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

RICHARD BOEKEN,)
)
Plaintiff,)
)
vs.)
)
PHILIP MRRIS, INCORPORATED, a)
corporation; INTERNATIONAL HOUSE OF)
PANCAKES, INCORPORATED, a corporation;)
DOES 1-100, inclusive,)
)
Defendants.)
)

NO. BC226593

DEPOSITION OF LUCY LOUISE HENKE, Ph. D., taken
on behalf of the Plaintiff, at 11755 Wilshire
Boulevard, Suite 1170, Los Angeles, California,
commencing at 2:00 P.M, on Tuesday, February 27,
2001, before DONNA J. RUDOLPH, CSR NO. 9652, in and
for the State of California.

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APPEARANCES

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Also Present:

Julia J. Tyler
Attorney at Law

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I N D E X
EXAMINATION
By Mr. Goldstein Page 5

PLAINTIFF' S	EXHIBITS DESCRIPTION	PAGE
1	Notice of Taking Depositions and Notice to Produce Documents for Inspection and/or Copying, dated 2/1/01	134
2	Curriculum Vitae	134
3	Dr. Henke's Reliance Materials	134

INFORMATION REQUESTED
(None.)

MARKED QUESTIONS
(None.)

1 defendant in a case?

2 A I think perhaps the first deposition I ever had
3 taken was in connection with my divorce.

4 Q Okay.

5 A So --

6 Q And how long have you lived in, let's see, I
7 thought it was New Hampshire, but I -- Louisiana?

8 A Now it's Louisiana. I've been there -- this is
9 my third year back in Louisiana.

10 Q And you've never gone by the name Lucille;
11 right, or have you?

12 A That's right. No, I haven't.

13 Q All right. Okay.

14 I'll just briefly lay out for you probably the
15 boring stuff you hear at the beginning of each deposition.
16 But the testimony you're going to give here today is under
17 oath. It's the same oath that would be administered in a
18 court of law, and if I should ask you a question that you
19 don't understand or I should frame a question incorrectly
20 or you want me to repeat it, just go ahead and ask me to do
21 that, and I'll be happy to do that.

22 You'll have the right at the conclusion of this
23 deposition to have the court reporter present with you a
24 booklet of all the words that are said here today. They'll
25 be transcribed, and you'll be given an opportunity to

1 review it make any type changes to it.
2 But you do understand that if you do make any
3 changes to it, it may be commented upon at the time of
4 trial, and it may prove embarrassing if they're of a
5 substantive nature.
6 Do you understand that?
7 A Yes, I do.
8 Q How long have you resided in Louisiana?
9 A I grew up in Louisiana, but I have recently
10 returned to Louisiana. This is my third year back.
11 Q Okay.
12 And prior to that, you lived in New Hampshire?
13 A Yes.
14 Q And where --
15 A Actually, no. I'm sorry. I taught in
16 New Hampshire, but I was living in Maine.
17 Q Okay.
18 A In southern Maine.
19 Q Okay.
20 How far of a commute is that?
21 A On a good day, it's about 45 minutes.
22 Q Oh, okay. Okay.
23 And where did you live in Maine?
24 A In Kennebunkport.
25 Q Okay. Never heard of that. Okay.

1 Prior to living in Maine, you resided where?
2 A I was living in Richmond, Virginia.
3 Q Okay.
4 Let me ask you first why don't you tell me
5 first if you could please explain for me what opinions
6 you've been asked to express or what you would express in
7 trial of this matter, if you were -- if that's all right.
8 I thought this -- I can draw it out of you, but
9 maybe if you'd tell us it'd be easier.
10 A Well, I can speak about my opinions on many
11 different levels. It's a very complex issue.
12 Q Okay.
13 A If you have a starting point --
14 Q Sure. That's fair.
15 A Maybe you want to --
16 Q What were you asked to do in this case?
17 A In this case, to take a look at the Boeken
18 situation, to look at his Complaint, at the depositions
19 which I am still reading some, as I keep coming in.
20 Q When you say "his Complaint," you mean the
21 Summons and Complaint, the lawsuit?
22 A Yes.
23 Q Okay.
24 And were you asked to give an opinion regarding
25 certain aspects of the case or comment on a particular

1 aspect?

2 A Yes. I was asked to comment upon the role of
3 advertising in consumer decisionmaking.

4 Q Okay.

5 Could you express for me, if you would, your
6 overall understanding of what the plaintiff has alleged
7 with respect to advertising in the Complaint?

8 A My understanding is that Mr. Boeken has claimed
9 that the Marlboro advertising and the Marlboro man
10 especially are the reason that he smokes, that he continued
11 to smoke and the reason that he is currently ill, and I
12 should also say my understanding is that the International
13 House of Pancakes is also in some way to be held
14 responsible for his choice to smoke at an early age.

15 Q And what was the theory behind the
16 International House of Pancakes?

17 A I -- I believe it was that there was a vending
18 machine in the International House of Pancakes which was
19 not monitored for use by under-age individuals. Therefore,
20 he had access to the machine.

21 Q Okay.

22 Now, in terms of opinions that you would
23 express, before you do so, would it be fair to state that
24 you had only express those opinions based upon your
25 viewpoint of a -- of a professional in the advertising

1 industry as opposed to -- you're not going to comment upon
2 any medical issues?

3 A That's correct. I am not. No, I'm not.

4 Q For purposes of your testimony, did you assume
5 that his doctors accurately diagnosed his condition?

6 A I have no idea about whether his doctor's
7 diagnosis is accurate or not.

8 Q Okay.

9 A I mean -- I don't really --

10 Q You're accepting as true the allegation that he
11 has lung cancer or not --

12 A I am accepting that as true.

13 Q Okay.

14 When did you first get retained on this case?

15 A Let me think about that. It must have been not
16 too long ago. I believe I was first retained in the end of
17 December.

18 Q Okay.

19 And can you tell me how -- what was the first
20 contact you had with a representative of the defendant in
21 this case or defendants, if there are more than one?

22 A I met with Mr. Dobberteen, Mr. Leiter and
23 Mr. Purvis in December. I don't know the exact date.

24 Q Where did that meeting take place?

25 A At 777 Figueroa.

1 Q Okay.
2 A Or South Figueroa, I'm not sure which.
3 Q I think it's south.
4 A South, okay.
5 Q And the purpose of that meeting, as you
6 understood, was to discuss the potential retention in this
7 case?
8 A That's correct. Yes.
9 Q Okay.
10 Were you out here in California anyway, or did
11 you fly out specifically for that meeting?
12 A I came out specifically for the meeting.
13 Q Okay.
14 So I take it before you had that meeting in
15 their office, was there a preliminary meeting in which
16 somebody indicated to you that they'd be interested in
17 having you come to 777 South Figueroa?
18 A I'm sorry. There was no meeting. It was a
19 phone call.
20 Q I'm sorry.
21 There was a communication?
22 A Yes, phone call from Mr. Purvis, Alan Purvis.
23 Q And what was said and by whom in that
24 discussion, if you can recall?
25 A He informed me of the case that was going to be

1 tried in California, that he thought I perhaps would like
2 to offer an opinion in this case and that I'm not sure if
3 he said he would be sending me some materials at that point
4 to look at, I'm not sure that there was anything to look at
5 at that point, actually. And then we set up a meeting for
6 the end of December. And I don't remember when that phone
7 call came, but it wasn't much earlier than the meeting
8 actually took place.

9 Q Did you know Mr. Purvis before that first phone
10 call?

11 A Yes.

12 Q And how did you come to know him?

13 A Mr. Purvis is at Johnson, Tyler & Purvis with
14 Miss Tyler. And they have tried -- they have asked me to
15 give my opinion in previous cases. When I was deposed
16 previously, Mr. Purvis was involved in that.

17 Q Okay.

18 When was the first time you set eyes on
19 Mr. Purvis or Miss Tyler? I don't need to know the exact
20 date.

21 A This is going to be difficult to answer, but
22 let me think. I think I first met Mr. Purvis in maybe
23 1992. I first met Miss Tyler maybe in 1995, and I'm not
24 certain that either of those is --

25 Q Okay.

1 A -- absolutely correct.
2 Q And how was the first contact initiated in or
3 about '92? How did that come up to pass?
4 A Mr. Purvis called me or perhaps Miss Johnson
5 called me, Johnson, and asked if I would be interested in
6 meeting and talking about my work at -- at the time I was
7 at the College of William and Mary, but I have been
8 conducting research that apparently they had heard of; and
9 we met to discuss that. I don't think it was in connection
10 with any particular case.
11 Q Have you ever been asked to perform any type of
12 research for anybody affiliated with the tobacco industry,
13 if they funded any type of research projects for you?
14 MR. DOBBERTEEN: Prior to 19- -- prior to that first
15 meeting.
16 MR. GOLDSTEIN: Any time.
17 MR. DOBBERTEEN: Any time.
18 THE WITNESS: No.
19 BY MR. GOLDSTEIN:
20 Q When was the first time that you worked for
21 compensation in any capacity for anybody related to the
22 tobacco industry?
23 A I think that the FDA testimony that I presented
24 during their 1995 -- I'm not sure if it was a -- it wasn't
25 a suit, I'm not sure what to call it, but when the FDA was

1 looking into advertising of tobacco and its impact.

2 Q Well, let me ask you -- I don't mean to offend
3 anybody. I apologize if I stumble through this like a bull
4 in a China shop. I remember clearly when there was a
5 congressional hearing and the heads of the tobacco industry
6 were reported -- right or wrong, the heads of the tobacco
7 industry.

8 Is that in connection with the advertising?

9 A No. That I was involved in, no, I was not
10 involved in that.

11 Q Okay. Okay.

12 Tell me what your opinion is -- well, first of
13 all, you don't have any personal firsthand knowledge of the
14 plaintiff in this case; right?

15 A That's correct. I don't.

16 Q You're testifying based on deposition
17 transcripts and thing of that nature --

18 A That's right.

19 Q -- right? Okay.

20 Were you asked to comment on whether or not the
21 things that he was saying were believable? In other words,
22 the opinions you expressed about Pancake House and Marlboro
23 man, things of that nature, that you went over?

24 A Not specifically, no. I wasn't asked whether
25 what he was saying was believable.

1 Q Okay.
2 Other than the six or so depositions in which
3 you've given, how many times have you testified in trials?
4 A I've testified in one trial.
5 Q Okay.
6 And when was that?
7 A In 1998.
8 Q Okay.
9 And -- and what was the name of that case, or
10 where was that?
11 A That was iron workers. I'm not --
12 Q I think that was 1999.
13 A Was it?
14 Q I think so.
15 A Okay. I would stand corrected on that. In
16 Akron.
17 Q Was the plaintiff's attorney in that case from
18 the Milbrook, Weiss firm, Patrick somebody or other?
19 A I don't recall, but --
20 Q "No"?
21 A But maybe -- I don't recall.
22 Q Patrick Coughlan, that name ring a bell?
23 A It doesn't.
24 MR. DOBBERTEEN: I know him I'm always trying to
25 remember if he pronounces his name Coughlan or Coughlan.

1 There's two guys down in San Diego, and they get in big
2 fights on how to pronounce their names. I'm sorry.

3 BY MR. GOLDSTEIN:

4 Q Okay.

5 Q Where are you presently employed?

6 A I work now at the University of Louisiana at
7 Lafayette.

8 Q In what capacity?

9 A I'm an Assistant Professor of Marketing in the
10 Department of Marketing, legal studies.

11 Q And what does that basically entail?

12 A I -- I'm on a tenure track, and I am carrying a
13 full load of teaching various courses there from marketing
14 research to consumer behavior, to advertising and promotion
15 or marketing communication management.

16 Q Where did the legal part of it come in, the
17 legal studies?

18 A That is part of the department almost by
19 default. The -- there are two or three individuals who in
20 the department teach courses related to business law. I
21 don't.

22 Q Okay.

23 Q Do you have any formal legal education?

24 A No, I don't.

25 Q Okay.

1 And do any of your courses that you teach have
2 anything to do with legal issues? Well, that's probably a
3 bad question. Let me rephrase that.

4 You don't teach any courses that have the name
5 legal or law in them, do you?

6 A No, I don't.

7 Q Okay.

8 Why don't you tell me just briefly -- I'm sorry
9 to go over this, but --

10 A That's all right.

11 Q I'd like to make it more interesting than less,
12 and people usually like to talk about themselves, so -- not
13 that the attorneys want to hear, but they have to in this
14 case.

15 Why don't you tell me what courses you
16 presently teach?

17 A Okay. I'm teaching consumer behavior --

18 Q Okay.

19 A -- at the undergraduate level.

20 And I'm teaching marketing research also to
21 juniors and seniors at the undergraduate level.

22 Q Uh-huh. Okay.

23 A Actually, this semester those are the two
24 courses that I'm teaching.

25 Q Okay.

1 And prior to your -- I want to say "tenure,"
2 but it might confuse that issue.

3 Where did you teach prior to Lafayette?

4 A I was teaching at the University of New
5 Hampshire.

6 Q In --

7 A In Durham

8 Q Okay.

9 And what did you teach there?

10 A I taught consumer behavior. I taught
11 advertising and promotion. I taught a course in direct
12 marketing. I taught a course in electronic commerce. I
13 taught a course in marketing in the music industry. And I
14 was teaching some of these at the undergraduate level
15 and -- and some of the principles actually principles of
16 marketing courses at both the undergraduate and the MBA
17 levels.

18 Q Okay.

19 What was your doctoral dissertation in?

20 A I wrote a dissertation on children's
21 perceptions of advertising, specifically development of a
22 nonverbal methodology for assessing children's perceptions
23 of advertising.

24 Q How did you -- when did you work on that?

25 A I worked with Dan Anderson from the University

1 of Massachusetts at Amherst, a child psychologist. I
2 worked with Jennings Bryant who was then at the University
3 of Massachusetts at Amherst in communication studies. And
4 Maurice Shelby was also on my committee from the Department
5 of Communication Studies.

6 Q Okay.

7 To your knowledge, have any of them ever
8 testified in any matter involving tobacco issues?

9 A I don't think so.

10 Q Okay. All right. You mentioned children.

11 Do you have any children of your own?

12 A I do.

13 Q And how many do you have?

14 A I have two boys.

15 Q How old are they?

16 A Ages 12 and 14.

17 Q Okay. All right.

18 Prior to New Hampshire -- or how long were you
19 at University of New Hampshire?

20 A Seven years.

21 Q Okay.

22 And what was your reason for leaving?

23 A I was offered a job at the University of
24 Louisiana at Lafayette, and I was anxious to return home
25 because my family is there.

1 Q Okay. All right.
2 Prior to the University of New Hampshire, where
3 did you work?
4 A I worked at the College of William and Mary and
5 did consulting in Richmond. It was not a full-time
6 position.
7 Q And what did you do at the college, and what
8 year was that by the way, approximately?
9 A 1989 to '90 --
10 Q Okay.
11 A -- I believe.
12 Q And what did you do there at the college?
13 A I taught advertising management at the
14 undergraduate level.
15 Q Okay.
16 Is there a textbook that's used -- is there one
17 textbook that you use now, say, in Lafayette, say, in the
18 courses you teach for some of these courses, advertising
19 text?
20 A The -- the advertising text that I've been
21 using is by Belch and Belch. It's promotion management,
22 but I've used others in the past.
23 Q B-e-l-c-h?
24 A Yes, believe it or not.
25 Q I should have hired them, somebody to promote

1 them
2 A They're in California, in fact.
3 Q Okay.
4 And is that the text in more than one of your
5 courses or in all --
6 A Only in the one promotion management class --
7 Q Okay.
8 A -- at U of L. UL at L. We've just changed.
9 Q We understand what you mean.
10 A Thank you.
11 Q Is there a recognized textbook that you use in
12 teaching your course on effective advertising on children
13 or -- let me just ask.
14 Which one is it, first?
15 A Well, I -- I don't really spend much time as a
16 course per se teaching the effects of advertising in -- on
17 children. The course that I teach in advertising is a much
18 broader course which covers a lot of territory. I don't
19 really assign a textbook for that.
20 Q So although you did your doctoral dissertation
21 in that, you've not taught that particular subject really
22 since you got your Ph.D.?
23 A Well, I think I may have in special topics
24 courses, maybe at the University of Massachusetts in
25 Lowell, but it was never a -- a course that was offered for

1 a classroom of the usual 30 or 40.

