIN.

12 HERE YOU GO. AND HE HAD,  
13 UNFORTUNATELY FOR HIM, MULTIPLE LESIONS IN THE  
14 BRAIN. THIS IS THE COMMON -- WE HEARD FROM  
15 DR. FEINGOLD AND I THINK FROM DR. STRAUSS AND FROM  
16 DR. SARNA. THIS IS COMMON. THIS IS THE WAY IT  
17 WORKS. LUNG CANCER IS THE PRIMARY CANCER THAT'S  
18 CAUSED BY TOBACCO SMOKE. METASTASIZES TO DIFFERENT  
19 PARTS OF THE BODY. THIS IS ONE OF THE FAVORITE  
20 PLACES RIGHT HERE, TO THE BRAIN.

21 AND MR. BOEKEN HAS BRAIN CANCER,  
22 LOW BACK CANCER, LUNG CANCER, AND IT'S A FATAL  
23 ILLNESS.

24 THERE IS NO CURE. BUT HE IS BEING  
25 TREATED THE BEST HE POSSIBLY CAN BE.

26 I'D LIKE TO SPEND SOME MINUTES --  
27 YOUR HONOR, JUST GIVE ME A CLUE, CAN WE GO TO  
28 QUARTER OF? IS THIS WHERE WE GO TO?

1 THE COURT: IT'S UP TO YOU. I AM NOT  
2 PUTTING ANY LIMITS ON EITHER SIDE. IF YOU WOULD  
3 LIKE TO TAKE A BREAK, WE WILL DO THAT. I EXTEND  
4 THE SAME COURTESY TO THE OTHER SIDE.

5 MR. LEITER: THANK YOU, YOUR HONOR.

6 MR. PIUZE: WELL, YOU ARE THE JURY, YOU  
7 GOT TO VOTE, NOW OR 15 MINUTES FROM NOW

8 JUROR: DO IT NOW

9 MR. PIUZE: YOUR HONOR, I THINK I WOULD  
10 LIKE TO TAKE A BREAK NOW

11 THE COURT: LADIES AND GENTLEMEN, TAKE  
12 OUR BREAK. BE BACK AT QUARTER TIL 11:00.

13

14 (AT THIS TIME, A RECESS  
15 WAS TAKEN.)

16

17 (THE FOLLOWING PROCEEDINGS  
18 WERE HELD IN OPEN COURT IN  
19 THE PRESENCE OF THE JURY.)

20

21 THE COURT: MR. PIUZE.

22 MR. PIUZE: THANKS.

23

24 OPENING ARGUMENT (CONTINUED)

25

26 BY MR. PIUZE:

27 I AM GOING TO SPEND LESS THAN FIVE  
28 MINUTES TOUCHING ON A COUPLE ISSUES OF LIABILITY

1 AND I AM NOT COMING BACK. PROMISE.

2 THIS IS DR. FARONE HERE. HE'S  
3 COMMENTING ON THAT LIGHT CIGARETTE EXHIBIT I JUST  
4 PUT OUT. AND HE'S QUOTING IT.

5 "MARLBORO 85 SMOKERS IN THE  
6 STUDY DID NOT ACHIEVE ANY REDUCTION IN  
7 SMOKE INTAKE BY SMOKING A CIGARETTE,  
8 SUCH AS MARLBORO LIGHTS, NORMALLY  
9 CONSIDERED LOWER IN DELIVERY. "

10 HE EXPLAINS THAT. WHAT DOES IT  
11 MEAN?

12 "ACCORDING TO THEIR HUMAN  
13 SMOKE SIMULATOR STUDIES, ACCORDING TO  
14 THE WAY PEOPLE SMOKED, THAT SMOKING  
15 THAT RED MATERIAL, YOU GET A CERTAIN  
16 DELIVERY LEVEL. WHEN YOU SWITCH TO  
17 THE LOWER TAR CIGARETTE, THE LIGHT,  
18 YOU DIDN'T GET -- ACTUALLY, THE SMOKER  
19 DIDN'T GET LESS TAR. "

20 SO THAT'S DR. FARONE SAYING THAT.

21 AND LAST, ON THIS PRODUCT HERE,  
22 THIS IS THE CAMBRIDGE CIGARETTE, AND THAT'S  
23 MEASURING THE BAD STUFF. DR. FARONE SAYS, ON PAGE  
24 1574 AND 5, THIS WAS THE FIRST ZERO ZERO TAR  
25 CIGARETTE HE HAD SEEN -- EXCUSE ME. IT WAS A  
26 PROJECT THAT WAS INTENDED TO MAKE IT AS LOW AS WE  
27 POSSIBLY COULD, ZERO, ZERO, OR 0.0. THE CODE NAME  
28 FOR THE PROJECT WHICH BECAME CAMBRIDGE WAS TRINITY.

1                   SOME OF THE DOCUMENTS YOU HAD DON'T  
2 SAY CAMBRIDGE, THEY SAY TRINITY. SO WHEN YOU SEE  
3 TRINITY, CAMBRIDGE.

4                   THE TAR IS THE BAD STUFF?

5                   "NO TAR, NO CARCINOGENS. "

6                   "NO TAR, NO CARCINOGENS.

7                   NOTHING TO ATTACK THE LUNG TISSUES. "

8                   AND THEN LAST, I MENTIONED THE  
9 DEFENDANT IN ONE SITUATION HERE, PHILIP MORRIS HAS  
10 A BURDEN OF PROOF. AND THAT COMES ABOUT AS  
11 FOLLOWS: WE DON'T HAVE A FINAL PREPARED  
12 INSTRUCTION FOR YOU TO PUT UP THERE.

13                   BUT IT COMES OUT AS FOLLOWS: UNDER  
14 STRICT PRODUCT LIABILITY, I WENT THROUGH THREE  
15 DIFFERENT SUBSETS, STRICT PRODUCTS LIABILITY,  
16 CONSUMER EXPECTATION TEST, IT DOESN'T WORK THE WAY  
17 IT -- IT DOESN'T WORK AS SAFELY AS AN ORDINARY  
18 CONSUMER WOULD EXPECT.

19                   BUT THE WARNINGS WERE INADEQUATE,  
20 AND THAT THE INSTRUCTIONS ON HOW TO SMOKE A LIGHT  
21 CIGARETTE WERE INADEQUATE, THAT'S IT, THEY DON'T  
22 HAVE THE BURDEN ON THAT.

23                   BUT THE THIRD ONE HAD TO DO WITH  
24 THE RISKS OF THE PRODUCT OUTWEIGHING THE BENEFITS.  
25 THE RISKS, EXCUSE ME, THE RISKS OF THEIR DESIGN OF  
26 THE PRODUCT OUTWEIGH THE BENEFIT.

27                   AND IN THAT CASE, I WENT THROUGH  
28 FIVE, I THINK, FIVE ELEMENTS WITH YOU. AND IF THE

1 JURY FINDS THAT ON THOSE FIVE ELEMENTS, THE  
2 PLAINTIFF HAS MET HIS BURDEN OF PROOF. AND IN THAT  
3 ONE INSTANT, THE BURDEN THEN SHIFTS TO PHILIP  
4 MRRIS.

5 AND IN THAT ONE INSTANT, PHILIP  
6 MRRIS THEN HAS TO SHOW YOU THAT THE BENEFITS OF  
7 THE PRODUCT OUTWEIGH -- THE BENEFIT OF THE  
8 CIGARETTES OUT-WEIGHED THE DANGER INHERENT IN THE  
9 DESIGN.

10 SO I COVERED THAT, THEY CAN TALK  
11 ABOUT THAT MORE IF THEY WANT.

12 NOW I AM GOING TO TALK DAMAGES AND  
13 THERE ARE TWO DIFFERENT, TWO DIFFERENT ISSUES THAT  
14 I AM GOING TO DISCUSS. ONE IS TO COMPENSATE MR.  
15 BOEKEN. AND IT'S CALLED COMPENSATORY DAMAGES. AND  
16 THE SECOND HAS TO DO WITH PUNISHING AND MAKING AN  
17 EXAMPLE OF PHILIP MRRIS AND THAT IS CALLED  
18 PUNITIVE OR EXEMPLARY DAMAGES.

19 IN THIS PARTICULAR CASE, WE HAD A  
20 LOT OF TESTIMONY FROM MR. JOHNSON AND, I THINK,  
21 MAYBE MS. MERLO TOO AND SOME OF THE OTHER FROM  
22 PHILIP MRRIS ABOUT PHILIP MRRIS'S FINANCIAL  
23 CONDITION.

24 THAT ONLY HAS TO DO WITH PUNITIVE  
25 OR EXEMPLARY DAMAGES. IT'S GOT NOTHING TO DO WITH  
26 COMPENSATORY DAMAGES.

27 AND I THINK I'D JUST LIKE TO MAKE  
28 IT CLEAR THAT WHEN WE ARE TALKING ABOUT

1 COMPENSATORY DAMAGES TO COMPENSATE MR. BOEKEN, THE  
2 WEALTH OF PHILIP MORRIS IS NOT AN ISSUE. AND THE  
3 FACT THAT PHILIP MORRIS IS RICHER THAN MR. BOEKEN  
4 IS NOT AN ISSUE. IT'S NOT AN ISSUE.

