

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
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1 the first time in a person's lifetime they used a particular
2 substance, correct, Dr. Proctor?

3 A. Right. Apparently at what age.

4 Q. Okay. And then in 2000 -- I mean, then on page 26,
5 you go down, and it says, "Among people aged 12 or older in
6 2019, 1.6 million people initiated smoking -- cigarette
7 smoking in the past 12 months, i.e., and never before the past
8 12 months, which was lower than the number in most years from
9 2002 through 2018. The number of people aged 12 or older in
10 2019, who initiated cigarette smoking in the past year
11 averaged to about 4,400 people each day." Did I read that
12 correctly?

13 A. Yes. So 4,000-some people are starting smoking
14 every day.

15 Q. "Among young adults aged 18 to 25 in 2019, 1 million
16 people initiated cigarette smoking in the past 12 months."
17 Did I read that correctly?

18 A. Yeah. Could you go up to the top of that column? I
19 want to make sure we got that right. I'm not sure I
20 understood that.

21 The number of people age 12 or older who initiated
22 smoking in the past year averaged 4,400 people each day.

23 Okay. I got that.

24 Q. Averaged to about 4,400 people each day, right?

25 A. Right.

1 Q. Okay. "Among young adults aged 18 to 25" -- did I
2 read that already? Yes.

3 Okay. "Among adults aged 26 or older in 2019,
4 90,000 people initiated cigarette smoking in the past 12
5 months or an average of about 250 new cigarette smokers aged
6 26 or older each day." Did I read that correctly --

7 A. Right. Yes.

8 Q. Okay. Adding all of these up, that is a total of
9 1,631,000 new initiates to smoking, correct?

10 A. Every year, yes.

11 Q. Or of that number of -- new initiates, 541,000
12 initiated cigarette smoking before the age of 18, correct?

13 A. Yes.

14 Q. And 1,000,090 initiated cigarette smoking after they
15 turned 18, correct?

16 A. I believe so, yeah.

17 Q. Would you accept my math that 1,090 is 67 percent of
18 1,631 thousand?

19 A. Yes.

20 Q. Would you agree that in this country about
21 two-thirds of people who first initiate combustible cigarette
22 smoking do so after they turn 18 years of age?

23 A. Say it again.

24 Q. Would you agree that in this country about
25 two-thirds of people who first initiate combustible cigarette

1 smoking do so after they turn 18 years of age?

2 A. I would have to double-check that. That doesn't
3 ring true to me somehow.

4 Q. Okay. Even though the numbers we just showed had
5 more people initiating smoking after the age of 18 than before
6 the age of 18?

7 A. Again, I would just have to double-check it.

8 Q. Okay. What would you do to double-check it?

9 A. Well, just to make sure we've done all the math
10 right. That's all. I just don't want to do it on the fly
11 here --

12 Q. Okay. Would you agree that today most people in
13 this country first initiate combustible cigarette smoking when
14 they are aged 18 or older?

15 A. No. That's the problem. That's what's causing me
16 pause. I -- I wasn't aware that -- if that's true, that must
17 be very recent.

18 Q. Okay.

19 A. That's why I want to double-check it.

20 Q. Other than going through this article itself, what
21 else would you need to do to double-check?

22 A. Well, just to double-check that, you know -- has it
23 really changed dramatically. Because in the past, most people
24 began by 18, so I want to find out when that changed, if that
25 changed, that sort of thing.

1 Q. Okay. All right. So, also on page 26, it talks
2 about initiation of alcohol use and states that among
3 adolescents -- sorry. "Among adolescents aged 12 to 17, the
4 number of past year initiates" -- well, I'll go ahead and
5 start from the top. I'm sorry.

6 Also talks about initiation of alcohol use. And it
7 starts out: "Among people aged 12 and older in 2019, 4.9
8 million people initiated alcohol use in the past 12 months,
9 not counting sips from another person's drink. Among
10 adolescents aged 12 to 17, the number of past year initiates
11 of alcohol use declined from 2.6 million adolescents in 2002,
12 to 2.3 million adolescents in 2019." Did I read both of those
13 correctly?

14 A. Yes.

15 Q. Would you agree that in this country more than half
16 of people who first initiate combustible cigarette smoking do
17 so before they turn 18 years of age?

18 A. Say that again, please.

19 Q. Yeah. I mean, is it your position that more than
20 half of people who first initiate combustible cigarette
21 smoking do so before they turn 18 years of age?

22 A. That's my understanding.

23 Q. Okay. Now, if we go down to page 17, it goes on to
24 say, "Among young adult aged 18 to 25, the number of past year
25 alcohol use initiates increased from 1.2 million people in

1 2002, to 2.4 million people in 2019." Did I read that
2 correctly?

3 A. Yes.

4 Q. Goes on to say, "Among adults aged 26 or older, the
5 number of past year initiates of alcohol use in 2019, 205,000
6 people was similar to the numbers in most years from 2002
7 through 2018." Did I read that correctly?

8 A. Yes.

9 Q. Okay. So, if we continue on, it talks about
10 substance use disorders in the past year as well. And it
11 says, "Substance use disorders, SUDs, are characterized by
12 impairment caused by the recurrent use of alcohol or other
13 drugs or both, including health problems, disability and
14 failure to meet major responsibilities at work, school or
15 home. The 2019 NSDUH included a series of questions to
16 estimate the percentage of the population aged 12 or older who
17 had at least one SUD in the past 12 months, subsequently
18 referred to as an SUD or past year SUD, except when SUDs refer
19 to more than one substance, such as an SUD for the misuse of
20 specific prescription drugs. SUD questions classify people as
21 having an SUD in the past 12 months based on criteria
22 specified by the Diagnostic and Statistical Manual of Mental
23 Disorders, 4th edition, DSM-IV. Respondents were asked SUD
24 questions if they previously reported use of alcohol or
25 illicit drugs in the past 12 months. Illicit drugs include

1 the use of marijuana, cocaine, including crack, heroin,
2 hallucinogens, inhalants and methamphetamines, as well as the
3 misuse of prescription stimulants, tranquilizers or sedatives,
4 e.g., benzodiazepines, and pain relievers." Did I read that
5 correctly?

6 A. Yes.

7 Q. The criteria specified in the DSM-IV, correct?
8 That's the criteria they used?

9 A. Yes.

10 Q. Okay. Says, "Alcohol use disorder was defined as
11 meeting DSM-IV criteria for either dependence or abuse for
12 alcohol. Respondents who used alcohol on 6 or more days in
13 the past 12 months were classified as having dependence, even
14 if they met three or more of the seven dependence criteria as
15 a -- having abuse if they did not meet the criteria for
16 alcohol dependence but met one or more of the four abuse
17 criteria. Relevant definitions for alcohol use disorder can
18 be found in the glossary." Correct? Did I read that
19 correctly?

20 A. Close enough.

21 Q. Okay. Thank you.

22 Would you agree that it is estimated that over
23 400,000 adolescents under the age of 18 have an alcohol use
24 disorder?

25 A. Apparently, by this, yes. By this criteria.

1 Q. Would you agree that the estimated number of
2 adolescents with alcohol use disorder is about five times
3 higher than the estimated number of adolescents who are daily
4 smokers of tobacco-burning cigarettes?

5 A. That sounds about right.

6 Q. Okay. I want to go to table -- or Figure 37. This
7 figure is: "Alcohol use disorder in the past year among
8 people aged 12 or older, 2002 to 2019." Do you see that?

9 A. Yes.

10 Q. Even though alcohol is still heavily advertised on
11 television, alcohol use disorder has, in fact, declined among
12 people aged 12 or older, correct?

13 A. Apparently.

14 Q. Over here on the right it says, "This -- illicit
15 drug use disorder. This section presents overall estimates
16 for illicit drug use disorder. It then provides SUD estimates
17 for selected specific illicit drugs. Illicit drug use
18 disorder was defined as meeting DSM-IV criteria for either
19 dependence or abuse for one or more of the following illicit
20 drugs: Marijuana, cocaine, heroin, hallucinogens, inhalants,
21 methamphetamines, and -- or" -- sorry -- "or prescription
22 psychotherapeutic drugs that were misused, i.e., stimulants,
23 tranquilizers or sedatives and pain relievers." Did I read
24 that correctly?

25 A. Yes.

1 Q. It also says, "Among people aged 12 or older in
2 2019, 3 percent, or 8.3 million people, had at least one
3 illicit drug use disorder in the past year." Did I read that
4 correctly?

5 A. Yes.

6 Q. Then if you go down to the aged 12 to 17, it says,
7 "Among adolescents aged 12 to 17 in 2019, 3.6 percent, or
8 894,000 people, had an illicit drug use disorder in the past
9 year." Did I read that correctly?

