

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO; AND ANTHONY  
CAMACHO,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE HONORABLE  
NADIA KRALL, DISTRICT JUDGE,

Respondents,

and

PHILIP MORRIS USA, INC., a foreign  
corporation; R.J. REYNOLDS TOBACCO  
COMPANY, a foreign corporation, individually,  
and as successor-by-merger to LORILLARD  
TOBACCO COMPANY and as successor-in-  
interest to the United States tobacco business of  
BROWN & WILLIAMSON TOBACCO  
CORPORATION, which is the successor-by-  
merger to THE AMERICAN TOBACCO  
COMPANY; LIGGETT GROUP, LLC., a foreign  
corporation; and ASM NATIONWIDE  
CORPORATION d/b/a SILVERADO SMOKES &  
CIGARS, a domestic corporation; LV SINGHS  
NC. d/b/a SMOKES & VAPORS, a domestic  
corporation,

Real Parties in Interest.

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*PETITIONERS' APPENDIX*  
*VOLUME 36 (Nos. 5459-5629)*

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*Attorneys for Petitioners, Sandra Camacho and Anthony Camacho*

1 MR. GREEN: Okay.

2 MS. RUIZ: That last one ends in 99497 and the  
3 earlier one is 99495.

4 MR. GREEN: That should be 32.

5 MS. RUIZ: All right. So then I'll straighten  
6 myself out.

7 MR. GREEN: Here, let's go off the record. I think  
8 I know what I've done.

9 (Discussion held off the record.)

10 BY MR. GREEN:

11 Q Greenfield, Iowa, have you ever heard of  
12 Greenfield, Iowa?

13 A Yes. Famous both in smoking history and in  
14 popular culture --

15 Q Okay.

16 A -- for a town that sought to do a kind of cold  
17 turkey for a month and then made into a film, I believe  
18 starring Dick Van Dyke among others.

19 Q That's right. Good memory.

20 And Greenfield, Iowa is a town where all the  
21 smokers tried to quit smoking at once and that was in the  
22 early 1970s; right?

23 A Yes.

24 Q And they made a movie about that; right?

25 A That's correct.

1 Q Called, as you referenced, Cold Turkey.

2 A Yes.

3 Q Which kind of illustrates in popular culture  
4 that it can be very difficult to quit smoking; right?

5 A Yes. It was a comedy.

6 Q Yep. And it was a comedy that was released  
7 nationally and received a lot of attention, particularly  
8 in Iowa where the story originated; right?

9 A That's correct.

10 Q Okay. Ann Landers -- who you are familiar  
11 with; right?

12 A Yes.

13 Q -- was a pen name for a syndicated columnist  
14 who wrote articles that appeared in newspapers around the  
15 country, including in Iowa and Arkansas; right?

16 A Yes. The sister of Dear Abby, basically the  
17 same line of work.

18 Q That's exactly right. That's what I was going  
19 to ask.

20 Both sisters, Dear Abby and Ann Landers, their  
21 columns often discussed the dangers of smoking and the  
22 benefits of quitting; right?

23 A They brought it up on occasion.

24 Q And they were from Sioux City, Iowa; right?

25 A I believe so, yes. Good midwestern girls.

1           Q     And as you've mentioned before, because they're  
2     from Iowa, their advice pertaining to smoking would have  
3     gotten particular interest among the citizens of the  
4     state of Iowa?

5           A     Well, they appeared in many of the newspapers  
6     in Iowa and across the country. I mean Ann Landers in  
7     particular, she would talk about smoking. She would talk  
8     about things in romance and relationship advice. In the  
9     '70s she had a long-running debate as to which way the  
10    toilet paper roll should go on the spindle; so, you know,  
11    catch-as-catch-can grab-bag variety of topics.

12          Q     Fair enough. Very entertaining.

13          A     Yes.

14          Q     I showed you some articles from the Arkansas  
15    Gazette and the Muscatine Journal and the Iowa Press  
16    Citizen as well. All three papers published articles  
17    about the dangers of cigarette smoking and lung cancer  
18    and other diseases in the 1960s through the 1990s. You  
19    agree to that; right?

20          A     They covered that smoking and health debate as  
21    it appeared in the news, yes.

22          Q     They also published articles about the benefits  
23    of quitting, and we saw a couple of those, through the  
24    1960s and the 1990s as well; right?

25          A     Yes. They -- occasionally they would cover

1 that.

2 Q And all three newspapers, consistent with other  
3 papers around the country, covered the 1964 surgeon  
4 general's report and other major surgeon general's  
5 reports as well?

6 A Yes. They covered the news just like other --  
7 in other parts of the country.

8 Q Okay. That is it on the newspapers. Let me  
9 ask you -- thankfully. Let me ask you about some of the  
10 companies real quick, okay?

11 R. J. Reynolds: From the 1920s through 2004,  
12 R. J. Reynolds and the American Tobacco Company were  
13 separate companies?

14 A That's correct. They later, through the  
15 acquisition of the Brown & Williamson Tobacco Company  
16 around 2003 -- I forget the exact year -- early 2000s --

17 Q 2005.

18 A 2004 they merged, yeah.

19 Q And from the 1920s to 2004, R. J. Reynolds and  
20 the Brown & Williamson Tobacco Corporation were separate  
21 companies?

22 A That's correct.

23 Q From the 1920s through 2015, R. J. Reynolds and  
24 the Lorillard Tobacco Company were separate companies?

25 A That's correct.

1 Q And R. J. Reynolds and Lorillard and Brown &  
2 Williamson and the American Tobacco Company were actually  
3 competitors during that time frame in the marketplace;  
4 right?

5 A When they were separate companies, yes. As the  
6 mergers and acquisitions proceeded, that was one way to  
7 build market share.

8 Q Okay. We talked earlier about the brands that  
9 Mrs. Geist smoked. Do you remember that?

10 A Yes.

11 Q One of the things that I neglected to ask you  
12 was that, starting in I think late 1998 is when  
13 Mrs. Geist started smoking the Winston Light 100s; right?

14 A That's what the deposition testimony indicates.

15 Q And Mrs. Geist continued smoking the Winston  
16 Light 100s until she quit smoking for good in 2016, I  
17 think June of 2016; right?

18 A That sounds correct, yes.

19 Q Okay. And what I want to do is ask you some  
20 questions about some of the brands that we covered, the  
21 brands that Mrs. Geist smoked, and comparing those to  
22 other conventional commercially successful cigarette  
23 brands, okay?

24 A Okay.

25 Q By "conventional cigarette brands" I mean

1 cigarettes that burn tobacco and contain nicotine, okay?

2 A Okay.

3 Q I'm excluding, by this definition, cigarettes  
4 that do not burn tobacco like Premier and Eclipse and  
5 even IQOS, and I'm excluding nontobacco cigarettes like  
6 Bravo, okay?

7 A Okay.

8 Q By using the phrase "conventional cigarettes,"  
9 I'm also excluding cigarettes that are denicotinized like  
10 Next, Benson & Hedges, Merit De-Nic and Quest 3, all  
11 right?

12 A Okay.

13 Q During the years that Mrs. Geist was smoking,  
14 there were no conventional commercially successful  
15 tobacco-burning cigarettes containing nicotine available  
16 on the market that were proven to be safer on a per-puff  
17 or dose-response basis than any of the cigarette brands  
18 that Miss Geist smoked; right?

19 MR. REYES: Objection; form.

20 THE WITNESS: I agree with that. The conventional  
21 cigarette, as you call them, is a defective product.  
22 They're all defective.

23 MR. GREEN: Okay.

24 Q And there were no conventional cigarettes, as  
25 we've defined them, that were proven to be safer than any

1 of the brands that Mrs. Geist smoked?

2 A That's correct. And in your preface to the  
3 question earlier, we kind of excluded the alternative  
4 designs, you know. So I'm forced to answer the question  
5 that they all were dangerous.

6 Q There were no conventional commercially  
7 successful tobacco-burning cigarettes that contained  
8 nicotine that were available on the market that were  
9 proven to be less dangerous than any of the brands that  
10 Mrs. Geist smoked; right?

11 A I agree from a historical perspective, yes.

12 Q And also no conventional commercially  
13 successful tobacco-burning cigarettes containing nicotine  
14 that were available on the market that were less  
15 addictive than the brands Mrs. Geist smoked; right?

16 A As a historian, you know, I see them all  
17 equally addictive. A specialist in addiction may have  
18 another view on that; for example, menthol cigarettes and  
19 the like. But as a historical opinion, which is not a  
20 medical opinion, they all cause the injury of addiction.

21 Q Okay. And I can only ask you for your  
22 opinions.

23 In your opinion, there were no conventional  
24 commercially successful tobacco-burning cigarettes  
25 containing nicotine that were available on the market

1 that were proven to pose less risk for lung cancer or  
2 COPD than any of the brands that Mrs. Geist smoked;  
3 right?

4 A Again, in my view as a historian, I see them  
5 all equally as dangerous, including the diseases you  
6 indicated in your question.

7 Q Since Mrs. Geist was not deposed and you never  
8 had an opportunity to talk to her or interview her, you  
9 can't testify to the jury as to what specifically was in  
10 her head as it relates to what she thought about the  
11 health risk of smoking; right?

12 A I cannot get into her head, as you used that  
13 metaphor. I can testify to what her husband testifies to  
14 in terms of her knowledge and understanding as an  
15 historical source because he's a direct witness,  
16 firsthand witness, and I can place people like Miss Geist  
17 in the historical context as I do in my Expert Report.

18 Q And when you're repeating what you saw from  
19 Mr. Geist, you're repeating what he reports was the  
20 information that Mrs. Geist told him, or that's what he  
21 claims; right?

22 A Yeah. That's what the text indicates, and then  
23 I put that in the broader historical context with other  
24 supporting data to evaluate those statements that I think  
25 are -- have a high level of truth value, if you will, or

1 historical validity.

2 Q Okay. Let me ask some follow-up questions  
3 about your case-specific opinions and about Miss Geist,  
4 okay?

5 A Okay.

6 Q I asked you questions about her family. I  
7 think we said that her mother and her father and her  
8 sister were smokers; right?

9 A That's correct, yes.

10 Q And Mr. Geist testified that Mrs. Geist had a  
11 sister Robin who smoked her whole life; right?

12 A Right. Just many members of her family were  
13 smokers, yes, that's correct.

14 Q And he reported, specific to Mrs. Geist's  
15 sister Robin, that Robin was not a healthy smoker and  
16 she's someone who wheezed, not a healthy person and she's  
17 someone who wheezed; right?

18 A Someone who -- say that again. What was that  
19 last word?

20 Q Wheezed, w-h-e- --

21 A Oh, wheezed as in from a lung perspective.  
22 Yeah, there was some discussion of that.

23 Q That's something that Mr. Geist and Mrs. Geist  
24 observed?

25 A It's mentioned in the deposition, yes.

1           Q     Mrs. Geist's sister Robin, it's mentioned that  
2 she tried to quit in the 2000s; right?

3           A     I believe that's indicated, yes.

4           Q     If you need me to refer you to any particular  
5 page number, I'm happy to do that as we go, okay?

6           A     Let me get those -- I had closed those  
7 documents because we were opening so many. Let me go  
8 back and just get myself resituated so that if we do want  
9 to go to that I can find it immediately. Okay, I've  
10 opened both volumes of Timothy Geist's deposition.

11                     Yeah, so just so you -- you had asked me about  
12 the sister. Yes, when asked by Miss Heinz -- she asked,  
13 "During the time you did spend with her," referring to  
14 the sister, "do you remember her having any breathing  
15 issues or a cough?"

16                     And the response is, further down, "She had a  
17 scar on her neck and she wheezed and I don't know the  
18 specifics."

19           Q     Okay.

20           A     And then, "And you never asked what the scar or  
21 the wheezing?" And he responded no. And what the  
22 questioner -- she was interrupted, so what she was trying  
23 to ask was, "You never asked what the scar or the  
24 wheezing was related to," just so that that's clear.

25           Q     Okay. Robin, Miss Geist's sister, tried to

1 quit smoking in the 2000s; right?

2 A I believe so, yes.

3 Q If you look at page 137, that's helpful.

4 A Yeah, I'm right there.

5 Q Mrs. Geist's sister Robin told Mr. and  
6 Mrs. Geist that the doctors had asked her to try to quit  
7 smoking after she had had some thyroid issues; right?

8 A Yeah, that's correct, yes.

9 And it's important for context, just below that  
10 he indicates that Verna was not real close -- they  
11 weren't real close, so --

12 MR. GREEN: I don't know that that's context to  
13 my -- responsive to my question, so I'll move to strike  
14 that.

15 Q My question is simply, if you look at 137, 138  
16 and 139, that Mrs. Geist's sister Robin told Mrs. Geist  
17 and Mr. Geist that the doctors had asked her to try to  
18 quit smoking after she had had some thyroid issues.

19 A Some thyroid issues, right. And they go on and  
20 they say, "She had a lot of health issues and I don't  
21 know what they were."

22 Q Right. Mr. Geist reports that Mrs. Geist was  
23 aware that her sister was trying to quit smoking, right,  
24 if you look at page 139?

25 A Yes. He did indicate that, yes.

1           Q     Mr. Geist himself was never a regular smoker,  
2     was he?

3           A     That's my understanding, correct.

4           Q     In fact Mr. Geist testified that his mother,  
5     when he was growing up, told him not to smoke?

6           A     I think so. Let me --

7           Q     I can help you.

8                     On page 73 and page 75, Mr. Geist tells a story  
9     about how when he turned 16 and got his driver's license,  
10    there was a measure of freedom that was conveyed, and  
11    with that his mother told him that he should not smoke.

12          A     Yeah, I'm there. I'm just reminding myself --  
13    yeah, "Don't speed. Mom said don't" -- right, yeah,  
14    right. "She told me not to smoke. She told me not to  
15    speed," right.

16          Q     All right. Mr. Geist said that later, when he  
17    was going through basic training in the Air Force, that  
18    he had tried cigarettes on a few occasions; right? Do  
19    you remember that?

20          A     Yes, that's right, yes.

21          Q     And I think he was saying that as part of basic  
22    training, which is very intense, that they could take  
23    smoke breaks, and he would participate in the smoke break  
24    to sort of get a mental break from the difficulties of  
25    basic training.

1           A     That's a common ritual in the military at this  
2     time, "Smoke 'em if you got 'em" as the phrase goes.

3           Q     And he said that he inhaled the first time that  
4     he had a cigarette and then never again after that?

5           A     Yeah. I'm on page 87 just so that we're all  
6     talking about the same thing.

7           Q     Tell me if -- when you're ready and I can  
8     direct you to it.

9           A     Yeah, direct me to it.

10          Q     Page 91 and 92.

11          A     Okay. I was close, but not -- oh, he says --  
12     yeah, he says, "Smoke 'em if you got 'em." I guess I  
13     remembered that from my first reading. He says, "I  
14     carried cigarettes at that time."

15          Q     Can I re-ask my question?

16          A     Yes.

17          Q     Okay. Mr. Geist testified that he inhaled the  
18     very first time he had a cigarette, but on any occasion  
19     he smoked after that he did not inhale; right?

20          A     That's correct, yes.

21          Q     Mr. Geist testified that the first time he  
22     smoked a cigarette, when he inhaled he coughed; right?

23          A     Yes, that's what he says.

24          Q     He indicated in his testimony that he didn't  
25     particularly like smoking?

1           A     That's what it says, yes.

2           Q     He of course never became a regular smoker, but  
3 he would on occasion throughout the rest of -- throughout  
4 the years that followed, he would on occasion bum a  
5 cigarette from a friend if they were in a bar or  
6 something like that; right?

7           A     Right, yeah, and not inhale. That's correct.

8           Q     And Mr. Geist testified that even though he  
9 tried smoking and had smoked on several occasions of his  
10 life, that he never told his mother because she would  
11 have been upset; right?

12          A     Yes, he does say that, yes.

13          Q     And his mother had a rule against smoking in  
14 her house to the point where Mrs. Geist was not allowed  
15 to smoke at Mr. Geist's mother's house.

16          A     I believe that's correct.

17          Q     And Mrs. Geist would abide by those rules and  
18 not smoke in her house; right?

19          A     Sure, yeah.

20          Q     Mr. Geist testified that in the 1990s there  
21 was -- he said, quote, "more information coming out that  
22 cigarettes may be bad for you"; right? I can direct you  
23 to the page if that's helpful.

24          A     Yeah, just -- I'm on page 100 now.

25          Q     Page 70 -- let's see. Page 308.

1           A     Oh, you're in Volume -- towards the end of the  
2 volume, 308.

3           Q     Yes.

4           A     All right. Let me just get there.

5                     Okay, I'm on 308. Let me just see. Okay, yes.

6           Q     Mr. Geist testified in the 1990s there was  
7 information that he saw that smoking was not good for  
8 you; right?