5                   THESE ARE BOTH PEOPLE IN THE EYES  
6 OF THE LAW. AND WHEN IT COMES TO COMPENSATION,  
7 MR. BOEKEN SHOULD BE COMPENSATED WHETHER IT'S  
8 LORILLARD, A LITTLE COMPANY, OR PHILIP MORRIS, A  
9 BIG COMPANY. THAT DOESN'T MATTER. COMPENSATION  
10 HAS NOTHING TO DO WITH THE WEALTH OF THE DEFENDANT.

11                   HAVING SAID THAT, RICHARD BOEKEN IS  
12 SORT OF MY AGE. HE'S SORT OF FROM MY ERA. HE SORT  
13 OF WENT THROUGH EXPERIENCES THAT WE HEARD FROM  
14 PROFESSOR COBBS HOFFMAN HERE, WENT THROUGH SOME  
15 UNIQUE TIMES.

16                   I'D LIKE TO TELL YOU MY VIEW OF  
17 MR. BOEKEN.

18                   WORLD WAR II IS COMING TO AN END  
19 END ALMOST EXACTLY AT THE TIME HE WAS BORN.

20                   HE GREW UP IN THE POST WORLD WAR II  
21 ERA.

22                   WHAT OUR COUNTRY AND THE WORLD HAD  
23 BEEN THROUGH, THE ENTIRE WORLD AT WAR WAS A HUGE  
24 THING. AND THE IMAGE OF THE MILITARY, YOU SAW THIS  
25 MARINE POSTER THAT HE LIKED. HE SAID THE MARINES  
26 WERE THE ELITE. THAT'S IT. THAT'S WHAT YOUNG KIDS  
27 GREW UP WITH.

28                   AND THE IDEA OF A TOUGH, RESILIENT,

1 INDEPENDENT, STRONG MALE, I KNOW, NOWADAYS, WE ARE  
2 SUPPOSED TO BE MORE SENSITIVE. BUT THE IDEA BACK  
3 THEN WAS TOUGH, INDEPENDENT, RESILIENT. AND THAT'S  
4 HOW HE SAW HIMSELF. HE WAS A CHILD OF HIS TIMES.

5 AND YOU CAN SEE IT IN HIS ACTIONS.  
6 AND YOU CAN SEE IT IN WHAT HE CHOSE TO DO, AND YOU  
7 CAN SEE IT IN WHAT HE DID.

8 HE WAS INTO WEIGHT LIFTING. HE WAS  
9 INTO PHYSICAL CONDITION.

10 WHEN IT CAME TIME, THERE WAS A WAR  
11 GOING ON. HE JOINED THE MILITARY.

12 HIS STEPSON, WHEN HE CAME IN HERE,  
13 SAID, YOU KNOW, MY FIRST RECOLLECTION OF THE GUY IS  
14 THAT HE BOUGHT ME A BIRD AND A DOG AND WHATEVER,  
15 SOMETHING ELSE.

16 BUT BESIDES THAT, HE WAS A BIG,  
17 STRONG, TOUGH GUY WHO LIKED TO BE OUTSIDE. HE WAS  
18 TANNED. HE WORKED WITH HIS HANDS. HE WAS INTO  
19 CONSTRUCTION. WHEN WE DID THINGS IT WAS ALWAYS  
20 OUTDOORSY. WHEN WE DID THINGS, IT WAS CAMPING.  
21 WHEN WE DID THINGS, IT WAS GOING UP TO THE  
22 MOUNTAINS. WHEN WE DID THESE THINGS, IT WAS  
23 OUTSIDE, OUT.

24 ANYWAY, NOT ONLY FOR THE PURPOSES  
25 OF MY TALKING ABOUT THE LIABILITY ISSUES IN THIS  
26 CASE, WAS HE LIKE THE MARLBORO MAN, HE WAS. HE  
27 ENJOYED BEING OUTSIDE. HE ENJOYED HIS BODY. HE  
28 ENJOYED BEING STRONG. HE ENJOYED THIS MASCULINE



1 AND GAS STUFF.

2 WE HEARD MORE ABOUT THE BUSINESS, I  
3 THINK, FROM HIS BUDDY, ELVIS MENDEZ, THAN WE HEARD  
4 FROM HIM BUT HE'S DONE REALLY WELL AT IT.

5 SO HERE'S A GUY WHO WAS TOUGH,  
6 PHYSICALLY, WAS RESILIENT, WAS A HARD WORKER, WAS A  
7 GOOD PROVIDER, ALL OF THE THINGS THAT HOPEFULLY WE  
8 TELL OUR KIDS THAT THEY SHOULD BE.

9 HIS LIFE EXPECTANCY AS A NORMAL  
10 MALE IN OUR SOCIETY IS 21.4 YEARS FROM TODAY.

11 THAT'S, OF COURSE, IF HE DIDN'T  
12 HAVE THIS DISEASE.

13 AND, OF COURSE, HE'S NOT THE  
14 MAJORITY.

15 BUT THE COMPENSATION IN THIS CASE  
16 IS GOING TO HAVE TO COMPENSATE HIM FOR THE LOSS OF  
17 21.4 YEARS INTO THE FUTURE AS WELL AS WHAT HE HAS  
18 BEEN THROUGH. SO THERE ARE THREE CATEGORIES OF  
19 COMPENSATORY DAMAGES. ONE, MEDICAL EXPENSES. YOU  
20 ARE GOING TO HAVE THE MEDICAL BILLS. IT'S ABOUT  
21 270,000 BUCKS.

22 SECOND, HIS LOSS OF EARNINGS AND  
23 EARNING CAPACITY, NOT QUITE AS EASY.

24 YOU ARE GOING TO HAVE MR. BOEKEN'S  
25 TAX RETURNS. YOU ARE ALSO GOING TO HAVE MR.  
26 BOEKEN'S, A COUPLE DOCUMENTS OUT OF A BANKRUPTCY  
27 PETITION.

28 AND IN THAT DOCUMENT FOR THE

1 BANKRUPTCY PETITION, IT STATES WHAT HIS INCOME WAS  
2 FOR A COUPLE OF YEARS WHEN WE DON'T HAVE TAX  
3 RETURNS FOR.

4 SO IN OTHER WORDS, I DON'T KNOW THE  
5 EXACT YEARS BUT YOU LOOK IN THE BANKRUPTCY PAPERS  
6 AND IT SAYS FOR YEAR "X," HERE'S WHAT I MADE, YEAR  
7 "Y," HERE'S WHAT I MADE. AND THEN AFTER THAT, FOR  
8 MOST OF THE YEARS, THERE ARE TAX RETURNS.

9 SO YOU LOOK AT THAT STUFF, AND WE  
10 HAD, I HAD MY OWN ACCOUNTANT CAME IN HERE. AND I  
11 ALSO HAD ELVIS MENDEZ COME IN HERE. MR. MENDEZ FOR  
12 A COUPLE REASONS, BUT RIGHT NOW FOR THE REASON I AM  
13 ABOUT TO DESCRIBE.

14 THERE WERE TWO YEARS IN THERE WITH  
15 THE TAX RETURNS. YOU WILL JUST SEE THEM JUST LAY  
16 THEM OUT AND THESE TWO STAND OUT LIKE SORE THUMBS.  
17 BECAUSE MOST OF THESE TAX RETURNS ARE LIKE 220,000,  
18 \$237,000, \$225,000. AND IT'S ALL IN THAT RANGE  
19 RIGHT IN THERE.

20 ONE OF THEM, I AM NOT POSITIVE, BUT  
21 I THINK IT'S FOR '96 IS \$100,000.

22 SO ELVIS MENDEZ WAS IN HERE. THEY  
23 USED TO WORK TOGETHER. THEY STARTED OUT AT TEASE  
24 SAME COMPANIES WHEN THEY GOT INTO THIS OIL AND GAS  
25 LEASING AND OIL AND GAS WELL INVESTMENT. AND THEY  
26 BOTH WENT OUT ON THEIR OWN AND THEY BOTH STARTED  
27 THEIR OWN COMPANIES AND THEY ARE BUDDIES.

28 THEY TRIED, YOU KNOW, THEY HAVE

1 GONE AS FAR AS TO GO TOGETHER TO LOOK AT OFFICE  
2 SPACE TOGETHER BECAUSE THEY ARE THINKING ABOUT IF  
3 NOT PARTNERING UP, AT LEAST SHARE SPACE. AND  
4 ALTHOUGH THEY WALKED RIGHT UP TO THE EDGE SEVERAL  
5 TIMES, LIKE UP TO THE ALTER, THEY DIDN'T DO THAT.  
6 IT JUST DIDN'T HAPPEN.

7 BUT THEY ARE IN THE SAME BUSINESS.  
8 THEY FLY DOWN TO TEXAS TOGETHER TO LOOK AT THESE  
9 WELLS. THEY GO TO VEGAS TOGETHER TO GO TO COMPUTER  
10 SHOWS AND STUFF LIKE THAT.