10 A. Yes.

11 Q. If you go down to page 36, it specifically addresses
12 something called a "marijuana use disorder." Do you see that?

13 A. Yes.

14 Q. It says, "Among people aged 12 or older, the
15 percentage with a past year marijuana use disorder was 1.8
16 percent in 2002, or 4.3 million people, and 2019, or 4.8
17 million people, but showed declines in some years. Although
18 this population in 2019 -- among this population in 2019, the
19 percentage who had a marijuana use disorder in the past year
20 was similar to the percentage in each year from 2002 through
21 2013, but it was higher than the percentages in most years
22 from 2014 to 2018." Did I read that correctly?

23 A. Yes.

24 Q. Okay. And in the aged 12 to 17 section, it says,
25 "Among adolescents aged 12 to 17, the percentage with a past

1 year marijuana use disorder declined from 4.3 percent, or 1.1
2 million people, in 2002, to 2.8 percent, or 699,000 people, in
3 2019." Did I read that correctly?

4 A. Yes.

5 Q. Would you agree that an estimated 700,000
6 adolescents under the age of 18 have a marijuana use disorder
7 as described in this document?

8 A. As -- per that definition, yes.

9 Q. Would you agree that the estimated number of
10 adolescents with a marijuana use disorder exceeds the number
11 of adolescents who reported smoking at least one
12 tobacco-burning cigarette in the past month?

13 A. Yes. But, again, it's apples and oranges because
14 you're comparing use over a past year for marijuana and use
15 over the past 30 days for cigarettes. That's not really a
16 fair comparison.

17 Q. Okay. Would you agree that the estimated number of
18 adolescents with a marijuana use disorder is about nine times
19 higher than the estimated number of adolescents who are daily
20 smokers of tobacco-burning cigarettes?

21 A. Again, I think there's a -- somewhat of an improper
22 comparison being made, but the raw numbers, I would agree
23 with.

24 Q. All right. There's a table here, table -- figure,
25 sorry -- Figure 39, "Marijuana use disorder in the past year

1 among people aged 12 or older." And then there's a table,
2 "Marijuana use disorder in the past year among people aged 12
3 or older." So I'm going to focus on the table. Here. And
4 ask you. You see that this shows that -- let me see.

5 Let me ask you this. The marijuana legalization
6 movement has not had much of an impact on marijuana use
7 disorder because the percentages haven't gone up since 2002,
8 and, in fact, have gone down, correct?

9 A. In terms of use of marijuana?

10 Q. Yes.

11 A. I think that's correct.

12 Q. Okay.

13 A. I think they're counting all use as a disorder,
14 strangely, but, yeah.

15 Q. Have you looked at how they defined "use disorder"
16 in the DSM-IV?

17 A. Not apart from what they're saying here. I think
18 they're --

19 Q. Okay.

20 A. -- giving it a definition here.

21 Q. Okay. So then we go to page 40. And then there's a
22 section, "Substance use disorder, alcohol and illicit drugs."
23 "Among people aged 12 or older, the percentage with a past
24 year SUD, i.e., alcoholic use disorder, illicit drug use
25 disorder or both, remained stable between 2015 and 2019. In

1 2019, 20.4 million people aged 12 or older, or 7.4 percent of
2 this population, had an SUD in the past year, including 14.5
3 million who had an alcoholic use disorder and 8.3 million who
4 had an illicit drug use disorder. Among the 8.3 million
5 people with a past year illicit drug use disorder, 4.8 million
6 people had a marijuana use disorder and 1.4 million people had
7 a prescription pain reliever use disorder." Did I read that
8 correctly?

9 A. Yes.

10 Q. And then, of course, on the next page, it goes down
11 to break this up from -- in the group age 12 to 17. "Among
12 adolescents aged 12 to 17 in 2019, 4.5 percent, or 1.1 million
13 people, had a past year SUD." Did I read that correctly?

14 A. Yes.

15 Q. You would agree that an estimated 1.1 million
16 adolescents under the age of 18 have a substance use disorder
17 to either alcohol or illicit drugs according to this criteria?

18 A. Apparently.

19 Q. Would you agree that the estimated number of
20 adolescents with a substance use disorder to either alcohol or
21 illicit drugs is nearly twice the estimated number of
22 adolescents who smoked at least one tobacco-burning cigarette
23 in the past month?

24 A. Well, yeah, except one is comparing behavior over a
25 past year; the other is comparing it to just behavior over a

1 last month. So it's not really a fair comparison.

2 Q. Would you agree that the estimated number of
3 adolescents with a substance use disorder to either alcohol or
4 illicit drugs is about 14 times higher than the estimated
5 number of adolescents who are daily smokers of tobacco-burning
6 cigarettes?

7 A. Again, it seems like an apples and orange
8 comparison. I agree with the underlying data but not with the
9 comparison.

10 Q. Okay. All right. So I have one more, Dr. Proctor.
11 I think it's back here on page 40.

12 Okay. Page 40, aged 12 to 17. This is on the
13 opioid use disorder. "Among adolescents aged 12 to 17, the
14 percentage with a past year opioid use disorder decreased
15 from .6 percent, or 153,000 people, in 2016, to .3 percent, or
16 87,000 people, in 2019. Except for 2016, these estimates in
17 2019, were similar to the estimates in 2015 to 2018." Did I
18 read that correctly?

19 A. Yes.

20 Q. Would you agree that the estimated number of
21 adolescents with an opioid use disorder is nearly twice the
22 estimated number of adolescents who are daily smokers of
23 tobacco-burning cigarettes?

24 A. No. Again, I think there's an improper comparison
25 over the time period. In other words, the regular smoking, I

1 think, is over the past 30 days. But here, you've got a --
2 the opioid use is over the past year. So I'm not comfortable
3 with the comparison, though I -- I agree with the underlying
4 data.

5 Q. Okay. We may come back and compare those. And make
6 a note.

7 All right. I'm going to continue on with this
8 document -- and we're going to talk about substance use
9 treatment in the past year, Dr. Proctor. "Substance use
10 treatment is intended to help people address problems
11 associated with their use of alcohol or illicit drugs, i.e.,
12 not counting tobacco use, including mental -- medical problems
13 associated with the use of alcohol or illicit drugs. The 2019
14 NSDUH provided two principal measures related to substance use
15 treatment in the past year: A, the need for substance use
16 treatment; and B, the receipt of substance use treatment. The
17 survey also collected information on the types of settings
18 where people received treatment and issues associated with
19 people needing substance use treatment but not receiving it."
20 And then it goes on to have the, "Need for substance use
21 treatment. SAMHSA classifies people as having a need for
22 substance use treatment if they had an SUD in the past year or
23 if they received substance use treatment at a specialty
24 facility within the past year." Did I read that correctly?

25 A. Yes.

1 Q. And, of course, then it goes to break it down by
2 ages. In the aged 12 to 17 category, it says, "Among
3 adolescents aged 12 to 17 in 2019, 4.6 percent, or 1.1
4 million, needed substance use treatment in the past year.
5 These estimates in 2019, were similar to the estimates in 2015
6 to 2017, but they were higher than the estimates in 2018."
7 Did I read that correctly?

8 A. Yeah. But I have to say it's bizarre because
9 they're excluding tobacco as if people using tobacco don't
10 need substance use treatment. There's a very odd separation
11 of tobacco in that -- on that page.

12 Q. Well, would you agree that the number of adolescents
13 that the federal government estimates has a need for substance
14 abuse use treatment for either alcohol or illicit drugs is
15 nearly twice the estimated number of adolescents who smoked at
16 least one tobacco-burning cigarette in the past month?

17 A. Yeah. But it's a crazy idea that the smokers don't
18 need substance use treatment. It's bizarre that they're
19 segregating that out.

20 Q. Would you agree that the number of adolescents that
21 the federal government estimates have a need for substance
22 abuse -- use treatment for either alcohol or illicit drugs is
23 about 14 times higher than the estimated number of adolescents
24 who are daily smokers of tobacco-burning cigarettes?

25 A. Your math could well be right.

1 Q. Okay. And keep going down to page --

2 A. But, again, I don't accept the categories.

3 Q. Understood.

4 Receipt of substance use treatment. Okay. This is
5 a long one. Bear with me.

6 ATTORNEY HENNINGER: Lisa, you'll get copies of all
7 these, I promise.

8 BY ATTORNEY HENNINGER:

9 Q. "NSDUH respondents who used alcohol or illicit drugs
10 in their lifetime were asked whether they ever received
11 substance use treatment. And those who received substance use
12 treatment in their lifetime were asked whether they received
13 treatment in the past 12 months prior to the survey interview,
14 i.e., in the past year." Okay. So, these are respondents who
15 used drugs or alcohol and who have received treatment for
16 drugs and alcohol, correct, Doctor?