9           A     That's what he says, yes.

10          Q     And he indicated that he had a back-and-forth  
11 discussion with -- he probably had a back-and-forth  
12 discussion with Mrs. Geist where he told her that he had  
13 seen information that smoking was not good for you;  
14 right?

15          A     That's correct.

16          Q     And he said that he did not know what, if  
17 anything, she said in response. He didn't remember her  
18 response; right?

19          A     That's right, he doesn't remember her response.  
20 He does say that, as he says on the next page, "I know  
21 she was trying to quit. I knew she wanted to quit and  
22 she just couldn't do it. I knew she was trying her best,  
23 and if she couldn't -- if she couldn't do it, she told me  
24 she couldn't do it."

25          Q     What page is that on?

1           A     307 line 7 right after the one that you  
2     indicated -- or just before it, I'm sorry.

3           Q     That's before and that's part of a separate  
4     discussion. So I'll move to strike that as  
5     nonresponsive.

6                     In this discussion where Mr. Geist is telling  
7     her in the 1990s that he had heard information that  
8     smoking was not good for you, he says that he does not  
9     remember what, if anything, she said in response?

10          A     In response to that particular question, that's  
11     right, that's his response.

12          Q     He also testified earlier in the deposition  
13     that he did not like Mrs. Geist smoking when he first met  
14     her. I think he said he didn't like the smell of it;  
15     right?

16          A     That's correct. I seem to recall that.

17          Q     When he first met Mrs. Geist in 1993, he  
18     started encouraging her to quit; right?

19          A     Yes.

20          Q     In particular after they got married, Mr. Geist  
21     started encouraging -- or was encouraging her to quit  
22     smoking and mentioned information about the dangers of  
23     smoking; right?

24          A     Well, he was trying to persuade her to quit.

25          Q     Yeah.

1           A     There's lots of -- and she was trying to quit.

2           Q     He testified that when he was in the military,  
3     in the Air Force, he saw people whose breathing was  
4     affected by smoking.

5           A     Yes, on page 237.

6           Q     That's right.

7           A     Yeah. He says -- yeah, the question is, "You  
8     talked about knowing that people who ran," comma,  
9     "smoking could affect their breathing; correct"?

10                     And he answers, "Correct. Seen it in the  
11     military."

12           Q     Yep, he says he's seen it in the military.

13                     And on -- you remember he had a sister who  
14     lived in Pennsylvania; right?

15           A     That's correct, yes, I recall that.

16           Q     And there was a story that Mr. Geist told where  
17     he and Mrs. Geist went home to Pennsylvania for his  
18     grandfather's funeral and his sister was smoking. Do you  
19     remember seeing that?

20           A     What page? Give me that page and I'll zip  
21     right to it.

22           Q     Page 78.

23           A     Okay, right. St. Marys, Pennsylvania. Let me  
24     just refresh just so that we're on the same page.

25                     Right, yes. He says, "In the late '90s when we

1     went home for the -- my grandfather's funeral, she was  
2     smoking and I told her, 'You should probably quit that.  
3     It's not -- probably not good for you.'

4                 And then he said, "What, if anything, did she  
5     say in response?"

6                 And her answer was, "Well" -- he says, I'm  
7     sorry. The answer is, "She said, 'Well, I'm smoking  
8     lights and filters and they're okay.'"

9                 Q     Okay. That was -- when you said "she," that's  
10    his sister Patty, right, who is making that statement?

11                A     Yes, his sister Patricia.

12                Q     And Mr. Geist says, even though she made that  
13    statement, that -- if you look at the next page -- he  
14    nevertheless encouraged her to quit and was trying to get  
15    Mrs. Geist to quit also; right?

16                A     That's correct.

17                Q     We talked about the fact that Mrs. Geist worked  
18    at the casino for quite a number of years, or casinos for  
19    quite a number of years.

20                A     That's correct.

21                Q     The last one that she worked at for a 20-year  
22    period, you might recall seeing in the deposition they  
23    banned the employees from smoking on the casino floor in  
24    2005; right?

25                A     There was a discussion of that, that's correct.

1 Q And Mrs. Geist of course, even after she was  
2 prohibited from smoking on the casino floor, continued  
3 working there for another ten years or so?

4 A That's correct, until 2015.

5 Q Mrs. Geist and Mr. Geist had a subscription to  
6 the Las Vegas Review Journal from 1995 until Miss Geist  
7 passed away?

8 A The newspaper.

9 Q Yeah.

10 A Yes.

11 Q And he testified that they would on occasion  
12 watch the nightly news on all three networks, ABC, NBC  
13 and CBS?

14 A That's correct.

15 Q Mr. Geist, being someone who served in the Air  
16 Force, testified that he read newspapers and magazines  
17 from the military and that he recalled seeing information  
18 about the dangers of smoking; right?

19 A They saw a lot of things about smoking, yes.  
20 He testified to following it on the news, seeing industry  
21 officials and also scientists and other anti-smoking  
22 activists -- or anti-smoking messages.

23 Q Well, when he's talking about -- when he's  
24 talking about the source of part of his information as to  
25 the dangers of smoking, when he's saying the information

1 was coming out, he's specifically pointing to the  
2 military publications, the magazines and the newspapers  
3 from the military; right? That's on page 484.

4 A Let me get to -- that's Volume II. Let me just  
5 shift gears here. 484?

6 Q Yes, sir.

7 A Yeah, let me get that.

8 Well, I mean my answer is yes to your question,  
9 but it's worth reading the specific text. The question  
10 is, "So following up on what we were just talking about,  
11 that conversation where you first asked her to quit and  
12 you said that there was some information coming out --  
13 and I know you don't remember exactly what the  
14 information was, but tell me generally where you were  
15 getting your sources of information around 1994. Did you  
16 read newspapers? Magazines? TV?"

17 And then his answer is, "I believe it was from  
18 the military."

19 Q Right.

20 A And then he's asked, "Did they have any kind of  
21 classes or fliers or do you remember any?"

22 He says, "I don't remember."

23 Q Then it goes on and says, "You remember hearing  
24 something in the military around that time frame?"

25 And he says, "Yes, ma'am"; right?

1 A Yes.

2 Q He also testified that he had read about coffin  
3 nails in a book and believed it was a reference to  
4 cigarettes. Would you like me to point you in that  
5 direction?

6 A Are you in Volume I or II?

7 Q Volume I on page 298.

8 A Okay, I got to shift gears.

9 Q Sorry.

10 A That's okay. No problem. It's just, you know,  
11 they're two separate files in my system.

12 Yes. He says, "I believe I read it in a book."

13 Q And he understood "coffin nails." He believed  
14 that was a reference to cigarettes; right?

15 A Right.

16 Q And if you look at the next page, he had read  
17 about the term "cancer sticks"; right?

18 A That's correct.

19 Q And he understood that to be a reference to  
20 cigarettes; right?

21 A That's correct.

22 Q We talked a little bit about the warning labels  
23 earlier. By the time Mr. Geist met Mrs. Geist in 1993,  
24 there had been labels on packages for 27 years; right?

25 A Yes. If I could -- and I'll answer your

1 question, but the previous question I didn't have a  
2 chance to explain my answer.

3 Q Let me --

4 A I just wanted to point out that --

5 Q Hold on. Let me make the record clean.

6 A Yeah.

7 Q The answer to my question I just asked was  
8 "yes." I understand you want to point something out with  
9 respect to a prior answer that you gave.

10 A Yes. On the slang terms "coffin nails" and  
11 "cancer sticks," he said he read them in books but he did  
12 not use the terms and his wife never used the terms, and  
13 he was unfamiliar with the phrase "nicotine fit," just  
14 for completeness.

15 Okay. And so then you had asked me a question  
16 about the warning labels, just to get back on track.

17 MR. GREEN: I move to strike this one 'cause it's  
18 not really even vaguely responsive to what I asked.

19 Q On the warning labels, by the time Mr. and  
20 Mrs. Geist met in 1993, labels had been on packages for  
21 27 years at that point; right?

22 A Yes. In particular the rotational warnings  
23 were now on the packs, the ones set up by 1984  
24 legislation and went on in '85.

25 Q Those labels had been on for eight years by the

1 time they met in 1993; right?

2 A That's correct.

3 Q Mr. Geist testified that he assumed he would  
4 have talked to Mrs. Geist about the surgeon general's  
5 warning when he was trying to get her to quit?

6 A I'm sorry. Could you -- I didn't quite  
7 understand the question.

8 Q Sure. Mr. Geist testified that he assumed that  
9 he would have referenced the warnings when he was talking  
10 with Mrs. Geist trying to get her to quit smoking?

11 A Are you on page 310-ish?

12 Q Volume II, page 506.

13 A Okay. Let me -- give me a second here just so  
14 that I have -- give me a second.

15 MR. REYES: Page 150 in the PDF.

16 MR. GREEN: Thanks, Nick.

17 THE WITNESS: Yeah, he says, "I assume I did." Yes,  
18 that's what he testifies to.

19 BY MR. GREEN:

20 Q And he also testified that he himself,  
21 Mr. Geist, was -- probably saw the 1970s warning label  
22 and that he was aware that warning labels were on all  
23 cigarettes regardless of whether they were filtered,  
24 unfiltered, light or regular?

25 A Is this on the same page?

1 Q No. This is on -- it is Volume I, page -- at  
2 the bottom of page 312 and the top of page 313.

3 A Okay.

4 Q I'm happy to re-ask the question if you'd like.

5 A Let me get there real quick.

6 No. Yes, I remember your question; and he does  
7 testify that he believed it was required to have these on  
8 all types of cigarettes regardless of whether they were  
9 light, regular or filtered, which we've established.

10 Q And he testified on page 323 that he was aware  
11 that since 1971, any print or billboard advertising they  
12 would have seen would have had the surgeon general's  
13 warning on it?

14 A Yes. He responds to that "agreed," yes, so he  
15 says yes.

16 Q And at the top of the page Mr. Geist testified  
17 that Mrs. -- that he did not remember Mrs. Geist ever  
18 telling him that she heard from a cigarette company that  
19 smoking was not harmful?

20 A He said he doesn't remember.

21 Q Yep. And he also, in the question before that,  
22 said he didn't remember hearing from Mrs. Geist that  
23 advertisements told her that smoking was not harmful.

24 A Let me review this.

25 Well, I can't agree with that. I can't answer

1    yes to your question because on that page he responds  
2    that the -- he cuts himself off. "She told me her belief  
3    was that the cigarette companies' message in  
4    advertisement to us, through multiple forms of media, was  
5    that light cigarettes were safer."

6            Q    That's a different question.

7            A    What were you asking me then?

8            Q    Mr. Geist testified that he did not remember  
9    Mrs. Geist telling him that any advertisements told her  
10   that smoking was not harmful?

11           A    So you're really parsing it down between safer  
12   and not harmful. His response to the "not harmful"  
13   question is "I don't remember. I don't remember having  
14   that specific wording in a conversation, so I may have  
15   misspoke."

16                    So he's trying to answer the question as  
17   precisely as possible, but just a few steps or few lines  
18   above, he indicates the answer that I read into the  
19   record a moment ago.

20           Q    Well, he's referencing light cigarettes. I'm  
21   going to talk to you extensively about light cigarettes  
22   and I can do that now.

23           A    Well, he's referring to advertising.

24           Q    Mr. Geist claimed that he remembered Mrs. Geist  
25   saying that she had heard that light cigarettes were

1 safer than regular cigarettes; right?

2 MR. REYES: What page?

3 THE WITNESS: That's correct.

4 MR. REYES: What page? I'm sorry.

5 MR. GREEN: I don't know. I'm just going on memory.

6 MR. REYES: I gotcha'.

7 BY MR. GREEN:

8 Q I'm referencing your report. I'll reference  
9 your report.

10 A Okay.

11 Q Miss Geist then believed that regular  
12 cigarettes were not safe, right, that they were harmful?  
13 You agree to that; right?

14 A Yes. I mean during this period where she's  
15 trying to reduce her risk, it is a reasonable inference  
16 that as she was struggling to quit and control her  
17 smoking by turning to these other products, she had some  
18 sense that regular unfiltered cigarettes were not safe.

19 Q You said "regular unfiltered cigarettes"?

20 A Right.

21 Q There are filtered cigarettes that are not  
22 light low-tar cigarettes; right?

23 A That's true, but she says throughout the  
24 deposition she believed that she --

25 Q She wasn't --

1           A     -- I mean her husband testifies throughout the  
2 deposition that she believed filtered cigarettes also  
3 offered a measure of protection.

4           Q     She never smoked unfiltered cigarettes. You  
5 agree there; right?

6           A     That's right, perhaps because she thought that  
7 unfiltered cigarettes conveyed an unreasonable risk.  
8 That's an inference on my part.

9           Q     So it would be your opinion that Mrs. Geist  
10 then would have believed that unfiltered cigarettes posed  
11 an unreasonable risk from the very beginning of her  
12 smoking history since she always smoked filtered  
13 cigarettes; right?

14          A     Well, that would be an inference. Like you  
15 said, I can't get into her head and actually know what  
16 her views were on that, but just responding to your  
17 question, which was also an inference, I think you can  
18 infer perhaps, because the historical record supports  
19 this in terms of broader consumer knowledge, particularly  
20 in the industry surveys, that many smokers turned to  
21 filters and lights and low tars because it offered them  
22 protection.

23          Q     Okay. We're about to take another break in  
24 just a minute, but it would be a fair inference in this  
25 case to say that Mrs. Geist, from the beginning of when

1 she started smoking, believed that unfiltered cigarettes,  
2 regular cigarettes, were harmful and were an unreasonable  
3 risk?

4 MR. REYES: Objection; form, asked and answered.

5 BY MR. GREEN:

6 Q Right?

7 A That's possible. I mean we don't have any  
8 direct evidence so that it would have to be an inference,  
9 but that's certainly within the realm of possibility.  
10 Many other smokers had that view, and that was a view  
11 encouraged by the tobacco industry itself. That's why  
12 things so quickly changed from the '50s to the '60s from  
13 unfiltered cigarettes to filtered cigarettes. Of course  
14 industry statements encouraged that as well.

15 MR. GREEN: Move to strike after "yes" as  
16 nonresponsive.

17 MR. REYES: Objection to striking.

18 MR. GREEN: Understood.

19 Q When Mrs. Geist -- when did she first smoke  
20 light cigarettes, to your recollection?

21 A Well, Merit was a light cigarette from the  
22 beginning, so the Merit cigarettes. She also later I  
23 believe smoked Doral and Winston Lights.

24 Q So it's your opinion that Mrs. Geist first  
25 started smoking a light cigarette when she started

1 smoking Merit, whether that's in the late 1970s or some  
2 other time; right?

3 A That's my recollection as I sit here.

4 Q Would it be a fair inference then that  
5 Mrs. Geist believed that the cigarettes she was smoking  
6 before Merit -- so Winston, for example -- were harmful  
7 and an unreasonable risk?

8 A Well, no, 'cause Winston is a filtered  
9 cigarette, and filtered cigarettes also were promoted and  
10 advertised as offering a measure of protection.

11 Q So in your --

12 A And as a either 14- or 16-year-old, I will make  
13 the observation that as a child below the majority, that  
14 she probably, like every other adolescent that's been  
15 studied, completely misperceived and misunderstood the  
16 risks that smoking posed at that time. There's a lot of  
17 research on that. There's a 1968 HHS study of adolescent  
18 high school student beliefs on smoking where they clearly  
19 identify that children during this age, while they had an  
20 awareness that cigarettes might be harmful, had no  
21 understanding that their own smoking was going to harm  
22 their own body.

23 MR. GREEN: With all due respect, I'll move to  
24 strike that answer as well.

25 Q So is it your opinion then, Doctor -- if I

1 understand what you're trying to say -- that Mrs. Geist  
2 viewed filtered cigarettes the same way she viewed light  
3 cigarettes; in other words, one was no safer than the  
4 other?

5 A I don't have an opinion on her right now. I'd  
6 have to go back through the text. I wasn't looking to  
7 make an evaluation on that, when I did my report, as to  
8 whether she had thought -- you know, her relative views  
9 towards filters versus lights. My opinion is maybe one  
10 level of generalization above that that both filters and  
11 lights were advertised, promoted, designed to give, as  
12 the Philip Morris document illustrates, the illusion of  
13 filtration, that they were health cigarettes and  
14 therefore conveyed a measure of safety to the person that  
15 was using them.

