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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD BOEKEN,)
)
Plaintiff,)
) Case No.
vs.) BC 226593
)
PHILIP MRRIS INCORPORATED, a) Pages 1 - 94
corporation; INTERNATIONAL)
HOUSE OF PANCAKES INCORPORATED,)
a corporation, DOES 1 - 100,)
Inclusive,)
)
Defendants.)
_____)

DEPOSITION OF ALLAN SMITH, M.D. ,
TUESDAY, FEBRUARY 27, 2001
9: 30 A. M

REPORTED BY: LAURA J. MELLINI
RPR, CSR NO. 8181

1 Deposition of ALLAN SMITH, M.D., the witness, taken on
2 behalf of the Defendants, on TUESDAY, FEBRUARY 27, 2001
3 at 9:30 A.M., at 777 South Figueroa Street, Forty Fourth
4 Floor, Los Angeles, California, before LAURA J. MELLINI,
5 CSR NO. 8181.

6

7 APPEARANCES OF COUNSEL:

8 FOR PLAINTIFF:

9

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11 BY: MICHAEL J. PIUZE, ESQ.

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18

19 FOR DEFENDANTS:

20

21 ARNOLD & PORTER

22 BY: TROY THOMAS, ESQ.

23 777 SOUTH FIGUEROA STREET

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WITNESS	I N D E X EXAMINATION	PAGE
ALLAN SMITH, M D. ,	By Mr. Thomas	4

E X H I B I T S		
NO.	PAGE	DESCRIPTION
1	17	Letter Dated February 13, 2001 with Document
2	20	Reports of Cedars-Sinai Medical Center
3	20	Letter Dated January 19, 2001 with Attached Smoking History of Richard Boeken
4	26	Letter Dated February 23, 2001 with Attached Volumes I and II of plaintiff Richard Boeken's Deposition
5	29	Document Titled Richard Boeken

1 LOS ANGELES, CALIFORNIA; TUESDAY, FEBRUARY 27, 2001

2 9:30 A.M

3
4 ALLAN SMITH, M.D.,
5 having been first duly sworn,
6 was examined and testified as follows:
7

8 EXAMINATION
9

10 BY MR. THOMAS:

11 Q Please state your name.

12 A Allan Smith.

13 Q Do you have a middle name, Mr. Smith?

14 A Yes.

15 Q What is your middle name?

16 A First time I've been asked that. Herries,
17 H-e-r-r-i-e-s.

18 Q What is your working address?

19 A 2211 Braemar Road, B-r-a-e-m-a-r, Oakland,
20 California, 94602.

21 Q What is your residence address?

22 A That is it. It's the -- I have a home office
23 there where I do my consulting work from

24 Q And is that where you -- if we were to send
25 you your deposition transcript, is that where you would

1 like us to send it to?
2 A Yes.
3 Q Have you ever had your deposition taken
4 before?
5 A Yes.
6 Q How many times?
7 A I don't know. It's way over a hundred, but I
8 don't know.
9 Q During any of these deposition proceedings,
10 were you a party in the litigation?
11 A I think the answer is no. I was always as an
12 expert, if I understand your question.
13 Q Have you ever talked with any attorney who was
14 representing the plaintiff in this action about the
15 deposition process?
16 A No.
17 Q Based on your experience as an expert witness
18 and your prior deposition testimony, are you familiar
19 and do you have a complete and full understanding of the
20 deposition process?
21 MR. GOLDSTEIN: I would object. It's
22 compound, but go ahead.
23 THE WITNESS: Yes.
24 BY MR. THOMAS:
25 Q I just want to state that I don't want you to

1 answer something that you haven't heard completely. I
2 don't want you to answer something that you haven't
3 heard -- that you have heard, but don't understand. I
4 also don't want you to answer something that contains
5 some inappropriate, imprecise language that you think
6 would make it an imprecise question or answer were you
7 to give an answer. If any of this occurs, please let me
8 know.

9 A Okay.

10 Q Is there any reason why you can't give a
11 complete and accurate deposition today concerning your
12 involvement in Mr. Boeken's case?

13 A No.

14 MR. GOLDSTEIN: Let me just jump in for one
15 second just to say that we did -- we were here on time
16 but did get a late start today. And in terms of the
17 word "complete," the doctor has advised us that he has
18 to leave here at 12:30. So I just want to say that on
19 the record.

20 BY MR. THOMAS:

21 Q Do you have a curriculum vitae or resume with
22 you? Is this a current and up to date curriculum vitae?

23 A Pretty much.

24 Q Has there been any additional contributions on
25 your part, any articles or publications that are not

1 listed in your CV today?

2 A Not that I already published or pressed, no, I
3 don't think so.

4 Q Are you working on any that haven't been
5 published?

6 A Yes.

7 Q What are those articles?

8 A I am working on articles all the time.

9 Counsel, I don't normally talk about them until they're
10 in press or published. There's none that -- well, I'm
11 not normally asked about work in progress. I could tell
12 you what the topics are generally, if you like.

13 Q What are the topics?

14 A They relate to arsenic in drinking water,
15 arsenic and lung cancer, micro nutrients in the blood
16 and skin lesions due to arsenic, chronic respiratory
17 disease and arsenic plus cigarette smoking. Those are
18 some of them -- or the main topics that I'm currently
19 writing on.

20 Q Are there any other topics that you're
21 currently writing on?

22 A There's also genetic changes in bladder tumors
23 as they relate to smoking and arsenic and genetic
24 susceptibility.

25 Q What publications are those articles going to

1 be published in?
2 A I don't know.
3 Q Can you give me an estimate on the dates when
4 those articles are going to be finished and published?
5 A Well, I don't know. We submit peer review
6 journals, of course, and it's a long process. By that I
7 mean is the time taken for review is quite often
8 revision requests, things like that. So I can't
9 predict.
10 Q Okay. To move things along, would you please
11 circle all publications that you believe are
12 specifically pertinent to the opinions that you've been
13 asked to provide or likely to provide as an expert in
14 this case in your CV.
15 MR. GOLDSTEIN: I'm going to have to object.
16 I think he's not required to do that. He can maybe
17 identify them for you, but it really requires him to
18 speculate as to what your question might be.
19 MR. THOMAS: I was hoping we could move things
20 along.
21 MR. GOLDSTEIN: If you're able to answer, go
22 ahead. I'm not going to obstruct that. But I want to
23 object for the record.
24 THE WITNESS: My opinions aren't based on --
25 at least in this case aren't based on my publications.

1 It's based on the general scientific literature. I
2 don't know how to answer your questions.
3 BY MR. THOMAS:
4 Q Are there any publications listed in your CV
5 on which you base your opinions in this case on?
6 A In any way, shape or form? I'm not quite sure
7 how to answer. There's no articles that I would pull
8 out and say are distinct from things that are in the
9 general scientific literature and have information upon
10 which I base my opinions that is only present in my
11 articles.
12 If I was testifying and asked what I base my
13 evidence on, I wouldn't refer specifically to my own
14 publications, although some of them do relate to smoking
15 and lung cancer.
16 Q Which ones relate to smoking and lung cancer?
17 A Actually, there's one that I might state when
18 testifying that that was a source of information.
19 That's number 57 here called Mortality Attributable to
20 Smoking in New Zealand.
21 Q How does that relate -- how is that pertinent
22 to your opinions in this case?
23 A In that we worked out proportion of deaths due
24 to smoking in New Zealand, and if I was asked about what
25 proportion of smokers get lung cancer or die due to

1 smoking, my opinion ultimately is dependent on the
2 source studies which we collated in that publication,
3 but it is, though, in terms of your first question
4 pertinent to my opinions.

5 Q Okay. How is it pertinent to your opinions?
6 I'm not sure I understand.

7 A I never know what questions I would be asked.
8 If somebody asked me what proportion of cigarette
9 smokers die relative to smoking, I would say roughly 2
10 out of 5. I would say that was one of the things that
11 we calculated at that time in that publication.
12 Although there we were primarily looking at mortality
13 due to smoking in the total population rather than just
14 in smokers.

15 Q Are there any other publications listed in
16 your CV that are pertinent to your opinions other than
17 the one you just mentioned?

18 MR. GOLDSTEIN: I would have to object to your
19 characterization of "pertinent." I mean, the doctor
20 said that a lot of them may relate to it. I don't know
21 if you can judge an article by its title necessarily,
22 but as you look through here briefly, Doctor, do you see
23 anything else that jumps out?

24 THE WITNESS: Not that way. If I was
25 testifying and answering a question, I would say or

1 refer directly to my own publications. Of course, it
2 does depend what I'm asking (sic). If somebody asked me
3 about arsenic and lung cancer or synergy between arsenic
4 and smoking and lung cancer, then clearly I would refer
5 to my own publications, and then if I was asked about
6 synergy between asbestos and smoking I might in part. I
7 don't expect necessarily to be asked questions like that
8 in a case that, as best I can see, it just involves
9 cigarette smoking and lung cancer.

10 BY MR. THOMAS:

11 Q What about for the questions you expect to be
12 asked in this case?

13 MR. GOLDSTEIN: Can you elaborate? I'm not
14 sure you asked that -- I didn't understand.

15 BY MR. THOMAS:

16 Q I'm expanding on his answer. He said that --
17 which publications he would recite would depend on the
18 questions he was asked in a particular case. So I'm
19 asking him based on the questions you expect to be asked
20 in this case, what questions would you list for me --
21 I'm sorry -- which publications would you list for me?

22 MR. GOLDSTEIN: I would have to object. I
23 think that that's vague, and that requires him to
24 speculate as to what you might ask. I think it might be
25 proper to just ask him what his opinions are, and then

1 maybe if we can have an agreement that if he runs across
2 any -- in his testimony any articles that come up, if
3 you could point him to that. Whatever. I'm not trying
4 to take away your questioning. I just want to suggest a
5 means to move it along.

6 THE WITNESS: I thought I'd answered your
7 question. I indicated that I thought this case just
8 related to cigarette smoking and lung cancer, and I
9 don't know why then you say I was referring to -- in my
10 answer to this particular case. I then mentioned this
11 case specifically.

12 BY MR. THOMAS:

13 Q Let me ask you this. What are the opinions
14 that you're going to be asked to give as a witness at
15 trial or, in your opinion, are likely to be given by you
16 as a witness in trial in this case?

17 MR. GOLDSTEIN: I object to the question as
18 being compound, but go ahead and answer.

19 THE WITNESS: I expect to be asked what caused
20 the lung cancer. My opinion is that it was caused by
21 smoking cigarettes. I presume you're asking me for
22 questions I might be asked on direct examination
23 because --

24 BY MR. THOMAS:

25 Q Correct.

1 A And in that regard when in anticipation of
2 questions I might be asked in cross-examination, I might
3 be asked other questions. If it weren't for that, I
4 think that would be the only question. But I might be
5 asked whether or not I thought something else
6 contributed along with cigarette smoke, and I would
7 answer no, and indicate if asked further what I
8 considered in that regard.

9 I am speculating, of course, about what I'm
10 going to be asked so maybe I should note that if some
11 other agent synergistically -- one could consider
12 various exposures such as asbestos and radon as two
13 agents that, when you leave smoking aside as the main
14 cause of lung cancer, are two other causes that are
15 widespread in the population.