2 Q Okay.

3 And you also said you consulted during that
4 same period of time.

5 Well, let me ask you, first, how long were you
6 at the College of William and Mary?

7 A For one year.

8 Q And did you have a title -- given a title
9 there?

10 A Not really. It was on the associate professor
11 level, but it was a one-year contract.

12 Q Okay.

13 A So I wasn't a hybrid.

14 Q Do you have to have a teaching credential? I
15 guess you don't to teach college. Do you or --

16 A Generally to teach college, the terminal degree
17 in whatever the discipline is, is required, so --

18 Q Okay.

19 A So to have a Ph.D. was certainly a requirement
20 at William and Mary. I don't know about any other.

21 Q Just to bore everyone further, what was your
22 Master's thesis in? Is there a subject --

23 A I chose the nonthesis option so that I could go
24 ahead through the program to the Ph.D.

25 Q How many years of schooling did you have up to

1 your Ph. D. ?
2 A Up to and including --
3 Q Well, including your Ph. D. ?
4 A Ph. D. through graduate school or --
5 Q Right. I just want to know --
6 A I entered graduate school in '75. I exited in
7 '80, but that was after one year of being in New York while
8 I wrote my dissertation and completed some courses.
9 Q And where were those courses?
10 A I think information processing was one of them
11 Q No.
12 Where?
13 A I'm sorry. I try to remember my courses.
14 Q This is fun.
15 A That was also at the University of
16 Massachusetts in Amherst. I graduated from U-Mass. And
17 when I left to work in New York, I had -- I think I had one
18 course to complete and a dissertation to write.
19 Q Okay.
20 Prior to 1989, let's just go back.
21 Where did you work prior to -- prior to 1989?
22 A I worked at the University of Massachusetts in
23 Lowell.
24 Q Doing what?
25 A I was an assistant professor when I began in

1 the Department of Marketing. And during my time there, I
2 was promoted to a tenured associate professor of marketing.

3 Q And what period of time were you there? Just
4 approximately.

5 A It seems to me it must have been '82 to '88 or
6 so?

7 Q Okay.

8 And prior to that, what'd you do?

9 A Prior to that, I worked at the University of
10 Kentucky in the department of marketing.

11 Q Why Kentucky?

12 MR. DOBBERTEEN: Why not?

13 BY MR. GOLDSTEIN:

14 Q Any particular reason you were there?

15 A Well, there was this guy.

16 Q Okay.

17 A Need I go on?

18 Q Okay.

19 And how long were you at the department of
20 marketing at the University of Kentucky?

21 A I think that was about two years.

22 Q And what was your title there?

23 A Assistant professor of marketing.

24 Q Would it be fair to state that the different
25 places where you've taught marketing courses, I mean, are

1 they -- are they somewhat similar for want of knowledge on
2 my part in, let's say, for example, University of Kentucky
3 and that and Lafayette, are they somewhat similar, the
4 courses that you taught?

5 A Well, at the University of Kentucky, there was
6 a Ph.D. program in marketing. So I was teaching at the
7 Ph.D. level as well as the Master's and the undergraduate
8 levels. The University of Louisiana at Lafayette does not
9 have a Ph.D. program. There's an MBA program, so the kinds
10 of courses I'm teaching would necessarily be limited
11 because of that.

12 Q Okay.

13 A But otherwise, the same areas are covered by
14 the courses that I teach generally.

15 Q Okay. Let's see.

16 When was the first time that you'd had any
17 involvement at all with the tobacco industry? By that, I
18 mean consulting, working, doing anything other than
19 possibly being a consumer? I'm not saying you are.

20 A Correct. No, I'm not. As I said, I think it
21 was the interaction with Mr. Purvis and Miss Johnson.

22 Q '92?

23 A Yes.

24 Q Okay.

25 What is your hourly rate today for your

1 testimony?

2 A Should I -- can I ask you to repeat that
3 question before? I'm not sure I --

4 Q Oh, I just wanted to know the first time you
5 had any involvement with --

6 A That's what I thought you said. Okay. That's
7 fine.

8 Q I don't --

9 A Yes, that's fine. Thank you. My hourly rate
10 today? 175 an hour for reviewing or producing documents
11 and \$200 an hour for time spent giving testimony at
12 deposition --

13 Q Okay.

14 A -- or in the courtroom

15 Q Right.

16 When you flew out to have your first meeting in
17 December, was that a trip that was paid by someone other
18 than yourself?

19 A Not yet.

20 Q Oh, you haven't -- okay. Make a note. Okay.

21 The expectation is, though, that the time you
22 spent, including the initial session, is going to be
23 compensated time from your perspective?

24 A That would be my assumption, yes.

25 Q Okay.

1 What percentage of your income is derived from
2 giving expert testimony?
3 MR. DOBBERTEEN: I assume on an annual basis?
4 MR. GOLDSTEIN: Yeah. We could do weekly, but
5 that'd be too long.
6 MR. DOBBERTEEN: That'd be too hard.
7 BY MR. GOLDSTEIN:
8 Q Approximately.
9 A I'll have to approximate because I haven't
10 really calculated that. I would say maybe 25 percent.
11 Q Okay.
12 And what percentage of your time is consumed
13 with consulting or giving expert testimony for the tobacco
14 industry?
15 A That varies, depending on --
16 Q Well, let's say in the last year.
17 Can you remember -- how many -- well --
18 A Probably also --
19 Q 25 percent?
20 A Yes, around 25 percent. It's --
21 Q How much time have you spent to date reviewing
22 materials in connection with this case?
23 A Estimate 25 hours, maybe.
24 Q Okay.
25 A Actually, probably more than that.

1 Q Okay.
2 A Yes.
3 Q Okay.
4 And can you tell me how you spent your time
5 briefly?
6 A Well, I have begun reading the depositions.
7 Some I've finished. Mr. Boeken. As I said, the Complaint,
8 the depositions of Judy Boeken, and there are several
9 others, friends and associates, I haven't had time to
10 complete.
11 Q Okay.
12 Have you sat, I guess, in that one trial that
13 you testified in 1999, did you ever -- were you present
14 when an opposing expert ever testified on the same subject
15 as you did?
16 MR. DOBBERTEEN: Present in the courtroom?
17 MR. GOLDSTEIN: In the courtroom, yeah.
18 Q Did you hear the other person's testimony?
19 A It seems to me I heard someone after I had
20 testified, and I don't remember who that was, actually.
21 Q Okay.
22 But you can't say, as you sit here, whether it
23 was on the subject of advertising or not?
24 A No.
25 Q You can't remember? Okay.

1 A No.
2 Q If I were a tobacco company lawyer and I asked
3 you whether there were other people that could serve in
4 your same capacity other than, if unavailable, are there
5 other people -- could you give me some names of some other
6 people?
7 A Who could serve as witnesses --
8 Q Right.
9 A -- in advertising or consumer behavior?
10 Q If you were unavailable -- and I really wanted
11 you as a witness -- but you were involved or had a conflict
12 of some kind, are there any other witnesses that you're
13 aware of that, share the same view as you do in
14 advertising?
15 MR. DOBBERTEEN: Well, I'll just object. It calls
16 for speculation.
17 MR. GOLDSTEIN: Okay.
18 MR. DOBBERTEEN: And foundation.
19 But go ahead. If you understand the question,
20 answer it as best you can.
21 THE WITNESS: I mean, I imagine there are people
22 that I work with now whom I've never asked about opinions
23 who would share the opinion that I do. We've never
24 discussed it. I --
25 BY MR. GOLDSTEIN:

1 Q Okay. Let me ask you a different question.
2 A Okay.
3 Q Well, why don't you tell me what it is your
4 view is and what you would testify to regarding your belief
5 about the nexus between advertising and smoking as it
6 relates to this case?
7 A All right. I can --
8 Q Virtually.
9 A Generally speaking, although this is very
10 broad, as I said, broad topic, consumer decision making is
11 a very complicated process. And there are many, many
12 factors involved in moving a consumer from an initial
13 awareness of a brand or initial understanding of a need
14 that exists to the actual purchase of a product or service.
15 And parents and influences within the household where a --
16 an individual grows up, have a great influence on creating
17 attitudes and values and beliefs that will then, in turn,
18 determine how that individual processes information from
19 advertising and promotion.
20 Q Okay.
21 Other than that, is there any other opinions
22 that you expect to express at trial in this matter?
23 A Well, related to this theory of marketing and
24 how advertising and promotion fit into marketing. Where
25 consumer behavior is relative to the marketing concept.

1 The relative importance of factors which may influence
2 consumer decisionmaking would all be issues that would be
3 related to the opinion, which I may discuss.

4 Q Okay.

5 A Yeah.

6 Q Was that similar to the opinion you expressed
7 in the case in Ohio?

8 A This seems to be much the same, very similar.

9 Q And how about in the other six cases that
10 you've given your deposition in?

11 A Well, now, some of those were different types
12 of cases, but pretty much the same issues involved in
13 advertising.

14 Q Have you ever given expert testimony on cases
15 outside of the tobacco industry?

16 A I have not. There was at least one case was
17 settled before.

18 Q Okay.

19 And what generally was that subject?

20 A That was dealing with brand marks and peoples'
21 perceptions of different brand marks and confusion
22 regarding brand marks.

23 Q Okay.

24 It had nothing to do with the issue in this
25 case that's alleged that a person was induced because of

1 advertising to commence patronizing a product of some kind;
2 correct? Different issue, no?

3 A I see overlap, but in the sense that brand
4 marks are ways of communicating about -- in this case was a
5 retail outlet in which the retailer felt the brand mark was
6 too similar to another one and caused confusion, and
7 therefore, people were induced to not purchase at one
8 outlet or another because of confusion about marketing
9 communication. So the perception of communication about
10 products and services really is -- is at issue in both of
11 those kinds of cases. So I see an overlap, but it's not
12 exactly the same.

13 Q Okay. Okay.

14 Can you tell me about the opinion that you
15 expressed in the 1999 trial concerning the issues about
16 whether you believe that the tobacco industry has ever
17 undertaken to target its advertising promotion towards
18 people of tender ages?

19 MR. DOBBERTEEN: I'll object that has no foundation.

20 But go ahead and answer.

21 BY MR. GOLDSTEIN:

22 Q Well, I can -- that's fine. Let me just
23 rephrase.

24 Would you agree that one of the issues in the
25 case in 1999 in Ohio had to do with allegations that the

1 tobacco industry did target some of its advertising towards
2 children? Was that one of the issues that you recall
3 having been raised during the trial?

4 A It -- that may have been a question somebody
5 had, but as far as my area of testimony, it does not
6 include the intent of a manufacturer or an advertiser per
7 se.

8 Q Okay.

9 A To the extent that I guess I was shown -- I'm
10 not sure if it was this case or other cases. In some
11 cases, I've been shown company documents, which are
12 intended by some or claimed by some to be damaging in that
13 they purport to demonstrate an intent to target underage
14 individuals, I was asked to comment on those kinds of
15 papers. But basically, my issue is -- is the impact that
16 advertising has rather than the intention of the
17 advertising.

18 Q Okay.

19 Let me ask you from a personal point of view.

20 Have you ever heard it alleged that various
21 members of the tobacco industry have undertaken purposeful
22 attempts to market to underage persons to get them to start
23 smoking prior to the time they're 18?

24 A I have heard that allegation, yes.

25 Q Okay.

1 And have you ever made any inquiry to determine
2 whether or not any truth existed to that allegation?

3 A The documents that I was shown, I am assuming,
4 were what someone could find as the most damaging, and what
5 I saw there was -- did not concern me in -- in the regard
6 that people have been --

7 Q Okay.

8 A -- the tobacco companies have been aiming.

9 Q As a mother of two children under 18, if you
10 heard that the tobacco industry had targeted a campaign at
11 their school, you -- would you have any kind of reaction if
12 you heard that it was going to be targeted towards your
13 children? In other words, to lure them to start smoking at
14 their present ages of 12 and 15, you said?

15 A Actually, I -- I'm not sure I would be that
16 upset about my children and what they would do in the face
17 of that kind of advertising because I don't think that's
18 really where they -- the influence comes from

19 Q What -- well, I understand, but that's not my
20 question.

21 If you heard -- let me give you another
22 analogy.

23 If you heard that somebody was out to
24 physically harm your children, that would be an alarming
25 thing, would it not?

1 A I would be very alarmed if I heard that.
2 Q Okay.
3 And if you heard that somebody was out to lure
4 them into doing something which -- and I'm not saying -- I
5 don't want to offend present company here -- but if
6 somebody was out to lure them to do something which may
7 physically harm them or maybe even eventually kill them,
8 would that be a subject that you would find offensive?
9 MR. DOBBERTEEN: Let me just interpose incomplete,
10 improper hypothetical with no foundation, but go ahead.
11 I'm not telling you not to answer it.
12 THE WITNESS: Okay.
13 BY MR. GOLDSTEIN:
14 Q I appreciate it.
15 A Certainly I would -- I would disapprove if that
16 were the case.
17 Q Okay.
18 And let me ask you your personal views, not to
19 badger you, but because I think it's relevant.
20 You said you don't smoke; is that right?
21 A That's correct.
22 Q And are you in favor of people smoking or not?
23 Do you have an opinion one way or the other?
24 A It's up to them to decide if they want to smoke
25 unless, of course, they're my children.

1 Q And if they're your children?

2 A It's something they know I disapprove of, and
3 in fact, they disapprove of, but -- and probably more
4 strongly than I do. So --

5 Q Would that be because of parental influence
6 that was exerted at home, do you think?

7 A Actually, I think not. Interestingly, I -- I
8 think that my discussions with them didn't occur really
9 about smoking at very young ages, and at very young ages,
10 they would come to me with comments about smoking being
11 bad. So I think there's an awareness about smoking that
12 certainly they knew my policies at -- in the household
13 regarding smoking.

14 Q Not smoking?

15 A It's not allowed in the house.

16 Q How about your husband or your former husband,
17 he ever smoke in the house?

18 A No.

19 Q Okay.

20 I understand your testimony is limited to a
21 specific slice of advertising, but let me just probe a
22 little bit further in terms of your views overall in terms
23 of smoking and when the Surgeon General publishes a report
24 that says that it may be harmful or is harmful? Is that a
25 report that -- you're aware of that report aren't you?

1 A Yes.
2 Q Okay.
3 And is that a report that you believe?
4 A Well, there are several reports that have come
5 from the Surgeon General, and there are different pieces of
6 those reports in the past several decades. If the question
7 is: Could I believe everything that the Surgeon General's
8 report includes, I'm not sure I would -- I would say I
9 wholeheartedly agree with everything in that report which
10 is not actually written by the Surgeon General, but by a
11 team of -- of individuals.
12 Q Uh-huh.
13 A Do I believe that smoking is dangerous to
14 health? Yes.
15 Q Do you believe that it can be highly addictive?
16 MR. DOBBERTEEN: Objection. Vague and ambiguous.
17 BY MR. GOLDSTEIN:
18 Q Okay.
19 A Yeah, I'm not real qualified to talk about
20 addiction, but it certainly seems that for some people,
21 it's very difficult to quit.
22 Q Okay.
23 Have you received any criticism in your
24 personal life for testing on behalf of the tobacco industry
25 at any time?