16 Q For the purposes of your opinions as it relates  
17 to Miss Geist, do you lump light cigarettes and filters  
18 together? In other words, you're not saying that  
19 Mrs. Geist believed that light cigarettes, for example,  
20 were safer than filtered full-flavored cigarettes?

21 A Again I don't have a view on her relative  
22 beliefs between the two. We know that -- you have to  
23 look at this unfold over time because, you know, light  
24 cigarettes are not issued at the same time, or developed  
25 at the same time, that filtered cigarettes are. Filters

1    come first and that's a device that the industry relies  
2    on; and then when they perceive a need that  
3    health-conscious smokers want something else, they  
4    develop the lights and low tars in the '60s, '70s and  
5    early '80s and then later ultralights. So, you know, the  
6    time dimension is critical.

7                But all I can say is that both were seen by  
8    consumers at this time as offering some measure of health  
9    protection and that's based on industry research.

10           MR. GREEN: I'll move to strike as nonresponsive to  
11   my question.

12           Q    Your case-specific opinions -- I want to make  
13   sure this is clear because it's going to impact where I  
14   ask questions. You don't have a case-specific opinion  
15   that Mrs. Geist believed that light cigarettes, for  
16   example, were safer than filtered full-flavored  
17   cigarettes; you view them as one generalized category, as  
18   it relates to her?

19           A    Well, her husband reports that she thought that  
20   light cigarettes were safer, and so --

21           Q    Safer than what?

22           A    Yeah, safer than -- I guess since she did shift  
23   to lights, safer than regular filter cigarettes. So I  
24   guess that would be a reasonable inference even if, as I  
25   said earlier, I can't get deep into her head, so to

1 speak.

2 Q Okay. So then it would be a reasonable  
3 inference in this case that Miss Geist believed that the  
4 filtered Winstons she was smoking, for example, were  
5 harmful and an unreasonable risk?

6 A No, that's actually not a good inference  
7 because, as I said a moment ago, you have to include the  
8 time dimension, you know.

9 Q When she --

10 A Wait a minute. Your question assumes that all  
11 she ever knew about smoking she knew at age 14 or at age  
12 16 or for that matter at age 24, whichever time that she  
13 started smoking in the 1960s or early '70s. We've  
14 already discussed that issue and that's just not  
15 accurate. So just, you know, there's an assumption there  
16 that all she ever knew she knew right from the beginning,  
17 which of course is an assumption one cannot make.

18 Q Let me ask a precise question.

19 It's a reasonable inference, then, that when  
20 Mrs. Geist stopped smoking Winston cigarettes, that --  
21 it's a reasonable inference that she believed those  
22 Winston cigarettes were harmful and an unreasonable risk  
23 at that point in time?

24 A And because she migrated to what she thought  
25 was a safer more protective brand.

1 Q So are you answering yes to my question?

2 A That's -- yeah, that's quite possible. You're  
3 getting -- that's an inference that's certainly a  
4 possibility. Millions of smokers were kind of involved  
5 in a search for a safer product because they were  
6 struggling with nicotine addiction and could not quit so  
7 were desperate for something safer and, you know, I would  
8 put Miss Geist in that category.

9 Q Okay. Why don't we take a break.

10 A Great, all right.

11 Q Then go to our last section and get out of  
12 here.

13 A All right.

14 (Brief recess taken.)

15 BY MR. GREEN:

16 Q I'm going to switch gears a little bit to  
17 R. J. Reynolds, okay?

18 A Yes.

19 Q It was the public position of R. J. Reynolds  
20 from 2000 and continuing forward to the present, the  
21 public position of R. J. Reynolds, that there is no safe  
22 cigarette; right?

23 A That's correct, combustible nicotine-containing  
24 cigarette.

25 Q It's been the public position of R. J. Reynolds

1 since at least 2000 that the best way to reduce the risk  
2 of smoking is to quit?

3 A Yes. They make that statement on their  
4 website.

5 Q And it's been the public position of  
6 R. J. Reynolds since at least 2000 that R. J. Reynolds  
7 believes, as the surgeon general and other public-health  
8 officials have consistently stated, that no cigarette is  
9 safe, more specifically is their position; right?

10 A That's correct.

11 Q And it's been the public position of  
12 R. J. Reynolds since at least the year 2000 that the  
13 descriptors, for example, of full flavor, lights,  
14 ultralights, and low tar do not and are not meant to  
15 imply that any cigarette brand, style, or any category of  
16 cigarettes is safer than any others; right?

17 A Is that their public -- has that been their  
18 public position? I'd have to double check on that one  
19 because I know those descriptors have been banned because  
20 they are deceptive.

21 Q I can show it to you if you'd like.

22 A Yeah, 'cause you got me on one that I just --  
23 that's a new question. Can you believe that?

24 Q I can't believe that. As much time as we've  
25 spent together, I can't believe I've actually found a --

1           A     This won't take long. It's the website you're  
2 going to put up; right?

3           Q     Yeah. It's actually going to have a date on it  
4 that will show you. Just give me a second 'cause my PDFs  
5 are kind of slow. For whatever reason my PDFs are  
6 actually freezing, so if you'll give me just a moment.

7           A     Or you can show it on the screen if you want.

8           Q     Yeah, I'll do that. I'm not sure what's  
9 happening.

10          A     That's okay, 'cause I know you're going to show  
11 me a phrase and just for my own confidence, if you will.

12          Q     Uh-huh, no, understood.

13                Okay. See this on screen?

14          A     Yes.

15          Q     Okay. I'm trying to highlight the area at the  
16 bottom I'm going to refer to. This is a website from  
17 July 21st of 2000 from R. J. Reynolds Tobacco Company;  
18 right?

19          A     Okay, right. And so my answer to your question  
20 is yes.

21          Q     Okay, very good. So at least by 2000, the  
22 R. J. Reynolds Tobacco Company had disclaimed any  
23 position that lights or ultralights or low tar were any  
24 safer than any other brand or style of cigarettes?

25          A     On their website. I don't recall seeing that

1 in their advertising.

2 Q And it was of course, generally speaking, well  
3 publicized in that time frame that the tobacco companies  
4 were admitting not only that smoking was harmful but that  
5 light and low-tar or ultralight cigarettes were no safer  
6 than any other style or brand of cigarettes. Do you  
7 agree with that?

8 A I'm sorry, can you restate the question. I  
9 didn't quite --

10 Q Do you recall that it was well publicized, in  
11 2000 and in the five years that followed, that tobacco  
12 companies in general were agreeing, not disputing, that  
13 light or ultralight or low-tar cigarettes were any safer  
14 than any other style of cigarette?

15 A Yeah. This was all part of the kind of fallout  
16 from the master settlement and the rollout of the master  
17 settlement. This was covered in the press.

18 Q And even the descriptors on the packs were  
19 removed -- do you know what year the descriptor of light  
20 and ultralight were removed from cigarette packs?

21 A '09? You know, '09 comes to mind. I would  
22 look it up to double check.

23 Q Whatever year it is, whether it's 2009 or --  
24 it's going to be in that time frame; right?

25 A Yeah.

1           Q     It was actually a requirement by the Food and  
2     Drug Administration from the federal government; right?

3           A     Right. And it was also part of the -- if you  
4     go back, it was part of the outcome of the "United States  
5     versus Philip Morris, et al." RICO case. The finding in  
6     that case was that those were a fraudulent descriptor.  
7     So I think the FDA regulation firmed up what had been an  
8     edict from the Courts.

9           Q     Right. In any event, whether it's 2009 or some  
10    other year in that time frame --

11          A     2006 was the case.

12          Q     Is that when --

13          A     In that time period, 2006 to 2009.

14          Q     Okay. Whether it's 2006 or 2009, once lights  
15    and ultralights were removed from cigarette packs, there  
16    were no cigarette packs that had the words "lights" or  
17    "ultralights" on them after that; right?

18          A     That's correct. The industry maintained,  
19    though, the pack design and the colors and there was  
20    quite a bit of research indicating that consumers still  
21    understood those pack designs to indicate those  
22    descriptors.

23          Q     No packs or advertisements for cigarettes  
24    included the words "lights" or "ultralights" on them  
25    after they were removed in whatever year it was, in 2006

1 or 2009; right?

2 A That's right.

3 Q And Miss Geist, by the way, never smoked  
4 ultralight cigarettes, did she?

5 A I didn't see any reference to that.

6 Q You've testified before about the tar derby;  
7 right?

8 A Yes, in the 1950s.

9 Q General reduction efforts to remove tar and  
10 nicotine from cigarettes; right?

11 A Repeat that again. I couldn't understand what  
12 you said.

13 Q General reduction efforts by the companies to  
14 reduce tar and nicotine.

15 A Yes, although the tar derby refers to a  
16 particular period in the mid '50s in which the industry  
17 was advertising low tar, but many of these were found to  
18 have been deceptive; and hence the Federal Trade  
19 Commission ended the tar derby by prohibiting advertising  
20 on tar and nicotine content. Later, when the FTC agreed  
21 upon a common method of measurement, they allowed the  
22 industry to again list that data on their packs. That  
23 was in the late '60s. But the specific tar derby refers  
24 to this period of essentially fraudulent activity.

25 Q Okay. Mr. Geist -- let's go back to the Geist

1 case for some follow-ups.

2 A Okay.

3 Q Mr. Geist testified that when he himself would  
4 smoke, that he wanted a filtered cigarette to get less  
5 tar and nicotine; right?

6 A I didn't really focus on his smoking history as  
7 he is not the smoker in concern. So I may have no  
8 opinions on Mr. Geist in that regard. If you want to  
9 direct me to a particular testimony -- but, you know, I  
10 focused on the decedent in my analysis.

11 Q This won't take long, page 96 and 97.

12 A Okay.

13 Q On Volume I.

14 A Okay, I'm there. Let's do this two-page view.  
15 There we go, yeah, page 96.

16 Q Mr. Geist testified that he felt tar was where  
17 the taste of cigarettes came from, right, on line 23?

18 A Right. He had been -- just by way of context  
19 for this page, he said he had been smoking Marlboro  
20 Lights because, as he said there, "I thought they would  
21 be better for me," and then he says, "I thought that's  
22 where the taste come from," line 23, 24, that's correct.

23 Q That's what I wanted to get to.

24 When he said that he was smoking Marlboro  
25 Lights because he thought they were better for him, when

1 you look at page 97, he testifies what he means by that  
2 is better for him in that they tasted better; right? He  
3 did not associate better for him with any health benefit.

4 MR. REYES: Objection; form as to the timing of the  
5 question.

6 BY MR. GREEN:

7 Q That's what he testifies to on page 97 at the  
8 bottom; right?

9 A I see that, yes. Right, that's what he says,  
10 yes.

11 Q Okay. When Mrs. Geist started smoking Doral,  
12 right, Mr. Geist testified that she switched to Doral to  
13 try to cut down on her smoking and quit; right?

14 A Yeah. I'm recalling that she went to Doral  
15 Lights. Is that correct?

16 Q Yes. Let me rephrase it and be more specific.

17 When Miss Geist switched to Doral Light  
18 cigarettes, Mr. Geist said that she was switching to  
19 Doral to try to cut down and quit; right?

20 A Yes, that's the testimony, correct.

21 Q And he said that within a week, Mrs. Geist  
22 would be right back to the amount that she was smoking to  
23 begin with; right?

24 A Right. She really struggled with nicotine  
25 addiction, that's correct.

1           Q     So it would have been obvious to her pretty  
2     quickly that Dorals weren't helping her to quit smoking;  
3     right?

4           A     I'm not sure what her own perception of that  
5     was.

6           Q     Did you see any evidence that Doral was helping  
7     Mrs. Geist quit smoking or that she thought that they  
8     were actually helping her quit smoking?

9           A     Well, he indicates that she switched to Doral  
10    Lights with the hope that she could cut down.

11          Q     But did you see any evidence that Miss Geist  
12    believed, after she switched to Doral Lights, that was an  
13    effective thing to do; in other words, that the Doral  
14    lights actually helped her quit smoking?

15          A     Well, that's part of the fraud. She continued  
16    to smoke. That's the best I can -- I'll agree to that.  
17    She did continue to smoke.

18          Q     And there's no evidence that Mrs. Geist  
19    believed, after she switched to Doral Lights, that they  
20    were actually helping her quit smoking or even reduced  
21    the amount that she smoked?

22          A     Well, the evidence -- you know, the testimony  
23    is that she was trying -- you know, by changing the types  
24    of cigarettes she was smoking -- trying to find a safer  
25    and perhaps type of cigarette that would allow her to

1 quit. But she did continue -- she was never successful  
2 until very late in the story, so to speak, to actually  
3 quit completely.

4 Q When in the five years that Mrs. Geist smoked  
5 Doral Lights did you see any evidence in that five-year  
6 period that she believed that the Doral Lights were  
7 actually helping her quit smoking, not before she  
8 switched but after she switched?

9 A Right. I saw neither evidence for that or  
10 against that. It doesn't really come up.

11 Q Okay. When Mrs. Geist switched to Doral  
12 Lights, she did not increase the amount that she smoked;  
13 right?

14 A I think she was pretty much a one-pack-a-day  
15 smoker.

16 Q And when Miss Geist switched to Winston Lights,  
17 she did not increase the amount that she smoked, did she?

18 A I think she continued to smoke about a pack a  
19 day.

20 Q And you don't have any evidence in this case  
21 that Mrs. Geist specifically compensated when she  
22 switched from one brand or type of cigarette to another?

23 A Well, compensation is a complex phenomenon that  
24 involves not just the amount of cigarette that one smokes  
25 but the way and manner in which they smoke. In fact

1 that's the main point of compensation, is the manner in  
2 which the cigarettes are smoked, and there is no real  
3 evidence in this transcript to support one way or the  
4 other. It's just not addressed, so that would have to be  
5 a -- that's a silence in this historical record.

6 Q In other words, you're not able to point to any  
7 evidence in this case that Miss Geist changed the amount  
8 or the manner of her smoking when switching between types  
9 or brands of cigarettes?

10 A If it's in there, I missed it. It wasn't  
11 something I was looking for in formulating my opinions.  
12 I don't address it in my case-specific opinions. I  
13 should say, though, that compensation was an identified  
14 phenomenon that was commonly observed in those who smoked  
15 low-yield products.

16 MR. GREEN: Move to strike after "case-specific  
17 opinions" as nonresponsive.

18 MR. REYES: I object to moving to strike.

19 BY MR. GREEN:

20 Q Mrs. Geist would have been one years old when  
21 the Frank Statement was published; right?

22 A Yes.

23 Q And Mr. Geist testified that he had never heard  
24 of the Frank Statement and did not have any conversations  
25 with Miss Geist about the Frank Statement?

1           A     That's the testimony and that's not surprising.

2           Q     Mr. Geist testified that he never saw any  
3     cigarette advertisements on television with Mrs. Geist;  
4     right?

5           A     Well, that's correct, because they did not meet  
6     until the early '90s when formal cigarette commercials  
7     had been banned -- well, first removed from the airways  
8     by industry agreement and then that was formalized in  
9     legislation, but they did see television sponsorship,  
10    which we talked about earlier in this deposition.

11          Q     Mr. Geist testified that Mrs. Geist saw a  
12    tobacco-company representative on the television news  
13    that said that light cigarettes were safe. That's what  
14    he testified to; right?

15          A     Yes.

16          Q     That cannot be true; right? Because there were  
17    no tobacco-company representatives on television that  
18    ever said light cigarettes were safe.

19          A     Well, I have to give you a complicated answer.  
20                 It was certainly the industry's intention for  
21    their customers to believe that lights were a safer  
22    product, and this is one of the ways one has to interpret  
23    this kind of evidence. When he says she saw this, you  
24    know, as a historian, particularly one who has done a lot  
25    of oral interviewing and dealing with what we call memory

1 work and the like, really what he's testifying to is not  
2 that those words were literally stated by a  
3 tobacco-industry official, because they were very careful  
4 not to use that specific language. They wanted to get  
5 the idea across but not use the specific language and --  
6 but that is evidence to me, as a scholar and as a  
7 historian, that that was -- that she took away that  
8 meaning and that impression from the tobacco-industry  
9 statements, and that's how I interpreted that in that  
10 section. I forget the page it's on, but that one did  
11 strike me and I considered that one carefully.

12 Q You're inferring information when you're  
13 offering that opinion; right?

14 A Yes. I'm offering it -- I'm offering an  
15 historical evaluation of the data.

16 Q Let's look at what the source says happened on  
17 page 180, Volume I.

18 A I'm right there, uh-huh.

19 Q Mr. Geist said -- I'll start on 179 actually.  
20 No, actually let's look on -- yeah, 179, line 8 Mr. Geist  
21 reports that she, Mrs. Geist, said the cigarette  
22 companies -- the cigarette companies were saying that  
23 lights were safer; right?