11 ELVIS MENDEZ SAID THAT THEY BOTH  
12 GOT INTO A DEAL AND THEY PUT THEIR INVESTORS INTO A  
13 DEAL IN ORDER TO INVEST IN A. T. M MACHINES. AND  
14 THE DEAL WENT SOUTH. IT DIDN'T WORK OUT. THERE  
15 WAS A LOT OF MONEY LOST.

16 NOW, THESE INVESTORS HAVE TO BE  
17 KEPT HAPPY.

18 AND SO BOTH ELVIS MENDEZ AND  
19 RICHARD BOEKEN DECIDED THEY WOULD MAKE THE  
20 INVESTORS HAPPY BY EATING THESE LOSSES.

21 AND ELVIS MENDEZ SAID, AND I AM NOT  
22 POSITIVE NOW, BUT THERE'S A TRANSCRIPT IF YOU WANT,  
23 BUT HE THINKS IT WAS AROUND '96.

24 I AM JUST SIMPLY TELLING YOU THAT  
25 IF MR. BOEKEN LOST MONEY ON A. T. M 'S AND HE DECIDED  
26 TO EAT THE LOSSES, FINE, THAT'S GOOD. I AM NOT  
27 ASKING FOR ANY COMPENSATION FOR THAT.

28 I AM SIMPLY EXPLAINING WHY THAT ONE

1 YEAR WAS A DOWN YEAR.

2 SO ONE OF THOSE TWO YEARS THAT  
3 STOOD OUT, INVESTED IN A.T.M.'S, TURNED OUT TO BE  
4 BAD. THEY DIDN'T WANT THEIR INVESTORS TO EAT IT.  
5 SO THEY AGREED TO EAT IT THEMSELVES.

6 AND THEN THE SECOND YEAR WAS 1998.

7 AND IN THAT YEAR, THERE WAS A TAX  
8 RETURN FOR, YOU KNOW, IT'S -- YOU WILL SEE IT, IT'S  
9 LIKE 70,000 OR 37,000. BUT IT'S WAY ABOVE. AND IT  
10 DIDN'T LOOK RIGHT TO ME. AND THAT'S WHEN I ASKED  
11 BURNEY LEWAK, THE EVIDENCE IS HERE THAT HE'S MY  
12 PERSONAL ACCOUNTANT. HE DID A FAVOR, TAX SEASON,  
13 TO GO THROUGH ALL THIS STUFF AND FIND OUT WHAT'S  
14 WHAT.

15 AND HE WENT THROUGH ALL THE BOXES  
16 AND HE DID ALL THE STUFF AND HE CAME IN HERE AND HE  
17 TOLD YOU WHAT HE THOUGHT THE INCOME, THE REAL TRUE  
18 INCOME WAS AND THAT IT WAS GOING TO BE FILING AN  
19 AMENDED HAD RETURN AND IT WAS, IT WAS LIKE  
20 \$170,000.

21 WHAT YOU WANT TO DO WITH THIS SET  
22 OF FACTS, I AM NOT QUITE SURE.

23 WHEN DOCTOR FORMUSIS, HE'S THE  
24 ECONOMIST, CAME IN HERE TO GIVE A BOTTOM LINE  
25 NUMBER, HE TOOK ALL OF THE FIGURES RIGHT OFF OF THE  
26 PAPERS, ALL THE TAX RETURNS, THE YEAR HE MADE  
27 100,000, THAT'S WHAT HE MADE.

28 AND ALL THE OTHER YEARS HE TOOK

1 THEM RIGHT OFF THE TAX RETURNS EXCEPT FOR ONE YEAR  
2 AND THE ONE YEAR HE DIDN'T TAKE IT OFF THE TAX  
3 RETURN WAS THE YEAR THAT BURNEY LEWAK TALKED ABOUT.

4 TO ME, IT'S NOT A MAJOR ISSUE IF  
5 MR. BOEKEN'S COMPENSATION FOR THAT YEAR IS 173 OR  
6 IS 73 OR WHATEVER. IN THE CONTEXT OF WHAT THIS  
7 CASE IS, AND WHAT MR. BOEKEN'S DAMAGES IS AND WHAT  
8 I AM ABOUT TO TALK ABOUT, IT'S NOT A HUGE ISSUE.

9 BUT I HAVE TAKEN THIS TIME TO  
10 EXPLAIN THE FLOW OF THE INCOME THROUGH THE  
11 WITNESSES AND HOW IT WORKED.

12 HE WAS A SUCCESSFUL BUSINESS MAN.

13 AND YOU KNOW, WE FOLLOWED, THROUGH  
14 HIS TESTIMONY, THROUGH HIS WIFE'S TESTIMONY AND  
15 SOME TESTIMONY, THAT LIVING IN AN APARTMENT IN  
16 SANTA MONICA, AND GOING FROM THERE TO PACIFIC  
17 PALISADES AND GOING FROM THERE TO TOPANGA AND SHE  
18 SAID HIS LOVE WAS BUSINESS.

19 THAT'S ONE OF THE THINGS THAT  
20 ATTRACTED HER TO HIM I GUESS NOT SURPRISING. HER  
21 DAD WAS A BUSINESS MAN. AND THAT'S WHERE SHE --  
22 SHE GREW UP IN THAT KIND OF ENVIRONMENT.

23 SHE LOVED HEARING POWERFUL RICHARD  
24 DO BUSINESS ON THE PHONE.

25 ANYWAY, THE GUY WAS NOT BORN WITH A  
26 SILVER SPOON IN HIS MOUTH. HE WORKED HARD, AND HE  
27 WAS SUCCESSFUL. AND HE WAS MAKING DARN GOOD MONEY.

28 LIKE HE WILL NEVER MAKE ANY MORE.

1                   AND THE LOSS OF EARNINGS PAST, AND  
2 EARNING CAPACITY THAT DR. FORMUZIS TOLD YOU ABOUT  
3 IS SOMEPLACE IN THE VICINITY OF 2.1 MILLION  
4 DOLLARS.

5                   PAST IS LIKE \$450,000 IN ROUND  
6 NUMBERS. AND THE FUTURE, IT'S SOMETHING LIKE 1.7  
7 MILLION DOLLARS.

8                   THIS ASSUMES HE WOULD HAVE STOPPED  
9 WORKING WHEN HE WAS, I THINK, 66 AND A HALF YEARS  
10 OLD. SO YOU WANT TO PUT 66, 67.

11                   BUT HE DIDN'T WANT TO QUIT TOTALLY,  
12 BUT THAT'S WHERE WE STOPPED.

13                   AND THAT'S WHERE THE NUMBER COMES  
14 FROM

15                   SO TO COMPENSATE MR. BOEKEN,  
16 MEDICAL EXPENSES, LOSS OF EARNINGS, LOSS OF EARNING  
17 CAPACITY IN THE FUTURE.

18                   IT WAS BROUGHT OUT HERE THAT THE  
19 OIL AND GAS BUSINESS IS A RISKY BUSINESS, OKAY.

20                   AND IT WAS ALSO BROUGHT OUT HERE,  
21 AND I DON'T WANT TO MAKE ANYONE UNHAPPY WITH  
22 RICHARD BOEKEN OR ELVIS MENDEZ, BUT THE ENERGY  
23 BUSINESS IS NOT A VERY BAD BUSINESS TO BE IN  
24 NOWADAYS, UNFORTUNATELY FOR US CONSUMERS.

25                   BUT THERE IS A LINE OF EARNINGS  
26 FROM WHEN HE STARTED OUT AND HIS INCOME STARTS AT  
27 AROUND \$75,000, AND IT JUST GOES STRAIGHT UP.  
28 EXCEPT FOR THOSE TWO LITTLE PROBLEMS THAT I JUST

1 MENTIONED.

2 SO HE SHOULD BE COMPENSATED FOR HIS  
3 LOSS OF EARNINGS.

4 AND THEN THERE' S SOMETHING CALLED  
5 GENERAL DAMAGES.

6 THERE IS A JURY INSTRUCTION ON  
7 THAT, PAIN, SUFFERING, FEAR, ANXIETY, ALL THESE  
8 WORDS, AND I AM NOT GOING TO GO THROUGH THEM  
9 HIS DEMEANOR AND HIS FACIAL  
10 EXPRESSIONS AND HIS SIZE, AND RECOUNTING WHAT  
11 HAPPENED THROUGH HIS DIAGNOSIS, AND WAITING FOR THE  
12 RESULTS OF THE PATHOLOGY TEST, AND WHAT HAPPENED TO  
13 HIM ALONG THE LINE, I KNOW YOU HEARD THAT A MONTH  
14 AGO, IT' S THERE IF YOU WANT TO HEAR IT AGAIN. BUT  
15 IT SPEAKS MORE ELOQUENTLY AND MORE GENUINELY THAN I  
16 EVER COULD. AND I HAVE BEEN DOING THIS A LONG  
17 TIME, WAY BETTER.

18 HE TAKES HIS SON TO THE DOCTOR.  
19 WHILE HE IS THERE, HE HAS BRONCHITIS. THIS IS NOT  
20 HIS DOCTOR. HE SAYS, HEY, WHAT ABOUT THIS COUGH?