1 A I think so --
2 Q Okay.
3 A -- however subtle it may have been at some time
4 or other.
5 Q And when have you experienced that? What
6 periods of time would you say?
7 (An off-the-record discussion was held.)
8 MR. GOLDSTEIN: Please.
9 MR. DOBBERTEEN: Experienced what?
10 MR. GOLDSTEIN: Oh, criticisms.
11 THE WITNESS: Criticism Actually, there's only,
12 you know, at this moment one comment that comes to mind
13 that may not have even been meant as a criticism, but
14 someone said he thought I was a highly paid lobbyist for
15 the tobacco companies. And I think people don't really
16 understand what an expert witness does necessarily, but
17 other than that, it's -- it's -- I haven't suffered a lot
18 of criticism, but I think it's there.
19 BY MR. GOLDSTEIN:
20 Q Okay.
21 Where have the various cases that -- where have
22 you given your depositions, in what cities?
23 A Other. Portland, Maine.
24 Q Yeah.
25 A Washington, D. C.

1 Q Right.
2 A It seems impossible to think they were just in
3 those --
4 Q I'm sorry?
5 A -- two cities, but maybe they were only if they
6 were. Because I don't remember any others at this point.
7 Portland and D.C.
8 Q You had California.
9 Did you give a deposition in the case in Ohio?
10 A I did, but it seems to me that might have been
11 in D.C.
12 Q Huh, okay.
13 A New Orleans, of course.
14 Q Okay.
15 And what companies have hired you to give
16 testimony? Has it just been Philip Morris or any others?
17 A I haven't been hired by Philip Morris
18 specifically, but I've been hired by --
19 Q I'm sorry.
20 A I've been asked by Johnson, Tyler and Purvis
21 primarily.
22 Q But I mean, for different defendants,
23 different -- I want know -- I mean, you understand that
24 attorneys have hired you, but you've testified on behalf of
25 which companies other than Philip Morris?

1 A In some of these cases, I think all the tobacco
2 companies were named as defendants.

3 Q So you don't remember whether it was one or a
4 consortium of all of them? You don't remember who paid
5 your bills actually or --

6 A No. Actually, I don't have the -- the
7 connections between the attorneys and the tobacco companies
8 they represent completely straightened out. I understand
9 now that Philip Morris is the company concerned.

10 Q Okay.

11 And all -- in all of the cases or most of the
12 cases? I mean, I don't understand.

13 Is it your testimony that Philip Morris is the
14 one you've testified on behalf of in each of those other
15 six cases?

16 A I'm not sure Philip Morris was involved in
17 every one of those. It seems to me R.J. Reynolds was
18 involved in the FTC testimony that I gave. That's not
19 really a -- a suit. I don't know what you call it, but --

20 Q Is this the -- is Philip Morris the company
21 that formally had Joe Camel --

22 A No.

23 Q -- as one of its -- which company was that?

24 A That, I do know. R.J. Reynolds.

25 Q Okay.

1 And what testimony have you given in connection
2 with Joe Camel as an example?

3 A Well, although the opinions that I have refer
4 equally to Joe Camel -- and that advertising is to the
5 other cigarette advertising -- I did have primary research
6 which I conducted regarding Joe Camel and children's
7 perceptions of Joe Camel which I have talked about in some
8 of these other depositions.

9 Q And when did you do that research? When was it
10 that you did that research?

11 A In the early 90's.

12 Q And where did you do the research?

13 A The University of Virginia -- I mean, in
14 Virginia. And in Maine.

15 Q Independently or with a university?

16 A Independently.

17 Q And was somebody paying you for that?

18 A No.

19 Q You just did it on your own?

20 A Yes.

21 Q Okay.

22 And how long did you spend in your
23 investigational research?

24 A Well, that process is a pretty long and drawn
25 out one from designing the study to data collection to

1 submission either to a conference or to a journal to final
2 publication, so maybe four years from conception to actual
3 publication in a journal.

4 Q During what four years was that?

5 A '91. It was published in '95.

6 Q By whom?

7 A "The Journal of Advertising."

8 Q Okay.

9 And how big of a sample did you use in that?

10 A Somewhere around '89, I think.

11 Q Maybe '83?

12 A It was '83?

13 Q It was '83? I don't know.

14 Did you testify -- I just briefly looked at the
15 transcript of your testimony.

16 Well, if you don't remember, somewhere in the
17 80's?

18 A It might have been 8:35. Yeah, it might have
19 been in the 80's. I don't remember exactly.

20 Q Do you remember the statistical size of the
21 sample?

22 A Well, it was a convenient sample, yet what I
23 was looking at was differences in age groups and cognitive
24 developmental levels. So having that small a sample is
25 appropriate if what you're looking at is changes in

1 perceptions by age group.

2 Q Is it your belief that if called to testify at
3 trial, you would essentially state that regardless of what
4 the tobacco industry may have targeted or what's alleged
5 that they may have targeted that really there's no way to
6 influence children by their advertising? Maybe I didn't
7 artfully phrase that.

8 A I'm sorry. If you could do it again, I didn't
9 hear the whole thing.

10 Q Is it your professional opinion that the
11 advertising industry has never, as far as you know, gone
12 after advertising that's specifically marketed for underage
13 consumer?

14 MR. DOBBERTEEN: Objection. Vague and ambiguous.

15 THE WITNESS: Well, that would be an area that I'm
16 not focusing on in my opinion.

17 BY MR. GOLDSTEIN:

18 Q Okay.

19 A Which, again, is the intent of the advertiser.

20 Q Okay.

21 So is it correct then, that regardless of
22 whatever the motivation may have been by the tobacco
23 industry, your testimony would be that it would fall short
24 of any intended objectives based on your research.

25 In other words, if the tobacco industry

1 actively sought out to try to influence young people to
2 begin smoking, your belief, based on your research, is that
3 it wouldn't have its intended effect?

4 A Advertising is not that powerful; that's right.

5 Q Okay.

6 And to what extent do you think that
7 advertising can influence the consumer behavior in, say,
8 people that are under 18?

9 A I would say the key word would not be behavior
10 so much as awareness. That advertising and other forms of
11 mass media are widely accepted as ways of communicating
12 information about brands. And increasing awareness levels
13 about various brands and how one brand is different from
14 the other, but as far as behavior, that's a different
15 issue.

16 Q What about subliminal advertising? If -- if
17 there was -- I almost said "sublimidable."

18 Is there a belief on your part that there are
19 some things that the advertising industry could do that may
20 not be cricket in terms of advertising.

21 MR. DOBBERTEEN: Objection. Vague and ambiguous.

22 BY MR. GOLDSTEIN:

23 Q Okay.

24 A I have never seen any credible evidence that
25 subliminal advertising has had any impact on -- on anyone's

1 purchase intention if, in fact, subliminal advertising
2 exists.

3 Q Okay.

4 When was it that the Joe Camel character was
5 banned from advertising?

6 A Oh. I thought that was a voluntary. Was that
7 not a voluntary removal of Joe Camel? I'm not certain.

8 Q You know more than I do.

9 Before that was, I mean, whatever it was, what
10 is your understanding when he disappeared from the
11 advertising publications or news media?

12 A '96, '97, maybe.

13 Q Okay.

14 Is there --

15 A And I could be all wrong in that, but that's --

16 Q Do you have any understanding as to whether
17 that was the result of any investigations that were
18 undertaken on behalf of or in connection with the
19 government? I say "the government." I know it's a large
20 entity, but --

21 MR. DOBBERTEEN: Objection. Vague and uncertain and
22 ambiguous.

23 THE WITNESS: That would be hard for me to say
24 because I don't really remember when Joe Camel disappeared
25 and from what venues.

1 BY MR. GOLDSTEIN:

2 Q Okay.

3 You -- would you disagree with those people
4 that would say that a -- that the Joe Camel cartoon figure
5 was designed or intended to reach potential consumers under
6 18?

7 A I -- I would have to talk instead about how
8 individuals under 18 may have perceived Joe Camel or how
9 consumers in general perceive advertising rather than what
10 the intention of the advertising is.

11 Q Well, did you ever hear anything about why it
12 disappeared from advertising? I know you said you thought
13 it was voluntary, but for what reason did you understand
14 that the Joe Camel character is no longer featured in ads?

15 A Actually, I've never been given a -- any sort
16 of an explanation from someone who is in control of that
17 process, so I don't really --

18 Q Have you heard anything, you know, that you
19 said you thought it was voluntarily withdrawn.

20 Do you know the source of that information?

21 A Maybe I shouldn't have said it. Maybe it's
22 speculation on my part.

23 Q Okay.

24 But as you sit here today, you don't know one
25 way or the other about the Joe Camel characters, the

1 cessation of the use of that, why it came to pass?

2 A I thought that during the Federal Trade
3 Commission hearings, Joe Camel disappeared, but I wasn't
4 sure that that was actually because of the -- a rule -- a
5 ruling.

6 Q If I were to ask you to assume for purposes of
7 this question that the reason it was abandoned was because
8 of a belief that it was specifically intended to be
9 targeted towards children, would that be a subject you
10 would take issue with?

11 MR. DOBBERTEEN: Objection. Vague. Incomplete,
12 improper hypothetical. No foundation. Assumes facts not
13 in evidence.

14 THE WITNESS: Before I could answer that, I would
15 want to know exactly why it was removed from advertising
16 and to refresh my memory on that because I know I was
17 involved in that at the time with the Federal Trade
18 Commission.

19 BY MR. GOLDSTEIN:

20 Q Had you -- have you testified before on
21 condition hearings or Federal Trade Commission hearings?

22 A I have given testimony.

23 Q Where was that?

24 A I believe that was in Washington also.

25 Q Okay. Okay.

1 And in connection with what kind of proceeding,
2 do you remember?
3 A It was -- the Federal Trade Commission
4 proceedings regarding Joe Camel, I was deposed.
5 Q You were deposed?
6 A Yes.
7 Q So that wasn't --
8 MR. DOBBERTEEN: Is that a "yes"?
9 THE WITNESS: Yes. That's a "yes."
10 BY MR. GOLDSTEIN:
11 Q Thank you.
12 A I'm sorry.
13 Q And so that wasn't a lawsuit.
14 That was giving testimony; right?
15 A That's right. That's right, I guess.
16 MR. DOBBERTEEN: If you know. I mean, you're
17 getting into some legal issues here. But give him your
18 best understanding of what this FTC thing was?
19 THE WITNESS: I thought they were collecting
20 information so they could do some rule making, and they
21 were calling upon various periods of time to give their
22 opinions.
23 BY MR. GOLDSTEIN:
24 Q Was the testimony you gave in the presence of a
25 court reporter?

1 A Yes.
2 Q And did you also have an attorney present when
3 you were testifying?
4 A There seemed to have been several present.
5 Q Okay.
6 Were they from the FTC, do you know?
7 A Well, at least one person who was taking my
8 deposition was with the FTC.
9 Q Okay.
10 And who were the others representing?
11 A I -- I could not tell you who was in that room
12 at this time.
13 Q Okay.
14 Were you represented by an attorney? Did you
15 have an attorney representing you?
16 A Not really. Not representing me.
17 Q Is there any attorneys from the tobacco
18 industry that were present when you were testifying?
19 A Yes.
20 Q And do you know the names of any of those?
21 A I believe Miss Tyler was one.
22 Q Okay.
23 Were you compensated for your testimony that
24 you gave at that time?
25 A Yes.

1 Q And was that again by Philip Morris?
2 A I have never received compensation from Philip
3 Morris, so I can't tell you. It was --
4 Q I'm sorry.
5 A Perhaps Decker, Price and Rhodes or -- I don't
6 know.
7 Q Did the attorney that retained your services --
8 strike that. I'm -- I'll object to my own question.
9 Did you --
10 MR. DOBBERTEEN: Sustained.
11 BY MR. GOLDSTEIN:
12 Q Overruled.
13 Did you -- did you have an understanding before
14 you went to testify that you would be paid for the time
15 that you were there?
16 A Yes.
17 Q And that understanding was between you and
18 whom?
19 A Perhaps Johnson and Tyler?
20 Q Okay.
21 Did I ask you, when was that FTC testimony?
22 A You may have, and I don't know if I answered
23 because I'm not sure.
24 Q Okay.
25 A But maybe '96 or '97?

1 Q And can you tell me what you can recall of the
2 testimony you gave at that time?

3 A I was speaking about the consumer
4 decision-making process and children's perceptions of
5 advertising. I did talk about my study of Joe Camel and
6 the young children and other studies that had been done, I
7 assume. I don't remember exactly what I said, but it was
8 the same area that we're talking about here, except perhaps
9 with more of a focus on children.

10 Q So you're saying I'm not asking you enough
11 questions about children. Okay. We can change that.

12 Is -- other than the Joe Camel figure, have
13 there been any other figures that you're aware of, any
14 advertising figures that the advertising industry for the
15 tobacco industry have utilized other than Joe Camel?

16 A Any --

17 MR. DOBBERTEEN: Objection. Vague.

18 THE WITNESS: Figures?

19 BY MR. GOLDSTEIN:

20 Q Well, when you mentioned the Marlboro man, I'm
21 wondering if there are any other -- how would you term the
22 Marlboro man? He's not a spokesman because he doesn't
23 speak.

24 A He's not even a "spokescharacter" or an icon of
25 some sort.

1 Q Okay.
2 A For --
3 Q When you call it an advertising icon -- All
4 right.
5 Other than the Joe Camel and the Marlboro man,
6 are there any other advertising icons that you're aware of
7 that are used in the tobacco industry, let's say in the
8 last 20 years?
9 A So images in advertising for --
10 Q That connote tobacco use --
11 A Tobacco.
12 Q -- or associated in its tobacco use?
13 A Is there any Cool penguin? Was there a Cool
14 penguin?
15 Q Any others?
16 A There was a -- in the past how many years? Was
17 there a Philip Morris bell boy?
18 Q A bell boy?
19 A (Witness nods head.)
20 I'm older than you; right?
21 Q Maybe not.
22 MR. DOBBERTEEN: Don't worry. I remember.
23 BY MR. GOLDSTEIN:
24 Q Okay. Okay.
25 Those are the ones that come to mind; right?

1 A Yes.
2 Q Okay.
3 Can you tell me, as you sit here today, what
4 you -- I know this sounds silly, but what you know about
5 the Marlboro man character, or the caricature. I am -- I
6 mean, it's an issue in this case.
7 MR. DOBBERTEEN: Objection. Vague and ambiguous
8 uncertain.
9 BY MR. GOLDSTEIN:
10 Q Well, let me rephrase the question.
11 What is it that the plaintiff has alleged in
12 this case about the Marlboro man that led him to smoke, if
13 you know?
14 A My understanding of his allegation is that the
15 Marlboro man was irresistibly macho which then compelled
16 him to smoke.
17 Q Do you express an opinion whether or not that's
18 accurate or true as far as the plaintiff is concerned?
19 A I didn't really express an opinion about --
20 Q Okay.
21 A -- his specific allegation.
22 Q Do you have an opinion as to whether that's
23 credible or not, that allegation?
24 MR. DOBBERTEEN: Objection. Beyond the scope of
25 expertise. Calls for speculation.

1 THE WITNESS: May I ask for a break at this point?
2 MR. GOLDSTEIN: Sure.
3 MR. DOBBERTEEN: Yeah, answer his question. Then
4 we'll take a break unless he wants to let you go now. I
5 don't care.
6 MR. GOLDSTEIN: No, we can take a break.
7 THE WITNESS: Okay. Thank you.
8 (A brief recess was taken.)
9 BY MR. GOLDSTEIN:
10 Q And I think we're talking about -- I think
11 before the break we were talking about the Marlboro man;
12 right?
13 A Yes, I think so. Somewhat.
14 Q Right.
15 MR. DOBBERTEEN: And Boeken's allegation regarding
16 it.
17 BY MR. GOLDSTEIN:
18 Q Right.
19 And you don't have an opinion on that; is that
20 right, whether he's credible or not? His view or his
21 assertion?
22 A I will probably talk about his allegations, his
23 assertions in comparison with the research results and the
24 marketing theory.
25 Q You've not done any research specifically with

1 respect to this case, then; is that right? I mean, you've
2 not been asked to do any research or specific studies based
3 on anything he has said, Mr. Boeken; is that right?