24 A Yes.

25 Q That was based on a conversation that he had

1 with Mrs. Geist. That's his sworn testimony; right?

2 A That's correct.

3 Q And then he's asked a specific question: Did  
4 Mrs. Geist tell him that she'd heard that lights could be  
5 safer on the news, and he said that's where the  
6 information was coming from, from the news; right?

7 A That's correct.

8 Q And then he's asked to identify the source of  
9 where the information was coming from. On line 21 he's  
10 asked, "Did she tell you that she also heard information,  
11 for example, from public health authorities on the news  
12 about light cigarettes?"

13 And he says, "No, no. She said -- we watched  
14 it on the nightly news -- that she -- she said that she  
15 had saw cigarette-company executives on the nightly news  
16 saying that light cigarettes were better for you and  
17 there's no direct cause between cigarette smoking and  
18 cancer."

19 Did I read that part correctly?

20 A Yes, you did.

21 Q First of all, there were no cigarette-company  
22 representatives on the nightly news saying that light  
23 cigarettes were safer than full-flavored cigarettes;  
24 right?

25 A There were plenty of executives saying that

1     there was no link between cigarette smoking and cancer  
2     and any other disease.

3           Q     That's not my question.

4           A     Let me finish. I know that's not.

5                     And when combined with the other messages, it's  
6     perfectly reasonable for an ordinary viewer and consumer  
7     and smoker like Ms. Geist to walk away with that view.  
8     This is as much a statement of her knowledge and  
9     belief -- this is as close to getting into her head as  
10    any component of the deposition testimony across these  
11    two volumes.

12                    But to answer your question, the cigarette  
13    manufacturers' leaders were very disciplined in their  
14    message to kind of skirt around explicit statements while  
15    still conveying the meaning that lights and filters were  
16    safer.

17           MR. GREEN: I move to strike as nonresponsive.

18           Q     I would like a direct answer to this question.

19                    There were no cigarette-company executives or  
20    representatives on television saying that light  
21    cigarettes were safer than full-flavored cigarettes, were  
22    there? That never happened.

23           MR. REYES: Objection --

24           THE WITNESS: Not in that explicit language, but  
25    again --

1 BY MR. GREEN:

2 Q That's the language he uses repeatedly; right?

3 A Not in that explicit language, but again, as a  
4 historian, I'm looking at this testimony of, you know, an  
5 everyday person who is trying to answer the questions  
6 that are posed to him as best he can under oath, doing  
7 his best to tell the whole truth and nothing but the  
8 truth.

9 What I interpret this to mean is an expression  
10 of the meaning that Verna Geist, Ms. Geist, took from the  
11 tobacco-industry statements, which is a little bit  
12 different than the very carefully lawyerly crafted  
13 statements that industry executives would make to the  
14 public.

15 MR. GREEN: I move to strike that entirely, and that  
16 is -- and I move to strike it not only as nonresponsive  
17 but as a misstatement of the record, because this witness  
18 offers on his own initiative, without any carefully  
19 crafted questions from lawyers -- and he repeats this  
20 repeatedly throughout his deposition -- that she,  
21 Mrs. Geist, told him that she saw cigarette-company  
22 executives and representatives on the television saying  
23 that light cigarettes were safer.

24 Q Those were his words, not carefully crafted  
25 questions from lawyers; right? He says that repeatedly,

1 doesn't he?

2 A My answer is yes, but I do need to make a  
3 gentle correction; and we're doing this through Zoom, so  
4 it's easy for people to misunderstand what folks are  
5 saying and we're at the end of a very long day.

6 Q Yes, sir.

7 A When I talked about the -- when I referenced  
8 lawyers, I wasn't referencing the person posing the  
9 questions to Mr. Geist in the deposition. I was  
10 referring to the ways in which industry executives back  
11 in history, say in the 1980s and 1990s, would give their  
12 statements. So that is an important distinction. I was  
13 not criticizing the person asking the questions in the  
14 deposition. Those are, in fairness, fairly  
15 straightforward questions and --

16 Q I apologize for my misunderstanding.

17 A That's okay. It's difficult, particularly  
18 through the electronic media where we don't have the same  
19 body language and the like.

20 But again my reference -- certainly you can  
21 strike it. That's your job, but again I've already  
22 indicated that those exact words, I have not seen them  
23 stated by industry executives, but that certainly was the  
24 meaning that the industry was seeking to convey to the  
25 smoking public, that lights were safer.

1           Q     Okay. Let's start with this: Mr. Geist, in  
2 multiple instances in his deposition, was adamant, very  
3 explicit, that it was his testimony that Mrs. Geist told  
4 him that she heard from cigarette-company executives or  
5 representatives on television specifically that light  
6 cigarettes were safer. That's his testimony; right?

7           A     That's correct.

8           Q     And we agree on this point: There was no  
9 instance in which cigarette-company executives or  
10 representatives were on television saying that light  
11 cigarettes were safer. We talked about that earlier  
12 today; right?

13          A     And I agree, using that explicit language,  
14 using that particular formulation of language, with the  
15 explanation though that that was the meaning that the  
16 industry was trying to convey to smokers, that these were  
17 in fact a safer product. I see no problem with that.  
18 Mr. Geist is testifying to what his wife told him.

19          Q     Name me an instance where a tobacco-company  
20 executive or representative was on television trying to  
21 give a meaning specifically that light cigarettes were  
22 safer that you just talked about. I can't think of one.  
23 Can you?

24          A     Again they didn't use that explicit language,  
25 but cigarette manufacturers developed light cigarettes,

1 low-yield products, with the explicit purpose of  
2 supplying a health cigarette, reduced-risk cigarette --  
3 even though it wasn't reduced risk and they knew that --  
4 to smokers so that smokers would keep on smoking, and  
5 they openly discuss that in their internal documents. So  
6 what -- although I agree and my answer is yes, I have not  
7 seen industry executives make that explicit statement.  
8 The fact that Miss Geist is telling her husband that she  
9 sees that is really her way of saying, "This is what I  
10 believe."

11 Q And that's of course if you assume that that  
12 actually happened; right?

13 A I have -- I'm assuming that Mr. Geist is doing  
14 his best to answer these questions to the best of his  
15 ability. He strikes me as a reasonable person through  
16 the text. I have no basis for thinking that he is -- I  
17 mean you're implying that he's perjuring himself. I  
18 don't take that away. I think he's trying to answer  
19 these questions the best he can. That's why some of the  
20 answers are contradictory, 'cause he's doing his very  
21 best.

22 Q Let me ask you this: Can you think of a single  
23 instance in which a tobacco-company executive or  
24 representative went on television, particularly on the  
25 nightly news, and even implicitly suggested that light

1 cigarettes were safer than full-flavored or regular  
2 cigarettes?

3 A Well, now you've asked me a different question.

4 Q Yes.

5 A And I will refer you to the appearance on  
6 Nightline of Edward A. Horrigan in -- I believe it's  
7 February of 1984 where he is talking about the  
8 connection -- you know, the open-debate campaign, and my  
9 recollection is he is implicitly engaging in this kind of  
10 talk. It's not explicit.

11 Q Okay. Open-debate campaign did not mention  
12 light cigarettes, did it?

13 A I believe Horrigan in his discussion -- not in  
14 the -- well, let me answer your question.

15 The open-debate campaign did not mention light  
16 cigarettes in the text. I think it refers to the  
17 advertisements.

18 Q Let me ask you about Horrigan.

19 So the open-debate campaign that you've  
20 testified to about many times does not mention light  
21 cigarettes; right?

22 A The text of the advocacy ads, that's correct.

23 Q Ed Horrigan on Nightline, what did he say about  
24 light cigarettes?

25 A My recollection is that, through his denials

1 that smoking caused any disease, he was implying that  
2 they were safer cigarettes.

3 Q How?

4 A Through his language. I'd have to review the  
5 video, but that's -- as I sit here and recall, I'm left  
6 with that sense.

7 Q I mean that's with Ted Koppel; right?

8 A Yes.

9 Q And in that interview with Ted Koppel on  
10 Nightline, Mr. Horrigan is disputing the link between  
11 smoking generally and disease; right?

12 A That is the main purpose of his talk, that's  
13 correct.

14 Q Right. He doesn't mention directly or  
15 indirectly that there are any benefits to light  
16 cigarettes at all, does he?

17 A You know, I don't have the video in front of me  
18 or the transcript. I'd have to review that. So my  
19 answer to this, then, to answer your question is -- we're  
20 not going to get very far on this -- is I don't know of  
21 any explicit statements. I've not seen explicit  
22 statements where the industry says, "Smoke light  
23 cigarettes, they're safer" by a representative of the  
24 company on like a news program, but I do know that that  
25 was what their advertising said. That was the import of

1    their advertising if you look at the advertising of  
2    Merit, if you look at the advertising of Winston Lights,  
3    all of the light brands; and that is why those  
4    descriptors have been banned, because many organizations,  
5    including the federal government, have found that they  
6    are deceptive and fraudulent.

7                    And Miss -- you know, Mr. Geist is testifying  
8    and answering the questions on what his wife told him.

9                    Q    Can you think -- you mentioned Ed Horrigan on  
10   Nightline when he didn't reference light cigarettes being  
11   safer. Can you think of any other news program in which  
12   a tobacco-company executive or representative implicitly  
13   claimed that light cigarettes specifically are safer than  
14   full-flavored cigarettes?

15                   A    Nothing on the news comes to mind, but all of  
16   their advertising does.

17                   MR. GREEN: Okay. Move to strike after "Nothing on  
18   the news comes to mind" as nonresponsive.

19                   Q    Some follow-up questions: Whatever news  
20   program that Mr. Geist claims that Mrs. Geist saw, he was  
21   not actually there with her. He didn't see that program;  
22   right?

23                   A    That doesn't seem to be the case. He was  
24   testifying, or conveying to the person asking him the  
25   questions, what she had told him.

1 Q Okay. When you say, "That doesn't seem to be  
2 the case," you're agreeing that Mr. Geist didn't see  
3 whatever news program that Mrs. Geist said that she saw?

4 A Right. On this section here in page 179, he  
5 seems to be testifying to what she told him, not what he  
6 saw. So this might have been something that, you know,  
7 happened in the past.

8 Q Right. And Mrs. Geist did not specify what  
9 news program she was referring to, who was on it, or what  
10 exactly they said; right?

11 A That's right. He's just recounting what his  
12 wife told him.

13 Q And he doesn't know what cigarette company or  
14 cigarette-company representative she might have been  
15 referring to; right?

16 A That's right. She doesn't seem to have  
17 conveyed that information to him. If she did, he doesn't  
18 remember it.

19 Q In fact Mr. Geist says that whatever Mrs. Geist  
20 had seen on television would have been before they met in  
21 1993; right?

22 A That's correct, yes. That's why he didn't see  
23 it.

24 Q And so you're not able to tell the jury and  
25 you're not able to show the jury whatever it was that

1 Mr. Geist claims that Mrs. Geist saw on the news; right?

2 A As I sit here, no. If I discover something,  
3 I'll let you know.

4 Q Do you have any evidence that Mrs. Geist saw  
5 whatever Mr. Geist is referring to on the news before or  
6 after she started smoking Merit cigarettes?

7 A I don't know.

8 Q Okay. Mr. Geist acknowledged that he didn't  
9 know, 'cause Mrs. Geist didn't explain what she meant  
10 when she said "safer"; right?

11 A Are you on the same page?

12 Q I'm on page 182, lines 5 through 7.

13 A Okay. Let me -- right. He said that she did  
14 not explain that.

15 Q And Mr. Geist offered his own opinions what he  
16 thought less tar and less nicotine meant. He thought  
17 that there would be less smoke in the house and maybe a  
18 different smell; right? Page 186.

19 A Yes. He also says lower tar -- on page 183 --  
20 "Lower tar less nicotine was what the advertisements were  
21 saying and what they were saying on the news, and I  
22 thought anything lower had to be better."

23 So, yeah, there were a variety of attributes  
24 that he was referring to.

25 Q Mr. Geist referenced that Mrs. Geist told him

1 that cigarette companies were saying in magazines that  
2 light cigarettes were safer; right?

3 A Yes.

4 Q Number one, he had no idea what magazine she  
5 might have been referring to, what person may have said  
6 what he was referring to, or what cigarette company that  
7 person worked for; right?

8 A Right. You know, I mean he's recounting  
9 conversations that he's had with her that expressed her  
10 fundamental belief.

11 Q And you're not able -- because we don't know  
12 what magazine she was talking about or what article,  
13 you're not able to tell the jury what she read or show  
14 the jury whatever article that Mr. Geist is referring to?

15 A That's correct, but you know, again the  
16 historian's job is to put these in context; and you can  
17 object, but I have to give my answer.

18 I have to explain that when somebody like  
19 Ms. Geist, you know, expresses an opinion that cigarette  
20 manufacturers internally sought to cultivate among the  
21 smoking public, you know, it's reasonable to make a  
22 connection between those two events and developments.

23 Q So you're going to then tell the jury what  
24 article Mr. Geist is referring to? 'Cause that's my  
25 question.

1           A     No, no, but I was providing historical context  
2     in my response.

3           Q     Okay. Mr. Geist testified that Mrs. Geist  
4     never considered switching to cigars or even to little  
5     cigars; right?

6           A     That's right, yes, that's right.

7           Q     Or any other type of tobacco product that would  
8     be more difficult to inhale; right?

9           A     No. That doesn't seem to have been something  
10    that she considered.

11          Q     And Mr. Geist did not recall any conversation  
12    with Mrs. Geist about any filter on any specific brand of  
13    cigarettes; right?

14          A     That's correct.

15          Q     In other words, there weren't conversations  
16    where Mrs. Geist was comparing the specific type of  
17    filter of a cigarette brand or type compared to another  
18    one; right?

19          A     That's correct, I did not see that in the  
20    record.

21          Q     Okay. Getting close.

22                 We talked about coupons earlier. You saw  
23    evidence that when Mrs. Geist would purchase Doral Light  
24    cigarettes from the store, that there were some occasions  
25    where she would get an ashtray, T-shirt, or a coffee cup;

1 right?

2 A That's right, the Doral Tobaccoville promotion,  
3 which was a significant promotion put on by the  
4 R. J. Reynolds Company.

5 Q And the Tobaccoville promotional items that she  
6 received would have been items that she received when she  
7 purchased the cigarettes from the store; right?

8 A Right, or mailed in the proof of purchase from  
9 the carton. I'm not sure how she actually received them,  
10 but there were multiple ways that people could receive  
11 the branded merchandise. The historical record indicates  
12 that they had displays, but you could also mail away.

13 Q If you look at page 40, it indicates that the  
14 Tobaccoville promotional items that Mrs. Geist received  
15 were items that she received when she purchased --

16 A Okay.

17 Q -- the cigarettes from the store. In other  
18 words, she didn't mail anything off to get those items;  
19 right?

20 A Right, yes, that's correct.

21 Q And that would be the case for whether it was  
22 an ashtray, a T-shirt, or a coffee cup?

23 A Correct.

24 Q Mr. Geist testified that the only -- let me  
25 confirm before I ask it -- that the only promotional

1 items that she received were those Tobaccoville  
2 promotional items when she smoked Doral between 1993 and  
3 1998; right?

4 A That's right. That's what's discussed.

5 Q And we talked about coupons for Winston.  
6 Mrs. Geist did not get or use coupons for Merit, Doral  
7 Light or Pyramid, did she?

8 A You know, that one I'm just not recalling, you  
9 know, the specific -- that level of detail on coupon  
10 usage.

11 Q Volume II, 446, 16 to 19.

12 A Okay. Let me get there, 446.

13 Right, so yeah, he doesn't recall getting any  
14 Merit or Doral Lights coupons in the mail or Pyramid  
15 coupons.

16 Q Exactly. And there was a discussion in  
17 Volume I where Mrs. -- Mr. Geist said that Mrs. Geist  
18 collected Winston bar codes, but she wasn't collecting  
19 those for herself. She was donating them to someone  
20 else, who was using them; right?

21 A That's correct, yeah.

22 And just on the previous question, you know, he  
23 didn't get any coupons in the mail, but he doesn't really  
24 remember how his wife got the coupons. So there are  
25 other ways to get coupons than the mail. You can get

1    them at the store, point-of-purchase displays. Just  
2    something to point out. Now, whether that was the case  
3    or not, you can't say from the record.

4           Q    Mrs. Geist quit smoking combustible cigarettes  
5    for good in 2016; right?

6           A    That's correct.

7           Q    And I think it was -- was it June of 2016?  
8    It's when they found a spot on her lung before she was  
9    diagnosed with cancer; right?