17 A. Nontobacco drugs.

18 Q. Yeah. "Receipt of any substance use treatment
19 includes substance use treatment received in the past year at
20 any location, such as a hospital, paren, inpatient, closed
21 paren, rehabilitation facility, outpatient or inpatient,
22 mental health center, emergency room, private doctor's office,
23 prison or jail, or self-help group, e.g., Alcoholics Anonymous
24 or Narcotics Anonymous, closed paren. The 2019 NSDUH also
25 collected information on the receipt of substance use

1 treatment at a specialty facility. Substance use treatment at
2 a specialty facility is included in the estimates of any
3 substance use treatment because a subset of the treatment
4 locations was categorized as specialty facilities -- at a
5 specialty facility was defined as a substance use treatment
6 received by a respondent at a hospital, paren, only as an
7 inpatient, closed paren, a drug or alcohol rehabilitation
8 facility, as an inpatient or outpatient, or mental health
9 center." Did I read that correctly?

10 A. Yes.

11 Q. And, of course, then it goes to the aged 12 to 17
12 and states, "Among adolescents aged 12 to 17 in 2019, .7
13 percent, or 172,000 people, received any substance use
14 treatment in the past year. These estimates in 2019, were
15 similar to the estimates in 2015 to 2018." Did I read that
16 correctly?

17 A. Yes.

18 Q. Would you agree that an estimated 172,000
19 adolescents under the age of 17 actually received treatment
20 for alcohol or illicit drug use each year?

21 A. Apparently. That's what the data says.

22 Q. Would you agree that about twice as many adolescents
23 under the age of 18 received treatment for alcohol or drug use
24 than are daily smokers of tobacco-burning cigarettes?

25 A. It's just such an apples and orange comparison. The

1 numbers, I think, are correct, but it's -- I just don't really
2 like the comparison.

3 Q. I mean, why not? I mean, you have a comparison of
4 groups of 12 to 17-year-olds who were asked a variety of
5 questions. One is whether or not they smoke, and one is
6 whether or not they've received treatment for alcohol or drug
7 use. And they respond --

8 A. Yeah, but they -- the comparison would be how many
9 of the people who are getting treated, you know, for the
10 different substances. So there -- what you want to do is know
11 how many people are being treated for tobacco use disorder
12 versus these other substance abuse disorders, and that's not
13 what's being compared at all. So I think it's a bizarre
14 comparison.

15 Q. No. But what I am comparing are the number of
16 adolescents aged 12 to 17 in the United States who have
17 reported receiving substance use treatment in the past year
18 versus the number of adolescents aged 12 to 17 who have
19 reported smoking a combustible cigarette within the last --

20 A. Yeah. But, apparently, none of those people, or at
21 least we don't know, of those people smoking are getting any
22 treatment for their abuse disorder because it's not even
23 counted. Like where is the data in this report on how many of
24 these smokers are getting treatment for their substance use
25 disorder? It's not even mentioned, I don't think.

1 Q. And but how does that factor in, in comparing the
2 numbers of people who actually sought treatment for alcohol
3 and drug use with the numbers of people who smoke cigarettes?

4 A. Because what you want to know is -- you have two
5 different types of disorder. You have alcohol and these
6 illicit drugs, and then you have tobacco disorder. You want
7 to know who's getting more help, and apparently, the tobacco
8 people are not getting any help. They're not even counted, I
9 think, in terms of substance use treatment. So that's --

10 Q. But -- it's not a matter of whether or not
11 they're -- they have a tobacco use disorder. It's by simple
12 math, isn't it true, that there are more 12 to 17-year-olds,
13 just by the numbers, who have received some type of substance
14 abuse training to alcohol and drugs, not tobacco, than are
15 current daily smokers of tobacco-burning cigarettes?

16 A. Yeah. Again, it's -- I agree with the math, but
17 it's apples and oranges. I don't think there's -- I don't
18 think it's a legitimate comparison.

19 Q. Okay.

20 A. But I agree with your numbers.

21 Q. And if we go down to page 52, we go to the 18 to 25,
22 it says, "Among young adults aged 18 to 25 in 2019, 1.7
23 percent, or 578,000 people, received any substance use
24 treatment in the past year. These estimates in 2019, were
25 similar to the estimates in 2015 to 2018." Would you agree

1 that the estimated 578,000 young adults aged 18 to 25 actually
2 receiving treatment for alcohol and drug -- year is what's
3 reflected in this document?

4 A. Yes, yes. But, again, apparently, the tobacco users
5 are getting no help, and they're not even counted as -- as --
6 as users.

7 Q. Would you agree that the estimated number of persons
8 under the age of 26 in this country who receive treatment each
9 year for alcohol or illicit drug use is about three-quarters
10 of a million?

11 A. Well, this figure here has 578,000.

12 Q. Uh-huh.

13 A. So that would be about two-fifths of a million,
14 maybe.

15 Q. Okay --

16 A. I mean three-fifths of a million.

17 Q. All right.

18 A. Little bit less than that.

19 Q. All right. Well, believe it or not, we actually are
20 done with Exhibit 16 --

21 A. A fond farewell.

22 Q. -- so, we are going to go to Exhibit 17, which I
23 will pull up momentarily.

24 (Exhibit No. 17 was marked for identification.)

25 BY ATTORNEY HENNINGER:

1 Q. Okay. All right. Can you see this, Dr. Proctor?

2 A. In principal --

3 Q. In principal. I know. I'll blow it up here for you
4 in a second. I'm going to represent to you for right now,
5 until I blow it up, that this is Exhibit PMU 99460, which is
6 Exhibit 17 to this deposition. It is a Baxter Bulletin
7 article entitled, "Higher Death Rate for Cigarette Smokers."
8 It's The Baxter Bulletin, Mountain Home, Arkansas, dated
9 November 4th, 1954. I'm now going to try to blow this up for
10 you, Dr. Proctor, so you can at least see -- hopefully, you
11 can see the November 4th, 1954, date at the top. And The
12 Baxter Bulletin, Mountain Home, Arkansas. Do you see that --

13 A. That -- yeah. That's a classic. I'm sure we've all
14 read The Baxter Bulletin from 19 whatever.

15 Q. Exactly, exactly.

16 And if I were to ask you why -- if you know why I'm
17 showing you something from The Baxter Bulletin, Mountain Home,
18 Arkansas, do you know if any of the Plaintiffs, either
19 Mr. Tully or Mrs. Geist, lived in Mountain Home, Arkansas, or
20 anywhere near Arkansas?

21 A. That would be my assumption; otherwise, you wouldn't
22 have showed it.

23 Q. Okay. But you don't have any information on that
24 one way or another, right?

25 A. Correct.

1 Q. All right. So, let me go down to the article. If I
2 can get my -- where's my -- okay. There you go. I'm going to
3 try to zoom in on this a little bit better for both of our
4 sakes, Doctor.

5 Do you -- can you see that okay?

6 A. Barely.

7 Q. I'll try a little bit better. And then --

8 A. That's better.

9 Q. -- there we go.

10 Okay. The article says, "The American Cancer
11 Society recently cleared up most of the confusion about health
12 and cigarette smoking when it reported that deaths among
13 cigarette smokers from 50 to 70 years of age are as much as 75
14 percent higher than those among nonsmokers. The report was no
15 tentative or qualified report." Did I read that correctly?

16 A. Yes.

17 Q. It goes on to say down here, "Originally, the
18 American Cancer Society intended to wait another year before
19 reporting on the study, but officials of the society report
20 that cigarette smokers were found to have so much higher death
21 rates that they didn't think they could withhold the
22 information another year. They also said that they were
23 releasing the information because we are thinking of saving
24 our lives." Did I read that correctly?

25 A. Yeah. "Saving lives."

1 Q. "Saving lives." Thank you.

2 And you know what now -- now that we've kind of read
3 a little bit about this, I assume you know exactly what
4 they're talking about because you and I have talked about it a
5 number of times at trial: The American Cancer Society --

6 A. Correct. Yeah. This is the summer 1954
7 announcement of the Hammond and Horn prospective study
8 results.

9 Q. Okay. And in this, it's reported at least in this
10 article that -- that the Hammond and Horn study results that
11 lung cancer deaths were at least three times and possibly nine
12 times as common among cigarette smokers as nonsmokers,
13 correct?

14 A. Yes.

15 Q. Okay. I'm going to -- here's Deposition Exhibit 18
16 will be our next one.

17 (Exhibit No. 18 was marked for identification.)

18 BY ATTORNEY HENNINGER:

19 Q. And here you go. It's another oldie, but goodie.

20 From The Baxter Bulletin, Mountain Home, and I'll
21 blow it up. Let's see -- let's first focus on the time. This
22 is from Thursday, June 2nd, 1960. Do you see the date on
23 that?