4 A That's correct. I haven't collected any
5 data --

6 Q Okay.

7 A -- for primary research.

8 Q And the only thing you were talking about is
9 research that you or others have conducted in the past that
10 you're relying on?

11 A That's correct.

12 Q Right? Okay.

13 So tell me, what your view is on advertising in
14 the tobacco industry, more specifically, meaning -- I know
15 that's an objectionable question as phrased -- what your
16 belief is as to the effect of advertising on children, I
17 should say the effect of tobacco advertising on children.

18 MR. DOBBERTEEN: I'm still going to impose a vague
19 and uncertain ambiguous objection. Can I just ask belief,
20 are you equating belief and opinion here?

21 MR. GOLDSTEIN: I'll rephrase.

22 MR. DOBBERTEEN: Okay.

23 BY MR. GOLDSTEIN:

24 Q What is your opinion with respect to the impact
25 of targeted tobacco advertising on children?

1 MR. DOBBERTEEN: So -- object. Foundation.
2 BY MR. GOLDSTEIN:
3 Q Okay.
4 A Okay. I'm not sure what you mean by
5 "targeted."
6 Q Well, I know sometimes people have taken an
7 offense to -- taken an exception to the use of that word.
8 Have you ever heard of any instances when it
9 has been alleged that the tobacco industry undertook
10 specific advertising campaigns that were designed to reach
11 persons under 18?
12 A I've heard allegations.
13 Q Okay.
14 A By some that the -- advertising has been aimed
15 at children who were too young to smoke or who were too
16 young to smoke.
17 Q Have you ever heard assertions that the tobacco
18 industry needs to recruit 3,000 new people a day in order
19 to maintain its present level of sales?
20 A I've heard some assertions similar to that.
21 I'm not sure if that's the exact figure I've read, but
22 that's what I have read, something similar to that anyway.
23 Q Okay.
24 Could you tell me what your opinion is --
25 opinion is as to whether the tobacco industry from

1 everything you know has ever undertaken any ads that were
2 focused upon reaching children, meaning persons under 18?

3 MR. DOBBERTEEN: Objection. Vague and ambiguous.
4 Uncertain. No foundation.

5 THE WITNESS: To the extent that I have had
6 documents placed before me or access to documents from the
7 tobacco companies and to the extent that I've been asked to
8 evaluate them, I see no evidence of a campaign to target
9 individuals under age to get them to begin smoking.

10 BY MR. GOLDSTEIN:

11 Q If I asked you to assume that the reason that
12 the Joe Camel figure is no longer in use is because of a --
13 allegations in a lawsuit where it was alleged that the
14 tobacco industry had specifically aimed its advertising at
15 children, that would be a comment that you would disagree
16 with? If I asked you to assume that were true, would you
17 take issue with that premise?

18 MR. DOBBERTEEN: Objection. No foundation. Assumes
19 facts not in evidence. I don't think that's a proper
20 hypothetical.

21 If you understand it, you can --

22 THE WITNESS: Okay. I would actually be interested
23 in tracking down the facts of that disappearance before I
24 would comment on it. I know that at the time I heard about
25 the removal of Joe Camel -- and I'm sure that I can recall

1 it if I'm given reminder -- but right now, I don't recall
2 how that whole situation progressed, so I'm being hesitant
3 to comment upon it.

4 BY MR. GOLDSTEIN:

5 Q Okay.

6 I'm going to ask you to assume that cigarette
7 smoking has been determined to be harmful and it kills two
8 out of five people and harms the health of the other three
9 out of five, and I'm also going to ask you to assume that
10 tobacco use under -- by persons underage 18 is illegal,
11 okay?

12 Assuming those two facts, if you learned that
13 someone in the tobacco industry had purposefully undertaken
14 advertising to entice teenagers under 18 to begin smoking,
15 would you find that to be wrong?

16 MR. DOBBERTEEN: I'm still going to object vague and
17 ambiguous as stated. Uncertain, compound, and I don't
18 think it's a proper hypothetical.

19 Go ahead.

20 THE WITNESS: Okay. I think that you asked me to
21 assume that tobacco will harm two out of five people and be
22 also harmful to the remaining three?

23 BY MR. GOLDSTEIN:

24 Q The --

25 A Which means --

1 Q Let's assume -- let me rephrase this.

2 A Okay.

3 Q Assume that tobacco use has been shown to be
4 fatal in many cases and definitely has adverse health
5 risks, in other words, smoking is not something that
6 improves your health at all. Assume that to be true. And
7 also assume that use by persons under 18 violates the law
8 in every state of the United States, okay?

9 If I asked you to assume those two facts as
10 true, do you have an opinion as to whether or not it would
11 be appropriate if you discovered that the tobacco industry,
12 more specifically Philip Morris, had undertaken advertising
13 that was intended to cause teenagers under 18 to begin
14 smoking?

15 MR. DOBBERTEEN: Objection. I don't even know that
16 there's a question there, but I think it's an improper
17 hypothetical, incomplete, and it's just too much vagueness
18 and ambiguity in it.

19 THE WITNESS: If I became convinced that the tobacco
20 companies, any of them, were engaging in an extensive
21 wholehearted campaign to persuade underage individuals to
22 smoke, I would be concerned about that, and I would
23 disapprove of that.

24 / / / /

25 BY MR. GOLDSTEIN:

1 Q Okay.

2 Have you ever heard an allegation that the
3 tobacco industry has knowingly included or enriched
4 chemicals in the tobacco used to make cigarettes, to make
5 it become addictive, to make people become dependent upon
6 it?

7 A I've heard those allegations, yes.

8 Q Have you ever seen any documents that bear on
9 that subject?

10 MR. DOBBERTEEN: Objection. Vague and ambiguous.

11 THE WITNESS: None specifically that I recall.

12 BY MR. GOLDSTEIN:

13 Q Okay.

14 If you found that to be true, that the tobacco
15 industry was knowingly spiking its tobacco to create a
16 society of dependent people, drug dependent on the drugs
17 that they include in their tobacco, would that be something
18 that you would take issue with?

19 MR. DOBBERTEEN: Objection. Vague and ambiguous and
20 uncertain.

21 THE WITNESS: I have some trouble here because
22 you're asking me to talk about evaluating intent. And
23 again, if the -- if I would assume that there was a devious
24 plan to include chemicals in cigarettes because they would
25 have been addict users of the product, I'm not -- I'm not

1 sure how it would come to that.

2 BY MR. GOLDSTEIN:

3 Q Well, I want to know as a human being because
4 you're an expert. I want to know your personal biases --
5 and I understand you've testified for the tobacco
6 industry -- but I've heard allegations that the tobacco
7 industry has enriched spiked, whatever you want to call it
8 and has placed additives to its tobacco to make people
9 physically dependent on the tobacco rendering it very
10 difficult to quit, and I'm wondering whether if that was
11 true, whether you would have an opinion on that.

12 MR. DOBBERTEEN: Objection. Beyond the scope of
13 this witness's expertise and testimony. Vague and
14 uncertain.

15 THE WITNESS: I realize you're asking my personal
16 opinion rather than my professional opinion as an expert.

17 BY MR. GOLDSTEIN:

18 Q Right.

19 A And the problem I would have in answering this
20 question is that, although I've heard the allegations, I'm
21 not familiar with what kind of processing take place of
22 anything I have eaten or used as a consumer which may, in
23 fact, enhance flavor and may also in some way be addicting.
24 I'm not sure about how this process works, and I'm not
25 qualified to talk about it --

1 Q Sure.

2 A -- these processes.

3 Q And I'm not asking you to opine on those issues
4 at all.

5 My question, though, is: If you found out that
6 the company that's paying you today to give testimony in
7 this case was in the past or -- or on an ongoing basis,
8 including in their products, that they're selling to the
9 public chemicals, which they know to be fatal and enriching
10 those products with chemicals, that make the people who
11 consume them dependent on them and unable to quit, would
12 that be something that you would personally find offensive?

13 MR. DOBBERTEEN: For the purposes of killing them
14 and making them for the purposes of killing them and making
15 them dependent, I would find that despicable.

16 And I wanted to impose an objection. It's
17 compound, vague and ambiguous.

18 BY MR. GOLDSTEIN:

19 Q Okay.

20 You're aware of some of the criticism that the
21 tobacco industry has enjoyed in their recent years, yes?

22 A Yes.

23 Q Okay.

24 Is it your opinion that whatever criticism
25 you're aware of, that that's undeserved?

1 MR. DOBBERTEEN: Objection. Vague and ambiguous.
2 Uncertain.

3 THE WITNESS: That would be difficult to answer
4 without thinking about specific forms of criticism or
5 exactly what criticism you're talking about.

6 BY MR. GOLDSTEIN:

7 Q What criticisms are you aware of that has been
8 leveled at the tobacco industry?

9 A One major one is that underage individuals have
10 been targeted by ad campaigns.

11 Q If you found that to be true, that would be
12 something that you wouldn't necessarily agree with; right?

13 A If I found that to be true, it's not a policy I
14 would agree with; that's correct.

15 Q Okay.

16 Now, in terms of your role as a -- as an
17 expert, have you ever been given free rein -- well, let me
18 change that.

19 Have you ever been to the headquarters of
20 Philip Morris?

21 A No, I have not.

22 Q Okay.

23 Have you ever been shown internal company
24 documents by the lawyers in preparation for your testimony?

25 A I have -- I've seen a lot of company documents,

1 some of them in deposition, and some of them were materials
2 that were attached to depositions. And I'm sure in other
3 situations I've also seen company documents. I don't know
4 exactly which specific situations, but, yes, I've seen a
5 lot of company documents.

6 Q Were those documents that were shown to you by
7 the people that are paying you as opposed to the
8 opposition?

9 A Some of the documents may have been provided by
10 the attorneys who retained me when they were included in
11 depositions of other individuals in the case --

12 Q Okay.

13 A -- which I needed to read.

14 Q Now, I take it that on each of those occasions
15 when you've testified -- I'm going to say the six
16 depositions you've given and the -- the trial testimony you
17 gave in Ohio -- that each of them was concerned --
18 concerning the subject of advertising and children with the
19 tobacco industry; is that right?

20 A Not specifically.

21 Q Well, advertising and the effects of tobacco on
22 children.

23 Would that be more accurate?

24 A Not necessarily always that narrow. The
25 effects of advertising, yes. The -- the impact of

1 advertising on individuals in general, as well as children.

2 Q Okay.

3 Have some of the people that have deposed you
4 or examined you on the stand tried to broach the subject
5 with you that -- in which they assert that the tobacco
6 industry has particularly focused children in terms of
7 their advertising campaign?

8 MR. DOBBERTEEN: Objection. Vague and ambiguous.
9 Uncertain.

10 BY MR. GOLDSTEIN:

11 Q Well, do you recall being asked questions at
12 those depositions or trial testimony about whether or not
13 you're aware whether any of the tobacco industries have not
14 ever undertaken any advertising that was focused upon
15 children, towards children?

16 I'm sure that must have come up in at least
17 one, maybe more than one, of those depositions.

18 Q As far as you know, that's an issue which the
19 tobacco company disputes; is that right? In other words,
20 if you've heard assertions made by people that are suing
21 the tobacco industry, have you also heard counterarguments
22 by the lawyers for the tobacco industry to the effect that
23 the tobacco industry doesn't buy that. We've never done
24 that.

25 Have you ever heard statements to that effect?

1 A I don't know what specific terms that may have
2 been indicated, but --
3 Q Well --
4 MR. DOBBERTEEN: Wait a minute.
5 Go ahead finish your answer.
6 THE WITNESS: -- but my impression is that there
7 seems to be no evidence to support that assertion.
8 BY MR. GOLDSTEIN:
9 Q Has the tobacco industry lawyer -- or has any
10 tobacco industry lawyer ever told you essentially the same
11 thing that, there is no evidence to support that?
12 A No.
13 Q Okay.
14 A Not that I recall.
15 Q Okay.
16 Did you fly in here today from Louisiana?
17 A No. I flew in a few days ago from Louisiana.
18 Q Okay.
19 And I don't mean to pry, but with respect to
20 this case, what have you done while you've been here?
21 A Oh --
22 Q On this case.
23 A I've met with Miss Tyler and Mr. Dobberteen.
24 Q Okay.
25 A Dobberteen. I'm sorry. Even I'm doing it now.

1 MR. DOBBERTEEN: See? Happens all the time.
2 THE WITNESS: And Mr. Leiter.
3 BY MR. GOLDSTEIN:
4 Q Okay.
5 And how many times did you have meetings with
6 them?
7 A Yesterday we met.
8 Q For how long?
9 A A few hours, I think.
10 Q Okay.
11 Did you review any documents at that meeting?
12 A No.
13 Q Did you discuss what you might likely be asked
14 in today's deposition?
15 A Yes, in general terms how the deposition may
16 take place. Yes.
17 Q Did they ask better questions than I did? No.
18 Just kidding.
19 Tell me briefly what they -- what you and they
20 discussed yesterday in preparation for your deposition
21 today.
22 A Well, let's see. We talked about perhaps
23 starting with my background, and I should be prepared to
24 talk about my background. And be prepared to listen to and
25 let you finish questions, which apparently I am told I'm

1 not doing very well, but -- and then to answer after I've
2 had a chance to think about the question and just general
3 sort of reminders about how a deposition takes place.

4 Q What about the plaintiff? Did you have
5 specific discussions about the issues in this case?

6 A Well, to the extent that I still require some
7 of the information, we talked about the fact that I'm
8 waiting for some of the deposition of Mr. Boeken --

9 Q Okay.

10 A -- to arrive, I guess.

11 Q So you haven't seen all the transcripts. I
12 thought you had said you read them

13 A That's right.

14 Q But you've seen --

15 A No, I have not even received all of them

16 Q Okay.

17 A But I have read some of the early ones
18 carefully, and I have looked through some of the ones I've
19 received more recently.

20 Q Did you ever make any notes of any of the
21 materials that you reviewed?

22 A I -- I generally make notes of page numbers.

23 Q And do you have those notes with you?

24 A No.

25 Q Were you guys asked to produce any documents

1 today?

2 MR. DOBBERTEEN: What we produced. That's my
3 understanding. It's the C.V. and the reliance -- any
4 reliance documents. Those are reliance documents, and
5 they're obviously voluminous.

6 MR. GOLDSTEIN: Okay.

7 MR. DOBBERTEEN: I didn't know about these notes.
8 I'm not even sure what she's talking about candidly, but if
9 she's got some.

10 BY MR. GOLDSTEIN:

11 Q Did you take notes of their meeting yesterday
12 or your meeting?

13 A I think perhaps, you know, the ads or the date
14 of the trial I wrote down.

15 Q Okay.

16 A That's the kind of notes.

17 Q Okay.

18 A I have.

19 Q Was the time that you spent in California
20 strictly consumed with things on this case? I mean, you
21 came out here specifically to testify, and then you're
22 going to return?

23 A I came out specifically to testify, but I have
24 had the opportunity to extend my time in California because
25 it is Mardi Gras in Louisiana.

1 Q Okay.
2 MR. DOBBERTEEN: And everybody leaves town.
3 THE WITNESS: Everybody leaves town, and my children
4 are out of school; and I took the opportunity to go to
5 Universal City.
6 BY MR. GOLDSTEIN:
7 Q Okay. Great. Okay. Let me digress for a
8 moment.
9 Could you briefly summarize -- and this may be
10 overrule simplistic to ask you to do, but I think in one of
11 your theses, you talked about how you can prove that
12 children who are nonverbal or not able to speak are able to
13 still understand advertising? Is that -- did I correctly
14 assess that?
15 A That's very close to the ideas in some of the
16 work that I've done.
17 Q And when did -- I'm sorry. Go ahead. I didn't
18 mean to step on you.
19 A That's all right. In fact, I'm not sure which
20 way you want me to go with this question.
21 Q That's okay.
22 Which thesis, was that your doctoral thesis?
23 A My doctor thesis; that's right.
24 Q I'm sorry.
25 What were the ages of the children you had in

1 your study?