10          A    Right. She had had a medical incident and  
11    that -- again the research on that is, you know, clear  
12    that that often is what is able to get people to quit.  
13    Frank Sloan, economist of The Smoking Puzzle, makes that  
14    clear in his big study.

15          Q    My question is simply, Mrs. Geist quit smoking  
16    for good in 2016 before she was diagnosed with cancer;  
17    right?

18          A    Right.

19          Q    And are you going to offer opinions in this  
20    case as to any of Mrs. Geist's efforts to quit smoking  
21    before 2016?

22          A    Well, only in that it's discussed. She tried a  
23    variety of techniques. That's discussed in the record.  
24    I'm not the addiction expert, so I'm not going to offer  
25    that kind of medical opinion; but if asked, you know, did

1 she try to quit smoking, I'll say, well, yeah, there were  
2 times when she tried to quit smoking, yeah.

3 Q Okay. Let me ask you about that.

4 Mr. Geist testified that the longest that  
5 Mrs. Geist ever went without smoking before she quit for  
6 good was three days?

7 A That's correct, yes. I do remember that.

8 Q And it was clear -- Mr. Geist said this  
9 repeatedly in his deposition -- that he was after -- he  
10 was on Mrs. Geist throughout their marriage to try to get  
11 her to quit smoking?

12 A Yes. That's a persistent theme in the  
13 testimony.

14 Q When she quit smoking for good in 2016, she  
15 came home and said she wasn't going to buy any more  
16 cigarettes, that she was going to quit when she finished  
17 however many she had left in her carton; right?

18 A That's generally what he testifies to, yes.

19 Q And a couple days after that, she started using  
20 an electronic cigarette; right?

21 A Yes.

22 Q And you saw an instance where one of her  
23 friends or one of her neighbors actually quit smoking  
24 cigarettes and started using electronic cigarettes too;  
25 right?

1 A Right.

2 Q It was a concrete instance where electronic  
3 cigarettes can be used by people as part of an effort to  
4 quit smoking combustible cigarettes; right?

5 A Oh, yes, I agree. Yes, that is an example of  
6 that, yes.

7 Q And electronic cigarettes are an excellent tool  
8 for smokers of combustible cigarettes to quit smoking the  
9 combustible cigarettes; right?

10 A Well, they are a reduced-harm product, yes, and  
11 we -- you know, it's a shame we're only seeing them  
12 widely introduced now, not 30 years ago.

13 Q Mr. Geist said that the only thing Miss Geist  
14 did to quit smoking was put her cigarettes down and then  
15 later started -- and then a few days later she's using an  
16 E-cigarette; right?

17 A Yeah, I mean I forget the exact language that  
18 he uses. Is this in Volume I?

19 Q Yes, 226.

20 A Yeah, I'm in that area, so --

21 Q Line 18.

22 A Give me a second here to get there.

23 Yeah, he says July 2016 sounds about correct  
24 that she quit regular cigarettes.

25 Q And after she starts using the E-cigarette, she

1     only uses an E-cigarette for a period of a year or less,  
2     right, because she quit the E-cigarette when she goes on  
3     oxygen in 2017?

4           A     Yeah, I believe that's what the testimony is.  
5     Yes, that's -- my recollection is the same.

6           Q     Mr. Geist did acknowledge that Mrs. Geist drank  
7     alcohol. She liked Miller Lite and vodka; right?

8           A     Yeah. He said she was a social drinker.

9           Q     And he said she would smoke more when she  
10    drank; right?

11          A     Did he say that? I don't remember that. Just  
12    help me refresh my recollection. What page are you on?

13          Q     205.

14          A     205, okay. Let me --

15          Q     At the very bottom.

16          A     Yeah, he says, "I would say yes to that," okay.

17          Q     And Mr. Geist was a drinker. You recall seeing  
18    that; right?

19          A     Yes, he also would enjoy alcohol, yes.

20          Q     Well, Mr. Geist actually acknowledged that he  
21    had an alcohol problem, didn't he?

22          A     Did he say that? Again I was focusing on the  
23    smoker.

24          Q     I'll tell you -- page 116.

25          A     Okay, I'm there, yes.

1 Q Mr. Geist said that he --

2 A Okay, yeah, I see.

3 Q -- he believed he had an alcohol-abuse problem;  
4 right?

5 A Yes, he said in his mind, yes.

6 Q And he said that he quit drinking on December  
7 the 29th of 2012; right?

8 A That's correct.

9 Q That he just decided he had enough and he just  
10 stopped.

11 A Yes, that's what it says.

12 Q And he said it was difficult to quit drinking  
13 but he got it done; right?

14 A Yeah, but he did it. Yes, that's correct.  
15 Yeah, that's fair.

16 Q And Mr. Geist was a heavy drinker; right?

17 A Did he talk about how much he drank? I don't  
18 recall that. I mean if he says that he in his mind had  
19 an alcohol-abuse problem, you know, if it was a problem  
20 for him, that's enough.

21 Q He quantifies it actually, if you look at  
22 Volume II on page 515.

23 A Okay. Again I wasn't interested in his alcohol  
24 habits. I was looking at smoking of his decedent wife.

25 On page 515?

1 Q Yes, sir, lines 9 through 12.

2 A Okay. Yeah, so he's drinking a lot of beer.

3 Q Yeah. Before December 29th of 2012, Mr. Geist  
4 was drinking a case of beer a day; right?

5 A That's what he testifies to, yes.

6 Q And that's a lot of beer, as you mentioned;  
7 right?

8 A Well, it's a case. 12 or 24? I forget. I'd  
9 have to look that up.

10 Q Does it matter?

11 A I'm not sure what a case is. I don't drink a  
12 lot of beer. I'm not really a beer drinker.

13 Q Does it matter whether he's drinking 12 or 24  
14 beers a day? Let me strike that. Let me ask the  
15 question I want to ask.

16 Drinking a case of beer a day, just as a matter  
17 of common sense, can impact someone's memory; right?

18 A You know, I don't have an opinion on that. You  
19 know, he's -- now you're getting into diagnosing him for  
20 alcoholism, which might be something that an expert could  
21 do from this documentary record but not this expert,  
22 'cause I'm not going to diagnose somebody's nicotine  
23 addiction, nor am I going to diagnose their alcohol  
24 addiction.

25 Q That's not what I'm asking you to do.

1           Do you agree that drinking -- the fact that  
2   Mr. Geist was drinking a case of beer a day might explain  
3   some of the inconsistencies that we saw in the factual  
4   record?

5           MR. REYES:   Objection; form.

6           THE WITNESS:   No, I haven't considered that.   As he  
7   says here, "I've never had any problem in any of my  
8   careers with alcohol.   I did not drink at work.   I was  
9   never reprimanded for any alcohol.   I did my job.   When I  
10   got off work I got beer, had beer, drank beer,  
11   Budweiser."   That's the testimony.   So --

12          BY MR. GREEN:

13          Q       So was he -- I'm sorry.   Go ahead.

14          A       What he doesn't say is was this something he  
15   was doing for years and years or is this something that  
16   developed over time or only happened rather quickly and  
17   then compelled him to quit.   I mean there's no  
18   information here that allows me to answer the question  
19   that you've posed, so I can't answer the question.

20          Q       So will you then take the position to the jury  
21   that Mr. Geist drinking a case of beer every day has no  
22   bearing on either his ability to recall what he observed  
23   or has no bearing on the inconsistencies that we see in  
24   the factual record?

25          A       That's correct, it's of no bearing, because

1 what we don't know is was this behavior he did for a  
2 month or two before he quit drinking? Was it something  
3 he did for six months? We don't know. There's no  
4 indication here of how long he did this.

5 Q If Mr. Geist was drinking a case of beer a day  
6 for a matter of years, you agree that it could have  
7 impacted his ability to observe and then recall factually  
8 what's happening in his day-to-day life?

9 A I'm not going to offer a medical and  
10 psychological opinion on the impact of alcohol  
11 consumption on memory.

12 Q The reason I bring it up is there are a number  
13 of inconsistencies in the factual record that you're  
14 attempting to resolve as a historian piecing together the  
15 record, but you acknowledge that those inconsistencies  
16 could be influenced by the sole witness testifying in  
17 this case being a heavy drinker for a long period of  
18 time. That's a possibility, isn't it?

19 MR. REYES: Objection; form, asked and answered.

20 THE WITNESS: Well, you've got an assumption there  
21 that he was a long -- a heavy drinker for a long period  
22 of time. We don't know that. He's not -- you know,  
23 you're not getting an idea as to how long he drank or how  
24 many -- how much time was involved in this kind of  
25 behavior. This might have been something, you know, that

1 was in response to the stress of his wife's illness. We  
2 just don't know.

3 BY MR. GREEN:

4 Q She wasn't ill in 2012; right?

5 A No, at least not according to the testimony she  
6 had not had the spot on her lung; but, you know, we just  
7 don't know what the -- no. What I'm saying is we just  
8 don't know what really his drinking behavior was, so it  
9 plays no role in my analysis.

10 Q If you were to assume that he drank a case of  
11 beer a day for a period of years, that could possibly  
12 have impacted his ability to recount what he observed and  
13 it could possibly explain why we see inconsistencies in  
14 the record; right?

15 A Well, you know, inconsistencies in the record  
16 are not all that great; and when there's an  
17 inconsistency, as I've indicated earlier, I do what a  
18 good historian does, is look for the context and is this  
19 a likely situation and -- based on what we know about the  
20 broader history of tobacco and the tobacco industry's  
21 actions, and that's been my test. His own alcohol habits  
22 are something he talks about, but we don't really know  
23 how much this is involved here. So I have no opinion on  
24 this.

25 Q Okay.

1           A     It's not a factor.

2           Q     It's not a factor. Mr. Geist's drinking is not  
3 a factor in your opinion as it relates to any of the  
4 issues in this case?

5           A     Correct, yes.

6           Q     Okay. At this point in time, Doctor, have you  
7 given us, between your testimony here today, your expert  
8 disclosure and your Expert Report as supplemented -- have  
9 you provided us with all of the opinions and documents  
10 you intend to testify about at the trial in this case?

11          A     I think so, yes, yes.

12          Q     Okay. Those are all the questions I have.  
13 It's good to talk to you. I'm sorry it took so long.

14          A     That's okay. You've got your job to do and I'm  
15 here to help you. You know, I'm here till you get your  
16 job done.

17          Q     Thank you, sir. I appreciate your patience.

18          MR. TEPIKIAN: Maria, do you have anything?

19          MS. RUIZ: I do have some questions. You want me to  
20 go first or do you want to go?

21          MR. GREEN: Yeah, you go ahead.

22          MS. RUIZ: I'll be very quick I think.

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1 EXAMINATION

2 BY MS. RUIZ:

3 Q Good afternoon, Dr. Kyriakouides. My name is  
4 Maria Ruiz. I represent Liggett.

5 You and I have not met before; right?

6 A I don't think so.

7 Q It's nice to meet you. Just a few questions.

8 I know you've testified in various cases in  
9 which Liggett has been a defendant; right?

10 A Yes, here and there. It's been a while.

11 Q Have you done any Liggett-specific research  
12 since the last time you testified in a case where Liggett  
13 was a defendant?

14 A No, I haven't.

15 In your mind, what case comes to mind when you  
16 think of my last Liggett-specific case?

17 Q So I'd have to look it up, but I want to say it  
18 was in 2019.

19 A Okay, yeah. I have not done anything. In fact  
20 I'll -- no, I have no new opinions on Liggett. It would  
21 be consistent with prior testimony.

22 Q In your report -- and that's Exhibit 6 -- at  
23 page 63 you cited to a document at footnote 118 entitled  
24 "An In-Depth Exploratory Study on Cigarette Smoking  
25 Habits and Attitudes," and that was one of the documents

1 that you identified would be new to your reliance  
2 materials. I think you had said you had your standard  
3 reliance materials, and then if we take that and take  
4 certain footnotes from your report, that would be the  
5 universe of your current reliance materials. Is that  
6 accurate?

7 A Yes, that's correct, 'cause I just haven't --  
8 I'm a little behind in some of my housekeeping.

9 Q Got it. So have you read that document that's  
10 referenced in footnote 118 in its entirety?

11 A Yes, I have.

12 Q What do you intend to tell the jury about that  
13 document?

14 A Well, really the description of the impact of  
15 the way the industry framed health matters, as the quote  
16 I indicated -- that I chose indicates. If I show that to  
17 the jury, that's probably what I'll show, is the part  
18 that I've presented in the report, and let me --

19 Q That's not an opinion -- I apologize. I didn't  
20 mean to cut you off. Please finish.

21 A Okay, I see what you're saying. That's not an  
22 opinion, right. I would be showing the evidence.

23 The opinion would be that this is an example of  
24 internal tobacco-industry research on the process of  
25 smoking, on smokers' knowledge and understanding of, in

1 this case, health -- what I would call health signals.  
2 So I would -- my opinion on this is that this is a  
3 powerful historical source from an agent, in this case a  
4 tobacco company, that had a vested interest in knowing,  
5 really more than any other party in the country at the  
6 time, 1969 -- in knowing in detail what smokers'  
7 understanding of the product, of the process of smoking,  
8 and of the health dangers of smoking. And so --

9 Q Are you -- apologies, sorry. Go ahead.

10 A No, that's okay. It's a little bit of a bad  
11 connection.

12 So that's my answer.

13 Q Are you suggesting that Liggett had more of a  
14 reason to know this information than any other tobacco  
15 manufacturer in 1969?

16 A No. All the tobacco manufacturers wanted to  
17 know what their customers knew and understood about the  
18 dangers of smoking because they were involved in the  
19 activity of selling cigarettes to them. When I was  
20 making that comparison, I was really comparing it to  
21 nontobacco-industry entities.

22 So, for example, while the federal government  
23 is conducting many health surveys -- the Adult Use of  
24 Tobacco Survey, for example -- when you look at the  
25 amounts of money being spent and time and energy of the

1 tobacco industry in toto on marketing research, it really  
2 does dwarf that of, for example, the federal government's  
3 tobacco investigation efforts.

4 So I wasn't comparing Liggett to another  
5 company. They all were doing this because they all  
6 wanted to understand what the consumer's expectation was  
7 of the products so that they could shape that  
8 expectation.

9 Q And you talked about that earlier on in your  
10 deposition; right?

11 A Yes.

12 Q Okay. And did you fully express your opinion  
13 on that topic?

14 A Yes.

15 Q Did you have any conversations with Mr. Reyes  
16 about Liggett specifically?

17 A No. I didn't realize Liggett was a party to  
18 this case until I saw your name on the Zoom panel.

19 Q Until I started asking questions?

20 A Yes, until you asked questions, 'cause Liggett  
21 is often not party to the case. In fact if you were to  
22 ask me, "What's the case you did with Liggett," I would  
23 refer to Ferlanti, which was back in twenty -- 2009, one  
24 of the first Engle progeny cases.

25 Q A long time ago.

1           A     Yeah, quite some time ago.

2           Q     That's all the questions I have for you,  
3     Dr. Kyriakoudes. Thank you very much.

4           A     You're welcome.

5           MR. TEPIKIAN: Dr. Kyriakoudes, Bruce Tepikian. I  
6     don't have any questions.

7           THE WITNESS: I wish you a good afternoon,  
8     Mr. Tepikian.

9           MR. TEPIKIAN: You too.

10          MR. REYES: I have a few questions. Do you guys  
11     want to take 5 minutes before I start? It's going to be  
12     about 15 minutes, 20 minutes.

13          MR. GREEN: It's up to you.

14          MR. REYES: Let's just take two minutes. I'm going  
15     to get a glass of water.

16                     (Brief recess taken.)

17          MR. GREEN: Doctor, we have a stipulation that an  
18     objection by one defendant is an objection by all.

19          MR. REYES: Yes. That's -- no objection to that.

20          MR. GREEN: Thank you.

21          MR. REYES: On the same note, Dr. Kyriakoudes,  
22     they're most likely going to object to most of my  
23     questions. Just give them a chance to object and then  
24     answer.

25          THE WITNESS: Okay.

1 EXAMINATION

2 BY MR. REYES:

3 Q Okay. So Nevada follows the  
4 consumer-expectation test, and under the  
5 consumer-expectation test a plaintiff must demonstrate  
6 that a product failed to perform in the manner reasonably  
7 to be expected in light of its nature and intended  
8 function and was more dangerous than would be  
9 contemplated by the ordinary user having the ordinary  
10 knowledge available in the community. So that's the  
11 standard, and I want to ask you some questions about what  
12 ordinary cigarette consumers expect, okay?