24 A. Yes.

25 Q. And the article I'm talking about -- I'm going to

1 blow this up some more here. Because it's a little hard to
2 see -- whoops.

3 Okay. Is: "Comments on the County Beat." Do you
4 see that, Dr. Proctor?

5 A. Yes.

6 Q. Okay. And then it continues, and there's a little
7 star separating it. And it stays, "The latest warning on
8 cigarette threat comes from National Tuberculosis Association,
9 which has issued a statement on these three points: There is
10 an alarming increase in deaths from lung cancer; two,
11 cigarette smoking is a major cause of lung cancer; three, the
12 risk of lung cancer increases with the number of cigarettes
13 smoked." Did I read that correctly?

14 A. Yes.

15 Q. So this June 2nd, 1960, Baxter Bulletin article
16 reports that cigarette smoking is a major cause of lung cancer
17 and that the risk of lung cancer increases with the number of
18 cigarettes smoked, correct?

19 A. Yes.

20 Q. The article also goes on to say -- let's see.

21 Okay. Up here, "Just as discouraging to those of us
22 who can't or won't give up the habit is another statement in
23 the report, which says that although research is in progress,
24 'no present method of treating tobacco or of filtering the
25 smoke has been proved to reduce the harmful effect of

1 cigarette smoking. Up to now, these harmful effects can be
2 avoided only by not smoking cigarettes.'" Did I read that
3 correctly?

4 A. Yes.

5 Q. And this June 2nd, 1960, Baxter Bulletin article
6 reports there's no present method of treating tobacco or
7 filtering the smoke has been proven to reduce the harmful
8 effect of cigarette smoking, correct?

9 A. Yes.

10 Q. And this article also says that the only way to
11 avoid those harmful effects is by not smoking cigarettes,
12 correct?

13 A. Right. I mean, there are other ways that they don't
14 seem to know about. You could make them noninhalable or
15 noncombustible or nonaddictive. And, certainly, elements of
16 that were already known.

17 Q. I'm going to go on now to Deposition Exhibit Number
18 19.

19 (Exhibit No. 19 was marked for identification.)

20 BY ATTORNEY HENNINGER:

21 Q. And this is another Baxter Bulletin article and the
22 date -- I'll blow it up some -- is October 11th, 1962. Do you
23 see that?

24 A. Yes.

25 Q. Okay. I'm going to blow up down here so maybe we

1 can -- "Dr. Peale speaks at medical event." Do you see where
2 I have that highlighted?

3 A. Yes. Norman Vincent Peale.

4 Q. Okay. And then it goes on to -- in this, it talks
5 about -- maybe so it's a little easier to see. He talks about
6 Ochsner from the Ochsner Clinic in New Orleans. Let me find
7 that part for you, Doctor?

8 A. Yeah. I see it. Yeah. It's --

9 Q. Oh, you do?

10 A. Yeah. If you go in -- right above that "Act 1"
11 headline, "Act 1 benefits" --

12 Q. Oh. There we go.

13 A. -- there.

14 Q. Thank you.

15 "Dr. Alton Ochsner" -- I'm going to blow that up --
16 "of the Ochsner Clinic at New Orleans told the festival goers
17 the risk of cigarette smoker incurring lung cancer is eight
18 times as great as that of a nonsmoker. The festival group
19 awarded the special certificate of honor to Danny Thomas after
20 that." Do you see where I read that?

21 A. Yes.

22 Q. All right. So, I'm going to go to another exhibit.
23 Dr. Proctor, this is going to be Exhibit Number 20, I believe.

24 (Exhibit No. 20 was marked for identification.)

25 BY ATTORNEY HENNINGER:

1 Q. All right. This is termed, "Health Hazard Federal
2 Report Scores Smoking." This is from the Muscatine Journal,
3 January 11th, 1964. Have you ever heard of the Muscatine
4 Journal of -- do you know where it's from?

5 A. No, I don't.

6 Q. Okay. All right. Well, what you see is that this
7 is -- it's actually an article. What this little "AP" means,
8 it's an Associated Press article that was picked up in a local
9 newspaper, correct?

10 A. Exactly.

11 Q. And this reports that "smoking cigarettes is a
12 health hazard that calls for corrective action and is a major
13 cause of lung cancer and other death-dealing disease,
14 especially in men, a blue-ribbon federal panel reported
15 yesterday. In short, the panel indicated the more you smoke,
16 the greater your risk of an early death." I read that
17 correctly, correct?

18 A. Yes.

19 Q. And I assume we all know what they're talking about,
20 this blue-ribbon panel is --

21 A. Yeah. They're talking about the Surgeon General's
22 report.

23 Q. Okay. And then it goes on to outline some of the
24 highlights from the Surgeon General's report. It goes on to
25 say, "Number one, cigarette smoking far outweighs other causes

1 of lung cancer in men and the data for women point in the same
2 direction." Number four is: "The risk of lung cancer
3 increases the longer you smoke and the more cigarettes you
4 smoke in a day. It lessens if you quit smoking." Number
5 five: "Cigarette smoking is the most important cause of
6 chronic bronchitis, the coughing, irritation of the bronchial
7 tubes, and increases the risk of death from heart -- from
8 death from that disease." Did I read that correctly?

9 A. Yes.

10 Q. Okay. This January 11th, 1964, Muscatine Journal
11 article reports on the 1964 Surgeon General's conclusion that
12 the risk of lung cancer increases the longer you smoke and the
13 more cigarettes you smoke in a day, correct?

14 A. Yes.

15 Q. And this article reports on the 1964 Surgeon
16 General's conclusion that cigarette smoking is the most
17 important cause of chronic bronchitis as well, correct?

18 A. Yes.

19 Q. Okay. Okay. Let's see -- all right. Give me one
20 second, Dr. Proctor. I apologize. I'm looking for the --
21 okay. Let me -- okay.

22 So, Exhibit Number 20 [sic] -- I'm going to share --
23 show you right now, Doctor -- okay. This is Exhibit Number
24 20, and it is entitled, "Teachers Told Warn Students of
25 Smoking." And I'll represent to you -- whoops. Don't have

1 the thing. Oh, yes. Here it is.

2 This is from the Arkansas Gazette, Sunday, April
3 3rd, 1960. Do you see that date?

4 A. Yes.

5 Q. Okay. And this, again, is one of those -- it's a
6 little bit more difficult to see, but it looks like one of
7 those AP, Associated Press, articles, does it not?

8 A. It does.

9 Q. Okay. And it goes on to say, "'Science teachers
10 should warn their students never to smoke cigarettes,' says a
11 cancer expert." Did I read that correctly?

12 A. Yes.

13 Q. So this 1960 -- April 1960, Arkansas Gazette article
14 says -- teachers should warn their students never to smoke
15 cigarettes, correct?

16 A. Yes.

17 Q. And then in the second paragraph, it goes on to say,
18 "'There is no method of treating tobacco or filtering smoke
19 that appreciably reduces the cancer risk,' Dr. John Heller
20 told the National Science Teachers Association convention this
21 week. Heller is the director of the National Cancer Institute
22 at Bethesda, Maryland." Did I read that correctly?

23 A. Yes.

24 Q. So this 1960 Arkansas Gazette article reports that
25 Dr. Heller, director of the National Cancer Institute, said

1 that there is no method of treating tobacco or filtering --
2 (inaudible) --

3 (Certified Stenographer clarification.)

4 BY ATTORNEY HENNINGER:

5 Q. This April 1960, Arkansas Gazette article reports
6 that Dr. Heller, director of the National Cancer Institute,
7 said there is no method of treating tobacco or filtering smoke
8 that appreciably reduces the cancer risk, correct?

9 A. Yeah. It's a paraphrase, but he apparently said
10 something like that.

11 Q. "Findings" -- the article also says -- and it says
12 here -- these are in quotes right here -- "'Findings imply
13 that persons who have never smoked at all have the best chance
14 of escaping lung cancer,' he said." Did I read that
15 correctly?

16 A. Yes.

17 Q. Okay. Let me go to another exhibit. This will be
18 Exhibit 21, I believe.

19 (Exhibit No. 21 was marked for identification.)

20 BY ATTORNEY HENNINGER:

21 Q. And the good news, Dr. Proctor, is I'm running out
22 of exhibits, so that -- we should all be happy about that.

23 A. Sounds good.

24 Q. Including myself.

25 All right. This is -- Exhibit 21 is an article

1 entitled, "Teachers to View Films at Cancer Society Event."
2 And it's down here -- and I'll see if we can blow it up. But
3 it's a little bit hard to read, but if I represented that this
4 was also from the Muscatine Journal dated March 7th, 1964, do
5 you have any reason to doubt that I'd represent this
6 accurately right now?