16 Q Are there any other causes widespread in the
17 population?

18 A Not to the same extent that those two are, no.
19 Air pollution may contribute to cases, and of course
20 that's widespread, but it's not established in the way
21 that asbestos and radon are. And then the other causes
22 involve generally workplace exposures, which aren't
23 widespread like asbestos was.

24 Q You're referring to causes of lung cancer?

25 A Oh, I thought you were. I'm sorry. I was,

1 and I thought you were asking me further about that.
2 Q I was. I was just making sure. Any other
3 causes?
4 A I don't understand this question.
5 Q You listed asbestos, radon --
6 A Your question was different. You said that
7 were widespread.
8 Q Right. I was referring to that question.
9 A Right. No, I answered that. I haven't
10 finished my answer, though, to other things I might be
11 asked. I suppose I should continue on that, otherwise
12 the record might look as if that was all.
13 I might be asked about addiction to cigarette
14 smoking, and my opinions that relate to that.
15 Q What is your opinion that relates to that?
16 A It is very highly addictive, and in some
17 people extremely difficult to stop because of that. I
18 might also be asked questions about marijuana. It's my
19 opinion that in a case like this where there was some
20 occasional marijuana smoking, that it is a possible
21 contributor -- well, in fact, I would say probably
22 contributed to the dose of combustion products inhaled
23 that caused the lung cancer.
24 But it's trivial in terms of the overall dose,
25 as I understand the information in this case. In other

1 words, the cigarette smoking swamps out and makes
2 irrelevant any consideration of the marijuana smoking.
3 MR. GOLDSTEIN: I actually prefer, Doctor, if
4 he would ask you the questions rather than you give a
5 narrative. I think maybe it would be more direct.
6 THE WITNESS: I'm still trying to answer this
7 underlying question. I guess if you object to it, I
8 understand that.
9 MR. GOLDSTEIN: That's fine. Go ahead.
10 THE WITNESS: As I understand it, I was asked
11 about what else I might be asked on direct and testify
12 about.
13 MR. GOLDSTEIN: Right. I just wanted to
14 interpose an objection. I think it is a way we can move
15 it along but go ahead.
16 THE WITNESS: I'll try not to give a
17 narrative.
18 MR. GOLDSTEIN: No, go ahead.
19 THE WITNESS: I can't think of any other
20 things that I would be asked on direct, although of
21 course I may be.
22 BY MR. THOMAS:
23 Q I want to get back to your opinions in a
24 moment.
25 Dr. Smith, you were asked to bring certain

1 documents with you here today, and for the record I'm
2 going to hand you what is a Notice of Deposition of
3 Plaintiff's Designated Experts, and I'm going to show
4 you page number 3 of that document. I'm just going to
5 go through each request with you.

6 Looking at request number 1, it states, all
7 records, documents and other things and other writings
8 the deponent reviewed or expects to review for this
9 case.

10 Did you bring any such documents today?

11 A I understood that to be the case-specific
12 documents, and I have them here.

13 Q Can I take a look at those?

14 Both these stacks are those documents?

15 A Correct.

16 Q Are they arranged in any particular order?

17 A These are as in the order sent to me. No, the
18 others aren't in any particular order, but I could maybe
19 help you if you let me have a look quickly and see just
20 what order they are in.

21 Q Sure.

22 A Most of these relate to the medical records
23 which are in the order sent to me. There's a couple of
24 other pieces of material which are in random order.

25 Q Okay. This first document, what is this?

1 A There's a letter here from Geraldine Weiss.
2 Q And is that document under it -- was that
3 document attached with that letter or sent with that
4 letter?
5 A No, I think it came separately, but I don't
6 recall.
7 Q Okay.
8 A It implies they came separately, whether this
9 particular -- the bulk of them came separately, but I
10 can't be certain this part came at the same time or not.
11 MR. THOMAS: Okay. I'm just going to mark
12 this as Exhibit 1.
13 (The document referred to was marked by
14 the CSR as Defendants' Exhibit 1 for
15 identification and attached to and made a part
16 of this deposition.)
17 BY MR. THOMAS:
18 Q What is that document there?
19 A It's reports of Cedars-Sinai Medical Center,
20 the Imaging Group.
21 Q And did you read that report?
22 A It's not a report. It's a series of reports.
23 I glanced through them, yes, and read parts of them
24 Q Are any of your opinions that you mentioned
25 that you expect to be testifying to in this case based

1 on those reports?
2 A No. The medical reports give me an
3 understanding what the case is about, for example, that
4 the diagnosis was lung cancer. So none of my opinions
5 actually are based on the medical records, but my
6 understanding of the -- some pieces of information does
7 come from here.
8 Q How do you know the diagnosis was lung cancer?
9 A You mean how do I have that understanding?
10 Q Right.
11 A It's based on the records, various parts of
12 them I don't recall specifically where I first got
13 that in my notes. I put down that there was a routine
14 chest x-ray, nodule, lung cancer diagnosed October,
15 1999, a wedge resection, moderately well differentiated
16 adenocarcinoma. That's what my notes are. I don't know
17 exactly which lines that came from in this material. I
18 don't know.
19 Q And your notes are based on the medical
20 records you received in this case?
21 A Correct.
22 Q Are they based on anything else?
23 A No.
24 Well, when you say "notes," I was already
25 writing on here a piece that I was reading in the

1 airplane this morning, and that actually came from his
2 deposition as against the -- in contrast to the medical
3 records. The type -- the printed notes here all came
4 from looking at the medical records sent to me.
5 And also there was a statement, I think,
6 prepared by Geraldine Weiss's office concerning his
7 attempts to stop smoking. That must be somewhere in
8 there. It's not a medical record per se. That is
9 attached right here to the letter.
10 Q Can I see that document. Okay. To keep
11 things in order, I'd like to separate the medical
12 records from all other documents in these two stacks.
13 Could you help me do that?
14 A I think these are all medical records, and
15 this is all. Those are deposition transcripts.
16 Q Okay. So this stack right here -- this is all
17 medical records?
18 A I think so, yes.
19 Q And who did you receive these medical records
20 from?
21 A Who?
22 Q Who sent you these medical records?
23 A Attorney Geraldine Weiss.
24 Q Did anyone else send you any of these medical
25 records?

1 A Well, I don't know personally who does what at
2 that end. I know that my discussion was with attorney
3 Geraldine Weiss.
4 MR. THOMAS: We will mark this as the next
5 exhibit.
6 (The document referred to was marked by
7 the CSR as Defendants Exhibit 2 for
8 identification and attached to and made a part
9 of this deposition.)
10 BY MR. THOMAS:
11 Q Dr. Smith, I don't remember if you told me
12 what this document was, but could you tell me again what
13 that document is?
14 A It's a letter from Geraldine Weiss dated
15 January 19 with an attachment.
16 Q And what is the attachment?
17 A It's titled Smoking History of Richard Boeken.
18 MR. THOMAS: Okay. We'll mark that next in
19 order.
20 (The document referred to was marked by
21 the CSR as Defendants' Exhibit 3 for
22 identification and attached to and made a part
23 of this deposition.)
24 BY MR. THOMAS:
25 Q Dr. Smith, can you tell what this document is?

1 A This is a cover letter dated February 23rd,
2 2001. It enclosed Volumes I and II of plaintiff's
3 direct exam deposition testimony and excerpts from
4 plaintiff's direct exam testimony taken by the defense,
5 also excerpts from plaintiff's special interrogatory
6 responses.

7 Q And did you review the deposition transcripts
8 that were sent with that letter? Did you read the
9 deposition transcripts?

10 A Partly.

11 Q What do you mean "partly"?

12 A I mean not right through.

13 Q You read portions of them?

14 A Correct.

15 Q How do you determine what portions to read?

16 A I, in looking at them, started reading the
17 first pages in total, and then I looked for information
18 about marijuana smoking, information about work history.
19 I think that was all.

20 Q Did you look for any other information in the
21 depositions?

22 A I think that was all.

23 Q There was also -- what did you mention?
24 Interrogatory responses?

25 A Some pages, yes, pages 1, 5, 6 and 7.

1 Q Did you read those pages?

2 A I glanced at them

3 Q Was any information in those pages pertinent
4 to your opinions in this case?

5 A Not that I hadn't seen elsewhere, except for
6 the residential history I noted that he moved quite
7 frequently from one house to the other. And although
8 there's no need to think about radon in a case like
9 this, I thought that it could come up as a -- what I
10 would call diversion, and I was therefore -- or did note
11 that he hadn't lived in one house for 30 years or
12 anything like that.

13 Q How does that affect radon, your opinions on
14 radon?

15 A Well, there are houses that may have high
16 concentrations of radon, but if somebody moves around
17 like this, if any one house did have high
18 concentrations, then they wouldn't experience it for
19 very long.

20 Q Is radon a cause of lung cancer?

21 A Yes.

22 Q Why would someone who moves around a lot
23 not -- or have a less likely -- I'm sorry.

24 Why would someone who moves around a lot have
25 less exposure to radon?

1 A Well, the consideration of radon, as I've
2 already indicated, is really not pertinent in a case
3 like this. But if it were raised, the question would be
4 whether or not they or somebody lived in a house that
5 had high concentrations of radon, and in that case one
6 could reach the opinion that radon acted synergistically
7 with smoking.
8 But the high concentrations of radon don't
9 exist in many homes, and the likelihood of moving and
10 always being in a home with high concentration of radon
11 is, of course, very low.
12 Q You stated that radon is not pertinent. Why
13 do you believe that?
14 MR. GOLDSTEIN: I think that misstates his
15 testimony. I think he said that in consideration of
16 this case but...
17 THE WITNESS: In this case it's very clear
18 that smoking caused the lung cancer. The only question
19 is whether some agent -- other agent might have
20 contributed also, and that -- or even if there were,
21 would not alter the fact that from a risk standpoint,
22 the overwhelming risk factor for somebody like this
23 getting lung cancer would be the cigarette smoking.
24 BY MR. THOMAS:
25 Q Can someone get lung cancer from radon even

1 without ever smoking?

2 A Yes. But the exposures where one can
3 demonstrate that involve miners underground.

4 Q Did you finish your answer?

5 A Yes.

6 Q I didn't hear your last statement. Was it
7 miners underground?

8 A Correct. Miners, who spend many years working
9 underground, are at increased risk for lung cancer
10 whether or not they smoke, due to radon.

11 Q Do people who live in homes with radon -- are
12 they at a higher risk of contracting lung cancer even if
13 they don't smoke?

14 A Probably. Although it's a risk that's low and
15 has been very hard to establish. It is my opinion that
16 radon in homes can increase the risk of lung cancer, but
17 that demonstration is in cigarette smokers. I haven't
18 recently reviewed the evidence for nonsmokers and radon
19 in homes, but the risks, if they exist, are very low in
20 contrast to a cigarette-smoking history like this.

21 Q What do you base that opinion on?

22 A Extensive scientific literature. The risks of
23 smoking two packs of cigarettes a day may result in lung
24 cancer risks 20 times that of nonsmokers. Some studies
25 find much higher than that. Some of them are lower.