21 THE DOCTOR SAYS, AS LONG AS YOU ARE  
22 HERE, LET' S TAKE AN X-RAY, UH-OO, SOMETHING I DON' T  
23 LIKE. LET' S GO GET AN M R. I. , UH-OO, SOMETHING I  
24 REALLY DON' T LIKE. I WANT YOU TO GO SEE A  
25 SPECIALIST.

26 AND SO HE HAS A BIOPSY AND HE IS  
27 LYING THERE ON THIS TABLE, HE IS HAVING A BIOPSY,  
28 AND THERE' S THIS FROZEN SECTION, AND IT' S POSITIVE,

1 AND THERE GOES PART OF HIS LUNG.

2 AND HE IS TOLD, YOU KNOW WHAT, YOUR  
3 ODDS ARE "X," AND I FORGOT WHAT HE SAID, IT WAS  
4 SOMETHING LIKE 70 PERCENT, SOMETHING LIKE THAT, NO  
5 RETURN, IF IT HASN'T SPREAD TO YOUR LYMPH NODES.

6 SO LET'S WAIT.

7 SO, YOU KNOW, IT'S THE WORST THING.  
8 IT'S, I GUESS, THE THING THAT IS TERRIBLE.

9 SOME OF US HAVE THOUGHT ABOUT IT.  
10 SOME OF US HAVE HAD TO THINK ABOUT IT. SOME OF US  
11 HAVE NEVER THOUGHT ABOUT IT. BUT HE HAS TO NOW  
12 WAIT TO HEAR WHAT SOME DOCTOR FINDS ON A SLIDE,  
13 UNDER A MICROSCOPE, IN SOME WINDOWLESS ROOM ACROSS  
14 TOWN THAT'S GOING TO DECIDE HIS FATE.

15 AND WHO KNOWS WHAT KIND OF  
16 EMOTIONAL AND MENTAL DEFENSES ARE PUT ON DURING  
17 THAT TIME. BUT THE COIN WAS FLIPPED AND IT CAME  
18 DOWN THE WRONG WAY.

19 AND WE KNOW FROM THE TESTIMONY IN  
20 THIS CASE, THAT COIN ALMOST ALWAYS COMES DOWN THE  
21 WRONG WAY. IT IS A FATAL DISEASE.

22 BUT HE DIDN'T KNOW. SO HE HOPED  
23 AND HE HOPED AND HE HOPED. AND HE WAS GIVEN THE  
24 NEWS THAT HIS LYMPH NODES WERE INVOLVED. AND NOW  
25 HIS ODDS WERE DOWN TO, AGAIN, I CAN'T QUOTE  
26 EXACTLY, BUT I THINK IT'S LIKE 20 TO 30 PERCENT IS  
27 WHAT HE SAID.

28 CHEMOTHERAPY HAD TO BE CUT SHORT.

1 THE LAST DOSE HE COULDN' T TAKE.  
2 HE HAD ALL THESE UNBELIEVABLE SIDE  
3 EFFECTS.

4 DR. SARNA CAME IN HERE AND SAID,  
5 YEAH, THAT' S WHAT CHEMOTHERAPY IS ALL ABOUT. YOU  
6 SIT SOMEONE DOWN AND HOOK THEM UP TO A BOTTLE AND  
7 STICK IT IN YOUR ARM AND WE FEED THEM POISON FOR  
8 SIX HOURS. AND THAT POISON KILLS HIS CANCER CELLS,  
9 HOPEFULLY. BUT IT DOESN' T HELP THE REST OF YOU ALL  
10 THAT MUCH, EITHER.

11 SO HE HAD FIVE OF THOSE. AND HE  
12 HAD SOME RADIATION THERAPY.

13 AND WE HEARD FROM HIM, WE HEARD  
14 FROM HIS WIFE. WE HEARD A LITTLE BIT FROM THE  
15 STEPSON.

16 WE HEARD FROM DR. SARNA ABOUT SOME  
17 OF THOSE SIDE EFFECTS.

18 AND HE STOPPED SMOKING. HE STOPPED  
19 SMOKING (INDICATING).

20 AND THEN IN AUGUST OF 2000, HE  
21 FOUND OUT THAT HE HAD A METASTASIS TO HIS HOW BACK.

22 AND MORE TREATMENT, DEBILITATING  
23 TREATMENT.

24 HE IS TRYING TO KEEP HIS BUSINESS  
25 TOGETHER. HE IS TRYING TO KEEP HIS LIFE TOGETHER.  
26 HE IS TRYING TO PUT ON A BRAVE FRONT FOR HIS KID.  
27 HE WAS NEVER BEDRIDDEN, EVEN THOUGH THEY TOOK OUT  
28 PART OF HIS LUNG, HE WAS NEVER BEDRIDDEN. HE WAS

1 IN A CHAIR, BECAUSE HE WANTED TO BE TOUGH FOR HIS  
2 KID.

3 HE STARTED SNEAKING CIGARETTES FROM  
4 HIS WIFE. IT HAS METASTASIZED TO HIS LOW BACK.

5 WHO KNOWS WHAT KIND OF STORIES  
6 PEOPLE TELL THEMSELVES ABOUT THEIR LIVES. BUT WHEN  
7 HE REPORTED TO THE DOCTOR, I HAVE THESE SIDE  
8 EFFECTS, AND THIS IS AROUND CHRISTMASTIME OF 2000,  
9 THIS IS JUST BEFORE THOSE DEPOSITIONS WERE TAKEN,  
10 DOCTOR, I AM HAVING SIDE EFFECTS FROM THIS  
11 TREATMENT, VISION PROBLEMS, BALANCE PROBLEMS,  
12 BUMPING INTO STUFF, THE DOCTOR THOUGHT, THAT'S WHAT  
13 YOU THINK, PROBLEMS FROM THE TREATMENT, AND ORDERED  
14 AN M R. I. WHICH YOU HAVE SEEN HERE.

15 AND ALL THOSE PROBLEMS WERE CAUSED  
16 BY BRAIN CANCER.

17 AND WHEN MR. BOEKEN HEARD THAT, OF  
18 COURSE, HE WAS CRUSHED.

19 AND IF THERE WAS EVER ANY DOUBT  
20 ABOUT WHO WAS ADDICTED TO WHAT, HE WALKED OUT OF  
21 THAT PLACE AND WENT BANANAS BECAUSE IT DOESN'T  
22 MATTER ANY MORE.

23 ANYWAY, FOR WHAT HE HAS BEEN  
24 THROUGH SINCE OCTOBER OF 1999, AND FOR WHAT HE IS  
25 GOING THROUGH NOW, HE CAN'T EVEN ATTEND HIS OWN  
26 TRIAL. AND FOR WHAT HE IS GOING TO GO THROUGH FOR  
27 HOWEVER LONG HE IS, BEFORE THE FATAL DISEASE SLAYS  
28 HIM, AND FOR THE LAST OF 20 YEARS 21.4 YEARS IN THE

1 FUTURE, 21.4 YEARS FROM NOW, 2001, 2022, IT'S LIKE  
2 AROUND 2022, '23, THAT'S A LONG, LONG, LONG TIME  
3 THAT HE IS NOT GOING TO HAVE, WITH HIS WIFE, WITH  
4 HIS KID. THINGS CHANGE SO FAST IT IS ALMOST  
5 IMPOSSIBLE FOR ME TO TELL YOU HOW LONG THAT IS.

6 BUT I HAVE A BETTER SHOT AT IT BY  
7 FLIPPING IT TO SHOW YOU HOW LONG 22 YEARS IS.

8 HE WAS DIAGNOSED AT THE END OF  
9 1999, LET'S GO BACK TO THE 1980'S, 1977 AND A HALF.

10 NO ONE HAD ANY CELL PHONES. NO ONE  
11 HAD ANY COMPUTER. NO ONE HAD A FAX. THESE THINGS  
12 DIDN'T EXIST.

13 JIMMY CARTER WAS THE PRESIDENT OF  
14 THE UNITED STATES. VIETNAM WAR HAD ENDED FOR TWO  
15 YEARS.

16 DR. FARONE WAS IN HIS FIRST YEAR OF  
17 PHILIP MORRIS.

18 THAT'S A LONG TIME, LONG, LONG,  
19 LONG TIME.

20 ANYWAY, YOUR COMPENSATION FOR  
21 GENERAL DAMAGES HAS TO COVER SINCE OCTOBER OF 1999  
22 AND FOR HIS LOSS OF ALL OF THE FUTURE TIME AND HIS  
23 LIFE EXPECTANCY.

24 REMEMBER THAT, BECAUSE, THERE'S A  
25 LOT OF HUMAN LIFE THAT'S BEEN DISCUSSED IN THIS  
26 CASE. THAT'S AROUND TEN MILLION DOLLARS, AROUND  
27 TEN MILLION. I SAT DOWN, AND I AM PRETTY GOOD AT  
28 MATH, AND I SAT DOWN AND TRIED TO FIGURE IT OUT,

1 HOW MUCH HERE, WHAT THERE, WHAT THERE, AND I THREW  
2 IN THE TOIL TOWEL, THAT'S MY SUGGESTION.

3 AND I THOUGHT ABOUT SUGGESTING A  
4 HIGHER NUMBER. I SAID, WELL, I DON'T WANT THEM TO  
5 THINK I AM GREEDY. I THOUGHT ABOUT SUGGESTING A  
6 LOWER NUMBER. I DON'T WANT TO STIFF MY CLIENT.