7 A. No.

8 Q. Okay. Trust me --

9 A. I always trust you.

10 Q. So it goes on to say -- the article says, "East
11 Central Iowa teachers" -- and do you have any idea whether or
12 not Ms. -- Mrs. Geist or Mr. Tully had any connection to Iowa?

13 A. No, but I can infer that from your question.

14 Q. "East Central Iowa teachers will -- a new film and
15 film strip on the smoking and lung cancer relationship
16 Tuesday, March 17 at Hotel Roosevelt, Cedar Rapids. Biology
17 teachers, coaches, student counselors and other teachers in
18 Muscatine County have been invited to attend." Did I read
19 that correctly?

20 A. Yes.

21 Q. The article also states that "Dr. Brown explained
22 that the new film strip, 'I'll Choose the High Road,' is for
23 students at the sixth grade level and attempts to warn those
24 students about the health risks of smoking before they start.
25 The film, 'Is Smoking Worth It?' is designed for junior and

1 senior high students. 'We want these young people to know the
2 facts about smoking, which the cancer society attempts to
3 teach instead of preach,' says Brown." Did I read that
4 correctly?

5 A. Yes.

6 Q. So this March 1964, Muscatine Journal article is
7 reporting on anti-smoking films for students for sixth grade,
8 junior and senior high school students, correct?

9 A. Yes.

10 Q. And that would be from sixth grade all the way up
11 through high school, correct?

12 A. Yes.

13 Q. Okay. Let's go on to another article. This will be
14 Exhibit 22.

15 (Exhibit No. 22 was marked for identification.)

16 BY ATTORNEY HENNINGER:

17 Q. Okay, Dr. Proctor. I have Exhibit 22 up on the
18 screen. This is from the Arkansas Gazette dated June 15th,
19 1968. It's entitled, "Programs Urged Against Smoking." The
20 article says -- I'll blow it up some since it's a tiny -- can
21 you read that okay, Dr. Proctor?

22 A. Yes.

23 Q. Okay. It says, "County tuberculosis and respiratory
24 disease committees of the Arkansas Tuberculosis and
25 Respiratory Disease Association were urged Friday by the

1 association's executive committee to develop and sponsor
2 active programs to prevent young people from becoming smokers
3 and to convince smokers they should stop." Did I read that
4 correctly?

5 A. Yes.

6 Q. And then it goes on to say, "The association, whose
7 president is William H. Wyatt, endorsed findings of the United
8 States Public Health Service and other medical groups that
9 cigarette smokers die younger than nonsmokers and risk
10 disability from lung cancer, chronic bronchitis, emphysema,
11 coronary heart disease and other diseases in proportion to the
12 number of cigarettes smoked daily and the number of years a
13 person has smoked. Stopping smoking, the committee said,
14 'almost always improves lung function and reduces or stops
15 cough and sputum production.' It also 'clearly reduces the
16 risk of illness or death from coronary heart disease, lung
17 cancer and emphysema." Did I read that correctly?

18 A. Yes.

19 Q. This June 1968, Arkansas Gazette article reports
20 that cigarette smokers die younger than nonsmokers and the
21 risk of disability from lung cancer, chronic bronchitis and
22 emphysema, and coronary heart disease, correct?

23 A. Yes.

24 Q. Okay. I was going to keep plowing through, but I
25 apologize because I need a comfort break. So I'm going to go

1 ahead and take a break here. And can we go ahead and make it
2 until 4:30. Is that okay?

3 A. That's fine with me.

4 (Brief recess taken from 4:17 p.m. to 4:32 p.m.)

5 BY ATTORNEY HENNINGER:

6 Q. So I'm going to continue. I'm going to put up on
7 the screen now, Dr. Proctor, what will be marked as Deposition
8 Exhibit 23.

9 (Exhibit No. 23 was marked for identification.)

10 BY ATTORNEY HENNINGER:

11 Q. And, you know, I looked on this, and I'll also tell
12 you it is an Exhibit ABF 001434, but this doesn't have where
13 it was published. So I'm going to represent to you,
14 Dr. Proctor, that this was published in the Muscatine, Iowa,
15 Journal in November 15th, 1977. Can you accept that
16 representation?

17 A. Yes.

18 Q. Okay. It is called -- the article is entitled,
19 "Smokeout Thursday." And it goes on to say, "A proclamation
20 has been issued by Mayor Evelyn" -- I'm not even going to
21 attempt to butcher her name, S-C-H-A-U-L-A-N-D -- "urging
22 Muscatine smokers to join in a day of freedom from cigarettes
23 Thursday." And that's something that you and I have talked
24 about at trial. You've testified about it. It's called, "The
25 Great -- the American Cancer Society's Great American

1 Smokeout," correct?

2 A. It is.

3 Q. And as this article reflects, "That is a day the
4 American Cancer Society has set aside for the Great American
5 Smokeout, and it's a statewide campaign aimed at getting
6 pledges from smokers willing to go a day without cigarettes."
7 Did I read that correctly?

8 A. Yeah. That's actually nationwide.

9 Q. Yes. But I guess since they're reporting it,
10 they're focused on the statewide efforts of Iowa, correct?

11 A. Yes.

12 Q. And this is a day that was a national campaign that
13 received some publicity of trying to get smokers to put down
14 smoking for at least one day, correct?

15 A. Yes.

16 Q. Okay. Then it goes on to say, "In connection with
17 the event, the American Cancer Society will have a display of
18 an opticscopic lung" -- and it's O-P-T-I-C-S-C-O-P-T-I-C --
19 "lung at the Musser Public Library on Wednesday and Thursday
20 and the Muscatine Mall on Friday and Saturday. The lung shows
21 a normal lung, cancerous lung and a lung from -- with
22 emphysema." Did I read that correctly?

23 A. Yes.

24 Q. This November 1977, Muscatine, Iowa, Journal article
25 is reporting on the American Cancer Society's Great American

1 Smokeout, correct?

2 A. It is.

3 Q. And it's also reporting that they were displaying
4 normal lungs, cancerous lungs and emphysematous lungs in the
5 community, correct?

6 A. Yes.

7 Q. Okay. And it was common for the -- sorry. It was
8 common for the American Cancer Society to have such displays
9 in communities to demonstrate the harms of smoking, correct?

10 A. I've seen them elsewhere.

11 Q. All right. So, I'm going to go to Exhibit 24 now.

12 (Exhibit No. 24 was marked for identification.)

13 BY ATTORNEY HENNINGER:

14 Q. Okay. It's sort of on this same topic. We see
15 "Dear Abby" from the Iowa City Press Citizen from November
16 19th, 1986, correct?

17 A. Yes.

18 Q. Okay. I'll blow it up so you can see it a little
19 better.

20 "Anyone can live without cigarettes for a day." Let
21 me see if I can get it to go up a little bit.

22 And that was an article in the "Dear Abby" column,
23 correct?

24 A. Yes.

25 Q. It goes on -- let me see -- to say here, "Tomorrow

1 will mark the tenth annual Great American Smokeout, an upbeat,
2 good-humored, one-day campaign to encourage smokers to quit
3 smoking for 24 hours -- just to prove that they can do it.
4 The idea was conceived by the American Cancer Society, which
5 insists that anyone who can live without a cigarette for 24
6 hours can quit forever. If you're hooked on cigarettes or
7 cigars and you really want to quit, why not start tomorrow --
8 just for 24 hours?" Did I read that correctly?

9 A. Yes.

10 Q. The article says as a smoker -- and it goes on --
11 let's see -- in here, but there's a portion in here and we can
12 find it in a second -- that says as a smoker you are ten times
13 more likely to die of lung cancer than a nonsmoker. Is that
14 something that would be reported in this type of article?

15 A. Yes.

16 Q. For example, it says it accounts -- it goes on to
17 say, "The following information may motivate you: According
18 to John" -- Banzhaf?

19 A. Yes --

20 Q. "The III, who is the executive director of the ASH,
21 Action on Smoking and Health, in Washington, lung cancer is
22 the single largest contributor to the total cancer rate. It
23 accounts for 25 percent of all cancer deaths in the United
24 States. It is estimated that" -- sorry. My contact is
25 messing up -- "85 percent of all lung cancer cases are due to

1 cigarette smoking. As a smoker, you are ten times more likely
2 to die of lung cancer than a nonsmoker." Did I read that
3 correctly?

4 A. Yes.

5 Q. Okay. We're going to go to Exhibit Number 25.

6 (Exhibit No. 25 was marked for identification.)

7 BY ATTORNEY HENNINGER:

8 Q. Does that show, "Saturday, Jackie Carlson"?

9 A. Yes.

10 Q. Okay. Because when I click my little thing, it
11 still showed the other -- the "Dear Abby," so I wanted to make
12 sure.