2 A I believe they were six to eight.

3 Q Okay.

4 A Roughly that age.

5 Q Okay.

6 Well, at that age, I guess they would be able
7 to verbalize, would they not?

8 A Well, it depends on comfort level and -- and
9 various things that the children have with interviewers and
10 the level of articulation they were required to demonstrate
11 in order to be considered educated about advertising.

12 Q What -- can you give me an example of some of
13 the questions you remember asking the children that led you
14 to the conclusions that you ultimately reached in your
15 dissertation?

16 A Well, the dissertation actually sits in
17 contrast with previous research that I and others have
18 engaged in. With --

19 Q Sits in contrast? I'm sorry.

20 A Yes, it sits in contrast with research that I
21 had done and others had done --

22 Q Uh-huh.

23 A -- which sought to determine children's
24 perceptions of advertising and specifically their level of
25 understanding of the persuasive intent of advertising. And

1 in the previous research, children were asked questions
2 such as, "What is an advertisement? What is a TV
3 commercial? Why is that on television? What is it trying
4 to do?" And in order to score a high level of
5 understanding of ads, a child had to articulate the
6 persuasive intent of advertising in whatever way the child
7 could. As in --

8 Q But -- let me just interrupt you.
9 Is it -- simply stated, the child is asked to
10 say what is this ad trying to persuade you to do?

11 A Well, what is this ad for? Why is this on
12 television? What is this --

13 Q Okay. Okay.

14 A -- attempting to do?
15 What are you supposed to do when you see this?
16 Things like that.

17 Q And having asked those six to eight year olds,
18 those types of questions, what did you discern at the end?
19 What was the upshot of your thesis or the conclusion you
20 reached?

21 A Well, actually my thesis didn't ask the
22 questions. I'm sorry. Maybe I'm taking too much time with
23 this. But the thesis attempts to develop -- to develop a
24 new methodology where the children don't have to answer in
25 so many words. Because, in fact, in some of the earlier

1 research a child had to indicate that sponsorship was
2 involved, that these advertisements helped to sponsor
3 programs in order to be considered having the highest
4 awareness of what an ad was.

5 So the early research showed that, until the
6 age of 12, many children did not understand the purpose,
7 the intent of commercials. Now, looking at children and
8 dealing with children, one might have the idea that, in
9 fact, they know a lot more than they're able to articulate;
10 so the trick was to come up with methodology that would
11 allow them to demonstrate their understanding without
12 actually having to articulate verbally what they knew.

13 So my dissertation involved developing that
14 methodology where a story board was presented, and several
15 options were given to the child regarding what you're
16 supposed to do when you hear this; and they could finish
17 the story by pointing out more the options rather than
18 talking about the fact that now you're supposed to buy the
19 product or something like that, and the findings were that,
20 in fact, when you use a nonverbal methodology, children are
21 able to demonstrate at much younger ages their
22 understanding of the persuasive intent of advertising, the
23 selling intent of advertising.

24 Q So nonverbal is more powerful, in your opinion,
25 than verbal?

1 A It's --
2 Q That gives you the -- I'm sorry.
3 A In my opinion, it is a more --
4 MR. DOBBERTEEN: Objection. Wait a minute. That
5 question as phrased is vague and ambiguous.
6 If you understand it, go ahead.
7 THE WITNESS: Using a nonverbal methodology with
8 children may provide a more accurate picture of their
9 understanding than using a verbal picture.
10 BY MR. GOLDSTEIN:
11 Q There's not much discussion in Hollywood about
12 the impact that a lot of sex has in advertising and that to
13 some extent a lot of people are alarmed about the type of
14 exposure the people are having at an earlier and earlier
15 age to sex.
16 Is that a subject that you've ever studied?
17 MR. DOBBERTEEN: Objection. No foundation.
18 THE WITNESS: I haven't specifically studied that
19 topic, no.
20 BY MR. GOLDSTEIN:
21 Q Okay.
22 And what -- what is the last time that you did
23 some research on the subject of impact of advertising on
24 children?
25 A Well, I'm engaged in research now which is

1 related to advertising and children. It's not completed
2 yet.

3 Q Where are you doing that research?
4 A In Louisiana.
5 Q And who's that for?
6 A It is part of my responsibility as a
7 tenure-track professor. It's for me. It's for my job.
8 Q Okay.
9 Do you have a -- a particular subject in mind,
10 or is it -- let me rephrase.
11 At what point is the research at now?
12 A I have data collected and not yet analyzed.
13 Q How big of a sample is this of?
14 A It's a small sample as well. It's probably 80
15 something children.
16 Q Okay.
17 A And I could perhaps add to that data set or
18 choose to do an analysis now, and that's the point I'm
19 finding myself now.
20 Q Who are Dutton, Campos and Overman or Caps?
21 That name ring a bell?
22 A This is terrible.
23 Q It's okay. You won't remember my name after
24 the deposition, but go ahead.
25 A A law firm?

1 Q Right.
2 A Who represent --
3 Q No, but did they ever hire you for anything?
4 Do you know? Does that ring a bell?
5 A Oh, I think so.
6 Q Okay.
7 Do you remember what it was?
8 A Are they in Indiana?
9 Q I don't think so.
10 A This is --
11 Q That's okay.
12 We'll move on.
13 A Is this on my C.V.?
14 Q Yes.
15 A Okay. I think -- I thought they were -- well,
16 that must be different.
17 Q That's okay.
18 You worked when you worked at ABC Television.
19 Who'd you work for there?
20 A Marvin Mord was the Director of Research.
21 Q Can you spell that for the reporter?
22 A M-o-r-d.
23 Q Okay. Okay.
24 And what was the nature of the research that
25 you did there?

1 A My job was to evaluate the perceptions of
2 national news audiences for television programs, TV News
3 programs.

4 Q And did you have a staff that worked with you?

5 A Well, I worked with David Bender, and we had a
6 few people working in the department for us; but we also
7 contracted some of the work on pieces of the work out to
8 other companies.

9 Q Who is Thomas Donahue?

10 A Now, that's a loaded question.

11 Q Okay.

12 A Now, remember early in the deposition when you
13 said, "Why did you move to Kentucky?"

14 MR. DOBBERTEEN: That's why.

15 THE WITNESS: That's that guy.

16 BY MR. GOLDSTEIN:

17 Q Okay.

18 And how about Theodore Glasser?

19 A Ted Glasser is a professor at Stanford now as I
20 understand it. He was a professor at the University of
21 Hartford when I was teaching there as a graduate student at
22 the University of Massachusetts.

23 Q Okay.

24 And where is Thomas Donahue today?

25 A I don't really know, but he lives in

1 Charlottesville, Virginia.

2 Q I mean, is he teaching, or do you know what
3 he's doing?

4 A He's teaching at Virginia Commonwealth
5 University.

6 Q Okay.

7 You don't know whether either of your
8 co-authors have ever testified for the tobacco industry?
9 Do you know?

10 A Mr. Donahue?

11 Q Mr. Donahue or Mr. Glasser?

12 A He may have. I don't know. I don't think so.

13 Q Okay.

14 How did you first make contact with the
15 Johnson, Tyler and Purvis law firm?

16 MR. DOBBERTEEN: Other than what she already told
17 you?

18 MS. TYLER: Asked and answered.

19 MR. DOBBERTEEN: They called her.

20 BY MR. GOLDSTEIN:

21 Q Were you ever introduced? They just heard of
22 you; is that right?

23 A Well, at the time it wasn't Johnson, Tyler and
24 Purvis. It was Johnson -- Johnson and Alan Purvis were
25 working for a different law firm

1 Q Okay.
2 When articles list the names of three
3 co-authors, are they listed in terms of the prominence of
4 the contributions made to the article?

5 A Interesting question, actually. In some
6 disciplines, they are listed that way. In other
7 disciplines, I don't think there is a pecking order
8 displayed by the order of the names or an order of
9 importance or contribution.

10 Generally, in communication, the first author
11 is the primary author, the lead author and takes a more
12 important role in -- in contributing to the study. In
13 marketing, it may depend on the journal.

14 Q Is there any difference when you listed
15 things -- when you listed things on your C.V. the order in
16 which the various authors appear? Sometimes your name is
17 first. Sometimes it's last. Does that indicate anything?

18 A Generally, it does indicate my contribution
19 relative to the other authors.

20 Q Okay. All right.

21 Have we -- let me go back to your opinions that
22 you would give in this case.

23 Anything else you can offer in terms of an
24 opinion that you believe you'd be expected to give on
25 direct examination in trial?

1 A Well, I --

2 Q That's by them I mean, by your attorneys.

3 A Yes. It's -- I don't want to leave anything
4 out because it's a very broad area. So I have talked about
5 and expect to talk about marketing, theories of marketing,
6 advertising and promotion and their role in the marketing
7 process. Consumer decisionmaking.

8 I expect to talk about research findings which
9 confirm marketing theory and consumer decisionmaking theory
10 and theories about how advertising and promotion work. I
11 expect to discuss, to some extent, I suppose we'll be
12 discussing children and adolescence and their perceptions
13 of advertising and promotion.

14 Q Okay.

15 A To make a few that I can think of now. I'm --

16 Q Okay.

17 With respect to this case, can you tell me how
18 the children of adolescence and their perceptions may come
19 into play in terms of your expected testimony?

20 A In terms of this case, particularly I would
21 generally look at Mr. Boeken's situation and behaviors and
22 compare them to what has been discovered through research
23 and marketing and marketing communications and --

24 Q In other words, if he as an example asserted
25 that he was drawn to smoking because he was attracted to

1 the Marlboro man and the macho image that he portrayed,
2 it's your belief that your testimony would be that in tests
3 that you've conducted in terms that are out there, but
4 that's not confirmed in your research?

5 A Actually, I would probably, instead focus on
6 some of the things that I've seen in deposition which
7 reflect research findings and are not unexpected at all in
8 terms of Mr. Boeken's situation.

9 Q Give me an example, if you would.

10 A The research shows that people who grow up, for
11 example, in households with parents who smoke are much more
12 likely to begin smoking than others. That parents have a
13 very strong influence on the smoking decision, the decision
14 to begin smoking. Mr. Boeken grew up in a household with a
15 mother who smoked three packs a day, with a father who
16 smoked against doctor's orders and with a sister who smoked
17 and -- and I should add then peers and siblings are also
18 very important and have shown to be important in research
19 in the decision to begin smoking.

20 Q Why would that have any impact one way or the
21 other in this case as far as you understand?

22 A Why would what have --

23 Q Whether or not he was led to smoke or not by
24 the Marlboro man, I mean, you're going to fly out here from
25 Louisiana again for the trial. I'm just wondering what

1 your understanding is of the importance of your testimony.

2 MR. DOBBERTEEN: Objection. Calls for speculation.

3 No foundation.

4 BY MR. GOLDSTEIN:

5 Q Well, how do you understand your testimony fits
6 into the defense of the case?

7 MR. DOBBERTEEN: Same objections.

8 THE WITNESS: I have no understanding of how it fits
9 in to tell the truth. I understand that there are
10 misdemeanor witnesses, and I'm one of them

11 BY MR. GOLDSTEIN:

12 Q Okay.

13 And what function is it that you understand
14 you're going to play, I mean, in terms of advocating the
15 viewpoint of the tobacco industry?

16 MR. DOBBERTEEN: Objection. Vague and ambiguous.
17 No foundation. Calls for speculation.

18 Go ahead.

19 THE WITNESS: Well, I -- I see my role here as
20 conveying a sense of what the research findings are in this
21 area and what the research findings have demonstrated and
22 comparing those findings with the specific case in this
23 situation.

24 / / / /

25 BY MR. GOLDSTEIN:

1 Q In other words, if -- well, you don't have an
2 idea then, as you sit here today, whether it would make a
3 bit of difference one way or another whether he grew up in
4 a family of smokers; is that right, from your perspective?
5 Does that have any impact on this case, as far as you know?

6 A I don't know what you mean by that, whether it
7 has an impact on the case.

8 Q Well, you said -- were you talking about one of
9 the issues being that parents exert a strong influence and
10 peers exert a strong influence on smokers, and I'm
11 wondering whether or not that's true with respect to this
12 case.

13 How does -- how does that play a part in the
14 case, if you know?

15 MR. DOBBERTEEN: Objection. Calls for speculation.
16 And calls for a conclusion on the part of the witness.

17 THE WITNESS: Yeah, I can't tell you where it fits
18 in. I -- I honestly only -- I understand that I have a
19 small, I assume, role to play relative to the fact that
20 there are many other witnesses in this case, and I'm not
21 sure what -- what you mean by what impact I might have.

22 BY MR. GOLDSTEIN:

23 Q Okay. Okay.

24 What about the theories that are expressed by
25 the plaintiff in this case? What opinions, if any, have

1 you formulated, or do you have?

2 MR. DOBBERTEEN: Objection. Vague and uncertain.

3 THE WITNESS: The theories -- I'm sorry.

4 MR. DOBBERTEEN: Go ahead.

5 THE WITNESS: The theories expressed by the
6 plaintiff? Well, I've seen Mr. Boeken's depositions.

7 BY MR. GOLDSTEIN:

8 Q Okay.

9 I mean, I made a list of the things that you
10 told me starting with marketing and theories and things
11 like that. So I wanted to explore the subject of theories
12 with you as it relates to the Boeken case.

13 A All right.

14 Q So could you express for me if you have an
15 opinion with respect to any theories that Mr. Boeken or his
16 counsel have expressed in the case thus far versus --
17 vis-a-vis your knowledge and expertise?

18 MR. DOBBERTEEN: Objection. Vague and uncertain.

19 THE WITNESS: At this point it sounds like -- you
20 might be asking me to separate what the counsel said versus
21 what the plaintiff has said in his deposition. I'm not
22 sure if --

23 BY MR. GOLDSTEIN:

24 Q No --

25 A -- if I'm familiar enough with both of those at

1 this point

2 Q What is the reason that you reviewed Mr. Boeken
3 and Mrs. Boeken's deposition? Let me ask you that.

4 A All right. In preparation for this case, and I
5 haven't not -- I'm not sure if I completed Jimmy Boeken,
6 which I received just before I left town -- but I am
7 looking for this situation to see how it compares with what
8 has been learned in research regarding the impact
9 advertising and of peers and parents on the decision to
10 begin smoking or the decision to continue to smoke and
11 basically trying to piece together a case history of this
12 individual as you might do a case history of a -- of a
13 company's development to look at the influences over time.

14 Q Is it also basically to discern the facts of
15 the case as they may relate to your issues and determine --
16 and compare them to the information that you have that --
17 the research that you've done?

18 A You are much more articulate than I am. Yes, I
19 would say that is --

20 Q And I'm stumbling here. Okay.

21 What -- why don't we make a list including
22 Marlboro man, Pancake House. I want every --

23 A Oh.

24 Q What I'd like to do is find out each of the
25 things that you can remember having discerned from the

1 depositions that you've reviewed, the evidence you've seen.
2 A Whew.
3 Q And tell me, you know, each of those things and
4 then how you'd comment on those.
5 A Wow.
6 Q Well, hopefully, they're not that many, but
7 let's -- let's go through them briefly.
8 A Okay. You'd like a list of things that I
9 recall from the depositions which have relevance to my
10 opinion?
11 Q Right. Right. That's a good way of putting
12 it.
13 A Okay. Let me try. It probably won't be an
14 exhaustive list --
15 Q Right.
16 A -- but I can try to recall some key issues.
17 One, of course, is the circumstances under
18 which Mr. Boeken began smoking --
19 Q Okay.
20 A -- which he recalls at about the age of ten
21 when his father died looking for butts in ashtrays and
22 doing this with his friends because he was curious. It was
23 cool and wanted to see what it was like --
24 Q Okay.
25 A -- which is typically the way that most smokers

1 report beginning out of curiosity and so forth.
2 Those who continue to smoke and who become
3 smokers, research shows they are much more likely to come
4 from households where parents smoke or a sibling smokes.
5 And in Mr. Boeken's situation, that seems to be true. His
6 mother was a heavy smoker. His father, as I said, was a
7 smoker who smoked against doctor's orders as Mr. Boeken
8 himself has noted. And his sister smoked. I don't know
9 how old his sister was, but his sister smoked.