7 THERE'S NOTHING MAGIC ABOUT THAT.  
8 BUT THAT'S THE NUMBER.

9 SO THAT'S COMPENSATORY DAMAGES.

10 NOW, HERE'S A SWITCH, AND I WANT TO  
11 TALK ABOUT WHAT'S CALLED PUNITIVE OR EXEMPLARY  
12 DAMAGES.

13 THIS IS NOT TO COMPENSATE  
14 MR. BOEKEN. I AM NOT TALKING ABOUT MR. BOEKEN ANY  
15 MORE.

16 I AM TALKING ABOUT PHILIP MORRIS.

17 BUT I'D LIKE TO, I SAID THIS IN MY  
18 OPENING STATEMENT SO I WOULD JUST LIKE TO REPEAT  
19 IT.

20 PHILIP MORRIS ON TRIAL, RICHARD  
21 BOEKEN'S ON TRIAL?

22 I PUT PHILIP MORRIS ON TRIAL.

23 PHILIP MORRIS PUTS RICHARD BOEKEN ON TRIAL.

24 RICHARD BOEKEN'S SIN WAS THAT HE  
25 BELIEVED PHILIP MORRIS. THAT IS HIS SIN. HE  
26 BELIEVED THEM

27 AND I AM GOING TO TALK ABOUT THAT.

28 IN FACT, I AM GOING TO LET SOMEONE

1 ELSE TALK ABOUT THEM, THE PEOPLE THAT WROTE THESE  
2 JURY INSTRUCTIONS SAY.

3 "IF YOU FIND THAT THE  
4 PLAINTIFF SUFFERED ACTUAL INJURY, OR  
5 HARM OR DAMAGE CAUSED BY DEFENDANT,  
6 YOU MAY THEN CONSIDER WHETHER YOU  
7 SHOULD AWARD PUNITIVE DAMAGES AGAINST  
8 DEFENDANT FOR THE SAKE OF EXAMPLE OR  
9 BY WAY OF PUNISHMENT. "

10 LET ME STOP THERE FOR A SECOND. I  
11 CALL THESE PUNITIVE AND EXEMPLARY, THIS SAYS  
12 EXAMPLE AND PUNISHMENT.

13 BUT YOU GET THE DRIFT. IT'S TO  
14 PUNISH, BUT IT'S ALSO MAKING AN EXAMPLE OF. SO  
15 PEOPLE COMING DOWN THE LINE, LATER ON, IF THEY ARE  
16 INCLINED TO TAKE THE SAME COURSE, TO HAVE A LITTLE  
17 GUIDELINE TO WHAT AWAITS THEM, WHOEVER DECIDES TO  
18 PULL THIS KIND OF STUNT A AGAIN, THEY WILL KNOW  
19 WHAT AWAITS THEM

20 "YOU MAY, IN YOUR  
21 DISCRETION -- "

22 AND I WANT TO STOP AGAIN,  
23 "DISCRETION" MEANS THAT. YOU MAY FIND, YOU MAY  
24 FIND PHILIP MORRIS IS THE MOST DESPICABLE  
25 ORGANIZATION ON THE FACE OF THE EARTH BUT YOU MAY  
26 DECIDE, IN YOUR DISCRETION, TO DO NOTHING ABOUT IT.  
27 THAT IS YOUR CHOICE. THAT'S YOUR CHOICE.

28 "YOU MAY, IN YOUR

1 DISCRETION, AWARD SUCH DAMAGES IF, BUT  
2 ONLY IF, YOU FIND BY CLEAR AND  
3 CONVINCING EVIDENCE THAT DEFENDANT WAS  
4 GUILTY OF OPPRESSION, FRAUD OR MALICE  
5 IN THE CONDUCT ON WHICH YOU BASE YOUR  
6 FINDING OF LIABILITY. "

7 SO BEFORE I TALKED ABOUT BURDEN OF  
8 PROOF IN THIS CASE, RIGHT HERE, PUNITIVE DAMAGES,  
9 RICHARD BOEKEN, THROUGH ME, HAS A DIFFERENT BURDEN  
10 OF PROOF.

11 FOR COMPENSATION, FOR EVERYTHING WE  
12 HAVE TALKED ABOUT SO FAR, PREPONDERANCE OF THE  
13 EVIDENCE. 51, 49.

14 NO ONE'S LIFE IS BEING TAKEN. NO  
15 ONE'S LIBERTY IS BEING TAKEN.

16 PUNITIVE DAMAGES ARE SOMEPLACE THIS  
17 SIDE OF BEYOND A REASONABLE DOUBT.

18 NOW WE ARE NOT COMPENSATING, THIS  
19 IS PUNISHMENT.

20 AND IT'S FAIR. IT'S FAIR THAT THE  
21 BURDEN OF PROOF BE STRONGER.

22 BECAUSE NOW IT'S NOT JUST  
23 COMPENSATION, IT'S PUNISHMENT. SO IT'S FAIR THAT  
24 RICHARD BOEKEN, THREW ME, HAS TO PROVE STRONGER  
25 THAT THEY DESERVE TO BE PUNISHED.

26 AND THE WAY I VISUALIZE IT IS LIKE  
27 THIS, AND THIS IS JUST ME, IF THIS IS WHERE WE  
28 START, EVEN, DEAD EVEN, 50-50, AND WE GOT TO GO TO

1 THIS TO TAKE SOMEONE' S LIFE AND LIBERTY, 99 TO 1,  
2 MY SHORTHAND, AND WE GOT TO GO THIS (INDICATING)  
3 FOR COMPENSATION 51, 49, SOMEPLACE IN THE MIDDLE  
4 THERE IS CLEAR AND CONVINCING EVIDENCE.

5 AND I DON' T KNOW IF THERE' S A  
6 NUMBER FOR IT.

7 I KNOW THERE' S A 51, 49. BUT AFTER  
8 THAT, I DON' T KNOW

9 BUT CLEAR AND CONVINCING EVIDENCE  
10 IS BETWEEN THESE TWO EXTREMES.

11 SO THE BURDEN HERE IS BY CLEAR AND  
12 CONVINCING EVIDENCE.

13 THE PEOPLE WHO WRITE THESE LAWS TO  
14 BE WRITTEN, TO BE GIVEN TO THE JURY, HERE' S WHAT  
15 THEY SAY.

16 "CLEAR AND CONVINCING  
17 EVIDENCE MEANS EVIDENCE OF SUCH  
18 CONVINCING FORCE THAT IT DEMONSTRATES,  
19 IN CONTRAST TO OPPOSING EVIDENCE, A  
20 HIGH PROBABILITY OF TRUTH OF THE FACTS  
21 FOR WHICH IT IS OFFERED AS PROOF.  
22 SUCH EVIDENCE REQUIRES A HIGHER  
23 STANDARD OF PROOF THAN PROOF BY  
24 PREPONDERANCE OF THE EVIDENCE. YOU  
25 SHOULD CONSIDER ALL OF THE EVIDENCE  
26 BEARING UPON EVERY ISSUE REGARDLESS OF  
27 WHO PRODUCED IT. "

28 SO THIS REQUIRES MORE PROOF THAN

1 51/49. IT DOESN'T DEFINE IT FURTHER. BUT IT'S GOT  
2 TO BE A HIGH FRONT, NOT LIKE PUTTING SOMEONE IN  
3 PRISON, NOT BEYOND A REASONABLE DOUBT, BUT A HIGH  
4 PROBABILITY.

5 AND I ACCEPT THAT BURDEN, EAGERLY.  
6 SO FOR A HIGH PROBABILITY OF TRUTH,  
7 HERE'S WHAT HAS TO BE SEEN, SHOWN. THAT PHILIP  
8 MORRIS WAS GUILTY OF OPPRESSION, FRAUD OR MALICE.

9 "MALICE MEANS CONDUCT WHICH  
10 IS INTENDED BY THE DEFENDANT TO CAUSE  
11 INJURY TO PLAINTIFF, WHICH WE DON'T  
12 CLAIM OR, THIS, WE DO CLAIM  
13 DESPICABLE CONDUCT WHICH IS CARRIED ON  
14 BY THE DEFENDANT WITH A WILLFUL AND  
15 CONSCIOUS DISREGARD FOR THE RIGHTS AND  
16 SAFETY OF OTHERS. "

17 SO THE WORDS THERE ARE WILLFUL AND  
18 CONSCIOUS DISREGARD FOR THE RIGHTS AND SAFETY OF  
19 OTHERS.

20 READ THE DOCUMENTS.  
21 "A PERSON ACTS WITH  
22 CONSCIOUS DISREGARD OF THE RIGHTS OR  
23 SAFETY OF OTHERS WHEN HE OR SHE IS  
24 AWARE OF THE PROBABLE DANGEROUS  
25 CONSEQUENCES OF HIS OR HER CONDUCT AND  
26 WILLFULLY AND DELIBERATELY FAILS TO  
27 AVOID THOSE CONSEQUENCES. "

28 READ THE DOCUMENTS, PLEASE.

1                   AWARE, AWARE, AWARE. DO NOTHING,  
2 DO NOTHING, DO NOTHING. COVER UP, COVER UP, COVER  
3 UP. MISINFORMATION, DISINFORMATION,  
4 COUNTER-INFORMATION.