1 In contrast, the question as to whether or not
2 radon in homes causes lung cancer has involved
3 considerable attention, but the risks are -- if they
4 exist, are sufficiently low that it's been extremely
5 difficult to prove it. And that's based on extensive
6 scientific research and reading experience over the
7 years and so on.

8 Q What scientific research and readings are you
9 referring to?

10 A If the question is about radon, I have not
11 brought articles with me on radon. As I have indicated,
12 I don't regard it as pertinent to my opinions in this
13 case. The reason I brought it up is I expect some of
14 these topics are brought in for diversion purposes, and
15 that's -- in that context I indicated that I might end
16 up being asked about it.

17 But I have not brought the scientific
18 literature on radon, and from memory I wouldn't identify
19 specific articles. I would state my opinion based on my
20 general reading and experience on that topic.

21 Q Do you know of any specific studies or
22 publications on radon?

23 A I think my answer to your previous question
24 indicates how I'll answer this. I have read widely in
25 that literature. I have not brought them with me, and I

1 don't know from memory which to identify of the
2 publications in case I get the identities incorrect.
3 Q What do you mean by radon as a diversion?
4 A Well, I think as far as the medical evidence,
5 a case like this shouldn't go to court. Clearly,
6 cigarette smoking caused it, and that's obvious.
7 But I am aware from previous experience that
8 in defense of cases like this, various topics are pulled
9 in which in the scientific sense aren't really
10 pertinent, and therefore I would call them a diversion
11 from the central issue, presumably used to confuse the
12 jury.
13 MR. THOMAS: We need to go back to the
14 documents requested. Mark this as next in order.
15 (The document referred to was marked by
16 the CSR as Defendants' Exhibit 4 for
17 identification and attached to and made a part
18 of this deposition.)
19 BY MR. THOMAS:
20 Q Do you still have the notice that I handed
21 you? Okay. Item number 2 requests all correspondence
22 and other written communications by the deponent
23 concerning this case.
24 Have you brought those documents with you
25 today?

1 A Yes, I've already given them to you.

2 Q So the two -- the items that we've marked
3 into -- as exhibits include all --

4 MR. GOLDSTEIN: I think actually there were
5 three separate letters that I've seen, just to be
6 precise.

7 THE WITNESS: There were some instructions on
8 how to get here, but I may have left them in the car.

9 BY MR. THOMAS:

10 Q You didn't bring those up here. Other than
11 instructions, are there any other documents responsive
12 to number 2?

13 A No.

14 Q Are you aware of any others that would exist
15 even though you didn't bring them today?

16 A No.

17 Q How about same question for number 1? Are you
18 aware of any documents that are responsive to that
19 request that exist, but that you did not bring today?

20 A Well, no. I'm assuming, as I indicated
21 before, that that is a case-specific question. When it
22 says "other writings," it doesn't refer, for example, to
23 the published scientific literature but --

24 Q Well, are there published scientific -- is
25 there published scientific literature that you reviewed

1 or expect to review for this case?
2 A No. But my opinions are based on published
3 scientific literature. I have not rereviewed it for
4 this case.
5 Q Which published scientific literature are your
6 opinions based upon?
7 A There are thousands of articles that relate to
8 cigarette smoking and lung cancer, and over the course
9 of my career I've read large numbers of them
10 Q Have you reviewed any specifically for this
11 case?
12 A No.
13 Q Do you expect to review any for this case?
14 A No.
15 Q Item number 3 requests all reports, notes and
16 other writings prepared by the deponent or at the
17 deponent's request regarding this case. Did you bring
18 those documents with you today?
19 A Yes.
20 Q And can I see those documents. Okay. You've
21 handed me a one-page typewritten document. What is this
22 document?
23 A Some notes I took when I was reviewing the
24 records.
25 Q Do you have any other notes?

1 A No.
2 Can I -- there's an earlier question I thought
3 of an additional response.
4 Q Of course.
5 A When you asked me about opinions I might be
6 asked about, I could be asked about family history of
7 lung cancer, and whether that's important or not.
8 Q What is your opinion on family history of lung
9 cancer?
10 A That it's not important.
11 Q Okay. Well, I'm -- are there any other
12 opinions?
13 A No. That's just one topic I thought of that I
14 might be asked about.
15 Q Okay.
16 A When others come to mind, I'll let you know.
17 Q Please do. We'll get back to the opinions in
18 a moment. We're going to mark this as next.
19 (The document referred to was marked by
20 the CSR as Defendants' Exhibit 5 for
21 identification and attached to and made a part
22 of this deposition.)
23 BY MR. THOMAS:
24 Q Dr. Smith, just to finish this up, item number
25 4 requests all time sheets, records, billings and other

1 writings that reflect the amount of time the deponent
2 spent on any matter related to this case.
3 Did you bring those documents with you?
4 A I don't have any. In other words, I haven't
5 billed yet for anything.
6 Q Do you plan on billing for anything?
7 A Yes. Are you paying for this deposition, or
8 how does that work in Los Angeles?
9 MR. GOLDSTEIN: You'll find out.
10 THE WITNESS: We're all laughing. That's a
11 joke.
12 BY MR. THOMAS:
13 Q What is your hourly rate?
14 A \$400.
15 Q Do you have a retainer agreement for this
16 case?
17 A No.
18 Q Do you know if one exists in this case?
19 A If I knew that, I couldn't have said no. I
20 don't understand.
21 Q Oh, I wasn't sure if you were saying you
22 didn't bring one with you today or no, there isn't one.
23 A No, there isn't one. As indicated in this
24 letter, you require no retainer. In this instance I
25 agreed to not receiving any payment ahead of time.

1 Q Is there any agreement for payment of your
2 services in this case?
3 A Just what's mentioned in that sentence.
4 Q That sentence you're referring to, "You
5 require no retainer, but will bill us at a \$400 an hour
6 for reviews as this case progresses."
7 Is that what you're referring to?
8 A Yes.
9 Q This is on exhibit marked number 3.
10 Item number 5 requests all bills, invoices or
11 other writings reflecting the -- I'm sorry. We go on to
12 the next one. We already asked that one. No, wait.
13 I'm sorry. We haven't.
14 All bills, invoices or other writings
15 reflecting the amount the deponent billed or will bill
16 in the future to plaintiff's counsel or anyone else for
17 work done with regard to this case.
18 Any documents that exist in response to that
19 request?
20 A No, just that letter we just referred to.
21 Q Okay. Exhibit 3. Number 6 requests all
22 records, documents and other writings showing each
23 contact the deponent had with anyone involved in this
24 case.
25 Did you bring any of those documents with you?

1 A No, they don't exist.
2 Q No documents exist responsive to that request?
3 A No.
4 Q Number 7, the entire file or files maintained
5 by the deponent in regard to this case. Did you bring
6 that with you today?
7 A Yes.
8 Q Can I see that?
9 A You already have it.
10 Q Were those the documents that we've already
11 marked as exhibits?
12 A Yes.
13 Q And are there any other documents that you
14 maintain -- I'm sorry -- that would be responsive to
15 this request number 7?
16 A No.
17 Q Dr. Smith, have you had any conversations with
18 any attorneys involved in this case?
19 A Yes.
20 Q Who have you had conversations with?
21 A With attorney Geraldine Weiss.
22 Q And how many conversations have you had with
23 her?
24 A Perhaps three.
25 Q Do you recall when those conversations took

1 place?
2 A Not specifically. They were this year. I
3 believe the first one would be in January.
4 Q And what was discussed during that
5 conversation?
6 A I think just whether or not I would consider
7 consulting on this case and if I would review some
8 materials.
9 Q How about the second meeting? Do you recall
10 when that took place?
11 MR. GOLDSTEIN: Objection. I think it
12 mischaracterizes his testimony. I think he talked about
13 telephone conversations.
14 BY MR. THOMAS:
15 Q I'm sorry. Conversation. During the second
16 conversation, do you recall when that took place?
17 A No.
18 Q What was discussed during that conversation?
19 A I don't recall the specific ones nor exactly
20 how many there were.
21 Q And for the last conversation, do you know
22 when that took place?
23 A That was last night or the night before. It
24 was mainly about scheduling the deposition and
25 confirming arrangements were okay.

1 Q Was anything else discussed?
2 A I had at that time received this packet dated
3 February 23rd.
4 Q Is that Exhibit 4?
5 A Correct, but I had not read it then. I don't
6 recall what else was discussed then. I can recall
7 things that have been discussed but not precisely
8 when -- in which conversation.
9 Q What do you recall that has been discussed?
10 A At outset the smoking history and an overview
11 of the discussion of what records I should -- or I would
12 like to review. Then I did discuss various -- or raise
13 various topics that I thought might come up. One of
14 them was marijuana smoking. So I asked for information
15 on that. And another one was occupational history.
16 In both those instances I indicated it's not
17 that I thought they would likely be important based on
18 what I had already reviewed, but since they may come up,
19 it would be good for me to have information on them
20 I asked for the residential history. Nothing
21 else comes to mind.
22 Q No other topics were discussed?
23 A Nothing else comes to mind, no.
24 Q Did they send you any information on the
25 topics discussed?

1 A Yes.
2 Q What did they send you?
3 A This last packet was in response to that
4 request that's Exhibit 4.
5 Q Okay.
6 A Or those requests.
7 Q You mentioned that it was discussed what
8 records you should review. What records -- what were
9 those records?
10 A I've given you all the records that I have.
11 Q Was it suggested that you review any other
12 records that you haven't given me?
13 A I don't recall.
14 Q Have you ever been involved in a case before
15 for Mr. Piuze or his law firm?
16 A No.
17 Q And am I correct in understanding that
18 Mr. Piuze and his law firm have retained you in this
19 case?
20 MR. GOLDSTEIN: When you say "retained," can
21 you define that? Maybe that would help him
22 BY MR. THOMAS:
23 Q Have they asked you to give opinions in this
24 case as an expert?
25 A Yes.

1 Q Have they agreed to pay you for your time in
2 this case?
3 A Yes.
4 Q Have you ever been retained by the defense
5 side in a civil lawsuit?
6 A Yes, although I don't use the word "retain"
7 for anybody.
8 Q What word do you use?
9 A Consulting.
10 Q Consulting.
11 A It's just a minor semantic thing. I know
12 lawyers use the word "retain" all the time, but it
13 doesn't sound quite right to me.
14 Q So just difference in semantics between
15 retaining and consulting?
16 A Nobody retains me in one sense of the word. I
17 will advise and give consulting advice. In the other
18 sense of the word, I'm aware that that's the word you
19 used, but it has another meaning, and it's for that
20 reason that I don't like it.
21 Q What other meaning do you mean?
22 A Retain. It sounds a little like somebody is
23 in your pocket or you're in their pocket or something
24 like that. It just doesn't sound right. I prefer to
25 use "consulting." Also, I will not -- I will stop

1 consulting for anybody at any point in time at which I
2 think it's inappropriate for me to continue for whatever
3 reason. It's another reason for not liking the word
4 "retain."

5 Q Okay. Have you ever consulted for a defendant
6 that was a corporation or business entity?

7 A Yes.

8 Q On how many occasions?

9 A Many. I don't quite know how to answer that.

10 Q Is it more or less than the number of times
11 you've consulted for a plaintiff in a civil litigation
12 matter?

13 MR. GOLDSTEIN: If you know.

14 THE WITNESS: It's considerably less in terms
15 of the number and the total time -- well, that's not
16 quite true. In the area of litigation it's less,
17 considerably less in number and the time involved. But
18 I have consulted over the years for private companies
19 outside litigation.