13 A Okay.

14 MR. GREEN: Object to the form.

15 BY MR. REYES:

16 Q Do ordinary consumers expect their cigarettes  
17 to be more addictive than heroin or cocaine?

18 MR. GREEN: Object to the form.

19 THE WITNESS: No.

20 BY MR. REYES:

21 Q Do ordinary consumers expect their brains to go  
22 through physiological changes as a result of the nicotine  
23 contained in their cigarettes?

24 MR. GREEN: Object to the form.

25 THE WITNESS: No.

1 BY MR. REYES:

2 Q Do ordinary consumers accurately appreciate the  
3 meaning, severity, and probabilities of developing  
4 tobacco-related diseases?

5 MR. GREEN: Object to the form.

6 THE WITNESS: No.

7 BY MR. REYES:

8 Q If an ordinary consumer understands that  
9 smoking can cause a particular disease, does that mean  
10 that same consumer has a complete awareness or  
11 understanding of what that disease means?

12 MR. GREEN: Object to the form.

13 THE WITNESS: No.

14 BY MR. REYES:

15 Q So, for example, do ordinary consumers actually  
16 know what emphysema is, meaning how it perforates lung  
17 tissue, what the quality of the day-to-day life of  
18 someone living with emphysema is like?

19 MR. GREEN: Object to the form.

20 THE WITNESS: The data is clear they don't  
21 understand the etiology of that condition.

22 BY MR. REYES:

23 Q I want to ask about consumer expectations  
24 regarding the severity of smoking-related diseases.

25 Do ordinary consumers know the likelihood of

1 surviving five years after developing smoking-related  
2 diseases like lung cancer or laryngeal cancer?

3 MR. GREEN: Object to the form.

4 THE WITNESS: That's not a widely known fact among  
5 smokers, no. I think the data on that is clear.

6 BY MR. REYES:

7 Q When I say "ordinary consumers," I mean  
8 ordinary cigarette consumers.

9 A That's correct, and I interpreted your question  
10 to mean that. So that goes to all of my previous  
11 answers.

12 Q Okay. And do ordinary consumers understand the  
13 probabilities of contracting various smoking-related  
14 diseases?

15 MR. GREEN: Object to the form.

16 THE WITNESS: No.

17 BY MR. REYES:

18 Q How do the so-called filters or so-called  
19 lights fraudulent marketing affect a consumer's  
20 expectation of the probabilities of developing  
21 smoking-related diseases?

22 MR. GREEN: Object to the form.

23 THE WITNESS: As both tobacco-industry  
24 investigations and public-health investigations indicate,  
25 smokers thought that these product designs would offer a

1 measure of protection and therefore represented a less  
2 risky product.

3 BY MR. REYES:

4 Q Do ordinary cigarette consumers know that the  
5 tobacco companies formed a conspiracy in 1953 to conceal  
6 the health effects and addictive nature of smoking?

7 MR. GREEN: Object to the form.

8 THE WITNESS: No.

9 BY MR. REYES:

10 Q Do ordinary cigarette consumers know that  
11 Reynolds and other tobacco companies hired scientists and  
12 doctors to mislead the public about the health effects  
13 and addictive nature of smoking?

14 MR. GREEN: Object to the form.

15 THE WITNESS: No.

16 BY MR. REYES:

17 Q Do ordinary cigarette consumers know that  
18 Reynolds and other tobacco companies misled the surgeon  
19 general and other public-healthcare authorities about the  
20 health effects and addictive nature of cigarettes?

21 MR. GREEN: Object to the form.

22 THE WITNESS: No.

23 BY MR. REYES:

24 Q When Reynolds, Philip Morris, and other tobacco  
25 representatives were going on TV for over 50 years and

1 telling Americans that smoking had not been proven to be  
2 dangerous to health, did ordinary consumers have the  
3 benefits of the industry's secret documents that show  
4 that the industry was not being truthful?

5 MR. GREEN: Object to the form.

6 THE WITNESS: No.

7 BY MR. REYES:

8 Q Do ordinary cigarette consumers know that  
9 50 percent of all smokers will die from a smoking-related  
10 disease?

11 MR. GREEN: Object to the form.

12 THE WITNESS: No.

13 BY MR. REYES:

14 Q Would telling an ordinary cigarette consumer  
15 that filtered cigarettes and light cigarettes are safer  
16 affect their expectations of developing a smoking-related  
17 disease?

18 MR. GREEN: Object to the form.

19 THE WITNESS: Yes, it would shape their  
20 expectations.

21 BY MR. REYES:

22 Q Do ordinary cigarette consumers know that  
23 tobacco companies design their cigarettes with just  
24 enough nicotine to create and sustain addiction?

25 MR. GREEN: Object to the form.

1 THE WITNESS: They do not know that fact.

2 BY MR. REYES:

3 Q Do ordinary cigarette consumers have an  
4 understanding of the amount of cigarettes it takes to  
5 develop a smoking-related disease?

6 MR. GREEN: Object to the form.

7 THE WITNESS: No.

8 BY MR. REYES:

9 Q Do ordinary cigarette consumers know if there  
10 are chemicals like arsenic, cyanide, and radioactive  
11 polonium-210 in their cigarettes or smoke?

12 MR. GREEN: Object to the form.

13 THE WITNESS: No. This is not widely known.

14 BY MR. REYES:

15 Q Do ordinary cigarette consumers know that there  
16 are over 70 cancer-causing agents in every puff of smoke  
17 that they inhale?

18 MR. GREEN: Object to the form.

19 THE WITNESS: No.

20 BY MR. REYES:

21 Q Do ordinary cigarette consumers know tobacco  
22 companies purposely decrease the harshness in the tobacco  
23 smoke for the sole purpose of getting that smoke into the  
24 brain to deliver nicotine?

25 MR. GREEN: Object to the form.

1 THE WITNESS: No.

2 BY MR. REYES:

3 Q How do ordinary cigarette consumers receive  
4 information from the tobacco companies? For example, how  
5 did ordinary cigarette consumers get the idea that  
6 filtered cigarettes or light cigarettes were safer than  
7 nonfiltered or regular cigarettes?

8 MR. GREEN: Object to the form.

9 THE WITNESS: Through the enormous resources devoted  
10 to advertising, marketing and promotions.

11 BY MR. REYES:

12 Q Are you aware of the required warnings the  
13 defendants are required to put up on their websites?

14 A Yes.

15 Q Can you compare the amount of resources that  
16 the industry has spent on marketing lights and low tars  
17 and filtered cigarettes compared to the way they market  
18 the required warnings on their website?

19 MR. GREEN: Object to the form.

20 THE WITNESS: Yes, I can. Are we talking about the  
21 present day?

22 BY MR. REYES:

23 Q Well, compared to what they did in the '50s,  
24 '60s, '70s, '80s and '90s to how they're doing it today.

25 MR. GREEN: Object to the form.

1 THE WITNESS: Yes, I can. Would you like me to  
2 elaborate?

3 BY MR. REYES:

4 Q Please.

5 A Well, these required admissions exist on a  
6 website, company website, that you have to actively seek  
7 out and identify. If you take as my -- well, as the  
8 surgeon general reports and scholars have accepted, a  
9 figure of \$200 billion devoted to cigarette advertising,  
10 marketing, promotion since the 1940s, you know, a drop in  
11 a rainstorm is not adequate really a metaphor to explain  
12 how little they devote to informing the public about  
13 these admissions.

14 Q Was Verna Geist any different from the ordinary  
15 cigarette consumer in any of the questions I just asked  
16 you?

17 MR. GREEN: Object to the form.

18 THE WITNESS: No. Very typical.

19 BY MR. REYES:

20 Q We talked about this, or you testified as to  
21 this, but what age did Verna Geist begin smoking?

22 A The evidence that I accepted ranged between 14  
23 and 16.

24 Q Is there a difference between a 16-year-old  
25 ordinary cigarette consumer and a, say, 50-year-old

1 ordinary cigarette consumer?

2 MR. GREEN: Object to the form.

3 THE WITNESS: Yes, there's a very big difference and  
4 of course that issue came up in this deposition today.

5 BY MR. REYES:

6 Q What is the difference?

7 A Well, one of the main differences is that  
8 children don't understand that their experimentation with  
9 cigarette smoking or even their regular cigarette smoking  
10 is likely going to lead to a lifetime of nicotine  
11 addiction. That is clear from the public health-and-risk  
12 literature. These young people think that they can smoke  
13 and suffer no harm and believe that they can quit at any  
14 time at the beginning of this smoking process, and so  
15 they fundamentally do not understand how addictive the  
16 product is and how smoking at 16 will lead potentially to  
17 a lifetime of nicotine addiction.

18 Q Do ordinary cigarette consumers over-perceive  
19 the risk of developing smoking-related diseases?

20 MR. GREEN: Object to the form.

21 THE WITNESS: Only in the research sponsored by the  
22 tobacco-industry law-firm experts. In the legitimate  
23 public-health literature, the findings are consistent  
24 that smokers underestimate the risk of getting seriously  
25 ill.

1 BY MR. REYES:

2 Q Have the defendants come -- have the defendants  
3 come clean in this case or in your -- let me rephrase.

4 In your view of the historical record, to this  
5 day have the defendants completely come clean from all  
6 the negative impact that they have caused over the years?

7 MR. GREEN: Object to the form.

8 THE WITNESS: Absolutely not.

9 BY MR. REYES:

10 Q What have the defendants never admitted?

11 MR. GREEN: Object to the form.

12 THE WITNESS: Well, they still don't admit that  
13 addiction to nicotine delivered through combustible  
14 cigarettes causes disease, the addiction causes these  
15 harms, the compulsive use of the cigarette. They have  
16 not come clean or admitted their extensive youth  
17 marketing over a long swath of history of which we've  
18 discussed some today in this deposition. They won't even  
19 admit that addiction is itself a disease and an injury  
20 caused by their product. They haven't admitted to the  
21 fact that they've conspired. They haven't admitted to  
22 the fact that the agents of their conspiracy such as the  
23 Tobacco Institute or Council for Tobacco Research or, as  
24 it was previously known, TIRC, Tobacco Industry Research  
25 Committee, were agents of this conspiracy and this

1 information. They haven't admitted to their role in  
2 selling a product that has killed over 20 million people  
3 just since 1964. So there are many things that the  
4 cigarette manufacturers have not admitted to.

5 BY MR. REYES:

6 Q You were asked some questions about Miss Geist  
7 being able to read the warning labels, whether she read  
8 them. Do you recall those questions?

9 A Yes.

10 Q Let's assume that in the '60s, '70s, '80s and  
11 '90s Miss Geist read the warning labels and then she  
12 watched an interview with the tobacco representatives on  
13 TV. What would have been the industry's position  
14 regarding cigarettes being harmful?

15 MR. GREEN: Object to the form.

16 THE WITNESS: The industry's position was that  
17 cigarettes were not the cause of any injury or disease in  
18 people who smoked.

19 BY MR. REYES:

20 Q You were asked some questions about  
21 Mrs. Geist's smoking history, and if we can turn to  
22 page 52 of Mr. Timothy Geist's deposition --

23 A Let me get there. Give me a minute.

24 Okay, I'm there.

25 Q -- he was discussing an issue with his

1 Interrogatories, and he states, "And in the response 'My  
2 memory from throughout most of her life, Verna smoked two  
3 packs of cigarettes a day,' that should have been smoked  
4 one pack of cigarettes a day up to two packs  
5 occasionally."

6 Did I read that correctly?

7 A Yes.

8 Q So Verna Geist smoked one pack for most of her  
9 life, but there were occasions where she smoked two  
10 packs, at least according to Mr. Geist?

11 MR. GREEN: Object to the form.

12 THE WITNESS: Yes, yes.

13 BY MS. RUIZ:

14 Q And then if we can turn to page 21 of  
15 Mr. Geist's deposition, in lines 18 through 20 Mr. Geist  
16 was describing a picture and there was two packs of  
17 cigarettes next to Verna Geist, and he was asked, "Was it  
18 typical that she would have two packs in front of her at  
19 any given time?"

20 And then he responds, "She normally had two  
21 packs with her," and his reasoning was she didn't want to  
22 run out of cigarettes. Is that accurate?

23 A Yes. That's his testimony.

24 Q And then you were asked some questions about a  
25 medical record that was shown to Mr. Geist which

1     purported to show that she didn't start smoking until  
2     1976. So the testimony is on page 76 of --  
3     coincidentally -- of his deposition.

4             A     Let me get there.

5             Q     Sure.

6             A     Okay, yes.

7             Q     So on page 7 [sic] it says, "This would put her  
8     smoking, if it's for 40 years, in 1976. Do you agree?"

9                     And he answers on line 9, "That's the math."

10                    And then if you skip to 16 he's asked, "Do you  
11     know why she would have indicated that she smoked for 40  
12     years in 2016?"

13                    And he responds on line 19, "She may have just  
14     got it wrong."

15                    Did I read that correctly?

16             A     Yes.

17             MR. GREEN: Object to the form.

18                    Can you tell me what page that was on? I think  
19     you said 76, but I don't see that.

20             THE WITNESS: I can help with that. It's actually  
21     page 169.

22             MR. REYES: Sorry. So maybe I just got confused.

23             THE WITNESS: I did a little search for the word  
24     "math" while you were reading it and got lucky and found  
25     it on the first try.

1 MR. GREEN: Thank you, Doctor.

2 BY MR. REYES:

3 Q And, Dr. Kyriakoudes, you mentioned that you  
4 didn't review the medical records in this case. Is that  
5 correct?

6 A That's correct, yes.

7 Q So you were not aware of a medical record from  
8 2018 where Miss Geist advised her doctors that she  
9 stopped smoking in 2016 and that she had smoked for 50  
10 years. You wouldn't be aware of that?

11 A No. I have not reviewed that document, but as  
12 I said in the deposition, what we know about smoking  
13 initiation, you know -- again a lot of this is putting it  
14 in context -- is that the vast preponderance of people  
15 who become smokers do so before they reach the age of 18,  
16 a fact well known to the tobacco industry.

17 Q And just so the record is clear, if you do the  
18 math from 2016 50 years back, that would have her start  
19 date at 1966?

20 A That's correct.

21 Q And you also are not aware of Miss Geist's  
22 medical record from 2016 when she states that she has a  
23 45-plus-year smoking history; is that right?

24 MR. GREEN: Object to the form.

25 THE WITNESS: I haven't seen that record. I didn't

1 review the medical records.

2 BY MR. REYES:

3 Q You were asked some questions about Arkansas  
4 health-education pamphlets or notebooks or books and you  
5 were shown some materials that discussed the health  
6 effects of alcohol, drugs and tobacco. Do you recall  
7 those questions?

8 A Yes, I do.

9 Q Are these examples -- these health-education  
10 classes where scientists are trying to warn the public of  
11 the health risks of smoking, are these examples as the  
12 reasoning behind why the heads of the tobacco companies  
13 got together in 1953 to form a conspiracy and a mass  
14 marketing denial campaign regarding the health effects of  
15 smoking?

16 MR. GREEN: Object to the form.

17 THE WITNESS: Yes, that's correct, one factor, yes.

18 BY MR. REYES:

19 Q You were asked about a biology book from the  
20 year 1949, and the one example is the example where the  
21 number of the males studied was different from the  
22 conclusions that you picked up on?

23 A Yes.

24 Q And the conclusion there was, specifically  
25 speaking, the average life of heavy smokers does not

1 appear to be as long as the average life of moderate  
2 smokers and nonsmokers; right?

3 A That's what it said, that's correct.

4 Q When scientists tried to warn children of the  
5 harms of smoking, how did the tobacco industry combat  
6 those efforts?

7 A Well, they did so by denying that cigarettes  
8 were the cause of any disease. They did so by saying  
9 that they were sponsoring research to find the actual  
10 cause of cancer. The language of smoking in moderation  
11 was also a part of the language, especially in the 1950s,  
12 that framed the smoking and health debate: "Well, just  
13 don't smoke too much," for example. So there were a  
14 number of factors. But in terms of the industry's  
15 actions, it was through the creation of the TIRC and  
16 later the Tobacco Institute to, you know, spread  
17 disinformation that cigarettes were not dangerous.

18 Q Was the industry successful in their efforts to  
19 spread misinformation about the harms of smoking?

20 MR. GREEN: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. REYES:

23 Q Throughout the last 70 years, what is the age  
24 where the vast majority of lifelong smokers begin their  
25 cigarette-smoking journeys?

1 MR. GREEN: Object to the form.

2 THE WITNESS: The median age, as I said in the  
3 deposition, for males, 16; for females, depending upon  
4 when you look, 16 to early 17.