13 So I believe this is Exhibit 24 [sic]. And it is,
14 "Women and smoking," Muscatine, Iowa, Journal, May 23rd, 1981.
15 See if I can make it smaller, if it shows that. I'll go
16 ahead -- there's the Muscatine, Iowa, Journal, Saturday, May
17 23rd, 1981. It is also an exhibit identified as ABF 001470.

18 But I'll go a little bit smaller. There we go.

19 The article says that "women's smoking patterns are
20 becoming more like men's, and more women are developing lung
21 cancer. During the past ten years, women's death rates from
22 lung cancer have doubled according to the American Cancer
23 Society" -- sorry, let me go down -- "scientists know that 80
24 percent of lung cancer cases in the United States are caused
25 by cigarette smoking. The risk increases with the amount and

1 length of time smoked and decreases gradually after a smoker
2 breaks the habit." Did I read that correctly?

3 A. Yes.

4 Q. All right. Okay.

5 ATTORNEY HENNINGER: And, Lisa, did I accidentally
6 refer to that last exhibit -- is that 24 or was that 25?

7 (Off the record discussion.)

8 BY ATTORNEY HENNINGER:

9 Q. Okay. So, now, we're at Exhibit 26.

10 (Exhibit No. 26 was marked for identification.)

11 BY ATTORNEY HENNINGER:

12 Q. And this should be a Saturday, October 15th, 1983,
13 article from the Iowa City Press Citizen up in the top right.
14 Is that what you're seeing on your screen, Dr. Proctor?

15 A. Yes. On the cartoon page.

16 Q. Yes. And then there's a thing that says, "Timothy
17 Johnson." Do you see that?

18 A. Yes.

19 Q. Okay. And it says, "Lung cancer catching up to
20 breast cancer as killer." Did I read that correctly?

21 A. Yes.

22 Q. All right. So let me go see if I can't blow this up
23 some.

24 Okay. So the first paragraph says, "It's apparent
25 lung cancer is slowly but surely catching up with breast

1 cancer and soon may be the number one cancer killer of
2 American women." Did I read that correctly?

3 A. Yes.

4 Q. And it goes on it give some statistics, "As recently
5 as 1978, 34,000 American women died of breast cancer a year,
6 while 24,000 died of lung cancer. This year, an estimated
7 37,200 women will die of breast cancer, while 34,000 will die
8 of lung cancer." Did I read that correctly?

9 A. Yes.

10 Q. Then it also goes on to talk about -- down here in
11 this paragraph, "The reason for the dramatic increase in lung
12 cancer that has occurred in American women since World War II
13 can be pinpointed quite easily, colon, Cigarette smoking."
14 Did I read that correctly?

15 A. Yes.

16 Q. Let's see. I'm trying to find -- okay. Then it
17 goes on to state that -- down here -- I'm trying to figure it
18 out, but this doctor or this Timothy Johnson -- do you know
19 whether or not he is a doctor or not?

20 A. I don't.

21 Q. Okay. Let me find it. If I were to -- oh, here it
22 is. Sorry. Found it.

23 Do you see here kind of the italicized portion?

24 A. Yes.

25 Q. Says, "Dr. Johnson is the director of Lay Health

1 Information at Harvard University Medical School and holds
2 joint clinical instructor positions in medicine at Harvard and
3 the Massachusetts General Hospital." And then it goes on to
4 say, "Questions should be mailed to Dr. Timothy Johnson, care
5 of the Chicago Tribune." Did I read that correctly?

6 A. Yes.

7 Q. All right, Dr. Proctor. We're going to go to
8 Exhibit 27.

9 (Exhibit No. 27 was marked for identification.)

10 BY ATTORNEY HENNINGER:

11 Q. Which I believe is the last exhibit I have to show
12 you.

13 A. Great.

14 Q. At least the last one that -- I have here in my
15 arsenal, I believe. Here we go.

16 All right. This is another article -- Number 27 is
17 an article. Says, "Iowa City Press Citizen, Monday, April
18 8th, 1980." Do you see that up in the right-hand corner, sir?

19 A. 1985.

20 Q. Yeah. "Study links rise in lung cancer rate to
21 smoking," that's the title of the article, correct?

22 A. Yes.

23 Q. Says, "A rapid rise in lung cancer among Iowa women
24 can be blamed on an increase in cigarette smoking by women,
25 according to a study by the -- by an agency affiliated with

1 the University of Iowa. The study conducted by the Iowa
2 Health Registry showed the rate of lung cancer among Iowa
3 women is rising faster than any other type of cancer in the
4 state." Did I read that correctly?

5 A. Yes.

6 Q. Okay. For now, Dr. Proctor, I'm going to look
7 through my notes, but I am going to thank you for your time
8 and say that, subject to anything showing up on my notes, I'm
9 going to pass you to the next person for questioning. Thank
10 you?

11 A. Okay. Thank you.

12 ATTORNEY RUIZ: Bruce, is that me?

13 ATTORNEY TEPIKAN: Yeah. At this point,
14 Dr. Proctor, I don't have any questions for you.

15 THE WITNESS: Great. Thank you.

16 CROSS-EXAMINATION

17 BY ATTORNEY RUIZ:

18 Q. Good afternoon, Dr. Proctor. My name is Maria --

19 A. Good afternoon.

20 Q. -- Ruiz. I do believe we've met at some trial, but
21 I couldn't even tell you when. But it's nice to see you
22 again. I just have a couple of questions for you.

23 A. Okay.

24 Q. Based on your review of the record in this case,
25 you're aware that Martin Tully never used a cigarette

1 manufactured by Liggett, right?

2 A. That's my understanding.

3 Q. Okay. So, you would agree with me that there's
4 nothing that Liggett would have put out into the public that
5 would have caused Mr. Tully to begin smoking?

6 A. No --

7 ATTORNEY REYES: Object to form.

8 A. -- I wouldn't agree with that. I mean, the --

9 (Certified Stenographer clarification.)

10 A. No. I would not agree with that because, you know,
11 an ad for one is also an ad for all in the sense, and Liggett,
12 of course, was promoting its own cigarettes and from time to
13 time was also involved in the conspiracy. And, therefore,
14 anything that Liggett is doing pursuant to that conspiracy is
15 also creating a culture of acceptance for cigarettes, so I
16 would not agree with the way you phrased your question.

17 BY ATTORNEY RUIZ:

18 Q. And you -- I believe you've testified to this
19 before, but advertising isn't part of what you consider to be
20 the conspiracy, right?

21 A. No. That's not true. Advertising is part and not
22 part of the conspiracy. Obviously, each company is trying to
23 sell the most cigarettes. But on the other hand, within
24 advertising, what you could not say was governed by the
25 conspiracy. So, there's a -- there's a collaborative effort

1 that governs what could or could not be said about --
2 especially in the realm of health and safety. And that
3 definitely infects all of the advertising. So, in other
4 words, if concealment is part of the fraud, then what is not
5 said is part of the conspiracy, and that is true of
6 advertising as of other activities.

7 Q. Liggett didn't conspire with anyone to convince
8 Martin Tully to smoke Marlboro cigarettes, right?

9 A. Strictly speaking, that would be true in that narrow
10 formulation.

11 Q. And I'll ask you some more questions for Verna
12 Geist. Do you know what Liggett brand cigarettes Verna Geist
13 ever smoked?

14 A. No.

15 Q. Okay. Are you familiar with a brand called Pyramid?

16 A. Yes.

17 Q. That brand of cigarettes didn't come out on the
18 market until 1988?

19 A. Right.

20 Q. Okay. Would you agree with me that Liggett didn't
21 advertise -- didn't conspire with anyone to convince Verna
22 Geist to smoke the non-Liggett brand cigarettes that she
23 smoked?

24 ATTORNEY REYES: Objection. Form.

25 A. I didn't really understand that question.

1 BY ATTORNEY RUIZ:

2 Q. Would you agree with me that Liggett did not agree
3 with anyone to advertise to convince Verna Geist to smoke the
4 non-Liggett brand cigarettes that she smoked?

5 ATTORNEY REYES: Objection. Form.

6 A. In that odd formulation, that could be true.
7 It's -- it's hard to understand what you said, but perhaps --
8 what you said makes some sense, though it's oddly phrased.

9 BY ATTORNEY RUIZ:

10 Q. Okay. After 1997, the Pyramid cigarettes that Verna
11 Geist might have smoked had warning labels, correct?

12 A. Yes.

13 Q. And they had Liggett-specific warning labels that
14 were different from the labels that were on the other
15 cigarettes, right?