10 Q Have you ever had a doctor tell somebody to
11 smoke? I mean, have you ever heard of an instance in your
12 life where a doctor said, "Yeah, go ahead smoke"?

13 A I sure don't recall that now.

14 Q Okay. Okay.

15 And from your understanding, smoking is not
16 something that you understand to be good for one's health;
17 is that right?

18 A That's true. I've --

19 Q You understand that it's bad for one's health?

20 A I'm pretty convinced that it's not something
21 that's healthy.

22 Q Okay.

23 Would you say that that attitude is still
24 pervasive even among the people that hire you to testify
25 that smoking is not healthy for you?

1 MR. DOBBERTEEN: Objection. Calls for speculation.
2 No foundation.

3 THE WITNESS: I don't know. I mean, some of them
4 smoke; some of them don't. I really --

5 BY MR. GOLDSTEIN:

6 Q Okay. I interrupted you. Go ahead.

7 A Let's see, what else. Research also shows that
8 even if a parent smokes, the parent can have a mitigating
9 effect on initiation of smoking by discussing with a child
10 the negative consequences of smoking and by discouraging
11 smoking. In Mr. Boeken's case, however, his mother, upon
12 discovering that he smoked, suggested that he not hide it,
13 that they could smoke openly together in the house.

14 Q And you fault her for that?

15 A I don't fault anybody for anything. I simply
16 am looking at the research which would suggest that those
17 behaviors would increase his chances of becoming a smoker.

18 Q Okay. Okay.

19 A And study after study has shown that parent
20 influence and peer influence are the strongest, I should
21 say, parent and peer and sibling influence are the
22 strongest influencing factors in the decision to smoke.
23 And from all of that research which has been conducted,
24 confirming those relationships, come those conclusions
25 which are reflected in Mr. Boeken's situation.

1 Q Okay. All right.
2 What's the next thing that you remember going
3 through the file jumping out at you?
4 A Well, let's see. Mr. Boeken discusses quitting
5 attempts. He discusses the Marlboro image. He says he's
6 smoked Marlboro exclusively, although his wife says he
7 smoked Camel and Benson and Hedges and a couple of other
8 things I don't remember offhand. But he says that the
9 reason he smoked was that the Marlboro macho image was very
10 compelling, and that was why he smoked --
11 Q What was --
12 A -- as I recall, in his deposition.
13 Q Do you remember his occupation?
14 A He was a venture capitalist. I believe at one
15 point he was a flute player in a band. He was also -- a
16 securities broker.
17 Q And how old is he?
18 A He must be around -- wait. Let me tell you.
19 He was born in '44. That would make him 54, 55.
20 Q -6 maybe. No?
21 A Yeah, 56 would be right, depending on the
22 birthday. I don't remember.
23 Q Okay.
24 What's your view on the quitting attempts,
25 anything there in terms of advertising or any issues there

1 that come into your bailiwick?

2 A Well, I'm trying to recall the circumstances of
3 his quitting attempts. He quit once because of a
4 girlfriend or a potential girlfriend. And when that didn't
5 work out, he began smoking again.

6 Q But does any of that have anything to do with
7 anything in your expertise?

8 MR. DOBBERTEEN: Objection. Vague and uncertain.

9 THE WITNESS: Well, I'll have to look at that issue
10 more, but the quitting attempts are not the focus of my --
11 BY MR. GOLDSTEIN:

12 Q Right.

13 A -- work.

14 Q When you go through what you remember, I don't
15 want to do a memory test.

16 A Thank you.

17 Q I just want to know the facts. But what I want
18 to know is what you can remember and discern that would
19 crop up that would be asked to testify about. In other
20 words -- go ahead.

21 MR. DOBBERTEEN: Go ahead.

22 BY MR. GOLDSTEIN:

23 Q So let's go into the next issue.

24 Like the Marlboro man macho subject, is that an
25 issue you would have a commentary on, do you think?

1 MR. DOBBERTEEN: Okay.
2 The question calls for speculation.
3 Go ahead.
4 MR. GOLDSTEIN: Let me --
5 THE WITNESS: Well, something else has occurred to
6 me. As you said, those things just now is that Mr. Boeken
7 also stated that everybody smoked. And therefore, I
8 suppose maybe he asserted that was one of the reasons he
9 was smoking, too, was that everybody smoked. And research
10 also will show that people who are smokers are likely to
11 every estimate the prevalence of smoking.
12 But in fact, in his world, in his household,
13 perhaps everybody did smoke. So that it's an issue of
14 perceptions based on that household situation where the
15 parents and the siblings have so much influence. The --
16 well, let me think of some more, maybe.
17 BY MR. GOLDSTEIN:
18 Q How about the Pancake House and the vending
19 machine, is that an issue?
20 A Well, that issue is not really the focus of my
21 research or -- or probably not the focus of my opinion
22 of -- unless you begin discussing access of -- access
23 issues, which are only tangential to my opinion about the
24 perceptions of advertising.
25 Q Okay.

1 What else -- anything else you could recall
2 being subjects that you might be asked to comment on at
3 trial?

4 MR. DOBBERTEEN: Same objection. Speculation.
5 Calls for a conclusion of the witness.

6 THE WITNESS: I don't like to exclude anything
7 because I'm forgetting it, but right now, I don't really --
8 nothing comes up.

9 BY MR. GOLDSTEIN:

10 Q We just don't want to be surprised at trial
11 with hearing for the first time with hearing things that
12 you would express there that you haven't expressed here.

13 I don't want to beat you over the head, but
14 have we in a broad sense covered the subjects that you
15 think you'd be asked to testify about?

16 MR. DOBBERTEEN: Your question comes over the course
17 of this entire deposition?

18 MR. GOLDSTEIN: Yes.

19 Q Are we leaving anything out?

20 A Anything that we might be talking about at
21 trial? Maybe, but I don't know what that is.

22 Q Well, subjects -- what I want to know is, with
23 respect to the Boeken case --

24 A Yes.

25 Q -- we've established to my satisfaction, you're

1 not going to talk about the Pancake House, okay?

2 A Yes.

3 Q That's the only fair game here. I just want to
4 know what else.

5 Is there anything else that we think that you
6 might -- that you believe that might be relevant to your
7 area of expertise?

8 A Well, we might be talking about source;
9 correct. It seems to me that might be an issue here.
10 Research has shown that advertisements are generally viewed
11 to be less credible than say news reports because the
12 credibility is composed of trustworthiness and expertise,
13 and since people understand the selling intent of
14 advertising, there tends to be a lower credibility assigned
15 to advertisements and the messages contained there than
16 news reports because there's an assignment of a motive for
17 personal gain of some type.

18 Q And I believe that today's youth, limiting it
19 just to the youth, but you believe that to these youth are
20 sophisticated to discern what's good and what's bad for
21 them from advertising?

22 A I think that depends on their household
23 situations growing up, the kinds of influences they've had
24 at home, their parents.

25 Q Excluding parental influence and peer

1 influence, I just want to know if we can concentrate on the
2 advertising issues.

3 Can you -- can you recite for me an example of
4 a particularly successful advertising campaign that you may
5 have been involved in that was directed towards children?
6 Any picture, any field, anything?

7 MR. DOBBERTEEN: Objection. Vague and ambiguous.

8 THE WITNESS: Only tangentially.

9 BY MR. GOLDSTEIN:

10 Q Okay. Give me an example.

11 A I've begun research which advertising agencies
12 have used to perhaps talk to their clients about VCRs when
13 they were new. I've done research for M&M Mars, which was
14 to be used to develop public relations campaigns. I don't
15 know exactly to what end the research findings were put.

16 Q Was that representing to children as consumers?

17 A Children as consumers and teens as consumers
18 and adults as well.

19 Q And did -- and this is overly simplistic, but
20 was it your -- did you express an opinion as to what
21 advertising Mars was going to do or Mars did?

22 A No, I was come in advance of the ad campaign or
23 the public relations campaign. They were trying to
24 understand consumers' perceptions about candy at a time
25 when most people were pretty down on sugar and sweets and

1 the advertising to children is -- was an important issue.
2 But M&M Mars was trying to understand what possible
3 positive ingredients people may perceive their candies to
4 have.

5 Q And what candy product was that?

6 A Everything from -- well, let's see M&M's to
7 Snickers and Mars bars and those products.

8 Q What'd you tell them, do you recall?

9 A I told them a lot, but -- but, for example,
10 people thought that chocolate which contained milk than
11 chocolate which did not contain milk. Milk chocolate was
12 better than dark chocolate. I mean, some interesting
13 things, but --

14 Q Did Mars alter their marketing and sales or
15 advertising based upon anything you told them?

16 MR. DOBBERTEEN: Objection. No foundation. Calls
17 for speculation.

18 THE WITNESS: I would not understand anything
19 knowing that.

20 BY MR. GOLDSTEIN:

21 Q But you don't know?

22 A I don't know. I just did that work.

23 Q Okay.

24 Can you give me an example of something you've
25 studied or taken note of which is an exam of an advertising

1 campaign that you believe in the media is focused on, let's
2 say, adolescents? Is there something that you could know
3 you're aware of, that you would agree with me that that's
4 an ad that has been used focusing on adolescents?

5 A This shouldn't be difficult, but let me think.

6 Q I'll give you a hint.

7 How about music? Anything in the music area or
8 clothing area, as an example? I don't know.

9 A Actually, I was going -- well, I don't want to
10 speculate, but since we were talking about the M&M and the
11 impact of that research, I wondered if some of the ads I
12 have seen representing teenage boys, eating Snickers for
13 extra energy is an example of that.

14 Q Is that something that you've studied or taken
15 note of?

16 A Well, you said taken note of it.

17 Q No, but I asked you both.

18 And do you have an opinion whether that ad was
19 successful or not for the company that undertook it?

20 A Actually, I don't know. No, I don't. I don't
21 know.

22 Q Okay.

23 You just observed somebody who was aware of the
24 field that, in your opinion, this was an ad that was
25 designed to reach an audience of peers of the person

1 featured in the ad, as an example?
2 MR. DOBBERTEEN: Objection. Calls for speculation.
3 THE WITNESS: I -- I probably should see those ads
4 again before I talk about them I'm not really sure how
5 old this person was on the bicycle, but --
6 BY MR. GOLDSTEIN:
7 Q That's okay.
8 I'm not -- I'm not trying to pin you down to,
9 you know, an nth degree, but that would be an example,
10 something that you could point to of an ad that you think
11 was assembled by whatever company it was to market a candy
12 bar to that age group of 15 or 16; right?
13 A Possibly.
14 Q Okay.
15 A As I've described it, as I recall it, I don't
16 remember what it was there, but it seemed to me like it may
17 have been in that group.
18 Q Now, would you have thought that that was a
19 waste of the company's time to spend money to advertise to
20 a child or to a population of that age in that fashion?
21 MR. DOBBERTEEN: Objection. Calls for speculation.
22 No foundation.
23 THE WITNESS: I'm not sure -- and when you first
24 asked me this question, it was understanding to me because,
25 of course, I think of my children and ads they have seen or

1 ads they may have been influenced by, and I just know that
2 at one time it was very important to have some Airwalks.

3 BY MR. GOLDSTEIN:

4 Q Shoes?

5 A Yes.

6 Q Okay.

7 A And I could not find ads for Airwalks anywhere.

8 And I wondered how they had heard about Airwalks. And I
9 think I'm pretty observant about what they're watching and
10 doing, and I should have seen the ads, if there were some,
11 but I -- I'm not very good at coming up with ads which led
12 to requests for that brand; and it seems to sometimes work
13 without the ads. So was it a waste of time to have a
14 Snickers ad like that, I'm not sure.

15 Q Are -- in general, with respect to advertising,
16 do you believe that spending advertising money is usually
17 good investment if somebody's trying to market a product?

18 A That depends on the product and whether it's
19 for consumers or for businesses.

20 Q Well, as a general -- as a generic, the idea of
21 advertising, you were in the advertising industry at some
22 point, were you not? No?

23 A No, I was in --

24 Q You didn't work for anybody statistic?

25 A The research industry, the -- the polling

1 industry, and I was doing marketing for the networks when I
2 was doing research, marketing research for the networks.

3 Q One of the reasons that you were doing the
4 marketing research, they wanted to determine whether
5 particular products were effective being marketed; is that
6 right?

7 A In fact, there were a wide range of reasons for
8 conducting research when I was at Louis Harris. Different
9 kinds had different reasons for conducting studies, but,
10 yes, some of them were advertising, tracking studies to
11 determine the effectiveness of their ad campaigns.

12 Q Are some ads based on your experience and
13 knowledge effective? Some are able to get across the
14 message and -- and provide sales for the company?

15 A Well, here is the interesting distinction that
16 you would need to make. When you talk about the
17 effectiveness of ads, it brings you to what I said would
18 probably be discussed earlier, the decisionmaking process,
19 the consumer decisionmaking model.

20 And the fact that there are many steps a
21 consumer goes through from initial awareness of a brand to
22 event actually ultimately perhaps purchasing that brand.
23 And advertising is generally designed, and -- and its
24 function is to serve to have an effect in the beginning
25 stages of that decisionmaking model.

1 So that advertising can be effective if it's
2 successfully done, "it" being effective in increasing
3 awareness of a brand name. And so to that extent, can
4 advertising be successful? Can it be effective? I would
5 say it would be very important to identify effective in
6 doing what because there are some things that advertising
7 can be designed to do.

8 Q Now, what is your understanding as to the
9 amount of money that Philip Morris spends each year on
10 advertising?

11 A I would have to look up that specific figure,
12 but I know it's a lot.

13 Q In 1999, you testified it was \$5 billion.
14 Would that refresh your recollection at all?

15 A 5 billion?

16 Q Right.

17 A By Philip Morris specifically or by the tobacco
18 companies?

19 Q I thought Philip Morris.

20 A I think it's by the tobacco companies in
21 general.

22 Q Okay.

23 A 5 or 6 billion in advertising or promotion.

24 Q Okay.

25 And what is your understanding as to the reason

1 why the tobacco industry engages in advertising?

2 MR. DOBBERTEEN: Objection. Calls for speculation.
3 No foundation.

4 Go ahead.

5 THE WITNESS: Okay. I could talk about that --
6 that -- that issue in terms of the type of market where
7 advertising is taking place in the tobacco market.
8 Cigarettes are what is known as a mature product category
9 which means there's a lot of competition in that category.

10 There are a lot of brands identifying for
11 market share within that category. And the function of
12 advertising in a mature market is to maintain use among
13 customers, and secondarily, to attempt to track customers
14 of competing brands. And that's my understanding of the
15 function of advertising in the tobacco market.

16 BY MR. GOLDSTEIN:

17 Q So that if Philip Morris were to run the
18 Marlboro man, what is your understanding from that
19 advertising perspective what the goal is there? I mean, is
20 there any significance in using a particular advertising
21 icon --

22 MR. DOBBERTEEN: Object.

23 BY MR. GOLDSTEIN:

24 Q -- in the present ads?

25 MR. DOBBERTEEN: Objection. Vague and ambiguous.

1 No foundation. Calls for speculation.

2 Go ahead.

3 THE WITNESS: So when you say my understanding of
4 why they would run the Marlboro man, as in use this image
5 repeatedly?

6 BY MR. DOBBERTEEN:

7 Q Right.

8 A Well, one thing I would understand to be a
9 function of using is this image repeatedly would be to aid
10 the consumer in recalling something of a tangible about the
11 brand.