20 BY MR. THOMAS:

21 Q Well, within litigation, could you give me an
22 estimate as to the percentage in which you've consulted
23 for the defense versus the plaintiff's side?

24 A Overall, it's probably about ten percent.

25 Q For defense?

1 A Correct.
2 Q What types of matters have you consulted for
3 the defense?
4 A Concerning causation of cancers.
5 Q Are you finished?
6 A Yes.
7 Can we take a little break?
8 MR. THOMAS: Sure.
9 (Brief recess taken.)
10 (Michael Piuze is now present in the
11 deposition.)
12 MR. THOMAS: Can you read the last question
13 and answer?
14 (Record read.)
15 BY MR. THOMAS:
16 Q Any other matters in which you've consulted
17 for the defense?
18 A I think all of them have involved cancer in
19 one way or another.
20 Q Did they all involve causations of cancer?
21 A I think all involved a plaintiff who had
22 cancer, or plaintiffs, and the issue was whether or not
23 the chemicals caused it or not.
24 Q Did any of those cases involve smoking and
25 cancer?

1 A Not directly, no.
2 Q What about indirectly?
3 A Possibly, but I don't recall. I was not, nor
4 would I consult for tobacco companies.
5 Q Do you have an opinion that the plaintiff has
6 lung cancer?
7 A Not an expert opinion, no.
8 Q Do you have a nonexpert opinion?
9 MR. GOLDSTEIN: Well, maybe you could rephrase
10 that because I think it's a little problematic.
11 BY MR. THOMAS:
12 Q Do you have an understanding that the
13 plaintiff has lung cancer?
14 A Yes.
15 Q What do you base that understanding on?
16 A I thought we'd gone over that, Counsel. I
17 pointed out what was in my notes on the diagnosis
18 information.
19 MR. GOLDSTEIN: I think he did also identify
20 various documents and reports that he relied on.
21 BY MR. THOMAS:
22 Q Other than the documents and reports that
23 you've identified today, is there anything else that you
24 rely on for that understanding?
25 A No.

1 Q Is it your understanding that the plaintiff
2 has primary lung cancer, a lung cancer that originated
3 in the lung?
4 A Yes.
5 Q What do you base that opinion on or
6 understanding on?
7 A The medical reports.
8 Q Anything else?
9 A No.
10 Q What type of lung cancer does the plaintiff
11 have?
12 A The pathological type is adenocarcinoma.
13 Q Can you explain to me what adenocarcinoma is?
14 A It's a cancer arising in a certain type of
15 cells that are present in the lung and elsewhere in the
16 body. They're secretory cells.
17 Q Are there different types of adenocarcinoma?
18 A I'm not expert on that.
19 Q Do you know if there are?
20 A I'm here to give my expert opinions.
21 Q Do you know if there are?
22 A I'm here to give expert opinions, Counsel. I
23 don't want to speculate. I can look it up and answer
24 questions on it, but as I sit here I am not prepared to
25 answer questions on that because I haven't looked it up.

1 MR. THOMAS: Could we go off the record?
2 (Discussion off the record.)
3 MR. THOMAS: Can you read the last question
4 and answer.
5 (Record read.)
6 BY MR. THOMAS:
7 Q Dr. Smith, do you have any particular
8 expertise beyond that which any other medical doctor
9 would have going to medical school in evaluating
10 pathology slides and determining to what extent tissues
11 seen in pathology slides tend to prove or demonstrate
12 that a patient does or does not have lung cancer?
13 MR. GOLDSTEIN: I would have to object to that
14 question. If you're asking his particular area of
15 expertise, maybe you could just ask him that, but to --
16 the question is compound, and it's sort of open-ended
17 and also I'm not sure I understand it. Maybe you could
18 rephrase it.
19 BY MR. THOMAS:
20 Q Dr. Smith, do you understand the question?
21 A I haven't looked at pathological material
22 since 1971, and then it was routine. I do studies that
23 involve collection interpretation of pathological
24 material, but I don't do that myself.
25 Q So you would say you're not an expert in

1 evaluating pathology slides?
2 A Yes.
3 Q Are you an expert in determining to what
4 extent tissue seen in pathology slides tends to prove or
5 demonstrate that a patient does or does not have lung
6 cancer?
7 A No.
8 Q Do you agree that you do not have any special
9 expertise evaluating the clinical signs, symptoms and
10 features of plaintiff's case to determine whether or not
11 he medically does or does not have lung cancer?
12 A Correct. I agree.
13 Q Have you looked at plaintiff's case, in
14 particular, pathology information, clinical information,
15 diagnostic, radiology information and based on this
16 information concluded that plaintiff has lung cancer?
17 A I have an understanding that he does, but I
18 haven't concluded as an expert.
19 Q Did you review pathological information
20 suggesting lung cancer in the plaintiff?
21 A Not the slides, no.
22 Q Did you review any diagnostic radiology
23 information in plaintiff's case that you believe
24 supports the position that plaintiff has lung cancer?
25 A It's not my position. Maybe you've got quite

1 a few pages there, but I won't be testifying about the
2 diagnosis as to whether or not he has lung cancer,
3 period.
4 Q Have you ever met the plaintiff?
5 A No.
6 Q Have you ever spoken to any of the treat --
7 any of plaintiff's treating physicians?
8 A No.
9 Q Do you know what part of the lung plaintiff's
10 lung cancer is located in?
11 A I believe it was the right upper lobe.
12 Q And what do you base that belief on?
13 A My notes.
14 Q And those are notes from medical records you
15 received in this case?
16 A Correct.
17 Q You mentioned the right upper lobe. Can you
18 be more specific?
19 A No.
20 Q Do you know if there are different regions of
21 the -- medical regions of the right upper lobe?
22 A I won't be testifying about that.
23 Q Do you know if there are?
24 A I won't be testifying about that, Counsel.
25 Q I'm not asking if you will be testifying. I'm

1 just asking if you know.
2 MR. GOLDSTEIN: Argumentative, and I can
3 instruct him not to answer. I think he made it very
4 clear what his area of expertise is.
5 MR. THOMAS: Are you instructing him not to
6 answer?
7 MR. GOLDSTEIN: Yes. You can rephrase it.
8 I'm happy to try, but as I understand it from sitting
9 here, the doctor made it very clear as to the areas he's
10 going to testify about it. Seeking to ask the extent or
11 breadth of his knowledge or areas that are outside of
12 expertise is, I think, badgering, inappropriate and not
13 productive.
14 BY MR. THOMAS:
15 Q In plaintiff's case was there ever a treating
16 pathologist that stated in his or her opinion he or she
17 was able to conclude and diagnose plaintiff as having a
18 primary lung cancer?
19 A I haven't talked to any of the pathologists,
20 and I don't recall what is in the material I reviewed in
21 that regard.
22 Q Same question for treating or evaluating
23 radiologists.
24 A Same answer.
25 MR. GOLDSTEIN: He already -- he already

1 testified he hadn't talked to anybody specifically so...
2 MR. THOMAS: I didn't ask him if he talked to
3 anybody specifically.
4 MR. GOLDSTEIN: I thought that's what you
5 said.
6 MR. THOMAS: It was just whether he knew
7 based -- this could be based upon what you talked to
8 somebody, or based on your review of medical records or
9 any records or anything.
10 MR. GOLDSTEIN: When you say whether he knew,
11 what do you mean? The doctor said that he was supplied
12 records, spoke to the counsel who forwarded records to
13 him based on his review. He made certain assumptions
14 and conclusions that others had reached. You're saying
15 apart from that, did he conduct any other investigation?
16 BY MR. THOMAS:
17 Q Well, I was asking whether you knew one of
18 plaintiff's treating pathologists who had concluded and
19 diagnosed plaintiff as having a primary lung cancer?
20 A Not specifically, no. I have no information
21 other than the medical records sent to me.
22 Q Do you have an opinion as to whether the type
23 of lung cancer plaintiff has is a smoking-related
24 disease?
25 A Yes.

1 Q And what is your opinion?
2 A It was caused by smoking.
3 Q What do you base that opinion on?
4 A Extensive scientific literature and the
5 information about the case.
6 Q What information about the case do you base
7 that opinion on?
8 A My understanding is that he had lung cancer.
9 It was adenocarcinoma. My understanding is that there
10 was a lengthy cigarette smoking history.
11 Q Are you finished with your answer?
12 A Yes.
13 Q Is there anything else in plaintiff's history
14 that you based your opinion on?
15 A Not that opinion, no.
16 Q What in plaintiff's medical history did you
17 base your opinion on?
18 MR. GOLDSTEIN: I'm sorry. Isn't that the
19 question you just asked him?
20 BY MR. THOMAS:
21 Q You mentioned two subjects that you based your
22 opinion on. There was plaintiff's history, and I
23 believe you said medical history, but maybe I'm wrong.
24 A His history of smoking.
25 Q History of smoking. In forming your opinion

1 that smoking caused plaintiff's lung cancer, is a
2 clinical diagnosis of lung cancer a requirement?

3 A Of course.

4 Q Does a clinical diagnosis require that a
5 medical doctor treating the patient indicate his or her
6 conclusion that the patient has a primary lung cancer?

7 A No. Just requires that the patient have lung
8 cancer. If the proof were that the patient didn't, then
9 I would not hold the opinion that smoking caused
10 something he didn't have.

11 Q Do you require some type of proof that the
12 plaintiff has lung cancer in order to form your
13 opinions?

14 A Well, I've already answered that, Counsel.
15 No, of course not. That's not my area that I will be
16 testifying about.

17 MR. GOLDSTEIN: When you say that, you mean
18 to -- Counsel, you're asking him whether he
19 independently required any objective evidence? Is that
20 what you mean?

21 MR. THOMAS: No, could I have the question
22 read back?

23 "QUESTION: Do you require some type of
24 proof that the plaintiff has lung cancer in
25 order to form your opinions?"

1 BY MR. THOMAS:
2 Q Do you as an epidemiologist determine all the
3 reasons why a doctor diagnoses the patient as having
4 primary lung cancer?
5 A In my research studies I do, but not in a case
6 like this.
7 Q And in this particular case, did you determine
8 the reasons why a doctor may or may not have diagnosed
9 the plaintiff has having primary lung cancer?
10 A No.
11 MR. PIUZE: Is the ball in your court?
12 BY MR. THOMAS:
13 Q I'm sorry. Did you answer?
14 A Yes.
15 THE REPORTER: The answer was "No. "
16 MR. PIUZE: That's the reasons for these
17 depositions. You get to ask. You're supposed to listen
18 so you can learn so we can have a trial.
19 BY MR. THOMAS:
20 Q Have any lawyers representing plaintiff told
21 you that they thought that any of plaintiff's treating
22 doctors had concluded that plaintiff had lung cancer?
23 A Not that I recall specifically.
24 Q Or passed on to you any such information?
25 A It's implied that they believe there's

1 evidence that there's lung cancer, but I have not
2 addressed that, nor do I recall what specifically was
3 told to me.