16 A. Eventually, Liggett does make a claim about
17 addiction which the other companies did not make.

18 Q. Liggett isn't making a claim about addiction on the
19 cigarettes. Liggett is specifically warning its users about
20 addiction, correct?

21 A. Yes. That's correct.

22 Q. All right. You mentioned the CTR in your report,
23 right?

24 A. Yes.

25 Q. And you've testified before about CTR special

1 projects?

2 A. Yes.

3 Q. I don't want to rehash that testimony. Liggett
4 resigned from the CTR in 1968, right?

5 A. Correct.

6 Q. You've also previously testified about meetings and
7 various representatives from other organizations made to
8 Arthur D. Little Laboratories; is that --

9 A. I think so, yeah -- yeah.

10 Q. Okay. American Cancer Society visited Arthur D.
11 Little Laboratories?

12 A. Yes.

13 Q. Okay. I'd like to show you a document, if I may.
14 Just give me a second to pull it up. Because I'm not as handy
15 as Ursula.

16 ATTORNEY HENNINGER: That's scary.

17 ATTORNEY RUIZ: It should scare us all.

18 BY ATTORNEY RUIZ:

19 Q. Can you see the document that I put on the screen,
20 Dr. Proctor?

21 A. Yes.

22 Q. Okay. This is a 1956 document?

23 A. Yes.

24 Q. Have you seen this document before?

25 A. Probably.

1 Q. And it reflects that in 1956, Liggett authorized ADL
2 to give the Public Health Service representatives a tour of
3 the ADL Carlton Street laboratory and informed them of the
4 status of the repeat mouse skin painting studies, right?

5 A. Yes.

6 Q. And this exhibit also makes clear that ADL and
7 Liggett were also coordinating with Dr. Winder regarding those
8 studies, right?

9 A. Yes.

10 Q. Have you reviewed Liggett witness testimony from the
11 Cipollone case?

12 A. Probably, yeah.

13 Q. Are you generally familiar with that testimony?

14 A. Yes.

15 ATTORNEY RUIZ: That's all I have. And for Lisa, do
16 you need the spelling of "Cipollone"?

17 CERTIFIED STENOGRAPHER: I was going to ask.

18 Thanks.

19 ATTORNEY RUIZ: C-I-P-O-L-L-O-N-E. And I'm sure
20 others will correct me if I got that wrong.

21 CERTIFIED STENOGRAPHER: Thank you.

22 ATTORNEY RUIZ: Thank you, Dr. Proctor. I don't
23 have any other questions.

24 THE WITNESS: Thank you.

25 ATTORNEY REYES: Kim, do you have any questions?

1 ATTORNEY WALD: I do not.

2 ATTORNEY REYES: I have a few questions,

3 Dr. Proctor.

4 THE WITNESS: Okay.

5 ATTORNEY HENNINGER: And same objection for one --

6 ATTORNEY REYES: Yes.

7 ATTORNEY HENNINGER: Thank you.

8 ATTORNEY REYES: You want to put it on the record?

9 ATTORNEY HENNINGER: Yes. Objection for one

10 Defendant is good for all Defendants; is that correct?

11 ATTORNEY REYES: Yes, ma'am.

12 ATTORNEY HENNINGER: Thank you.

13 CROSS-EXAMINATION

14 BY ATTORNEY REYES:

15 Q. Dr. Proctor, you were asked a lot of questions
16 regarding polls dealing with smoking and health?

17 A. Regarding -- oh, polls. Yes.

18 Q. Dealing with smoking and health?

19 A. Yes.

20 Q. Does simply asking someone whether they believe
21 smoking can impact a person's health a good measure of a
22 person's understanding of the dangers of smoking?

23 ATTORNEY HENNINGER: Objection.

24 A. No. It's a very weak measure because just asking
25 whether something is good or bad for you doesn't tell you

1 anything, really.

2 BY ATTORNEY REYES:

3 Q. Are there diseases that are caused by smoking in
4 which people have a poor understanding of?

5 A. Yes.

6 Q. What are some examples of diseases that cigarette
7 users do not contemplate or have a poor understanding of?

8 A. Well, that would be --

9 ATTORNEY HENNINGER: Objection. Are we talking --

10 THE WITNESS: Pardon me?

11 ATTORNEY HENNINGER: I'm sorry. Are we talking now?
12 Time frame?

13 ATTORNEY REYES: Now.

14 ATTORNEY HENNINGER: Okay.

15 A. Yes. And both now and in the past, I think people
16 have a poor understanding of the nature and the magnitude and
17 the severity of various illnesses, things like Buerger's
18 disease, amputations. Very few smokers that I've ever met or
19 any of my students know that cigarettes are a leading cause of
20 amputations, that cigarettes cause birth defects, spontaneous
21 abortions, macular degeneration and, therefore, blindness. So
22 I think the variety of diseases and the severity of diseases
23 are even today poorly understood by -- especially by smokers
24 but also by nonsmokers.

25 BY ATTORNEY REYES:

1 Q. How does having a poor understanding of the diseases
2 you just mentioned caused by smoking affect a cigarette
3 consumer's expectations?

4 A. I think it --

5 ATTORNEY HENNINGER: Objection.

6 A. I think it create -- it means that the cigarettes
7 people are smoking now are creating false expectations. I
8 think people do not have accurate expectations. I think very
9 few people know that if you smoke for a long period of time,
10 most likely, your cigarettes will kill you. I think most
11 people don't understand the causal relationship between the
12 various diseases I mentioned, the blindness, the amputations,
13 the Buerger's -- Buerger disease, the spontaneous abortions.
14 And maybe most significantly, I think people have a poor
15 understanding of how different types of cigarettes create
16 disease. In other words, I think most people still have a
17 misunderstanding that a filtered cigarette would be safer.
18 BY ATTORNEY REYES:

19 Q. You were asked questions regarding polls dealing
20 with smoking causing lung cancer. Do you recall those?

21 A. Yes.

22 Q. Based on your research, do cigarette users have a
23 poor understanding of the probabilities or likelihood of
24 developing lung cancer?

25 A. Yes --

1 ATTORNEY HENNINGER: Objection.

2 A. Yes. I think so. I think they -- as we've seen
3 from the Gallup polls, most people realize there's a
4 connection between smoking and lung cancer and that smoking
5 causes -- can cause lung cancer. But all the polls we saw
6 were simply asking is it one of the causes. And I think very
7 few smokers understand that almost all lung cancers are caused
8 by cigarettes. Especially when you think about the people
9 just beginning to smoke.

10 BY ATTORNEY REYES:

11 Q. Based on your research, do cigarette users have a
12 poor understanding of what it means to be diagnosed with stage
13 four lung cancer?

14 ATTORNEY HENNINGER: Objection.

15 A. I think most people would not understand what that
16 means. I think people would probably realize that's not a
17 good thing, but I don't think people have a good understanding
18 of how likely you are to die if you are diagnosed with stage
19 four lung cancer or any other type of lung cancer.

20 BY ATTORNEY REYES:

21 Q. You mentioned earlier the reasons why you believe
22 that cigarettes are defective --

23 A. Yes.

24 Q. -- can you state that again?

25 A. Well, the main reason -- I mentioned that there are

1 principal defects and then subsidiary defects. The principal
2 defects would be inhalation or inhability, addiction and
3 combustion. Those are the -- those are the three principal
4 features of cigarettes -- design features of cigarettes,
5 defects of cigarettes, because they make cigarettes
6 unnecessarily hazardous, needlessly hazardous, avoidably
7 hazardous and, therefore, unreasonably hazardous. There are
8 also -- I mentioned subsidiary defects or minor defects which
9 include anything that's involved in a fraudulent
10 representation. So the fact that certain cigarettes are
11 called filtered, even though they don't filter, even though
12 historically certain cigarettes were called low tar, even
13 though they were not in fact low tar, the fact that certain
14 cigarettes were called lights, even though they were not
15 light, the fact that cigarettes were called natural or
16 additive-free, those are accurate in certain respects but
17 nonetheless fraudulent because they imply safety. So a lot of
18 people perceive an additive-free cigarette to be safer, even
19 though that is, in fact, not true. So there is a whole series
20 of subsidiary frauds that by virtue of leading to false
21 expectations are defective in that sense.

22 Q. Based on your research, do ordinary cigarette
23 consumers have a poor understanding that cigarettes are
24 purposely designed to be inhalable?

25 ATTORNEY HENNINGER: Objection.

1 A. Well, I think that -- that, in a way, goes to
2 intent, do they understand the intent of the design. But I
3 think -- to answer your question, I think to what you're
4 really asking about, is I think most people don't realize that
5 cigarettes have been designed in such a way that they are --
6 that they cause more harm than necessary. So I think most
7 people are not well-acquainted with the fact that cigarettes
8 are -- are defective. I think that's not well understood by
9 most people. Even some people in the public health community
10 get this all screwed up, right?