5                   LET THE LAWYERS RUN THE SHOW  
6 SELECT OUR PROGRAMS FOR LITIGATION PURPOSES.  
7 SELECT OUR PROGRAMS FOR PUBLIC RELATIONS PURPOSES.  
8 SELECT OUR PROGRAMS FOR ANY PURPOSES OTHER THAN  
9 SAFETY AND SCIENCE. SCIENTIFIC RESEARCH ABDICATED  
10 TO THE LAWYERS. NO INVOLVEMENT ON THE PART OF  
11 SCIENCE OR BUSINESS. LORILLARD'S MANAGEMENT IS  
12 OPPOSED TO TOTAL MANAGEMENT BEING IN THE HANDS OF  
13 COMMITTEE LAWYERS. IT'S REMINISCENT OF THE LATE  
14 '60'S.

15                   WE ARE DIGGING OUR OWN GRAVE IF WE  
16 DO SCIENTIFIC RESEARCH.

17                   AND YOU KNOW WHAT, THERE'S A BUNCH  
18 OF SMALL ONE'S. YOU HAVE HEARD IT ENOUGH, SEEN IT  
19 ENOUGH. YOU ARE GOING TO HAVE IT ENOUGH.

20                   PHILIP MORRIS DID NOT LIKE  
21 BIOMEDICAL RESEARCH.

22                   PHILIP MORRIS DIDN'T DO BIOMEDICAL  
23 RESEARCH.

24                   PHILIP MORRIS NEVER TESTED ITS  
25 MARLBORO CIGARETTE UNTIL THE YEAR LATE 2000.

26                   PHILIP MORRIS REPEATEDLY LIED TO  
27 ITS CUSTOMERS, POPULATION, THE CONGRESS, PHILIP  
28 MORRIS DISRESPECTED EVERYTHING THERE WAS EXCEPT FOR

1 ONE THING, WHICH IS THE BOTTOM LINE.

2 AND WHEN THE CHOICE CAME BETWEEN  
3 MONEY AND HEALTH, IT WAS MONEY. AND WHEN THE  
4 CHOICE CAME BETWEEN MONEY AND DEATH, IT WAS MONEY.

5 AND WHEN THE CHOICE CAME BETWEEN  
6 MONEY AND SAFETY, IT WAS MONEY. AND WHEN THE  
7 CHOICE CAME BETWEEN MONEY AND THE RIGHTS OF OTHERS,  
8 IT WAS MONEY.

9 AND WHEN THE CHOICE CAME BETWEEN  
10 ANYTHING IN THE WORLD AND MONEY, IT WAS MONEY.

11 AND IF YOU DON'T THINK I AM RIGHT,  
12 I AM GOING TO QUOTE MR. BIBLE IN JUST A BIT.

13 THAT'S OPPRESSION, THAT'S MALICE.  
14 SO WE HAVE TO SHOW EITHER MALICE OR  
15 OPPRESSION.

16 OPPRESSION IS DESPICABLE CONDUCT  
17 THAT SUBJECTS A PERSON TO CRUEL AND UNUSUAL --  
18 UNJUST HARDSHIP IN CONSCIOUS DISREGARD OF THAT  
19 PERSON'S RIGHTS.

20 "DESPICABLE CONDUCT IS  
21 CONDUCT WHICH IS SO -- PICK ONE, ANY  
22 ONE GETS YOU WHERE WE ARE GOING. BUT  
23 IN THIS PARTICULAR CASE. THEY ALL  
24 FIT, "VILE, BASE, CONTEMPTIBLE,  
25 MISERABLE, WRETCHED OR LOATHSOME THAT  
26 IT WOULD BE LOOKED DOWN UPON AND  
27 DESPISED BY ORDINARY, DECENT PEOPLE. "

28 ONE OF THE REMARKABLE THINGS THAT

1 WE HAVE HEARD HERE FROM MS. MERLO, ONE OF THE NINE  
2 SENIOR MANAGEMENT TEAM PEOPLE AT PHILIP MORRIS  
3 U. S. A. TOBACCO, IS THAT WHEN THEY DO ALL OF THEIR  
4 FOCUSING AND POLLING AND RESEARCHING AND TEST  
5 MARKETING, THE PEOPLE COME BACK AND SAY, WE THINK  
6 YOUR COMPANY, DO YOU WANT TO HEAR ABOUT LOOKED DOWN  
7 UPON AND DESPISED? WE THINK YOUR COMPANY IS THE  
8 DEVIL LIVE ON EARTH. OR, PUNITIVE DAMAGE IF MALICE  
9 IS SHOWN OR OPPRESSION IS SHOWN OR FRAUD.

10 "FRAUD MEANS AN INTENTIONAL  
11 MISREPRESENTATION, DECEIT OR  
12 CONCEALMENT OF A MATERIAL, " MATERIAL  
13 MEANING FOR "FACT KNOWN TO PHILIP  
14 MORRIS WITH THE INTENTION ON THE PART  
15 OF PHILIP MORRIS OF THEREBY CAUSING  
16 INJURY. THE LAW PROVIDES NO FIXED HAD  
17 STANDARDS -- " INJURY MEANING DAMAGE.  
18 "THE LAW PROVIDES NO FIXED STANDARDS  
19 AS TO THE AMOUNT OF SUCH PUNITIVE  
20 DAMAGES, BUT LEAVES THE AMOUNT TO THE  
21 JURY'S SOUND DISCRETION, EXERCISED  
22 WITHOUT PASSION OR PREJUDICE. "

23 YESTERDAY I FLASHED ABOUT FIVE OR  
24 SIX OF THESE FRAUD JURY INSTRUCTIONS UP ON THE  
25 ELMD. I DID IT QUICKLY. PLEASE TAKE A LOOK AT  
26 THEM IT'S COMMON SENSE. WHERE FRAUD, DIFFERENT  
27 KINDS OF FRAUD, BASICALLY IS SAYING ONE THING AND  
28 YOU KNOW IT'S NOT TRUE, YOU ARE SAYING ONE THING

1 WHEN YOU GOT NO REASON TO SAY IT, BECAUSE YOU  
2 SUSPECT IT'S NOT TRUE, OR SAYING SOMETHING TO LURE  
3 SOMEONE IN. THE FRAUD IS BASICALLY CREATING DOUBT  
4 ABOUT THE HEALTH CHARGE WITHOUT ACTUALLY DENYING  
5 IT.

6 THAT'S ALL OF THESE KINDS OF FRAUD  
7 IN A NUTSHELL.

8 IN ARRIVING AT ANY AWARD FOR  
9 PUNITIVE DAMAGES, YOU ARE TO CONSIDER THE FOLLOWING  
10 THREE THINGS: "ONE, THE REPREHENSIBILITY OF THE  
11 CONDUCT. "

12 IN OTHER WORDS, ARE WE DEALING HERE  
13 WITH PURSE SNATCHERS OR ARE WE DEALING HERE WITH  
14 ROBBERS, OR ARE WE DEALING HERE WITH BURGLARRERS,  
15 OR ARE WE DEALING HERE WITH WHAT?

16 AND SO I AM SAYING TO THE JURY THAT  
17 600,000 PEOPLE IN THE LAST HUNDRED YEARS HAVE DIED  
18 IN AMERICAN WARS, 600,000 AMERICANS, AND I AM  
19 SAYING TO THE JURY THAT SINCE 1965, OR IN ROUND  
20 NUMBERS, 17 MILLION PEOPLE HAVE DIED PREMATURELY  
21 FROM TOBACCO IN THIS COUNTRY.

22 AND I AM SAYING TO THIS JURY THAT I  
23 CAN'T EVEN BEGIN, THIS IS SO FAR OFF OF THE SCALE,  
24 THAT I CAN'T REALLY TRUST THIS. I CAN'T BEGIN TO  
25 DESCRIBE IT.

26 THIS WAS ALL DONE FOR MONEY.

27 THIS IS THE 1994 DEAR SHAREHOLDER  
28 LETTER FROM MR. BIBLE.

1                   SECOND THING YOU HAVE GOT TO  
2 CONSIDER, THE AMOUNT OF PUNITIVE DAMAGES WHICH WILL  
3 HAVE A DETERRENT EFFECT ON THE DEFENDANT IN LIGHT  
4 OF ITS FINANCIAL CONDITION.

5                   AND THIS IS WHY, IN THIS PARTICULAR  
6 CASE, I CAUTIONED YOU EARLIER, PHILIP MORRIS'S  
7 WEALTH IS REALLY NOT TO BE CONSIDERED WHEN YOU  
8 THINK ABOUT COMPENSATING MR. BOEKEN.

9                   BUT IN THIS CASE, THAT IS PUT  
10 BEFORE THE JURY, BECAUSE IT'S SOMETHING THAT MUST  
11 BE CONSIDERED HERE. HOW MUCH PUNISHMENT WILL IT  
12 TAKE TO HAVE A DETERRENT EFFECT IN LIGHT OF THE  
13 DEFENDANT'S FINANCIAL CONDITION?