4 Q How was it implied to you?

5 A By asking me to consult on a lung cancer case.

6 Q Any other reasons?

7 A No. I was sent records that had some evidence
8 that would support that, of course, but as I have
9 indicated, I'm not testifying about that topic.

10 Q Do you believe that you have the information
11 that tends to prove that plaintiff, if he has a cancer
12 primary to the lungs, likely had that cancer caused by
13 smoking?

14 A I need to hear that wording again.

15 MR. THOMAS: Can you read the question again?
16 (Record read.)

17 THE WITNESS: That's absolutely clear, I
18 wouldn't use wording like that. Smoking caused it,
19 based on all scientific evidence and consideration.

20 BY MR. THOMAS:

21 Q For that are you relying on -- I'm trying to
22 pronounce -- epidemiological studies?

23 A In part, yes. The human studies provide the
24 underlying evidence that smoking causes lung cancer.

25 Q Can you list every study to which you're

1 referring or relying on?
2 MR. GOLDSTEIN: I'm going to object. That is
3 overbroad, vague and in the earlier part of the
4 deposition he said that he has relied on thousands, if
5 not tens of thousands of studies that exist in the
6 field, but go ahead.
7 THE WITNESS: I don't know that I mentioned
8 tens of thousands, although it's probably correct, but I
9 did say thousands.
10 BY MR. THOMAS:
11 Q You don't have any specific studies that you
12 relied on?
13 A No, I wouldn't isolate any out.
14 MR. GOLDSTEIN: Counsel, I just want to state
15 for the record that there's some large pauses. I
16 understand I want to give you the full opportunity to
17 ask your questions, but the record doesn't properly
18 reflect there are large pauses between each question.
19 The witness already said he has a limited time
20 frame so I want to encourage you to use this time today
21 to your best advantage.
22 MR. THOMAS: I'm trying to go through my
23 records to see what I can take out so that we can go
24 faster.
25 MR. GOLDSTEIN: Thank you.

1 MR. THOMAS: I don't think there's been long
2 pauses between every question.
3 MR. GOLDSTEIN: I didn't mean to imply that
4 either, but fine.
5 THE WITNESS: If you like, I'll go through it
6 and tell you what to take out.
7 MR. PIUZE: Based on some of the questions
8 that remained in, I hate to think about what was taken
9 out.
10 BY MR. THOMAS:
11 Q Dr. Smith, is there a familial pattern of lung
12 cancer formation?
13 A Familial?
14 Q Do you know whether there's any genetic
15 susceptibility that has been identified to the
16 satisfaction of scientists that you think is reliable
17 for susceptibility to lung cancer?
18 A No. I think it's clear that lung cancers are
19 caused by external factors. It's also true that there
20 probably are genetic susceptibilities, but if there are,
21 there's not -- or none have been established that are
22 critically important. By that I mean there's no
23 evidence that you have to have a certain genetic profile
24 in order for smoking to cause lung cancer. There may be
25 minor variations and risks that are and will be

1 established though.

2 Q Why do you say those risks are minor?

3 A Because the risk associated with smoking two
4 packs a day is overwhelming, and without the cigarette
5 smoking, the genetic susceptibility to cigarette smoking
6 wouldn't be important at all. In other words, the
7 smoking that's required, and whether or not there's some
8 variation and risk between people due to genetic profile
9 is not that important.

10 Q What are all the risk factors that you believe
11 appropriately are identified with the development of
12 primary lung cancer?

13 A You mean in the general population?

14 Q Right. Correct.

15 A I need to ask further clarification. Are you
16 asking me for the established causes of lung cancer,
17 because that's what I think the question means?

18 Q Established causes as opposed to?

19 A Well, the term "risk factor" can be confusing.
20 As people get older, they have increased risks of
21 cancer. Not because of age, but just as a fact. You
22 can think of age as a risk factor, even though it's not
23 a cause.

24 Q So is age a risk factor?

25 A It is a risk factor for all adult cancers but

1 not a cause.
2 Q Are there any other risk factors?
3 A Well, Counsel, I asked you to clarify. I've
4 tried to explain the generic term risk factor. I
5 presume you really want to ask me about causes. So I'm
6 a little confused.
7 Q Actually, I want to ask you about both.
8 A What do you mean by "risk factor"?
9 Q Whatever your understanding is of risk
10 factors.
11 MR. GOLDSTEIN: Maybe you could explain it for
12 him
13 THE WITNESS: The main risk factors are the
14 actual causes. They're the only ones that are
15 important.
16 BY MR. THOMAS:
17 Q What are the causes?
18 A I haven't got a complete listing here, but
19 they include, obviously, cigarette smoking. We've
20 mentioned radon. Asbestos is another one. Arsenic,
21 nickel, cadmium, chromium, bis(chloromethyl)ether,
22 diesel exhaust, silica. Those are ones that come to
23 mind.
24 Q As you sit here today, can you recall any
25 others?

1 A I would need to write out the whole list and
2 add some to it.
3 MR. GOLDSTEIN: I think in the prior question
4 he also mentioned pollution.
5 THE WITNESS: We talked about air pollution,
6 but within that there is diesel exhaust. It may also be
7 that the PAH, which is another one on your list. PAH.
8 BY MR. THOMAS:
9 Q What does PAH stand for?
10 A Polycyclic aromatic hydrocarbons.
11 Q What are those?
12 A They're -- it's a chemical. It's in certain
13 industrial settings you get that exposure. It occurs in
14 automobile exhaust. I don't know whether you want a
15 chemical definition. I didn't bring along chemical
16 definitions.
17 Q Are there any other causes that you're aware
18 of?
19 A Those are the only ones that come to mind as I
20 sit here.
21 Q What about diet? Is diet a risk factor for
22 lung cancer?
23 A Yes.
24 Q What type of diet becomes a factor for the
25 development of lung cancer?

1 A Well, that's a different question. Did you
2 say now a factor? There are increased risks of persons
3 who have diets low in fruits and vegetables compared to
4 persons who have high intake of fruits and vegetables.
5 Q What about fatty foods, people who have a high
6 intake of fatty foods?
7 A What about them?
8 Q Is that a factor at all, or is that a risk
9 factor at all for lung cancer?
10 A No, except that such people tend to have low
11 fruit and vegetable intake.
12 Q Do you know why people with low fruit and
13 vegetable intake tend to have a lower incidence of lung
14 cancer (sic)?
15 A It's not fully clear. Antioxidants may be
16 part of it. There are other, though, more -- there are
17 a multitude of constituents of diet which may play a
18 role in it. It's not clear what they all are.
19 Another one that's been addressed is selenium
20 in the diet, and beyond antioxidants, vitamin A. But
21 there may be a complex combination of nutritional
22 factors involved.
23 Q Are there any medical tests that could
24 determine which causes led to plaintiff's lung cancer?
25 MR. GOLDSTEIN: I would interpose an objection

1 that he's already said that that's outside of his
2 particular expertise, but maybe I'm wrong. Go ahead and
3 answer if you wish.

4 THE WITNESS: Smoking caused the lung cancer.
5 There are no medical tests of the cancer itself to
6 absolutely prove that.

7 BY MR. THOMAS:

8 Q What about are there any medical tests to
9 determine the extent various risks factors contributed
10 to plaintiff's lung cancer?

11 A Only smoking -- obviously, we talked about
12 things like age, but age is not a cause, and it doesn't
13 contribute to cause. So when you say "contributed," it
14 has to be to cause. I could conceive of the possible
15 contribution of some other things, as I talked about
16 earlier. One was a relatively trivial contribution of
17 marijuana smoke. I could conceive of the possibility
18 that radon might also have been involved, but the
19 overwhelming evidence would support smoking as the only
20 cause to think about in a case like this.

21 Q Are there any medical tests that could
22 determine the extent to which, say, radon or other --
23 any other cause contributed to plaintiff's lung cancer?

24 A They may not have at all. There is no medical
25 test to determine if they played any role at all. By

1 that I mean -- I presume you mean a medical test that
2 relates to a tissue sample or something like that.

3 Q You stated earlier that you had an opinion as
4 to whether marijuana contributed to plaintiff's lung
5 cancer. Can you repeat that opinion again? What was
6 your opinion as to that?

7 MR. GOLDSTEIN: I would object. Asked and
8 answered twice, but go ahead to make it easier for him

9 THE WITNESS: Well, I can't vouch to repeat
10 exactly what I said before. I could tell you I
11 understand that he did smoke marijuana at certain points
12 in time on an irregular basis. And as I indicated
13 before, if it did contribute to the dose of combustion
14 products that contributed to causation of the lung
15 cancer, then it was relatively trivial compared to the
16 overwhelming major dose from cigarettes themselves.

17 BY MR. THOMAS:

18 Q What do you base that opinion on?

19 A My understanding is that he started smoking or
20 sharing a marijuana cigarette once a week or once every
21 other week in 1967. And by about 1969 stopped
22 smoking -- excuse me -- from 1971 stopped smoking
23 marijuana cigarettes.

24 One part of my opinion is based on my
25 understanding that he did have infrequent marijuana

1 smoking, and another part is that during the same days
2 he would have smoked two packs of cigarettes a day. So
3 that would be close to 300 cigarettes a week and maybe
4 one or two marijuana. And so even if marijuana were as
5 potent as cigarette smoking in causing lung cancer,
6 which there's a possibility, although there's no data to
7 support it, but I could conceive of that possibility
8 even if that were true, the dose from cigarette swamps
9 that from marijuana.

10 And in addition the -- not only the smoking
11 per week, but the overall duration of marijuana smoking,
12 as I understand it, was of the order of four years,
13 whereas the cigarette smoking started at age 13 and was
14 continuous after that virtually. Although, he said he
15 tried to quit at various points.

16 Q You mentioned earlier that it was in your
17 opinion that cigarettes were highly addictive. Can you
18 tell me what you base that opinion on?

19 A My reading of the scientific literature, in
20 particular the assessment of people trying to give up
21 and how difficult that is.

22 Q Have you conducted any studies on the
23 addictiveness of smoking?

24 A No.

25 Q Can you tell me specific studies on the

1 addictiveness of smoking for which you're relying?
2 A No, I can't point, as I sit here today, to
3 individual studies. It comes from wide reading over
4 many years. And at certain points I remember reviewing
5 things like the Surgeon General's reports on the
6 addictive properties of cigarette smoking.
7 Q Do you recall which reports?
8 A I think there was one report that addressed
9 that topic. I don't recall the specific title nor a
10 year, and certainly the reports have contained
11 information on the addictive properties of cigarette
12 smoking, beyond that one, if there was one solely
13 devoted to that.
14 Q Do you agree that attributable risk doesn't
15 directly give you information helpful in establishing
16 the cause and effect relationship?
17 A In a case like this, one doesn't need to think
18 about it, but I don't know -- as a general question
19 then, it is worth considering various information that
20 comes from epidemiological studies, and that is one of
21 them. In the context of cigarette smoking of this
22 extent, then I don't think you even need to think about
23 that.
24 Q Why don't you need to think about that in a
25 case like this?