12 Q But you said also that it's important to not
13 only retain the market share and attract people to a
14 particular brand, but also right up front to get them to
15 recognize initially to relate to that product; right?

16 A Well, let's put it this way: If -- if someone
17 is going to purchase a product or service, the steps that
18 individual goes through will include awareness of the brand
19 name and knowledge about the brand and how it's different
20 from other brands in that category, and then they will make
21 some evaluations of that brand; and if they are going to
22 continue and become purchaser of the brand, the evaluations
23 will be positive, strong, and they're compelling and then
24 the purchase will take place if it's available.

25 But at any point, an individual can drop out of

1 that process, evaluate -- keep the information, recall the
2 brand name, the icon related to it, evaluate the brand or
3 the private category and drop out of the process.

4 Q Are you an advocate in truth in advertising?
5 In other words, truthful advertising should be truthful
6 when it's put out?

7 A Absolutely.

8 Q Okay.

9 And you would take exception if you knew of an
10 ad that was knowingly misleading or deceptive; right?

11 A I think so with the FTC and pull it.

12 Q You what?

13 A And I think the FTC would, too, and pull it;
14 right.

15 Q Pull it.

16 Do you have an opinion whether or not -- you've
17 studied children, and you have probably a better
18 understanding than some of their thinking processes? Do
19 you have a belief based on your studies that children have
20 the intellectual maturity to determine whether or not
21 smoking is good for them or not?

22 A Well, in the children that I have studied
23 specifically, even at very young ages, they will talk about
24 smoking as a private category as bad for you and as more
25 than an unappealing thing.

1 Q That's not universally shared by all children
2 is it?

3 MR. DOBBERTEEN: Objection. Argumentative

4 MR. GOLDSTEIN: I'm sorry. I don't want it to be
5 argumentative.

6 Q In terms of your research, have you ever
7 interviewed children that smoke? Have you ever targeted
8 that particular segment of the population?

9 A If I have, I haven't determined that.

10 Q Okay.

11 Do you think it would be intellectually or
12 validating to determine -- well, strike that.

13 Are you aware of any research that you're
14 relying upon that has ever interviewed teenagers that have
15 started smoking, what their motivations are or any things
16 of that nature?

17 A I guess.

18 Q Can you point at the one or two? Can you tell
19 me the names of any that you're aware of where they have
20 interviewed children that smoke?

21 A Well, there are a lot of -- maybe I should look
22 at the list as a reminder so I don't misstate, but there
23 are many studies, most of the studies that I have on peer
24 and parent influence.

25 Q I'm sorry?

1 A On peer and parent influence that look at the
2 development of smoking at the time, and there are those
3 groups who ban smoking and some who did not and looking at
4 the different factors that may have influenced that.

5 Q Just because somebody that comes from a family
6 that smokes, that doesn't necessarily invalidate their
7 motivation for starting because of an ad they saw; right?

8 MR. DOBBERTEEN: Objection. Argumentative.

9 THE WITNESS: Actually, even when people are asked
10 to identify factors which have influenced them in their
11 decisions to smoke -- and advertising is one of those
12 options if they can choose from -- it is more often my
13 friends, curiosity. Those kinds of things are really the
14 influencing factors, and that would confirm what the
15 research and marketing and what the theories in marketing
16 suggest and marketing communication that advertising is
17 only going to affect those initial stages of the decision
18 making process, and when it comes down to purchase
19 decisions, that word-of-mouth communication is what has the
20 greatest impact.

21 BY MR. GOLDSTEIN:

22 Q But you do agree that advertising does have an
23 impact on the first -- what did you say?

24 You said it more artfully than I.

25 A The early stages of the consumer decisionmaking

1 process.

2 Q Okay.

3 So that if someone were to say that they saw an
4 ad early on, and that was one of the reasons that they
5 desired to start smoking, as an example, having seen the ad
6 that would be consistent with your understanding as to one
7 of the intended reasons or purposes of advertising?

8 A Actually, not the way you've stated this.

9 Q Okay. Tell me what's -- let's make it correct.

10 A Because if someone has seen an ad, the function
11 the advertising -- let's see if I cannot backtrack on this
12 because you were talking about significant advertising, and
13 now, I'm talking about advertising, so the effective of
14 advertising is generally with regard to those first stages
15 of the decision make can process which include awareness
16 which would mean I am aware that that brand name represents
17 this product category.

18 And I can match this brand name with a product
19 category. I know that Steel make chain saws. So when you
20 tell me the brand name, I can identify a product category.
21 So those stages of decisionmaking are where advertising
22 has -- its greatest impact. Second stage would be
23 understanding of the brand and what it represents. A
24 simple knowledge collect -- data-collection phase. What
25 about Steel chain saws?

1 Q Okay.
2 Now, let me --
3 A What do they do that others don't?
4 Q Well, let me give you an example. Let's talk
5 about Marlboro cigarettes for a minute.
6 What is it in the ads that you have observed
7 that are put out by -- forgive me because I'm not real
8 knowledgeable -- is it Philip Morris that puts out
9 Marlboro?
10 A Marlboro, yes.
11 Q What is it about the Philip Morris ads and
12 Marlboro that you think would direct a person to that brand
13 as opposed to some other brand?
14 A I think you can ask --
15 MR. DOBBERTEEN: Objection.
16 THE WITNESS: Okay.
17 MR. DOBBERTEEN: No foundation. Calls for
18 speculation.
19 BY MR. GOLDSTEIN:
20 Q Let me ask you: Do you have an opinion about
21 the issue of advertising and how it's created or focused to
22 lure a person from one to another?
23 MR. DOBBERTEEN: Objection. Vague. Ambiguous.
24 Argumentative.
25 THE WITNESS: Do I have an opinion about -- could

1 you repeat the -- the rest of that about how ads are
2 created?

3 BY MR. GOLDSTEIN:

4 Q No.

5 With respect to Philip Morris and the Marlboro
6 ad, you've said that one of the reasons that ads in general
7 are put out is to maintain a -- a level of consumerism of
8 their present -- maintain their present consumers; right?

9 We talked about that as one of the reasons for
10 advertising just to do that. And I assume that that is not
11 only related to other areas, but is also true with respect
12 to cigarettes; correct?

13 A In a mature product category, yeah.
14 Advertising and promotion is generally --

15 Q To maintain --

16 A -- to maintain --

17 Q To maintain is part of it --

18 A -- to maintain current brand users, yes, is
19 part of it.

20 Q Allegiance to the present brand. We said that
21 right allegiance --

22 A Yes. Yes.

23 Q Another reason is also because you said there
24 are so many diverse competing company vying for the same
25 smoking market as an example, that the purpose of the ad is

1 to bring a consumer or potential consumer to the
2 advertiser's product as opposed to somebody else's product;
3 right?

4 A Yes.

5 MR. DOBBERTEEN: Objection. Vague and ambiguous.
6 Go ahead.

7 BY MR. GOLDSTEIN:

8 Q Okay.

9 What is it that you understand the Philip
10 Morris Company does in their ads that make somebody want to
11 smoke Philip Morris product as opposed to Benson and
12 Hedges?

13 MR. DOBBERTEEN: Objection. No foundation. Vague
14 and ambiguous.

15 THE WITNESS: I -- I would say that the -- the
16 functions to differentiate that brand from others.

17 BY MR. GOLDSTEIN:

18 Q But how do they do that?

19 A Well, the one thing is that consistent imagery
20 could be an indication of how differentiation would take
21 place.

22 Q Well, let's speak specifically now. I mean,
23 what is it -- what ads have you seen Marlboro utilize, say
24 since 1992, when you first started testifying what ads have
25 you seen Marlboro run in -- in an effort to attract people

1 to their brand as opposed to other brands?

2 A I think -- now, I -- I'm -- I'm not going to be
3 perfect in recalling this --

4 Q No, it's okay.

5 A -- but my recollection is that from 1992 to
6 now, Marlboro's been fairly consistent in the imagery in
7 the advertising with the red roof, with the --

8 Q Mask?

9 A -- time face.

10 Q Masculine looking, rugged man?

11 A With a male and a male figure sometimes in a
12 cowboy hat, sometimes in the outdoors, that kind of imagery
13 is what I recall from '92 on.

14 Q Uh-huh.

15 There's nothing in the ads that you can recall
16 that talk about comparative health risks between Marlboro
17 and Benson and Hedges as an example; right?

18 A I don't recall any comparisons.

19 Q Okay.

20 In other words --

21 A In those --

22 Q In terms of your recall as to what you've seen
23 Marlboro advertised, isn't it correct that you can't recall
24 any specifics about how Marlboro is, for example, safer,
25 better tasting than another brand? Do you recall either of

1 those?

2 MR. DOBBERTEEN: Objection. Compound.

3 THE WITNESS: Are we working in -

4 BY MR. GOLDSTEIN:

5 Q Well, let me ask -- I'll -- I'll rephrase.

6 A Okay.

7 Q Do you recall any ads undertaken about Marlboro
8 cigarettes that tout the health benefits of a cigarette of
9 Marlboro brand over another brand?

10 A Not offhand, I don't.

11 Q Okay.

12 How about price? Do you remember seeing
13 anything that drew a price comparison between the Marlboro
14 cigarette and another brand of cigarette?

15 A Are we talking about any specific time period
16 here?

17 Q The same since 1992.

18 A Well, you know, that may have taken place in
19 promotions, in retail outlets, I'm not sure.

20 Q I understand. But I mean ads that you've seen.
21 I'm not asking you to say whether -- you know, what's the
22 entire Marlboro marketing approach? I just wanted you to
23 comment on the ads that you have seen, and I have -- I've
24 seen them, too.

25 I just wanted to ask you whether you can recall

1 anything else of a specific nature. In other words,
2 regarding price, do you remember Marlboro ever featuring an
3 ad that said, "Buy our product. We're cheaper than another
4 brand"?

5 MR. DOBBERTEEN: Objection. Vague and ambiguous.

6 THE WITNESS: From '92 on in the advertising for
7 Marlboro brand, I don't recall seeing that, but it may be
8 there. I don't know.

9 BY MR. GOLDSTEIN:

10 Q Okay. Okay.

11 In terms of the red roof, sometimes cowboy hat
12 adorned-outdoor pictures that are featured in the ads
13 prominently, are those individuals sometimes referred to
14 as, quote, the "Marlboro-man"?

15 A Yes. I've seen the Marlboro man if that's the
16 guy in the ads, yes.

17 Q Okay.

18 And is it your understanding as a professional
19 who analyzes these advertising things, that the -- that the
20 company that was pursuing those ads was doing so on an
21 order to promote a feel in the reader or consumer potential
22 consumer, if you will, that that Marlboro man or his
23 attributes were somehow related to the brand?

24 A You know, again, I'll be speculating if I do
25 that. I don't -- I don't know what their intention was.

1 In fact, my recollection is that Leo Burnett, who started
2 that imagery, liked the imagery, and the marketing
3 researchers advised him against using it, so I don't know
4 what they decided was the intent of using that or what they
5 were trying to evoke in individuals; but you could go to
6 the individuals and try to determine the perceptions and
7 see what -- what effect the ads have had that way.

8 (A brief recess was taken.)

9 MR. GOLDSTEIN: Back on the record.

10 Q I am informed that there was a document request
11 that was served with the Notice, and I just want to inquire
12 briefly if you have any of these documents other than this.
13 All records, documents and other writing you've reviewed or
14 expect to review in this case.

15 Do we have those?

16 A I think so, on that list? I think that -- I
17 don't know if I'll be adding to that. Maybe I'm not
18 allowed to at this point, but -- that's fairly
19 comprehensive there.

20 Q Is your C.V. -- I note that's a transmission
21 time November 3rd, 1999.

22 Is that still accurate today or -- I don't know
23 if this is a current C.V. or --

24 A It's pretty close, actually, I think.

25 Q Okay. All right.

1 And any other documents that you've reviewed
2 other than those that are listed on your reliance
3 materials?

4 MR. DOBBERTEEN: And the depositions that she's
5 already talked about.

6 MR. GOLDSTEIN: Right.

7 THE WITNESS: That's right. The deposition, and I
8 expect I will be getting the remainder of Boeken's
9 deposition as well, which I haven't had a chance to
10 receive, look at.

11 BY MR. GOLDSTEIN:

12 Q All right.

13 How about correspondence and other written
14 communications by you concerning this case? I take it
15 you've received documents from the law firm or law firms
16 when they transmit stuff to you, at least.

17 Do you have any of those?

18 A There's nothing that comes with it, except --

19 Q Well, whatever it is that comes with it, I
20 mean, we'd like to see that.

21 MR. DOBBERTEEN: You mean like a transmittal letter?

22 MR. GOLDSTEIN: Yeah.

23 Q Do you have those --

24 A Attached are one, two, three, four, five. I
25 mean, I have one of those. Right.

1 MR. DOBBERTEEN: Yeah. There's one letter like
2 that. And I think, otherwise, we just send her the copies.
3 MR. GOLDSTEIN: I understand.
4 But if you --
5 MR. DOBBERTEEN: Sure.
6 MR. GOLDSTEIN: Can I rely upon you to maybe attach
7 that or -- why don't you just provide a copy to Mr. Piuze
8 and the court reporter.
9 MR. DOBBERTEEN: Sure.
10 MR. GOLDSTEIN: If you would, that'd be great.
11 Q All reports, notes and other writing prepared
12 by you or at your request in this case.
13 Are there any?
14 A No.
15 Q No. No.
16 Did you prepare this reliance material outline?
17 A Yes. Some of it -- some of it was really
18 compiled earlier for other cases, and I've added to that.
19 Q Who actually typed this?
20 A Julia and I worked on that. And --
21 Q Okay.
22 A And I don't have that software. So --
23 Q Like, for example, if I asked you how you were
24 able to get the gray area up on top, you wouldn't be --
25 MR. DOBBERTEEN: Because you don't know how?

1 MR. GOLDSTEIN: No.
2 THE WITNESS: No, I wouldn't.
3 MS. TYLER: That would be my unique mastery of work.
4 Thank you.
5 BY MR. GOLDSTEIN:
6 Q All right.
7 How about Number 4? Time sheets, records,
8 billings and other writings that reflect the amount of time
9 you've spent on any matter related to this case?
10 A I --
11 Q Where do you keep record of the amount of time
12 you spend?
13 A I -- I don't know.
14 Q Well, do you write it down, or do you -- let me
15 ask you this: Do you have a home computer?
16 A I do, but I don't keep anything like -- that's
17 far too organized.
18 Q Do you have like a calendar? How do you keep
19 track of the time you spend?
20 A Tic marks, usually.
21 Q On where?
22 A On some piece of paper.
23 Q Where is this piece of paper?
24 A I -- I figured out, and then if I send a bill,
25 I don't usually keep the tic marks.

1 Q Right.
2 But usually before you submit a bill, you have
3 like -- do you have a list of the things that you do? In
4 other words, sometimes, my experience, it's difficult to
5 get paid when you just send tic marks?
6 A No. No. I do it --
7 Q Maybe you have a secret meeting to share with
8 us.
9 A Yes, I understand what you mean. No, I will
10 make tic marks. What I simply send is the number of hours.
11 I don't itemize or anything like that. I send the number
12 of hours that I've spent reviewing depositions.
13 Q Not in this present company, but let's say
14 somebody in accounting somewhere decided to question that,
15 how would you be able to reconstruct what you did?
16 A I would probably have to go back through which
17 days did I teach and which days did I have off and which
18 days were there not appointments with doctors and things
19 like that, to reconstruct when I was doing the reading.
20 Q Is that sheet with tic marks kept in the file
21 that you have in connection with this case?
22 A No. Actually, no.
23 Q Where do you keep that?
24 A I keep it until I --
25 Q No. Where? Where?