14                   IF I WAS GOING TO PUNISH OR MAKE AN  
15 EXAMPLE OF ONE OF MY KIDS, WHO MAKES A HECK OF A  
16 LOT LESS MONEY THAN I DO, THEN THE FINE THAT WOULD  
17 BE IMPOSED ON ONE OF MY KIDS WOULD BE A HECK OF A  
18 LOT LESS THAN IF I IMPOSED ON ME TO PREVENT, TO  
19 DETER FUTURE CONDUCT.

20                   THIS IS WHAT MR. JOHNSON TOLD US.

21                   THIS IS REVENUES.

22                   THIS GOES FROM '98 TO 2000.

23                   AND WHILE I -- JUST SO I DON'T  
24 FORGET IT, HE WAS ASKED BY MR. CARLTON, WELL, WHEN  
25 YOU ARE TELLING THE JURY ABOUT THESE NUMBERS AND  
26 PHILIP MORRIS'S FINANCIAL CONDITION, PHILIP MORRIS  
27 U. S. A. 'S, FINANCIAL CONDITION, MEANING YOU ARE  
28 TAKING INTO ACCOUNT LITIGATION AND SETTLEMENTS, MR.

1 JOHNSON TOLD YOU, TOTALLY UNCONTRADICTED, THAT  
2 PHILIP MORRIS HAS STATED IN ITS LATER SHAREHOLDER  
3 LETTERS AND ITS LATER FINANCIAL STUFF, WE HAVE, OUR  
4 PROFITS HAVE BEEN WAY UP SINCE THOSE SETTLEMENTS.

5 REMEMBER THAT. SETTLEMENTS,  
6 PROFITS WENT UP.

7 ANYWAY, HERE'S WHAT'S HAPPENED FROM  
8 1998 TO 2000, THIS IS DOMESTIC TOBACCO ALONE.  
9 THEIR OPERATING REVENUES HAVE SKYROCKETED.

10 THIS IS PROFITS. SAME PERIOD OF  
11 TIME. PHILIP MORRIS, U. S. A. , FROM 1998, I GUESS  
12 THAT'S THE PROOF OF THE PUDDING THERE, PROFITS HAVE  
13 GONE THROUGH THE ROOF.

14 I ALREADY SAID THAT BUT THIS IS NOT  
15 GOING TO BE IN THE JURY ROOM SO I SIMPLY GOT THAT  
16 FROM MULTIPLYING 400,000 BY THE NUMBER OF YEARS.

17 THE FINANCIAL CONDITION OF THE  
18 COMPANY THAT YOU MUST HAVE IN MIND IS NOT THE BIG  
19 PHILIP MORRIS PARENT COMPANY, NOT. IT IS PHILIP  
20 MORRIS U. S. A. , WHICH IS THE DOMESTIC TOBACCO  
21 COMPANY.

22 BECAUSE THE DOMESTIC TOBACCO  
23 COMPANY IS NOT TRADED ON THE NEW YORK STOCK  
24 EXCHANGE SEPARATELY. MR. JOHNSON FIGURED OUT  
25 SEVERAL DIFFERENT WAYS OF FIGURING ITS FINANCIAL  
26 CONDITION.

27 AND HERE'S HOW HE WENT ABOUT DOING  
28 THAT.

1                   FIRST, HE TALKED ABOUT THE DOMESTIC  
2 TOBACCO COMPANY, THAT'S THE DEFENDANT, THAT'S WHO  
3 WE ARE SUING HERE.

4                   FIRST HE TALKED ABOUT THEIR VERSION  
5 OF THE BIG COMPANY'S OVERALL REVENUES. AND HE  
6 SHOWED US THAT TOBACCO U. S. A. ACCOUNTS FOR ROUGHLY  
7 28 PERCENT OF THE BIG COMPANIES' REVENUES.

8                   AND YOU CAN SEE INTERNATIONAL  
9 TOBACCO AND INTERNATIONAL FOOD AND U. S. A. OR NORTH  
10 AMERICAN FOOD, IT'S ALL THERE. BUT WHAT HE DID IS  
11 HE TOOK THE PROPORTION OF REVENUES, AND REVENUES  
12 WERE 80 BILLION DOLLARS, IN ROUND NUMBERS, AND ON  
13 PROFITS HE DID THE SAME THING. AND THERE'S THE  
14 OVERALL PROFITS, TOBACCO U. S. A. , IS A THIRD, THE  
15 OVERALL DEAL, SOMETHING LIKE 16 BILLION DOLLARS,  
16 AND THE REASON HE DID THESE TWO THINGS, WE HAVE A  
17 THIRD ON ONE, 28 PERCENT ON THE OTHER.

18                  HE FIGURED THE MARKET  
19 CAPITALIZATION OF THE COMPANY THAT'S TRADED ON THE  
20 STOCK EXCHANGE AND THE MARKET CAPITALIZATION IS  
21 SIMPLY TAKING THE STOCK PRICE OUT THERE TODAY AND  
22 MULTIPLYING IT BY HOW MANY STOCKS ARE OUT THERE.  
23 AND YOU GET, ON THE DAILY HERE, 105 MILLION -- 105  
24 BILLION DOLLARS.

25                  SO DOING THESE TWO THINGS HERE, HE  
26 SAID, HEY, 28 PERCENT, 33 PERCENT, AND HE TOLD YOU  
27 THAT HE FIGURED THAT THE FINANCIAL CONDITION OF  
28 PHILIP MORRIS DOMESTIC TOBACCO, FIGURING IT THAT

1 WAY, WAS SOMEPLACE BETWEEN 30 ON THE ONE HAND AND  
2 35 BILLION DOLLARS. AND HE DIDN'T HAVE A FAVORITE.

3 BUT HE DID HAVE A FAVORITE IN  
4 ANOTHER WAY. AND THE OTHER WAY WAS TO TELL YOU  
5 THAT PHILIP MORRIS HAD JUST BOUGHT OUT THE NAME  
6 RIGHTS OF THREE TOBACCO COMPANIES, THREE TOBACCO  
7 BRANDS, CHESTERFIELD, L&M, AND THE THIRD ONE I  
8 FORGET, 300 MILLION BUCKS. AND THESE THREE BRAND  
9 NAMES ACCOUNTED FOR SOMETHING LIKE TWO-TENTHS, I  
10 MAY BE OFF BY A COUPLE TENTHS, BUT A COUPLE TENTHS  
11 OF ONE PERCENT OF THE MARKET.

12 AND HE SAID IF PHILIP MORRIS PAYS  
13 THIS MUCH FOR A COUPLE OF TENTHS OF ONE PERCENT OF  
14 THE MARKET, HERE'S WHAT THE MARKET IS WORTH.

15 PHILIP MORRIS'S SHARE, U. S. A. , 75  
16 BILLION DOLLARS.

17 AND HE SAID, IN HIS VIEW, THAT WAS  
18 THE FINANCIAL CONDITION, THAT WAS THE PROPER  
19 FINANCIAL CONDITION TO TAKE THAT INTO ACCOUNT FOR  
20 WHAT I AM GOING TO ASK YOU TO PUNISH AND DETER, 75  
21 BILLION DOLLARS.

22 ANYWAY, HE'S NUMBER 3. LET ME SAY  
23 SOMETHING ELSE FIRST.

24 JUST TO PUT THIS IN SOME KIND OF  
25 TERMS THAT WE CAN UNDERSTAND, WHAT I AM ABOUT TO  
26 SAY, LET'S SAY THE AVERAGE PERSON, JUST TO MAKE AN  
27 AVERAGE PERSON, JUST FOR THE HECK OF IT, MAKES  
28 \$50,000 A YEAR, WHICH THE AVERAGE PERSON DOES NOT,

1 AND LET'S COMPARE IT TO FIVE BILLION DOLLARS A  
2 YEAR, AND THE MULTIPLICATION FACTOR AS HUNDRED  
3 THOUSAND, SO IF THE AVERAGE PERSON GOES DOWNSTAIRS  
4 IN THE CAFETERIA HERE AND BUYS THIS CUP OF COFFEE  
5 FOR A BUCK, PHILIP MORRIS' EQUIVALENT TO THIS CUP  
6 OF COFFEE, IS \$100,000.

7 OR IF THE AVERAGE PERSON GOES DOWN  
8 TO THE PARKING GARAGE AND PAYS TEN BUCKS TO PARK, I  
9 KNOW YOU JURORS DON'T HAVE TO DO IT, BUT 10 BUCKS,  
10 THE SAME THING FOR PHILIP MORRIS TO PARK IS A  
11 MILLION DOLLARS.

12 IF THE AVERAGE PERSON MAKES \$25,000  
13 A YEAR, DOUBLE THEM UP. \$200,000 FOR A CUP OF  
14 COFFEE, SAME THING. TWO MILLION BUCKS TO PARK.

15 THAT'S WHAT WE ARE DEALING WITH  
16 HERE, AVERAGE PERSON TO PHILIP MORRIS.

17 THAT'S HOW MANY YEARS' EARNINGS?

18 THIRD, THE PUNITIVE DAMAGES MUST  
19 BEAR A REASONABLE RELATION TO AN INJURY, HARM OR  
20 DAMAGE SUFFERED BY THE PLAINTIFF.