1 A Because it's so obvious.
2 Q Why do you say it is so obvious?
3 A You have an extraordinarily potent lung cancer
4 causing habit that's been established in thousands and
5 thousands of studies to markedly increase risks of lung
6 cancer beyond any question of doubt. And as soon as one
7 has one sentence of a smoking history like this, and the
8 fact somebody has lung cancer, then we should all go
9 home.
10 Q Do you agree that attributable -- what is
11 called attributable risk is used for -- by you and other
12 people who are knowledgeable in their specialty, it is
13 used for the impact on public health?
14 A We do use it for that purpose in part, yes.
15 Q Can you identify what journals, texts or
16 authors you consider authoritative on the issue of the
17 cause of primary lung cancer?
18 A No. My opinions rely on extensive scientific
19 publications concerning studies done in humans, and I
20 can't isolate them out, nor do I rely on textbooks.
21 Q So there's not one that you believe is more
22 authoritative than another?
23 A No. My opinions are based on scientific
24 evidence that comes from studies.
25 Q Have you made any speeches or public

1 presentations regarding cancer in relationship, if any,
2 to cigarette smoking?

3 A I'm not sure what you mean by public
4 presentation. Does that include scientific meetings?

5 Q It would include scientific meetings?

6 A I frequently present information that relates
7 to cigarette smoking and cancer both at scientific
8 meetings and in my teaching.

9 Q Generally how often, say, in a given year?

10 A I would think the topic probably comes up more
11 than once a week in things I'm presenting.

12 Q Do you have any transcripts of those
13 scientific meetings?

14 A Scientific meetings don't have transcripts.
15 If you mean proceedings, I prefer to -- your question
16 was about speeches and presentations. I'm not referring
17 to writings. The writings I have copies of only the
18 scientific publications, which are in my CV. I don't
19 keep copies of meeting proceedings.

20 Q Were you ever a member of any organizations
21 with official policies regarding cigarette smoking?

22 A I don't know which of the societies I do or
23 have belonged to that have official policies. I don't
24 know quite how to interpret that.

25 MR. GOLDSTEIN: I think the question is very

1 broad. For example, if he is on the staff of a
2 university, who has a policy of following the law and
3 not allowing smoking, implicit in that question might
4 be, you know -- it might be overbroad is what I'm trying
5 to say. Maybe you could hone that question.
6 BY MR. THOMAS:
7 Q Were you a member of the American Cancer
8 Society?
9 A No.
10 Q Have you ever been a member?
11 A No.
12 Q Did you participate in any of the work that
13 evolved into any of the Surgeon General reports?
14 A I was not on any of the committees that
15 produced those reports.
16 Q Do you know if any of your studies were used
17 in those reports?
18 A I don't know. I've never looked for that.
19 Q Were you ever asked to participate in any of
20 the work?
21 A I don't recall.
22 Q Is it correct that you do not consider
23 yourself an expert in addiction?
24 A Not as a general topic, no. If there are
25 epidemiological studies that provide data, then I'm

1 expert in the design and interpretation of such studies,
2 but that doesn't make me an expert on addiction, in my
3 opinion.
4 Q Do you know the pharmacology of the chemicals
5 or drugs contained in cigarette smoke?
6 A I'm not a pharmacologist. I'm not -- I would
7 need to hear the question again. I don't expect to be
8 testifying about the pharmacological action of
9 constituents of cigarette smoke, if that helps you.
10 MR. THOMAS: Can you read the question again?
11 (Record read as follows:)
12 "QUESTION: Do you know the pharmacology
13 of the chemicals or drugs contained in
14 cigarette smoke?"
15 MR. GOLDSTEIN: Are you asking him to recite
16 what the pharmacological components are?
17 MR. THOMAS: I'm asking him if he knows.
18 THE WITNESS: I thought I answered the
19 question.
20 BY MR. THOMAS:
21 Q I don't think you did.
22 A I think I did.
23 MR. GOLDSTEIN: Yes, you did.
24 MR. THOMAS: Can you read his answer?
25 THE WITNESS: Maybe I don't understand your

1 question. If you want me to list all the chemicals in
2 cigarette smoke, I don't have that list here. Could I
3 look it up? If you want to know the action in the human
4 body of each chemical constituent of cigarette smoke, I
5 could also look those up, what we know about them

6 BY MR. THOMAS:

7 Q Again, do you know the pharmacology of the
8 chemicals or drugs contained in cigarette smoke?

9 MR. GOLDSTEIN: Same objection.

10 THE WITNESS: Same answers.

11 MR. THOMAS: We still haven't gotten an answer
12 to the question though.

13 MR. GOLDSTEIN: I believe he said he's not
14 prepared to answer and --

15 THE WITNESS: I think I have answered. I
16 don't think you know what the word "pharmacology" means,
17 Counsel.

18 BY MR. THOMAS:

19 Q I'm asking you for your understanding of what
20 it means, and based on your understanding whether you
21 know.

22 MR. GOLDSTEIN: I'm not going to permit him to
23 get into an exchange with you. If you want to express
24 to him what your understanding is or what you want to
25 ask from him I don't want you to give him a word and

1 have you say, what do you mean by that word. Why don't
2 you define for him what you're getting at first.

3 BY MR. THOMAS:

4 Q Do you know what chemicals in cigarette smoke
5 cause cancer?

6 A In humans there is quite a large list which
7 has been found to cause cancer in mice and rats. As far
8 as being sure which ones cause lung cancer or other
9 cancers in humans, then it's not nearly so clear. One
10 of them is 4-biphenyl, which is certainly a cause of
11 bladder cancer, and may play a role in lung cancer
12 causation.

13 The group of chemicals called PAH that we
14 talked about before are thought to play a role in lung
15 cancer causation, but I don't think that's absolutely
16 clear.

17 Then there's many other constituents of
18 cigarette smoke that are at relatively low
19 concentrations, but nevertheless in other settings and
20 in high concentrations known to cause lung cancer. And
21 they include quite a few of the list we talked about
22 before. Arsenic, Nickel, cadmium, chromium and others.

23 Q Are you finished with your answer?

24 A Yes.

25 Q Do you know of any others, any other chemicals

1 in cigarette smoke that cause cancer, lung cancer
2 specifically?

3 A In humans, no, it's not been established. We
4 don't know exactly which constituents are involved in
5 lung cancer causation.

6 Q Do you agree that you're not an expert in
7 toxicology?

8 A I am an expert in the inference from
9 toxicological studies as it relates to my work in
10 epidemiology. I'm not primarily a toxicologist, though.

11 Q What do you mean by inferences in toxicology
12 studies?

13 A Well, we examine toxicology studies for a
14 variety of reasons. One is to think about what we
15 should be doing in research on human health. Another
16 one is in the context of biological plausibility that
17 supports findings in humans. So for that reason I'm
18 always reading toxicological literature and
19 collaborating and discussing with toxicologists.

20 Q What is biological plausibility?

21 A We use that as a general rather vague, I know,
22 term to refer to scientific support for causal
23 information in humans that comes from outside of
24 epidemiology itself.

25 Q Do you agree that you're not an expert in

1 molecular biology?
2 A I'm not, although I use molecular biology in
3 some of my studies. But it's the people who work with
4 me who set up and do the assays.
5 Q Do you agree that you're not an expert in
6 pharmacology?
7 A I'm not.
8 Q Do you agree that you are not an expert in
9 psychology or psychiatry?
10 A I agree.
11 Q Do you know -- do you have any knowledge or
12 opinion as to how many people in the United States have
13 successfully quit smoking after a period of time when
14 they were long-term smokers?
15 A I don't know the number.
16 Q Do you know whether or not there are more or
17 less former smokers in the U.S. than there are smokers?
18 A I believe the number of former smokers now
19 exceeds active smokers.
20 Q Do you have any knowledge or opinion
21 concerning what percent of former smokers who are able
22 to quit smoking without assistance, say, assistance with
23 nicotine patches?
24 A I have no data on that. Although the word
25 "assistance" seems very vague.

1 Q Do you have any information or opinions as to
2 what the approximate number is for deaths attributable
3 to alcohol in the U.S. per year?
4 A I don't have that number with me.
5 Q Do you agree or disagree with this statement?
6 (Reading) "Epidemiology does not prove cause and effect,
7 but looks for relationships between the incidence of
8 patterns of disease and other variables."
9 A I disagree.
10 Q Do you agree or disagree with this statement?
11 (Reading) "The most reliable test for carcinogenicity
12 involves long-term animal testing."
13 A No, not if the inference is about humans.
14 Obviously, if you want to make inferences
15 about rats, you should study rats. If you want to make
16 inference about humans, the most reliable data comes
17 from human studies.
18 Q Do you agree or disagree with the following
19 statement? (Reading) "Among former smokers, the decline
20 in risk of death compared with continuing smokers begins
21 shortly after quitting and continues for at least 10 to
22 15 years. After 10 to 15 years of abstinence, risk of
23 all cause of mortality returns to nearly that of persons
24 who never smoked."
25 MR. GOLDSTEIN: That's a long-winded question.

1 Can you maybe summarize it down. It sounds like it's a
2 compound, run-on question.

3 MR. PIUZE: While there's a slight lull, can I
4 just ask you if you would identify the source of these
5 quotes as you're giving them to the witness. Would you
6 do that? Is that the Surgeon General's report, or is it
7 his former testimony?

8 MR. THOMAS: I'll represent to you that this
9 is the Surgeon General's report of 1990.

10 THE WITNESS: That question -- I would use
11 actual data. When you say agree or disagree, I would
12 just note that there's clear evidence that the
13 continuing smoker has higher risks of lung cancer
14 compared to people who stop for five years, and that
15 compared to the marked risk while actively smoking after
16 15 years or 20 years, the rates get close to those of
17 nonsmokers, but they're still markedly above them. It's
18 only in contrast for -- in comparing to the risks of
19 continuing active smokers that one could say that.

20 BY MR. THOMAS:

21 Q Do you agree or disagree with the following
22 statement? (Reading) "Statistical methods cannot
23 establish proof of a causal relationship in an
24 association."

25 A Statistical methods don't establish proof. I

1 agree with that.

2 Q Do you agree or disagree with the following
3 statement? (Reading) "Causal significance of an
4 association is a matter of judgment which goes beyond
5 any statement of statistical probability."

6 MR. GOLDSTEIN: Counsel, I just want to
7 interpose an objection to these questions. You're
8 taking something out of context. It may have different
9 meaning to the witness. Go ahead, if you can answer.

10 THE WITNESS: That one certainly requires the
11 context too -- some of the others I have struggled with
12 trying to answer to be helpful, whereas they also should
13 be put in context. Each of these sentences sort of is a
14 little -- or is clear even in the wording that something
15 came before and after.

16 BY MR. THOMAS:

17 Q Are you saying it may or may not be true,
18 depending on context?

19 A Could you read it again, please.

20 Q Sure. (Reading) "Causal significance of an
21 association is a matter of judgment which goes beyond
22 any statement of statistical probability."

23 A Yes, I'm not sure what "causal significance"
24 means. It would need to be put in context.

25 Q You don't have an understanding of the term

1 "causal significance"?

2 A No, it's not a specific definition, no.

3 If it's meant or related to the weight that's
4 given to something in causal inference, then I could
5 understand that, but I don't use the two words "causal
6 significance" to necessarily mean exactly that.

7 MR. GOLDSTEIN: Depending on the surrounding
8 word in that paragraph or statement that could appear,
9 and it could be true in both the negative and positive.
10 But if you want to ask him specifically, maybe you could
11 clarify. If you want to ask him a specific question and
12 if you clarify the specific context.