5 BY MR. REYES:

6 Q Did the defendants in this case also use  
7 cartoons and comics to promote their products to kids?

8 MR. GREEN: Object to the form.

9 THE WITNESS: Yes. Cartoon advertising was an  
10 important part of cigarette advertising.

11 BY MR. REYES:

12 Q You were asked questions regarding the Baxter  
13 Bulletin, some articles, and one in particular was from  
14 November 4th, 1954 and the title was "High Death Rates  
15 for Cigarette Smokers" -- or "Higher Death Rates for  
16 Cigarette Smokers." Did the industry agree or disagree  
17 with those statements?

18 MR. GREEN: Object to the form.

19 THE WITNESS: The industry vehemently disagreed with  
20 the American Cancer Society's Hammond Horn study, which  
21 was the subject of that story in the Baxter Bulletin.

22 BY MR. REYES:

23 Q In response to these type of studies that were  
24 trying to warn smokers of negative health effects from  
25 smoking, did the industry pay off scientists to combat

1 these studies?

2 MR. GREEN: Object to the form.

3 THE WITNESS: Yes. The industry, through grants,  
4 bought many friends and allies in the scientific  
5 community who then spoke out in a way that supported the  
6 industry's interest in creating doubt and denial that  
7 cigarettes were the cause of any harm. For example, Carl  
8 Seltzer, the prominent physical anthropologist, did a  
9 bunch of this work for the tobacco industry.

10 BY MR. REYES:

11 Q And in response to these type of studies that  
12 were trying to warn people of the harms of smoking, did  
13 the industry go on national television and tell the  
14 American people that cigarettes had not been proven to  
15 cause cancer?

16 MR. GREEN: Object to the form.

17 THE WITNESS: Many many many times.

18 BY MR. REYES:

19 Q Did the industry promise the American people  
20 and their customers that their health was more important  
21 than their profits?

22 MR. GREEN: Object to the form.

23 THE WITNESS: Yes. "Paramount" was the word they  
24 used.

25 ///

1 BY MR. REYES:

2 Q And what was the industry saying in their  
3 secret documents regarding their profits if their  
4 customers were to find out the truth?

5 MR. GREEN: Object to the form.

6 THE WITNESS: There are many memoranda in which  
7 industry executives contemplate what they call the exit  
8 strategy if their customers could, you know, easily quit  
9 smoking or even easily -- you know, if there was an easy  
10 medical cure to nicotine addiction.

11 BY MR. REYES:

12 Q You were asked another -- a question about  
13 another article from the Baxter Bulletin, and this one  
14 was from October 11th, 1962, and a quote here is,  
15 "Dr. Alton Ochsner of the Ochsner Clinic at New Orleans  
16 told the festival goers the risk of a cigarette smoker  
17 incurring lung cancer is eight times as great as that of  
18 a nonsmoker." Do you recall that?

19 A Yes.

20 Q Did the industry at that time agree or disagree  
21 with Dr. Ochsner's assessment of smokers and lung cancer?

22 MR. GREEN: Object to the form.

23 THE WITNESS: The industry vehemently disagreed with  
24 Alton Ochsner's many statements that cigarettes were the  
25 cause of serious diseases and internally regarded him as

1 the enemy.

2 BY MR. REYES:

3 Q In 1962 did the industry continue to pump out  
4 propaganda on the national newspapers and national  
5 television to get the message out that cigarettes had not  
6 been proven to cause cancer?

7 MR. GREEN: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. REYES:

10 Q And did ordinary cigarette consumers believe  
11 those messages from the tobacco companies?

12 MR. GREEN: Object to the form.

13 THE WITNESS: Yes.

14 BY MR. REYES:

15 Q How did these competing messages affect  
16 ordinary cigarette consumers' expectations as it relates  
17 to the hazards of cigarette smoking?

18 MR. GREEN: Object to the form.

19 THE WITNESS: It created doubt and confusion and  
20 therefore created the space where smokers could believe  
21 that their smoking behavior would not impact their  
22 health.

23 BY MR. REYES:

24 Q You were asked questions about an April 2nd,  
25 1960 article in the Arkansas Gazette, and the title is

1 "Teachers Told: Warn Students of Smoking." And the  
2 article there, amongst other things, talks about that  
3 there's no method of treating tobacco or filtering smoke.  
4 Do you recall that?

5 A Yes.

6 Q Did the industry continue to promote so-called  
7 filters as new and improved in the '60s, '70s and '80s?

8 MR. GREEN: Object to the form.

9 THE WITNESS: Yes.

10 BY MR. REYES:

11 Q Did the industry find other ways such as  
12 low-tar, light cigarettes to intercept smokers who were  
13 trying to quit smoking because they were concerned about  
14 their health?

15 MR. GREEN: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. REYES:

18 Q You were asked questions about another article  
19 dated March 2nd, 1964 and it was titled "Teachers to View  
20 Films at Cancer Society in May." And in there it talks  
21 about, "Dr. Brown explained that the new film strip,  
22 'I'll Choose the High Road,' is for students at the sixth  
23 grade level and attempts to warn those students about the  
24 health risks of smoking before they start," and it says  
25 it's important to warn students of the health risk before

1 they start. Why is it important to warn kids of health  
2 risks before they start smoking?

3 A Because once they start and develop nicotine  
4 dependency, it is very difficult for them to quit.

5 Q Do 14-, 15- and 16-year-old kids understand the  
6 severity and power of nicotine addiction at that age?

7 MR. GREEN: Object to the form.

8 THE WITNESS: No. The historical record is clear  
9 that they do not.

10 BY MR. REYES:

11 Q Did the tobacco industry study this concept in  
12 their internal papers, from your review of the historical  
13 papers?

14 MR. GREEN: Object to the form.

15 THE WITNESS: Yes, extensively.

16 BY MR. REYES:

17 Q Did the tobacco companies do everything in  
18 their power to keep teenagers from smoking or did they do  
19 everything in their power to get teenagers to begin  
20 smoking?

21 MR. GREEN: Object to the form.

22 THE WITNESS: They followed the second course of  
23 action, promoting smoking among young people and  
24 teenagers.

25 ///

1 BY MR. REYES:

2 Q Did the industry view teenagers as the base of  
3 their business?

4 MR. GREEN: Object to the form.

5 THE WITNESS: They did. They literally used that  
6 quote.

7 BY MR. REYES:

8 Q For the last 50 to 70 years, the tobacco  
9 industry has said that their marketing was intended to  
10 compete for market share and had nothing to do with  
11 leading young people to take up tobacco. Is that true?

12 MR. GREEN: Object to the form.

13 THE WITNESS: Could you repeat the question. I'm  
14 sorry, I had a bit of a mental lapse there. I didn't  
15 hear it well.

16 MR. REYES: Sure.

17 Q For the last 50 to 70 years, the tobacco  
18 industry has said and taken the position that their  
19 marketing was intended to compete for market share and  
20 had nothing to do with leading young people to take up  
21 tobacco. Is that accurate?

22 MR. GREEN: Object to the form.

23 THE WITNESS: No, no, that's not accurate at all.

24 BY MR. REYES:

25 Q Have there been reports and studies from

1 agencies such as the National Cancer Institute that have  
2 found the industry's marketing activities have been a key  
3 factor in leading young people to take up tobacco,  
4 keeping some users from quitting, and achieving greater  
5 consumption among users?

6 MR. GREEN: Object to the form.

7 THE WITNESS: Yes. The science is clear on that.

8 BY MR. REYES:

9 Q You were asked about an article called  
10 "Smokeout Thursday" where the American Cancer Society  
11 displayed lungs from smokers and lungs from nonsmokers in  
12 the public library. Do you recall that?

13 A Yes.

14 Q Have you ever researched the prevalence of  
15 smoking among educated versus noneducated people?

16 A Yes, I have.

17 Q Are noneducated or less educated people more  
18 likely to be smokers and smoke more cigarettes than  
19 educated people?

20 A Yes. I discuss that in my Expert Report I  
21 believe, but yes, smoking prevalence is inversely related  
22 to income, social class, and education levels.

23 Q Was Verna Geist a highly educated customer of  
24 the tobacco companies?

25 MR. GREEN: Object to the form.

1 THE WITNESS: No. She was a high school dropout.

2 BY MR. REYES:

3 Q Was Verna Geist, as a high school dropout, more  
4 likely to believe the tobacco companies' messages that  
5 smoking was not proven to be harmful or addictive or that  
6 lights were safer?

7 MR. GREEN: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. REYES:

10 Q You were asked about another article from the  
11 Iowa City Press from April 8th, 1983 and the title was  
12 "Study Links Rise in Lung Cancer Rate to Smoking." In  
13 April 8th, 1983, did the industry come clean and agree  
14 with these type of studies?

15 MR. GREEN: Object to the form.

16 THE WITNESS: No. They rejected them and, with  
17 great energy, disputed the fact that cigarettes caused  
18 any harm to any smoker.

19 BY MR. REYES:

20 Q You were asked about another article. I think  
21 this is from the Iowa City Press and it's from  
22 November 19th, 1986 titled "Anyone can Live Without a  
23 Cigarette for a Day." Do you recall that?

24 A Yes.

25 Q What was the industry's position regarding

1 nicotine addiction on November 19th, 1986?

2 MR. GREEN: Object to the form.

3 THE WITNESS: Nicotine was not addictive.

4 BY MR. REYES:

5 Q I want to change topics.

6 You were asked -- I couldn't type out the exact  
7 wording of Mr. Green's questions, but it was something  
8 along the lines that no other cigarette brands on the  
9 market, while Miss Geist was smoking, were available or  
10 proven to be less dangerous than the brands Miss Geist  
11 was smoking. Do you recall that?

12 A Yes.

13 MR. GREEN: Object to the form.

14 BY MR. REYES:

15 Q Do the tobacco companies purposely design their  
16 cigarettes to be inhalable?

17 MR. GREEN: Object to the form.

18 THE WITNESS: Yes, they do.

19 BY MR. REYES:

20 Q Is there any law or statute that you are aware  
21 of that forces the defendants in this case to design  
22 their cigarettes to be inhalable?

23 MR. GREEN: Object to the form.

24 THE WITNESS: No. That is a choice.

25 ///

1 BY MR. REYES:

2 Q If the defendants in this case designed their  
3 cigarettes not to be inhalable, would the smoke have been  
4 able to get into Mrs. Geist's lungs?

5 MR. GREEN: Object to the form.

6 THE WITNESS: No. And in fact, as I indicated in my  
7 report, internally scientists for the industry debated  
8 and offered to make noninhalable cigarettes as perhaps a  
9 safer design.

10 BY MR. REYES:

11 Q If the defendants had designed their cigarettes  
12 to not be inhalable, would Miss Geist have gotten the  
13 carcinogens from the cigarette smoke into her lungs?

14 MR. GREEN: Object to the form.

15 THE WITNESS: No.

16 BY MR. REYES:

17 Q Is there any definition, law or statute that  
18 you are aware of which requires cigarettes to be  
19 inhalable?

20 MR. GREEN: Object to the form.

21 THE WITNESS: No. The federal definition of a  
22 cigarette, defined many times in legislation from taxes  
23 to other legislation, is tobacco wrapped in paper.

24 BY MR. REYES:

25 Q Based on your review of the historical

1 documents and the internal secret tobacco documents, why  
2 do the defendants in this case design their cigarettes to  
3 be inhalable? What's the main purpose?

4 MR. GREEN: Object to the form.

5 THE WITNESS: To promote addiction to nicotine.

6 BY MR. REYES:

7 Q Based on your review of the historical  
8 documents and the internal secret documents of the  
9 tobacco companies, do the defendants purposely design  
10 their cigarettes with just enough nicotine to create and  
11 sustain addiction?

12 MR. GREEN: Object to form.

13 THE WITNESS: The cigarette manufacturers design  
14 their cigarettes to create and sustain addiction, that's  
15 correct.

16 BY MR. REYES:

17 Q Based on your review of the historical  
18 documents and the internal secret tobacco documents, why  
19 do the defendants design their cigarettes with the  
20 precise amount of nicotine that they do?

21 MR. GREEN: Object to form.

22 THE WITNESS: It promotes addiction, which promotes  
23 compulsive use, which promotes sales of the cigarettes,  
24 which promotes profits.

25 ///

1 BY MR. REYES:

2 Q As a historian, in your review of the  
3 historical documents and the internal secret documents of  
4 the tobacco companies, did the defendants foresee and  
5 understand that smokers like Verna Geist would inhale the  
6 cigarettes --

7 MR. GREEN: Object to the form.

8 BY MR. REYES:

9 Q -- would inhale the cigarette smoke?

10 A Yes, they did. They studied this very  
11 carefully.

12 Q Based on your review of the tobacco secret  
13 documents and the historical record, did the industry  
14 understand that smokers who inhaled their products were  
15 at risk of developing serious diseases such as lung  
16 cancer?

17 MR. GREEN: Object to the form.

18 THE WITNESS: Yes, the industry understood this.

19 BY MR. REYES:

20 Q Did ordinary cigarette consumers like Verna  
21 Geist understand the difference of harm an inhalable  
22 cigarette produced as compared to a cigarette that was  
23 designed to be uninhalable?

24 MR. GREEN: Object to the form.

25 THE WITNESS: No, there's no evidence that they

1 understood those differences, no.

2 BY MR. REYES:

3 Q To this day are the defendants in this case  
4 continuing to sell the same defective products they sold  
5 to Miss Geist 50, 60 years ago?

6 MR. GREEN: Object to the form.

7 THE WITNESS: Yes, yes. There's no change in the  
8 combustible-cigarette market.

9 BY MR. REYES:

10 Q You were asked questions about R. J. Reynolds'  
11 public position today that there is no safe cigarette.  
12 Do you remember that?

13 A Yes.

14 Q And I believe Mr. Green stated that their  
15 position, the tobacco companies' position, is that  
16 there's no cigarette that is safe, and that's been the  
17 position since at least 2000 I believe. Is that right?

18 A Yes.

19 Q Have the defendants ever publicly admitted that  
20 filtered cigarettes are no safer than nonfiltered  
21 cigarettes?

22 MR. GREEN: Object to the form.

23 THE WITNESS: No. They've not admitted to the  
24 filter fraud. That's another one of their areas that  
25 they've not admitted to.

1 BY MR. REYES:

2 Q Does the sentence "Filtered cigarettes are not  
3 safer than nonfiltered cigarettes" appear anywhere in any  
4 of the defendants' websites?

5 MR. GREEN: Object to the form.

6 THE WITNESS: Not that I'm aware of. I haven't seen  
7 it.

8 BY MR. REYES:

9 Q Has the message "Filtered cigarettes are not  
10 safer than unfiltered cigarettes" ever been stated in any  
11 way, shape or form by the defendants in this case?

12 MR. GREEN: Object to the form.

13 THE WITNESS: No, I don't think so, no.

14 BY MR. REYES:

15 Q And in fact, R. J. Reynolds and Philip Morris  
16 to this day still tell juries and judges that filtered  
17 cigarettes are safer than nonfiltered cigarettes. Is  
18 that accurate?

19 MR. GREEN: Object to the form of that.

20 THE WITNESS: Yes, they do. They do make those  
21 statements in court.

22 BY MR. REYES:

23 Q To this day do ordinary cigarette consumers  
24 believe that filtered cigarettes offer some protection  
25 over nonfiltered cigarettes?

1 MR. GREEN: Object to the form.

2 THE WITNESS: Even today there's misunderstanding  
3 and misperception in that area, so that's correct.

4 BY MR. REYES:

5 Q Are filtered cigarettes safer than nonfiltered  
6 cigarettes?

7 MR. GREEN: Object to the form.

8 THE WITNESS: No.

9 BY MR. REYES:

10 Q Have you studied that, reviewed the tobacco  
11 industry's internal secret documents regarding filtered  
12 versus unfiltered cigarettes?

13 A Yes, as well as the scientific research.

14 Q Is it accurate that the defendants' position  
15 regarding lights and regular cigarettes throughout the  
16 majority of the time that Miss Geist was smoking can be  
17 summarized as "There is nothing wrong with our  
18 cigarettes, but if you're worried, here's a lighter  
19 option"?

20 MR. GREEN: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. REYES:

23 Q Is it accurate that the defendants' position  
24 regarding filtered and unfiltered cigarettes throughout  
25 the majority of time Mrs. Geist was smoking can be

1 summarized as "There's nothing wrong with our unfiltered  
2 cigarettes, but we offer a filtered option as an added  
3 protection"?

4 MR. GREEN: Object to the form.

5 THE WITNESS: Yes.

6 BY MR. REYES:

7 Q Is that the message, based on the historical  
8 record that you reviewed, that tobacco companies were  
9 giving out to ordinary consumers like Verna Geist?