1 A Oh, where? It's usually like the back page of
2 one of those yellow tablets.
3 Q Oh. And where is it today? I mean, does it
4 exist or --
5 A No, not actually. I --
6 Q No?
7 A I mean, I've sent one bill.
8 Q When was that?
9 A After the meeting in December.
10 Q And how much was that for?
11 A Gee, I would have to go back and look at that,
12 but it was an expensive plain ticket and a couple of hours
13 of --
14 Q Did you fly first class?
15 A No.
16 Q Okay.
17 A Actually, on the way back, I did upgrade to
18 first class on my own because I was very sick and felt
19 sorry for the man next to me.
20 Q Okay. All right.
21 And you haven't been paid for that?
22 A No.
23 Q What's the normal time frame in which you're
24 paid after you testify?
25 A I think that depends on who's paying the bill.

1 Q All right.
2 What's your experience?
3 A Anywhere from, I don't know, 30 days to several
4 months.
5 Q What's the average amount of money that you
6 bill for working on one of the six cases where you gave
7 depositions? Just roughly?
8 A Honestly, I don't know because some have much
9 reading material attached and some have very little and
10 some --
11 Q Can you give me a ballpark figure? Is it
12 10,000? Is it 50,000? Is it --
13 A Closer to the 10- range.
14 Q Okay.
15 What's the most you think you've ever charged
16 in a case?
17 MR. DOBBERTEEN: For a whole case?
18 BY MR. GOLDSTEIN:
19 Q For working on a case, one of the cases you've
20 worked on?
21 MR. DOBBERTEEN: One of the cases, the most
22 expensive case she's worked on?
23 MR. GOLDSTEIN: Right.
24 THE WITNESS: Probably. I don't know -- I'm pretty
25 sure it must have been the iron workers' case where I ended

1 up testifying in court. That was very long, involved and
2 drawn out and --

3 BY MR. GOLDSTEIN:

4 Q And how much was that, do you know?

5 A Maybe 40,000.

6 Q Okay. All right.

7 A That's it. That's a guess.

8 Q Okay.

9 All bills, invoice and other writing that
10 reflect the bill in the future to defense counsel and any
11 other work done in regard to this case? Why don't we ask
12 you the same fashion, when you find that other invoice or
13 bill just to attach or send a copy to Mike Piuze and send a
14 copy to the court reporter.

15 All records documents and other writings
16 showing each contact the deponent had with anyone involved
17 in this case. Other than the transmittal letters, have
18 there been any other communications between you and other
19 counsel in this case?

20 MR. DOBBERTEEN: Written communication, he's talking
21 about.

22 THE WITNESS: No. No phone calls.

23 BY MR. GOLDSTEIN:

24 Q No e-mail or anything like that?

25 A No.

1 Q Just phone calls; all right. Okay.
2 And about how many times have you spoken with
3 any counsel in this case about this case?
4 MR. DOBBERTEEN: Wait a minute. Wait a minute. Can
5 you rephrase that?
6 BY MR. GOLDSTEIN:
7 Q Sure.
8 First, identify for me the names of the lawyers
9 that you've spoken to concerning this case. Okay. Present
10 company included.
11 A I will try to do that. Miss Tyler,
12 Mr. Dobberteen, Mr. Leiter and Mr. Purvis.
13 Q Okay.
14 A And I might be missing somebody, but --
15 Q Any paralegals?
16 A No.
17 Q Okay.
18 So in terms of on this case, the only people
19 that you've spoken with from a legal standpoint are the
20 four people you've identified?
21 A As far as I remember, yes.
22 Q Right.
23 And -- I know you told us briefly about the
24 conversations you had, but, as you sit here today, what's
25 the total number of conversations that you've had about

1 this case?
2 MR. DOBBERTEEN: With the lawyers?
3 THE WITNESS: I guess --
4 MR. GOLDSTEIN: With the lawyers, yes.
5 THE WITNESS: So a meeting yesterday for a couple of
6 hours counts as one conversation.
7 BY MR. GOLDSTEIN:
8 Q That would be one?
9 A Okay. So maybe four.
10 Q Okay.
11 What was -- the first one we talked about that
12 you were -- they thought you might want to come out and
13 talk in December; right?
14 A Yes.
15 Q That was the first conversation.
16 A Yes.
17 Q On the phone.
18 A Yes.
19 Q Is there any other conversations you can recall
20 about that, anything else?
21 A No.
22 Q Then when you got out here, you had a meeting
23 with whom?
24 A Mr. Purvis, Mr. Leiter, Mr. Dobberteen.
25 Q Okay.

1 Miss Tyler wasn't present?
2 A No.
3 Q Okay.
4 A We missed her.
5 Q Okay.
6 Then -- and have you gone over essentially what
7 you can recall of that conversation? Maybe I didn't ask
8 you about this.
9 What did you discuss in that first meeting in
10 December?
11 A Well, at that point, there were no depositions
12 to be reviewed, so it was a general outline of what the
13 case was about.
14 Q What were you told?
15 A Oh, goodness. That it was an individual case.
16 It was not a class-action case. That it was to take place
17 very quickly because of Mr. Boeken's health. And a rough
18 estimate of the dates that I would be needed and product
19 outlines.
20 Q Okay.
21 Anything like we feel our defense in this case
22 is thus or thus? Anything about that?
23 A No, not really. No.
24 Q Okay. Okay.
25 The next contact -- you just had one meeting

1 out here when you came out in December?
2 A Yes.
3 Q Okay.
4 Do you have any subsequent telephone
5 conversations with any counsel?
6 A We -- Miss Tyler.
7 Q And on how many occasions with her?
8 A Maybe two. We planned to come back. She was
9 asking me for dates and came back to me with the date that
10 was decided upon. I added to some of the materials that
11 have been used in past cases.
12 Q Is there one -- of the materials that you
13 relied upon, is there any one source document that you
14 think was definitive text that supports your view most
15 succinctly?
16 A Oh, one?
17 Q Want to look at it and see?
18 A That might be difficult.
19 Q And I wanted to exclude ones that you've
20 written, okay?
21 A I need my glasses. So I would say some of this
22 is background information, communication or theory or
23 marketing theory. Others that may be more specific to the
24 issues that we've talked about today. You know, there
25 would be several.

1 Q Can you identify those by any chance?
2 A I'd say that Conrad and Duffy.
3 MR. DOBBERTEEN: Just give him the numbers.
4 THE WITNESS: Oh, I'm sorry. 6 and 7 and 11 and 15
5 and 16 and 17 and 18, 28, and I may have skipped a few of
6 some importance there, but let's just say 28, 29 and 33,
7 34, 36, 38, 39, 41, 45, 46, 47, 48, 49, 50, 55, 59, 61, 63,
8 65, 69. Actually, that might hit the high points.
9 BY MR. GOLDSTEIN:
10 Q Okay.
11 What's the second article that you recognize?
12 No, I'm just kidding. I asked for one. Okay.
13 A Oh, I'm sorry.
14 Q That's okay.
15 Are any of those articles that you've written?
16 A No, those are not specifically.
17 Q Okay. Okay.
18 A My understanding is, you asked to exclude mine;
19 is that right?
20 Q Yeah, I did. I just wanted to just make sure
21 you were doing that.
22 A Okay.
23 Q Okay. Just wait one second.
24 Have you now told me, to the best of your
25 knowledge, the opinions that you have concerning this case?

1 A I think so. I hope I've covered that
2 territory.

3 Q Is there anything that you haven't covered to
4 the best of your recollection, to your knowledge?

5 MR. DOBBERTEEN: Objection. Calls for speculation.
6 Conclusion.

7 BY MR. GOLDSTEIN:

8 Q Can you think of anything, as you sit here
9 today, and I know it's almost tongue and cheek, but I
10 noticed on the proof of service that Arnold and Porter also
11 represents International House of Pancakes.

12 They're a defendant in this case, I take it?

13 MR. DOBBERTEEN: (Counsel nods head.)

14 If they're still in. I'm not sure.

15 BY MR. GOLDSTEIN:

16 Q Okay.

17 MR. DOBBERTEEN: I don't know.

18 THE WITNESS: Huh.

19 BY MR. GOLDSTEIN:

20 Q Okay.

21 I guess -- well, as you sit here today, can you
22 think of anything else, any subjects that I've glossed
23 over, or I want you to have a full opportunity to share
24 with me your opinions and belief and attitudes on things.

25 A Well --

1 MR. DOBBERTEEN: Wait a minute.

2 Is there a question there?

3 BY MR. GOLDSTEIN:

4 Q Well, have I skipped over anything that you can
5 recall, as you sit here today?

6 MR. DOBBERTEEN: Okay. Same objection as the last
7 one.

8 Go ahead.

9 THE WITNESS: Nothing comes to mind offhand that I
10 will be talking about that I haven't mentioned, but then
11 again, there are a lot of depositions that I have not yet
12 read. Something may surface in those, I don't know. But
13 basically, I think I've given the -- the general picture of
14 the areas that I'll be discussing.

15 MR. GOLDSTEIN: Let me just make sure that I didn't
16 inadvertently skip over something.

17 Q I made a note that you said that some of your
18 research sits in contrast with other research.

19 I have to ask you: What did you mean by that?

20 A Okay. What I was referring to then, I believe
21 it was the fact that the research that I did on my
22 dissertation, which is where the question came from,
23 arrived at different conclusions about children's abilities
24 to understand advertising compared to research I had done
25 before that because a different methodology had been used.

1 So my research results in 1980 are different
2 from and sit in contrast with my research results about
3 children's understanding of advertising prior to that time
4 when the verbal methodology was used. That's what I was
5 referring to.

6 Q So the views that you expressed today, is it
7 correct -- am I correct to assume that, in prior years,
8 you might have had a slightly different view than you do
9 today?

10 MR. DOBBERTEEN: Objection. That's -- that's vague,
11 ambiguous and uncertain.

12 MR. GOLDSTEIN: Fine. I'm just trying to understand
13 what you just said.

14 Q Are you saying that the views in the past that
15 you held are somewhat in contrast to those which you
16 presently hold today?

17 A Well, I'm saying that the research that I did
18 in the early 70's concluded because of the methodology used
19 that children were less capable of understanding the intent
20 of advertising or that they were capable at older ages only
21 of understanding the intent of advertising than my research
22 in 80's and after 80's indicated.

23 Q Okay.

24 Have you ever been a party to a lawsuit other
25 than -- other than your divorce? No. I asked that you;

1 right?

2 A No, I have not. Not that I recall. I think I
3 would.

4 MR. DOBBERTEEN: If you were served, you might.

5 Q What percentage of your testimony has been
6 defense oriented as opposed to plaintiff oriented?

7 A Good question. It seems that there were a
8 couple of situations which were plaintiff, and maybe four
9 which were not.

10 Q Which -- can you identify for me which ones
11 were plaintiff?

12 A Well, in Massachusetts, the tobacco companies
13 were challenging the intentions or actions of the
14 government to ban advertising.

15 Q So you on that -- in that context, you were
16 representing that tobacco --

17 A The plaintiff.

18 Q The tobacco as plaintiffs; right?

19 A That's correct.

20 Q And --

21 MR. DOBBERTEEN: You asked.

22 BY MR. GOLDSTEIN:

23 Q That's okay. And -- that's terrific. Okay.

24 And how about the other case? Is there another
25 case that you represented them as plaintiffs?

1 A I -- I guess if the Canadian case that I have
2 worked on qualifies, the same situation stands, the tobacco
3 companies are challenging the Canadian government's
4 intention to ban forms of advertising.

5 Q Okay.

6 Now, it's sometimes said that when a particular
7 expert testifies solely for one side or another, they
8 sometimes lose their objectivity.

9 Do you feel that that's applicable in your
10 case?

11 A How can I answer that? I don't --

12 Q "Yes" or "no."

13 A I don't think so.

14 Q You think you're objective -- is your
15 objectivity, in part, because you've testified both for
16 plaintiff and defense, is that your view?

17 A I think my objectivity comes as years of
18 training as a social scientist because one of the functions
19 as a social scientist is to remain as objective as possible
20 and to remain only an empirical evidence before drawing
21 conclusions.

22 Q Has any consumers or anyone that's been injured
23 that wanted to sue a tobacco company ever contacted you
24 that wanted to hire you?

25 A No.

1 Q No.
2 And if one wanted to, do you think you'd be
3 available to testify?
4 A I think --
5 MR. DOBBERTEEN: Objection. Calls for speculation.
6 No foundation.
7 BY MR. GOLDSTEIN:
8 Q Go ahead.
9 A -- think they would need to understand first
10 what the research results show and what marketing theory
11 indicates, and if they still felt they wanted me to discuss
12 those research findings, then maybe we would talk about it.
13 Q In other words, you would want them to know in
14 the past, your testimony has not been particularly in favor
15 of the consumer from that bent?
16 MR. DOBBERTEEN: Objection. Misstates the
17 testimony.
18 THE WITNESS: Actually, I think that marketing
19 theory supports the fact that marketing activities are in
20 favor of the consumer -- and that is the point -- marketing
21 is to have a consumer orientation.
22 BY MR. GOLDSTEIN:
23 Q You think that you're consumer oriented in your
24 approach? And do you view evidence and material from a
25 consumer point of view, corporate point of view, or is that

1 unfair to put on you?

2 MR. DOBBERTEEN: Objection. Vague and ambiguous and
3 compound.

4 THE WITNESS: I think I can only approach it as a
5 researcher. My perspective is a researcher's point of
6 view.

7 MR. GOLDSTEIN: Okay. Great.

8 Well, I thank you very much for coming out
9 here, and I think that concludes our questioning unless, of
10 course, any incredible revelation were to occur in any of
11 the documents you're going to be producing. If those check
12 marks turn out to be something other than tic marks, we
13 might be talking again.

14 Why don't we enter into a stipulation?

15 MR. DOBBERTEEN: If there is one in this one, I
16 don't know what it is.

17 MR. GOLDSTEIN: Why don't I just propose the
18 following: That the court reporter be relieved of her
19 duties, that the original may be sent to Arnold and Porter,
20 if that's your preference?

21 MR. DOBBERTEEN: Yes.

22 MR. GOLDSTEIN: And that the witness will then
23 have -- I don't know if there's a trial date coming up --
24 but how about two weeks?

25 MR. DOBBERTEEN: Let's just propose that the

1 original be sent to Arnold and Porter, that the witness
2 will have two weeks within which to review, make any
3 changes and sign the deposition under penalty of perjury,
4 or if the trial comes sooner and her testimony's required,
5 then at a minimum 48 hours before the witness will testify,
6 you'll so notify Mr. Piuze's office of any changes. That
7 if for any reason those time frames are not met, that a
8 copy of the transcript may be used for any purposes as if
9 signed.

10 MR. DOBBERTEEN: Okay.

11 Upon the reliance, in part, by the information
12 we received from the reporter, I can stipulate to that,
13 yeah.

14 MR. GOLDSTEIN: Great.

15 Thank you very much.

16 Subsequent to entering into our stipulation, it
17 occurs to me through a suggestion that was made --

18 MR. DOBBERTEEN: I'm going to withdraw my
19 stipulation.

20 MR. GOLDSTEIN: Perhaps we should -- that perhaps we
21 should -- just kidding. That we should attach several
22 documents to the transcript so that it's complete, and why
23 don't we have Number 1 being the Notice of Taking
24 Deposition, and Number 2 could be her C.V., the witness's
25 C.V., and Number 3 would be a document entitled

1 "Dr. Henke's Reliance Materials."

2 And we did agree that if you do find other
3 documents that are responsive to the Request, that you just
4 forward that immediately to Mr. Piuze and to the court
5 reporter, and we'll have those marked as Number 4.

6 Is that okay?

7 MR. DOBBERTEEN: Okay.

8 Thank you very much.

9 (Whereupon, the documents referred to
10 were marked Plaintiff's Exhibits 1,
11 2 and 3 for identification, copies of
12 which are attached hereto.)

13

14 (Whereupon, the deposition was
15 concluded at 5:20 P.M.)

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