13 THE WITNESS: I think if you asked me -- I can
14 answer most and say I don't disagree with them as
15 stated, but I can't quite tell. As soon as you ask me
16 to agree or not with one sentence out of a paragraph,
17 then we're in trouble. But I can certainly say for most
18 of them that I don't disagree with them but -- there
19 would be a "but."

20 BY MR. THOMAS:

21 Q What's the "but" for the last -- for the
22 statement "Causal significance of an association is a
23 matter of judgment that goes beyond any statement of
24 statistical probability"?

25 A The "but" would be in reference to causal

1 significance would be that if one is making causal
2 inference from epidemiological data, then it requires
3 using more than just the numbers or the statistics.

4 Q What else is required?

5 A We have a set of criteria that we use in
6 making causal inference. There's no single one item I
7 don't know if you want me to run through them all or --

8 Q Could you list -- can you tell me what they
9 are?

10 A The key ones in my view are to decide whether
11 or not findings and studies are due to chance. The
12 second one would be to consider possible biases in the
13 studies. The third one would be to consider the
14 consistency of findings from different studies done by
15 different scientists preferably in different places.
16 Another one is to consider the strength of the
17 association in that if a very high risk is demonstrated,
18 that adds to evidence of causation compared to lower
19 risks, which are harder to prove. Another one is dose
20 response relationships, which can support causal
21 inference. Another one is latency or the timing between
22 the exposure and the disease outcome. Another one is
23 biological plausibility.

24 Those are the main ones that I use in making
25 causal inference.

1 Q Have you personally done a metanalysis
2 (phonetic) of smoking and its relationship to lung
3 cancer?
4 A I've done a metanalysis of passive smoking.
5 Smoking and lung cancer was established so long before I
6 started doing research that I have not done one.
7 Q When did you do your study on -- what did you
8 term it? Passive smoking?
9 A Yes.
10 Q When did you do that study?
11 A Well, it was a work I did in the university
12 around about 1985, I think, but I'm not sure of the
13 exact year. It wasn't a journal or scientific
14 publication.
15 Q Was it published at all?
16 A Not in the scientific literature.
17 Q What about in nonscientific literature?
18 A Well, no, not in the literature period. It
19 was a report that I prepared that then led to the
20 banning of smoking in the school public health and
21 subsequently the university.
22 Q Were you ever asked to participate in the
23 design of a cohort study tied to smoking and its
24 relationship to the development of primary lung cancer?
25 A No, those studies were before I started my

1 active research.
2 MR. PIUZE: Can we go off the record for less
3 than 20 seconds?
4 (Brief recess taken.)
5 BY MR. THOMAS:
6 Q Dr. Smith, do you know whether there are
7 certain types of lung cancer that have a stronger
8 relationship to smoking than others?
9 A All the main types that are very strongly
10 related to smoking in relative risks terms, they differ
11 somewhat.
12 Q Are there any other types of lung cancer that
13 are not associated with smoking?
14 A Well, all the main types are.
15 Q What about the non-main types?
16 A I don't know.
17 Q What are the main types of lung cancer?
18 A Adenocarcinoma, small cell carcinoma, squamous
19 cell carcinoma, large cell, undifferentiated. Those are
20 the main pathological types.
21 Q Of those main pathological types, which is
22 most strongly associated with smoking?
23 A Well, they all are. When you say "most
24 strongly," it depends what's measured in relative risks
25 terms. Small cell carcinomas are, but that doesn't mean

1 the others aren't strongly related. It relates to that
2 particular measure.

3 Q But in comparison to the others, are you
4 saying that small cell carcinoma is more strongly
5 associated with smoking than say -- than any of the
6 other three you listed?

7 A Well, I wasn't saying that. I think when --
8 careful in not mixing words. I just indicated in
9 relative risks terms that is correct, but that is a
10 particular measure.

11 Q Is adenocarcinoma more strongly associated
12 with smoking than small cell carcinoma?

13 A In relative risk terms no, but again the
14 phrase "more strongly associated" requires a definition,
15 and I'm assuming you mean it in relative risks terms,
16 and the answer is no.

17 Q In relative risks terms is what I meant.

18 A It does not have as high relative risks as
19 small cell.

20 Q And same question for large cell.

21 A I don't recall.

22 Q Are you in favor of raising taxes on
23 cigarettes?

24 MR. GOLDSTEIN: Could you tell me what the
25 relevance is on asking this witness a personal question

1 on that matter? He's an expert here. You're paying for
2 his time. I'm not sure the relevance to this case.
3 MR. THOMAS: It's something that we've been
4 asking of both sides --
5 MR. PIUZE: Boeken never asked that --
6 MR. THOMAS: It's relevant to bias, I believe,
7 and also to the formation of this witness's opinions.
8 MR. GOLDSTEIN: Is tax an issue in this case,
9 cigarette tax?
10 MR. THOMAS: No, but his opinions on smoking
11 are.
12 MR. GOLDSTEIN: Right. You can ask about that
13 perhaps, but I'm not sure that asking about taxes would
14 be something that I would permit.
15 MR. THOMAS: I'm not just asking about taxes.
16 I'm asking about taxes on cigarettes and whether he's in
17 favor of them
18 MR. PIUZE: You're wasting incredible amounts
19 of valuable time here, including incredible pauses you
20 take between the answer and asking your next question.
21 I have a feeling it's designed to prolong these
22 proceedings. But if you want to ask him what he thinks
23 about the U.S. internal revenue tax, shoot.
24 MR. THOMAS: Because there are two of you,
25 let's have one attorney make the objections. I don't

1 need to argue with both of you.
2 MR. PIUZE: I'm not objecting. I'm making an
3 observation.
4 MR. THOMAS: Also, as far as your
5 observations, I haven't had long pauses in between
6 questions. I think that's a misstatement of what's been
7 going on here. But to move things along, I'll ask the
8 question again.
9 THE WITNESS: Counsel, I got up at 4:00 this
10 morning to leave for the airport at 5:00. We actually
11 started late. In my view I've been somewhat offended at
12 the very long pauses between questions.
13 MR. GOLDSTEIN: I don't mean to jump on the
14 bandwagon, but you yourself admitted that there are long
15 pauses.
16 MR. THOMAS: There were a few long pauses
17 because I was trying to take out information. I think
18 this is taking up much more time than my pauses.
19 Q Are you a proponent of raising taxes on
20 cigarettes?
21 A I think that the tobacco companies should be
22 closed. The cigarette products should not be marketed,
23 and it should be done voluntarily by all employees
24 resigning and walking away from the business that kills
25 so many users.

1 But if that were not to be, I'm not an expert
2 in the best public health interventions. It's certainly
3 true that while cigarettes remain a legal product, the
4 higher the price of them, the better to stop teenagers
5 from getting them. But one way of doing that is taxes.
6 So I wouldn't support much more direct action on tobacco
7 companies than that, though, but if something --
8 everything maybe needs to be done

9 Q Do you believe that adults in the United
10 States should not be permitted to smoke cigarettes?

11 A I believe that tobacco should be an illegal
12 product. Beyond that, I won't say any more. It
13 shouldn't be marketed nor sold. When you say the adults
14 shouldn't be allowed to use it, I don't think that's the
15 right end of things. It should not be publicly
16 available and marketed in the way that it is.

17 I'm aware that some people are extremely
18 highly addicted, and as it is with other drugs, there
19 may be a need to provide treatment. And it's areas that
20 I am not expert in the best way of handling.

21 Q Do you think that companies that manufacture
22 and sell tobacco should be put out of business by
23 lawsuits like this?

24 A Yes, this is one way. I think there are many
25 more direct ways. Politicians should decide that the

1 companies that market a product that kills two out of
2 five users, and damages the health of the other three
3 should not be allowed in modern society.

4 Q Do you get involved in lawsuits like this
5 because you hope that these types of lawsuits may result
6 in tobacco companies going bankrupt?

7 A That's one part. I do do medical/legal
8 testifying about causation of cancer and chemicals
9 anyway, and it's in part because I find it a very
10 interesting topic. I must say that in tobacco cases,
11 though, I feel an added value in the sense that it seems
12 one of many different approaches that might reduce or
13 make tobacco companies eventually go out of business.

14 Q Concerning your present work activities, how
15 do you occupy your time? For instance, do you teach?

16 A My main activities are teaching and research.

17 Q What percentage of your time -- of your work
18 time is spent teaching?

19 A A lot of research involves teaching and vice
20 versa because I teach doctorate students in part, and I
21 tend to break it down around about 50/50, but there's a
22 lot of overlap.

23 Q 50 percent for research and 50 percent for
24 teaching?

25 A Correct.

1 Q How much time -- what percentage of your time
2 is spent as a consultant or a witness in legal matters?
3 A The order of 10 percent of my working time.
4 Q So that would roughly reduce the teaching and
5 research to about 45 percent. Is that correct?
6 A No. I thought you were asking about my
7 university professor activities when I said 50 percent
8 teaching, 50 percent research. Even in there some of it
9 is administration, and other areas outside of teaching
10 and research.
11 Q Compared to your university work, what percent
12 is spent on university work versus what percent is spent
13 on consulting as a witness in legal matters?
14 A Roughly 10 to 90. By that I mean 90 percent
15 of my work time relates one way or another to university
16 activities.
17 Q What percent of your income is derived from
18 consulting as a witness in legal matters?
19 MR. PIUZE: What percentage of his
20 professional income?
21 MR. THOMAS: Professional income.
22 THE WITNESS: About a third.
23 BY MR. THOMAS:
24 Q How long have you acted as a -- worked as a
25 consultant or witness in legal matters?

1 A I first started in 1984.
2 Q Has the amount of time you spent as a
3 consultant in legal matters increased since 1984 or
4 relatively remained the same?
5 A Increased.
6 Q Has that been a steady increase or has it
7 varied?
8 A No, it's been stable for the last five years
9 at least.
10 Q So far the last five years it's taken
11 approximately ten percent of your professional time?
12 A Roughly, yes. It fluctuates 10, sometimes 15
13 percent. Sometimes less. So I've given 10 percent as a
14 rough estimate.
15 Q Dr. Smith, do you currently treat patients?
16 A No. When I see patients at my studies that
17 need treatment, I refer them to treating physicians.
18 Q Do patients come to you directly for medical
19 advice?
20 A No, not unless they're in my studies.
21 Q How does a patient become -- get into your
22 studies? Are they referred by doctors?
23 A No, we select them. Although we are sometimes
24 using doctors to identify them
25 Q How do you select patients for your studies?

1 A Each study is different. Some studies of
2 cancer are based on the tumor registries, which identify
3 them, and then we contact the patients, and another
4 study we get information from all x-rays done on a
5 certain area and identify from that those who may have
6 lung cancer, and then we subsequently get pathological
7 material in -- some studies I have physicians working in
8 our teams examine patients to diagnose them. It varies.
9 Q When was the last time you treated a patient?
10 A In -- my active treatment work finished in
11 1971, when I started full time work in epidemiology.
12 Q Was that in the United States?
13 A In New Zealand.
14 Q Are you licensed to practice medicine in the
15 United States?
16 A No.
17 Q Have you ever been licensed to practice
18 medicine in the United States?
19 A No.
20 Q Dr. Smith, do you currently smoke?
21 A I do not smoke regularly, no.
22 Q Do you smoke irregularly?
23 A Yes.
24 Q And how often do you smoke?
25 A On odd occasions when I'm on my own traveling.