10 A Yes, and it was making an impact, as their own  
11 internal documents and market research and surveys and  
12 other studies of smokers' knowledge and understanding  
13 indicate.

14 Q Is there testimony in this record where  
15 Mrs. Geist read, heard, or saw tobacco executives stating  
16 that cigarettes in general were not proven to cause  
17 cancer?

18 MR. GREEN: Object to the form.

19 THE WITNESS: Say that again. I'm sorry.

20 BY MR. REYES:

21 Q Is there testimony in this record where  
22 Mrs. Geist read, heard, or saw tobacco executives stating  
23 that cigarettes in general were not proven to cause  
24 cancer?

25 MR. GREEN: Object to the form.

1 THE WITNESS: Yeah. Her husband indicates that she  
2 saw that, yes.

3 BY MR. REYES:

4 Q Did ordinary consumers such as Verna Geist  
5 believe those type of messages from the defendants in  
6 this case?

7 MR. GREEN: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. REYES:

10 Q Did ordinary consumers such as Verna Geist know  
11 or appreciate the fact that filtered cigarettes were just  
12 as dangerous if not more dangerous than nonfiltered  
13 cigarettes?

14 MR. GREEN: Object to the form.

15 THE WITNESS: No.

16 BY MR. REYES:

17 Q You were asked a question about Miss Geist  
18 switching to light cigarettes, and there was some back  
19 and forth about whether there was any testimony as to  
20 Miss Geist switching to lights to help her quit or cut  
21 down. Do you recall that?

22 A Yes.

23 Q I want to turn to page 234 and 235 of  
24 Mr. Geist's deposition, I believe.

25 A Okay. Let me get there.

1 Q And it's at line 24 where it starts.

2 A Okay. So on page 235 --

3 Q 234, and then it starts on line 24 and then it  
4 goes down to 235.

5 A Okay.

6 Q I'll just read it for the record and make sure  
7 it's clear.

8 "And then that's when she came home with the  
9 Doral Lights 100 and said, 'Okay, I'm going to switch to  
10 the Doral Lights, the same thing that we -- in the  
11 conversation we had earlier. The advertisements say that  
12 the lights are better for you, less tar, less nicotine.  
13 So I'm going to switch to the lights. I'll try to cut  
14 down. I'll try not to smoke as much.'"

15 Did I read that correctly?

16 A Yes.

17 Q Based on this testimony, was Verna Geist  
18 switching to lights also to help her quit or cut down her  
19 cigarette consumption?

20 MR. GREEN: Object to the form.

21 THE WITNESS: Yes, and to protect her health.

22 BY MR. REYES:

23 Q Okay. I have no further questions. Thank you,  
24 Dr. Kyriakoudes.

25 MR. GREEN: Very briefly, and then we'll wrap this

1 up.

2

3

FURTHER EXAMINATION

4 BY MR. GREEN:

5 Q First of all, in another part of his  
6 deposition, Mr. Geist testified that Mrs. Geist never  
7 told him that she heard from a cigarette company that  
8 smoking was not harmful; right? I think we talked about  
9 that earlier, page 323, line 1. Right, sir?

10 A Okay. I'm on page --

11 Q Right at the top.

12 A -- 323, line 2. "That's fine. So just so the  
13 record is clear, did she ever tell you that she heard  
14 from a cigarette company that smoking is not harmful?"

15 He said, "I don't remember."

16 That's very ambiguous.

17 Q Okay. Well, that's what he testified to;  
18 right?

19 A Yes.

20 Q Okay. We have in prior depositions gone  
21 through what R. J. Reynolds or other tobacco companies  
22 acknowledged after the late 1990s. I'm not going to  
23 rehash all of that. I have one question for you though.

24 A Yes.

25 Q R. J. Reynolds has long -- and other tobacco

1 companies have as well -- have long admitted that the  
2 risk of developing serious diseases from smoking is  
3 significantly affected by the manner of smoking and the  
4 frequency of smoking. You've seen that; right?

5 A When you say "manner of smoking," I'm not sure  
6 if they address that. The industry has not admitted that  
7 compensation is a significant factor in the  
8 light-cigarette area the way the public-health community  
9 has, so I'm not sure what you mean by "manner of  
10 smoking."

11 Q Do you dispute that R. J. Reynolds has, for  
12 approximately at least 15 years, acknowledged that an  
13 individual's level of risk for serious disease is  
14 significantly affected by the type of tobacco product  
15 used as well as the manner and frequency of use?

16 A Type of tobacco product used? I mean this is  
17 very vague. You mean cigarettes versus other forms of  
18 tobacco or -- I'm not sure if I understand what you're  
19 talking about.

20 I'm going to go -- I'm at RJRT.COM. Let's just  
21 get this. We know that they have that page. We can look  
22 at that page. Now, they have their mandated admissions  
23 from the federal court.

24 Q That's not what we're talking about.

25 R. J. Reynolds on its website now admits that

1 the length of smoking, the length of time smoking, the  
2 frequency of smoking, and the amount of smoking can  
3 significantly affect the risk of serious disease; right?

4 A Well, now you're talking about dose response,  
5 and that's true.

6 Q R. J. Reynolds has acknowledged that for a long  
7 time, right, for at least 15 or 20 years?

8 A I'm not sure how far back it goes, but they  
9 have talked about, you know, the amount of smoking. But,  
10 you know, the part of that that they don't indicate is  
11 that nicotine addiction compels people to smoke at  
12 enormous levels of usage. So there's -- you know, that's  
13 an admission that is completely meaningless.

14 Q Okay. Well, I understand your position. I  
15 move to strike as nonresponsive and we'll be here a long  
16 time if we need to, but the question that I have is that  
17 R. J. Reynolds does, and has for a long time, admitted  
18 that the risk of serious disease is impacted, is  
19 affected, by the length of time someone smokes, the  
20 frequency they smoke, and the amount they smoke; right?

21 MR. REYES: Objection; form.

22 THE WITNESS: You know, I'm trying to find this on  
23 their website.

24 BY MR. GREEN:

25 Q On the third bullet in Tobacco Use and Health.

1           A     Okay, let me -- I'm on Tobacco Harm Reduction.  
2     Let me go to -- okay. So we have -- I'm on RJRT.COM,  
3     Transforming Tobacco, Here's What We Believe. Yeah, I  
4     mean all it says is, "No tobacco product has been shown  
5     to be safe or risk free, but the type of tobacco product  
6     used, how long it is used, and the frequency and amount  
7     of use significantly affect the risk of serious disease."  
8     That's all it says.

9           Q     So we can go back and look at other websites if  
10    we need to, but can we agree --

11          A     That's the language that's there now and that's  
12    what it says.

13          Q     Can we agree that R. J. Reynolds now and for a  
14    long time has admitted, acknowledged, that the risk of  
15    serious disease is affected by how long someone uses --  
16    smokes, the frequency they smoke, and the amount that  
17    they smoke?

18          A     Well, the language I read is what they have.  
19    It doesn't tell you -- I mean that's an almost  
20    meaningless statement, but it says what it says. I read  
21    it from their website and that's what it says.

22          Q     You're saying it's meaningless to acknowledge  
23    that the risk of developing a smoking-related disease is  
24    impacted by the length of smoking, the amount they smoke,  
25    and how frequently someone smokes? You're saying that it

1 means nothing?

2 A Yes, from the perspective of informing their  
3 consumers about the actual scale and scope of the risk  
4 they are taking, the dangers they are exposing themselves  
5 to by using their product, yeah, I mean there's no actual  
6 information there.

7 The idea that you shouldn't smoke too much is a  
8 common idea. In fact that was one of the things that we  
9 saw back in the 1950s as a way for people to justify  
10 their smoking. Indeed we even saw in the health  
11 textbooks, when they discussed the research of Raymond  
12 Pearl, where moderate smokers and nonsmokers are lumped  
13 in one category and heavy smokers are lumped in another  
14 category.

15 So as I actually consider this bit of language,  
16 not only is it meaningful [sic], it's in fact deceitful  
17 in that it doesn't provide any real information and it  
18 doesn't acknowledge the fact that people who are addicted  
19 to nicotine are compelled to smoke, nor does the next  
20 sentence, "Nicotine in tobacco products is addictive,"  
21 indicate that that causes disease.

22 Q Are you finished, Doctor?

23 A I'm finished, yes.

24 Q The first bullet, very first bullet on the  
25 website, R. J. Reynolds acknowledges] that cigarette

1 smoking is a leading preventable cause of death. That's  
2 a position they've had for a long time; right?

3 A And that is a true statement, yes.

4 Q R. J. Reynolds in the next sentence admits now  
5 and has for a long time that "Quitting cigarette smoking  
6 significantly decreases the risk of chronic bronchitis,  
7 emphysema, and other serious diseases and conditions";  
8 right?

9 MR. REYES: Object to form.

10 THE WITNESS: Yes. That's taken straight from the  
11 '84 warning-label regime, but yes, that's a true  
12 statement.

13 BY MR. GREEN:

14 Q R. J. Reynolds admits now and has long admitted  
15 that nicotine and tobacco products is addictive; right?

16 MR. REYES: Objection to the form of the question.

17 THE WITNESS: But they don't admit that nicotine  
18 addiction causes the disease; and these statements are  
19 buried in a website which I myself as an expert had  
20 trouble finding just now in this deposition, and I don't  
21 see --

22 BY MR. GREEN:

23 Q You found it --

24 A -- these statements anywhere attached to their  
25 marketing and promotion.

1 THE REPORTER: One at a time.

2 BY MR. GREEN:

3 Q What do you mean you had trouble? You found  
4 this in a manner of 60 seconds.

5 A I had to -- I had to hunt and peck around the  
6 website. You had to direct me to it.

7 Q I didn't. I didn't direct you to this page. I  
8 just directed you to where on this page it was and it  
9 happened to be at the very top. You went to RJRT.COM and  
10 it's right there.

11 In any event, the website, R. J. Reynolds now  
12 and for a long time has acknowledged that nicotine and  
13 tobacco products is addictive; right?

14 MR. REYES: Objection; form.

15 THE WITNESS: That's what the sentence says.

16 MR. GREEN: Thank you.

17 THE WITNESS: Nicotine and tobacco products is  
18 addictive. They state it in their website.

19 BY MR. GREEN:

20 Q And the last area I want to ask you about is,  
21 R. J. Reynolds and Philip Morris and Liggett too have not  
22 advertised a cigarette that carries a descriptor of light  
23 or ultralight for 12 to 15 years at this point; right?

24 A That's correct, they haven't used those terms.  
25 They've been prevented from using them, that's correct.

1 Q Okay. Thank you, Doctor. It's good to see  
2 you. Those are all the questions I have.

3 MR. TEPIKIAN: I got a couple questions if I may.

4 THE WITNESS: Yes.

5

6

EXAMINATION

7 BY MR. TEPIKIAN:

8 Q Dr. Kyriakoudes, Bruce Tepikian on behalf of  
9 Philip Morris.

10 Are you familiar with Cancer Prevention  
11 Study II, CPS-II?

12 A Yes. I mean these are the unknown prospective  
13 epidemiological studies. I mean we're in maybe the third  
14 iteration of that if not more, yeah, just going back to  
15 the original Hammond and Horn work.

16 Q And have you reviewed it and read it or studied  
17 it as something that you've looked at and you're familiar  
18 with its findings?

19 A No. I've just generally seen references to it.  
20 I've not actually read the original research from it, but  
21 I've heard of it.

22 Q Have you used or considered CPS-II as part of  
23 the materials in helping form your opinions in this case?

24 A No, no.

25 Q Why is that?

1           A     It's not cited in my work. I haven't seen it  
2     as being relevant. My area here is primarily, you know,  
3     public knowledge, common knowledge, and the actions of  
4     the tobacco industry. It's not something that, you know,  
5     I've needed to research intensively for my opinions.

6           Q     In response to -- Mr. Reyes asked you a number  
7     of questions with regard to the filters and whether or  
8     not they were effective. Have you looked at CPS-II and  
9     considered its findings as it relates to filtered  
10    cigarettes?

11          A     No, I haven't. I've relied on the National --  
12    the National Cancer Institute has an authoritative report  
13    on filters and low-yield cigarettes in which their  
14    conclusion is that these are not safer than others. I am  
15    aware that there is, here and there, epidemiological  
16    research that was published in the '70s and the '80s --  
17    perhaps some of it was from this survey, others from  
18    other surveys -- which found some minor reductions in  
19    cancer rates -- for example, between filters and  
20    nonfilters and lights and regular cigarette smokers --  
21    but those are few and far between and in my evaluation  
22    not definitive.

23          Q     And so you would consider the work done by --  
24    you know, related to CPS-II to be not effective or not  
25    good research with regard to the filters?

1           A     I don't have an opinion on that because, as  
2     I've indicated, that's not a document that I've relied  
3     upon. So I wouldn't know either way.

4                     You know, for example, Monograph 13 I accept as  
5     an authoritative -- or as a, you know -- let me rephrase  
6     that.

7                     Monograph 13 is something I rely on as well as  
8     the 2010 and 2014 surgeon general's reports; and those,  
9     as comprehensive reviews of the science, are suitable for  
10    my needs as a historian.

11          Q     But the largest cancer study is something that  
12    you have not looked at as it relates to smoking and  
13    filters; is that correct?

14          A     No. Instead I've looked at the authoritative  
15    analyses of the National Cancer Institute and the surgeon  
16    general.

17                    When you say "largest cancer studies," I mean  
18    in the end, all the cancer-prevention studies are are  
19    database surveys and, you know, the raw data that is  
20    manipulated and researched by epidemiologists and other  
21    scientists. So I mean that's what the study is. It's an  
22    ongoing prospective data-gathering effort of individuals  
23    to understand a variety of aspects of cancer.

24          Q     You don't find --

25                    THE REPORTER: I'm sorry? Say your question again.

1 THE WITNESS: Well, actually --

2 MR. REYES: Dr. Kyriakoudes, hold on. She couldn't  
3 get that.

4 BY MR. TEPIKIAN:

5 Q I think we were talking over each other,  
6 Doctor. I want to ensure you'd finished answering that  
7 question before I spoke.

8 A Sure. I mean it doesn't yield findings until  
9 it's analyzed by a scientist. You know, it's like the  
10 Adult Use of Tobacco Survey. That doesn't yield findings  
11 until somebody gets the data and begins to analyze the  
12 data. So, you know, that's how these work.

13 In the old days we used to get them on a CD.  
14 Before that you got them on tape. You had to go down to  
15 the data -- as they said at UNC Chapel Hill when I was at  
16 the Population Center there on my NIH Fellowship, you had  
17 to go down to the data hauler and get them to load the  
18 tape into the mainframe for you. I didn't use those  
19 data, but I used other data in a similar form. Now you  
20 probably just download it from the website.

21 Q That's all the questions I have, Doctor.

22 A Thank you.

23 MR. REYES: Dr. Kyriakoudes, do you want to read or  
24 waive?

25 THE WITNESS: I'll read it, please. You can either

1 send a physical copy or a digital copy, whichever is more  
2 convenient for the court reporter.

3 MR. TEPIKIAN: If I may ask the court reporter,  
4 where are you from?

5 THE REPORTER: Henderson, Nevada.

6 MR. TEPIKIAN: What company?

7 THE REPORTER: Oasis Reporting.

8 MR. TEPIKIAN: Oasis? Okay, thank you.

9 MR. REYES: Can we get a copy whenever you have it  
10 ready?

11 THE REPORTER: Of course.

12 MR. TEPIKIAN: Same here. I think we've got a  
13 standard order with you guys.

14 MR. GREEN: As does my firm, Philip Green for  
15 R. J. Reynolds. And given the hour, I'll probably send  
16 you the exhibits tomorrow if that's okay.

17 (Deposition concluded at 3:32 p.m.)

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## CERTIFICATE OF DEPONENT

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I, LOUIS M. KYRIAKOUDAS, PH.D., deponent

18

herein, do hereby certify and declare under penalty of

19

perjury the within and foregoing transcription to be my

20

deposition in said action; that I have read, corrected

21

and do hereby affix my signature to said deposition.

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23

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LOUIS M. KYRIAKOUDAS, PH.D., Deponent

## REPORTER'S CERTIFICATE

I, Ellen A. Goldstein, a duly certified court reporter in and for the County of Clark, State of Nevada, do hereby certify:

That I reported the taking of the deposition of LOUIS M. KYRIAKOUCES, PH.D. at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth;

That the witness requested to read and sign the transcript herewith;

That I thereafter transcribed my shorthand notes into typewriting and that the typed transcript of said deposition is a complete, true and accurate transcription of my shorthand notes taken down at the proceedings.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 7th day of December 2021.



Ellen A. Goldstein, CCR No. 829

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