21 AND THERE IS NO DEFINITION, THAT'S  
22 FOR YOU TO DECIDE.

23 SO I HAVE GOT 10 MINUTES. AND I AM  
24 NOT GOING TO QUITE TAKE THE TEN MINUTES. BUT  
25 FOLLOW THIS ALONG, IF YOU WILL.

26 LET'S JUST SAY THAT I KNOW NONE OF  
27 US WOULD DO IT, BUT LET'S JUST SAY THAT SOMEONE WAS  
28 IN THE DIAMOND LANE WITH ONE PERSON IN THE CAR.

1 AND YOU GOT CAUGHT. A MINIMUM FINE FOR BEING IN  
2 THE DIAMOND LANE WITH ONE PERSON IN THE CAR IS 271  
3 BUCKS.

4 NOW BEING IN THE DIAMOND LANE WITH  
5 ONE PERSON IN THE CAR IS NOT EXACTLY WIFE BEATING.  
6 IT'S NOT EVEN PURSE SNATCHING. THAT'S NOT EVEN  
7 TAKING A CANDY BAR WITHOUT PAYING FOR IT.

8 BUT BEING IN THE DIAMOND LANE WITH  
9 ONE PERSON IN THE CAR IS 271 BUCKS. AND JUST TO  
10 BRING THIS ALL DOWN TO WHERE WE CAN UNDERSTAND IT  
11 HERE, THE \$271 FINE, IF THE AVERAGE PERSON IS  
12 MAKING 50,000 BUCKS A YEAR, THAT'S A 27 MILLION  
13 DOLLAR FINE FOR PHILIP MORRIS.

14 IN OTHER WORDS, TO MAKE THE SAME  
15 IMPACT ON PHILIP MORRIS AS IT DOES ON THE AVERAGE  
16 JOE DRIVING DOWN THE DIAMOND LANE, IF AVERAGE JOE  
17 OR JOSEPHINE MAKES 50 GRAND, IS 27 MILLION,  
18 \$100,000.

19 AND IF THE AVERAGE JOE OR JOSEPHINE  
20 IS MAKING 25,000 BUCKS A YEAR, THAT SAME DIAMOND  
21 LANE VIOLATION FINE IS \$54,200,000.

22 AND I THINK THE AVERAGE PERSON  
23 PROBABLY MAKES SOMEPLACE BETWEEN THOSE TWO NUMBERS,  
24 SOMEWHERE.

25 SO I JUST WANT TO SAY, PUNITIVE OR  
26 EXEMPLARY DAMAGES HERE OF 27 MILLION DOLLARS TO 54  
27 MILLION DOLLARS IS A DIAMOND LANE VIOLATION.

28 PHILIP MORRIS HAD FIVE BILLION

1 DOLLARS A YEAR, MAKES 100 MILLION DOLLARS A WEEK,  
2 100 MILLION TIMES 50 GETS YOU FIVE BILLION.

3 \$100,000 A WEEK DIVIDED BY SEVEN  
4 DAYS IS 14 MILLION DOLLARS A DAY.

5 DIVIDED BY 24 HOURS, 600,000 BUCKS  
6 IN AN HOUR.

7 I HAVE BEEN ARGUING SINCE 11:00  
8 NOW, AFTER THE BREAK, APPROXIMATELY, WHILE I HAVE  
9 BEEN ARGUING SINCE 11 O'CLOCK, PHILIP MORRIS  
10 TOBACCO, U.S.A., HAS JUST MADE ANOTHER \$600,000.

11 MY ARGUMENT HAS GONE ON FOR A DAY  
12 AND A HALF. PHILIP MORRIS HAS MADE 21 MILLION  
13 DOLLARS.

14 THIS TRIAL HAS LASTED SINCE MARCH  
15 19, PHILIP MORRIS HAS MADE JUST SHY OF A BILLION  
16 DOLLARS.

17 THIS IS THE SMALL COMPANY, NOT THE  
18 BIG COMPANY.

19 1994:

20 "THE LEGAL ARENA WE'RE  
21 COMMITTING ALL THE RESOURCES NECESSARY  
22 TO DEFEND THE COMPANY FROM NEW FORMS  
23 OF LITIGATION, MAKING SURE WE HAVE THE  
24 BETTER FIRE POWER THAN OUR FOES, NO  
25 MATTER HOW FORMIDABLE. IN THE NEW  
26 CLASS ACTION SUITS AND STATE MEDICAID  
27 CASES, WE BELIEVE THE LAW CONTINUES TO  
28 BE ON OUR SIDE. ALL THOSE NEW CASES

1           POSE DIFFICULT CHALLENGES. WE SHOULD  
2           ULTIMATELY PREVAIL ON THEM JUST AS WE  
3           HAVE BEEN SUCCESSFUL IN OTHER TYPES OF  
4           CASES OVER THE LAST 40 YEARS. IT IS  
5           IMPORTANT TO NOTE HERE THAT THE  
6           TOBACCO INDUSTRY HAS NEVER LOST OR  
7           PAID TO SETTLE A CASE. BEYOND  
8           DEFENDING OURSELVES, WE ARE TURNING  
9           THE LEGAL TABLES ON SOME OF THOSE WHO  
10          ATTACK US. WE ARE GOING ON THE  
11          OFFENSIVE TO VINDICATE OUR RIGHTS AND  
12          TO MAKE IT CLEAR THAT CURRENT NOTIONS  
13          OF POLITICAL CORRECTNESS CANNOT BE  
14          USED TO JUSTIFY UNLAWFUL CONDUCT THAT  
15          ABRIDGES THOSE RIGHTS. WE'RE SUING  
16          THE E. P. A. , SUING STATE AND LOCAL  
17          GOVERNMENTS, SUING ABC, " HEY, THEY ARE  
18          REALLY TOUGH.

19                       THEY GOT A RIGHT TO THINK THEY ARE  
20          TOUGH, BECAUSE THEY HAD AN UNRESTRICTED RIGHT, IN  
21          WHICH THEIR COMPANY HAS GONE FROM BEING WHAT ELLEN  
22          MERLO CALLED SOME SMALL TOBACCO COMPANY TO HAVING  
23          THE FRANCHISE, THE LARGEST CONSUMER PRODUCT  
24          ORGANIZATION IN THE WORLD BASED ON THAT.

25                       YOU WANT TO DEFER FUTURE CONDUCT?

26                       OCTOBER 13, 1999, THIS IS RIGHT  
27          AROUND WHEN MR. BOEKEN WAS BEING DIAGNOSED WITH  
28          LUNG CANCER, ALSO BEING LAUNCHED IS A HUNDRED

1 MILLION A YEAR T. V. ADVERTISING BLITZ,  
2 ADVERTISED --

3 MR. LEITER: OBJECTION, HEARSAY.

4 THE COURT: SUSTAINED.

5 MR. PIUZE: OKAY. MS. MERLO ADMITTED  
6 AFTER I LEANED ON HER PRETTY HARD, THAT PHILIP  
7 MORRIS SPENT 100 MILLION DOLLARS TO ADVERTISE THE  
8 FACT THAT IT GAVE 75 MILLION DOLLARS TO CHARITY.

9 SHAME ON THEM

10 NOW THOSE, THIS IS PROFESSOR COBBS  
11 HOFFMAN. THOSE WHO DO NOT PAY ATTENTION TO THE  
12 PAST ARE DOOMED TO REPEAT IT.

13 THOSE WHO DO NOT PAY ATTENTION TO  
14 THE PAST ARE DOOMED TO REPEAT IT.

15 THIS IS THE TIME, THIS IS THE  
16 PLACE, YOU ARE THE PEOPLE, NOW

17 YOU WANT TO REALLY PUNISH PHILIP  
18 MORRIS, YOU WANT TO REALLY PUNISH PHILIP MORRIS,  
19 WATCH.

20 THAT'S ABOUT A THREE DIAMOND LANE  
21 VIOLATION, THREE DIAMOND LANE VIOLATIONS. THAT'S  
22 ME TAKING AWAY MY KID'S ALLOWANCE FOR A WEEK, WHICH  
23 IS A NICE ROUND NUMBER. I HAVE NO PRIDE OF  
24 AUTHORSHIP.

25 IF EVER ANYONE DESERVED IT, THIS IS  
26 THE TIME, THIS IS THE PLACE, YOU ARE THE PEOPLE.  
27 DON'T LET THEM ESCAPE.

28 AFTER 1978, AS MR. CARLTON BROUGHT

1 OUT, AND AFTER THE SETTLEMENTS, THEIR PROFITS WENT  
2 UP THREE TIMES. STOP IT.

3 THANK YOU.

4 THE COURT: THANK YOU, COUNSEL.

5 ALL RIGHT, LADIES AND GENTLEMEN, WE  
6 WILL TAKE OUR AFTERNOON BREAK. WE WILL SEE YOU AT  
7 1:30 THIS AFTERNOON. DON'T DISCUSS THE CASE WITH  
8 ANYONE.

9

10 (AT 12 NOON, THE LUNCH  
11 RECESS WAS TAKEN TO  
12 1:30 P. M OF THE SAME DAY.)

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