1 Q Just when you're traveling?
2 A Pretty much, yes.
3 Q Are there any other occasions in which you
4 smoke?
5 A No, not really. I don't smoke regularly. I
6 am embarrassed to say that I still on occasion succumb,
7 but it's not a regular thing and hasn't been for many,
8 many years.
9 Q What are the reasons why you continue to
10 smoke?
11 A I would rather not -- I don't expect to be
12 asked questions about this on direct testimony. It's
13 not something that is part of my expert opinion, and I
14 regard as a very embarrassing private matter. I do not
15 smoke regularly, but there are on occasions that I still
16 succumb.
17 Q When was the first time you smoked?
18 A When I was a university student -- I don't
19 know what you want. The year or my age.
20 Q Med school or undergrad?
21 A Medical school.
22 Q Do you recall the year?
23 A It would have been around 1965.
24 Q And did you smoke cigarettes, or what form of
25 tobacco did you smoke?

1 A Initially, it was a pipe.
2 Q Have you ever smoked cigarettes?
3 A Yes.
4 Q Do you continue to currently smoke cigarettes?
5 A On rare occasions.
6 Q Did you ever smoke cigarettes on a regular
7 basis?
8 A Not really. Not like regular cigarette
9 smokes. No, I never wanted to smoke and didn't -- I've
10 never smoked regularly for months, for example, in my
11 life. I did smoke a pipe regularly.
12 Q How often did you smoke a pipe?
13 A Well, I really -- this line of questioning
14 seems to be wasting time. You know, I have to go at
15 12:30, and I'm not going to be testifying about my
16 personal smoking. It's not pertinent to my opinions in
17 this case. I'm here as an expert. I think you've asked
18 quite a lot of questions.
19 Q Just a few more, Doctor. When did you first
20 become aware of the Surgeon General's report of 1964?
21 A I don't recall.
22 Q Are you aware of that report?
23 A Yes.
24 Q Do you know when you became aware of the 1962
25 British College -- I'll rephrase that.

1 Are you aware of the 1962 British College of
2 Surgeon's report on smoking?
3 A Not specifically, no. I'm aware that there
4 were various reports like that, but I don't recall that
5 specific volume.
6 Q Do you recall what was in that report?
7 A No. If I did, I would recall the specific
8 volume.
9 Q When you started smoking, were you aware that
10 smoking caused an increased risk of disease?
11 A When I started smoking, I started smoking a
12 pipe, and I think at that time I was at medical school,
13 and various physicians and professors and others, I
14 think, had the idea that pipe smoking wasn't that bad.
15 When I first -- that's my answer. That's the way I
16 first started.
17 Q What about when you first started smoking
18 cigarettes? Did you know that they were associated with
19 an increased risk of disease?
20 A Yes.
21 Q What was your understanding of their
22 association with increased risk of disease?
23 A I don't recall. You mean at that time?
24 Q At that time.
25 A I don't recall. I know I -- I had no idea how

1 high the risks were at that time.
2 Q Have you ever smoked Marlboro cigarettes?
3 A Yes.
4 Q Did you ever smoke Marlboro cigarettes
5 exclusively for a period of time?
6 You okay?
7 A These chairs -- no, I have never smoked
8 cigarettes regularly for -- as I've indicated, it's
9 normally been a very sporadic, occasional thing. So
10 that's my answer.
11 Q Did you smoke other brands of cigarettes?
12 A I have, yes.
13 Q Do you know why you chose to smoke Marlboro
14 cigarettes?
15 A I don't. Probably the advertisements, but I
16 don't, no.
17 Q You say "probably the advertisements," what do
18 you mean?
19 A I thought that was plain English.
20 MR. GOLDSTEIN: We call them "advertisements."
21 He calls them "advertisements" (phonetic).
22 THE WITNESS: I'm sorry.
23 BY MR. THOMAS:
24 Q Have you ever suffered withdrawal symptoms --
25 let me -- I object to my own question.

1 MR. PIUZE: Overruled.
2 MR. GOLDSTEIN: Sustained.
3 BY MR. THOMAS:
4 Q Have you ever tried to quit smoking?
5 A Oh, yes. I don't smoke regularly. I often
6 never wanted to smoke ever again.
7 Q What have you done to try to quit smoking?
8 A Stop.
9 Q Have you used any aids?
10 A No. Not known chemical aids, no.
11 Q Did you suffer any withdrawal symptoms when
12 you tried to quit smoking?
13 A Not at the immediate time, no. The -- in
14 certain settings, as I indicated, when I'm on my own,
15 when I'm traveling, I have major urges to smoke. But I
16 wouldn't say that when I stopped, I actually had reached
17 a time I stopped because I don't continue very long that
18 I have physical withdrawal symptoms, no.
19 Q Do you have an opinion as to whether or not
20 you are addicted to tobacco?
21 A It depends how one defines "addiction." In
22 certain settings it appears I can't control this urge to
23 have a cigarette. But I don't smoke continuously. So
24 in that sense I have not become addicted to continuous
25 smoking.

1 Q Just a few more questions, Doctor.
2 Are you able to distinguish different flavors
3 or effects from different brands of cigarettes?
4 MR. PIUZE: Compound. Flavors or effects?
5 BY MR. THOMAS:
6 Q Are you able to distinguish different flavors
7 from different brands of cigarettes?
8 A I suppose. I don't know. I don't think about
9 it.
10 Q Same question for effects?
11 A No.
12 MR. THOMAS: Let's go off the record a
13 second.
14 (Brief recess taken.)
15 MR. THOMAS: Dr. Smith, I have no more further
16 questions for you.
17 THE WITNESS: Thank you.
18 MR. GOLDSTEIN: Put a stipulation on the
19 record?
20 MR. THOMAS: Yeah. We will stipulate to
21 relieve the court reporter of her custodial duties. The
22 transcript will be forwarded to in care of Troy Thomas
23 at Arnold & Porter, at which time I will send an
24 original to you, Dr. Smith, for your review so that you
25 can make any changes or corrections that you feel are

1 necessary.
2 Because of the short time frame for trial
3 here, I would stipulate that or suggest that we
4 stipulate to a shortened time for Mr. Smith to review
5 the deposition transcript.
6 MR. PIUZE: He's not going to be available.
7 He's going to be out of country -- between when and
8 went, Doctor?
9 THE WITNESS: The 6th and 25th.
10 MR. PIUZE: So he won't have this in his
11 hands. Do you want to take it with you? I don't blame
12 you. He won't have this in his hands until he's back.
13 I'd agree that he will have read and corrected the
14 deposition prior to his testimony, and I'll also agree
15 that I'll inform you of any changes, additions or
16 corrections within 24 hours of his testimony. And if I
17 don't do so, you can use the deposition as if you got a
18 signed, sealed and delivered original.
19 MR. THOMAS: Right, his time might be a little
20 short if he's going to make some significant corrections
21 to it. Can we have a little more time than that just so
22 that if he does make significant corrections or changes,
23 we will be adequately informed of that.
24 MR. PIUZE: I'll try. Given the fact he's
25 coming back -- I don't know where he fits in the scheme

1 of things. He could conceivably come back and not have
2 enough time to change it. I'll do my best.

3 MR. THOMAS: Haven't we entered into
4 agreements regarding other experts for shortened time to
5 review the transcript?

6 MR. PIUZE: Yes. None of them are leaving the
7 country, however.

8 MR. THOMAS: I mean this is going to pose a
9 problem for us. If we are waiting --

10 MR. PIUZE: You can go by Code if you want.
11 I'm trying to be cooperative and doing the best I can
12 with all these depositions. This one just happens to
13 have a unique feature. He's going to be out of the
14 country.

15 MR. THOMAS: Do we have an agreement, an
16 ongoing agreement between our firm and your firm as to
17 response times for expert witnesses?

18 MR. PIUZE: I can't answer that. Anyway,
19 while you're thinking about either concluding or saying
20 something further, if you've got any remaining financial
21 transactions with Dr. Smith, I'd appreciate if you could
22 handle those so he can get out of here, please.

23 MR. THOMAS: Well, I think as far as the
24 timing of obtaining his deposition transcript, I think
25 that's going to be a problem. It may be something we

1 need to take up with the court.
2 MR. PIUZE: That's okay, but I think we've
3 reached the end of the road here. I don't think there's
4 any reason to discuss it. The real bottom line is the
5 code prescribes 30 days from his receipt. So if we
6 cannot agree, then he's going to get 30 days from his
7 receipt. You don't want that. I'm ready to give you a
8 way better deal than that.
9 MR. THOMAS: It was just my understanding that
10 there was an agreement between us as to timing of
11 receiving expert depositions, and if there is such an
12 agreement, which I understood there was, I would propose
13 that that time, that agreement should be used in this
14 case and for Mr. Smith as well.
15 MR. PIUZE: Okay. I can't say that is a
16 global, no exceptions, universal rule. I cannot say
17 that. So I'm doing the best I can.
18 MR. THOMAS: Okay. What have you agreed to do
19 for us then as far as getting his --
20 MR. PIUZE: At the minimum I will advise you
21 24 hours prior to his testimony of any changes,
22 corrections or additions. And if I do not do so, you
23 can use your certified copy as if it's a signed, sealed
24 and delivered original. If time permits and he returns
25 from his trip in such a way that he gives me more time

1 to inform you further in advance, I will do so.
2 MR. THOMAS: Okay. Well, we have that on the
3 record. I mean, as far as whether we can work out
4 another agreement or whether we need to or whether
5 another agreement has been reached on that, that may be
6 something we can discuss later. But to move things
7 along, to get Dr. Smith out of here, I say that we are
8 finished.
9 MR. PIUZE: Excellent.
10 MR. GOLDSTEIN: Fine. Thank you.
11 (Discussion off the record.)
12 MR. THOMAS: Send the transcript Federal
13 Express to Dr. Smith on Thursday.
14 (Whereupon, at 12:20 P.M, the deposition of
15 ALLAN SMITH, M.D. was adjourned.)
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1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4
5
6

7 I, ALLAN SMITH, M D. ,
8 hereby certify under penalty of perjury under the laws
9 of the State of California that the foregoing is true
10 and correct.

11 Executed this day of , 2001
12 at ,
13 California.

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20 _____
21 ALLAN SMITH, M D.

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24
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1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4 I, LAURA J. MELLINI, Certified Shorthand
5 Reporter, number 8181, for the State of California, do
6 hereby certify;
7 That prior to being examined,
8 ALLAN SMITH, M.D.,
9 the witness named in the foregoing deposition, was by me
10 duly sworn to testify the truth, the whole truth and
11 nothing but the truth;
12 That the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me;
15 That the foregoing transcript is a true
16 record of the testimony and all objections made at the
17 time of the examination.
18 I hereby certify that I am not interested
19 in the event of the action.
20 IN WITNESS WHEREOF, I have subscribed my
21 name this day of , 2001.
22
23
24 _____
25 Certified Shorthand Reporter
for the State of California