11 BY ATTORNEY REYES:

12 Q. Based on your research, do ordinary cigarette
13 consumers have a poor understanding of the true addictive
14 nature of nicotine?

15 ATTORNEY HENNINGER: Objection.

16 A. I don't think most people know that nicotine is as
17 addictive as heroin or cocaine. I don't think most people
18 understand that if you have only a few cigarettes you are
19 likely to become a regular smoker. I don't think most people
20 understand how difficult cigarettes are to quit. Apart from
21 those people who have tried. In other words, my view is that
22 once people have tried, they -- they often do come to a kind
23 of expert understanding of how difficult it is to quit. So in
24 that sense, regular smokers who try to quit, I think they do
25 start learning, obviously, how difficult it is to quit. But

1 until people have tried to quit, I think very few people
2 understand how hard it would be. That's why I think -- that's
3 one reason I think it took so long for cigarettes to be
4 recognized as addictive because in the 1940s, and early 1950s,
5 they were very few people actually trying to quit. And,
6 therefore, very few people realizing how difficult it was to
7 quit.

8 BY ATTORNEY REYES:

9 Q. You were asked questions about newspaper articles
10 from The Baxter Bulletin, where there was mention that
11 cigarettes were causing harm. Do you recall some of those?

12 A. Yes.

13 Q. Did the tobacco cartel do anything to combat those
14 types of messages?

15 ATTORNEY HENNINGER: Objection.

16 A. Yes. The whole point of the conspiracy was to
17 dilute, oppose and distract from that news. So, if there had
18 not been articles such as those we've seen, there would have
19 been no need for a conspiracy from the industry's point of
20 view. The whole point of the conspiracy is to distract from
21 and counter those -- that information coming out into -- into
22 the public.

23 BY ATTORNEY REYES:

24 Q. You were shown an article from 1960, titled,
25 "Teachers Told Warn Students of Smoking Cigarettes." Do you

1 recall that?

2 A. Yes.

3 Q. Did the tobacco cartel embrace these types of
4 messages or did they find new and creative ways to lure kids
5 to continue smoking?

6 A. Well, again --

7 ATTORNEY HENNINGER: Objection. Sorry.

8 A. -- that's the whole point of the conspiracy, is to
9 combat that growing scientific consensus and to find ways to
10 keep people smoking. That's the whole point of the denial
11 campaign. It's also the whole point of the reassurance
12 campaign through things like lights, low tars, filters. The
13 point in each instance is to keep people smoking in light of
14 this growing publicity of hazards.

15 BY ATTORNEY REYES:

16 Q. Can you talk a little bit about the Joe Camel
17 campaign? Is that an example of the tobacco cartel finding
18 creative ways to trap kids into a life of disease and
19 addiction?

20 ATTORNEY HENNINGER: Objection --

21 A. Well, the -- strictly speaking, the Camel campaign
22 is not a campaign by the industry. It's a campaign by one
23 company to attract as many people as they could to their
24 brand, in particular, by using that cartoon imagery to attract
25 underage people as well. And so I think if you qualify it,

1 that it's not really an example of the industry doing
2 something. In that particular case, it's an example of one
3 company trying to target kids.

4 BY ATTORNEY REYES:

5 Q. Was it successful, those types of marketing
6 techniques, of using cartoons? Were they successful in
7 targeting kids?

8 ATTORNEY HENNINGER: Objection --

9 A. The Joe Camel -- the Joe Camel campaign was
10 successful in capturing a sizable fraction of the teenage
11 market, which it had not had before. Camel was an aging
12 brand, a brand of old people, in the 1980s, and Joe Camel
13 helped propel that to a leading youth attract brand. It never
14 achieved the same youth marketing stature as Marlboro, but it
15 was basically tied with Newport as the -- one of the leading
16 underage target brands.

17 BY ATTORNEY REYES:

18 Q. I want you to assume that Verna Geist was 32 years
19 old in 1994.

20 A. Okay.

21 Q. Did the tobacco cartel get called to testify in
22 front of Congress in 1994, in that year?

23 ATTORNEY HENNINGER: Objection.

24 A. Yes.

25 BY ATTORNEY REYES:

1 Q. What was the tobacco cartel's position in that
2 hearing?

3 ATTORNEY HENNINGER: Objection --

4 A. Uniformly, the cigarette makers denied that
5 cigarettes cause cancer. They denied that nicotine was
6 addictive. They denied that there was any harm caused by
7 cigarettes.

8 BY ATTORNEY REYES:

9 Q. And what was the purpose of that hearing from the
10 government's standpoint? Were they trying to, you know, for
11 lack of a better term, just trying to save lives?

12 ATTORNEY HENNINGER: Objection.

13 A. I think the Waxman hearing was designed to get the
14 truth out and to have the industry go on record with the --
15 the denial campaign to sort of force a crisis in a way. In
16 light of the continued denial. You have to remember the
17 secret documents were coming out. The ingredients list was
18 coming out. So the manipulation of nicotine question was
19 heating up. The question of FDA, potential regulatory action
20 was coming up. It's the Clinton administration. So a lot of
21 things are heating up with the idea of really exposing the --
22 the denial campaign. That's what's really -- really going on,
23 getting it clearly outlined.

24 BY ATTORNEY REYES:

25 Q. After the 1994 congressional hearings, did tobacco

1 cartels continue to find new and creative ways to keep people
2 smoking?

3 ATTORNEY HENNINGER: Objection.

4 A. Yes. I mean, throughout that period, they are
5 adapting. They're adjusting their behavior.

6 BY ATTORNEY REYES:

7 Q. Can you explain what the Winston No Bull campaign
8 was about?

9 ATTORNEY HENNINGER: Objection.

10 A. That's Reynolds's effort to jump on the healthier
11 cigarette train with a new type of fraud, which was the no
12 additives fraud. Many of the companies had explored,
13 typically, on a smaller -- as a smaller-scale operation, a
14 so-called additive-free or an all-natural cigarette. And
15 Reynolds put more money into this than the other companies.
16 And the flagship brand for that effort was Winston, which, by
17 the late 1990s, was being advertised as an additive --
18 additive-free cigarette. And that was a deception because the
19 suggestion was made indirectly -- not directly, but
20 indirectly, that this would be a safer cigarette and -- when,
21 in fact, it was not a safer cigarette.

22 BY ATTORNEY REYES:

23 Q. How did the Winston No Bull campaign affect the
24 cigarette consumer expectations regarding smoking and health?

25 ATTORNEY HENNINGER: Objection --

1 A. It created false expectations by suggesting that
2 this type of cigarette would be a safer cigarette when that
3 was not true.

4 BY ATTORNEY REYES:

5 Q. Was it successful in misleading cigarette consumers
6 into believing cigarettes were less dangerous than they
7 actually were?

8 ATTORNEY HENNINGER: Objection --

9 A. It was successful for a time, but eventually, due to
10 historical circumstances, other cigarettes were more
11 successful, namely American Spirit, notably, which indirectly
12 is eventually bought by Reynolds. But Winston drops out as
13 the flagship brand for the no-additive, natural direction, but
14 for a time, it was successful. It definitely sold many tens
15 of billions of cigarettes, but it was eventually eclipsed by
16 other so-called natural and additive-free cigarettes, like
17 American Spirit, but that's -- that's ten years later.

18 ATTORNEY REYES: Thank you, Dr. Proctor. I have no
19 further questions.

20 THE WITNESS: Thank you.

21 REDIRECT EXAMINATION

22 BY ATTORNEY HENNINGER:

23 Q. I have just a couple follow-up questions,
24 Dr. Proctor, based on what Mr. Reyes asked you.

25 You answered a bunch of questions that he posed to

1 you about the general cigarette consumer, such as what was
2 the -- did they have a poor understanding of diseases caused
3 by smoking, did they have a poor understanding of addiction.
4 Do you remember those types of questions?

5 A. Yes.

6 Q. And you answered them as to cigarette smokers in
7 general, correct?

8 A. Yes.

9 Q. Just to reiterate, you do not have any information
10 specifically as to what Mrs. Verna Geist thought or believed
11 or knew about the dangers of smoking or their addictiveness of
12 smoking at any point in time, correct?

13 A. That's correct.

14 Q. And the same is true: You do not have any
15 information as to what Mr. Martin Tully knew or did not know
16 or heard or any of the information he had about the health
17 risks of smoking or the addictive nature of smoking, correct?

18 A. Well, I know what was not provided to him, but
19 you're correct that I don't know what he received. I don't
20 know what he thought.

21 Q. Fair enough. And --

22 A. You -- yeah. You put it as if -- as he had certain
23 information, but I think what you really meant is: Do I know
24 what he knew? And the answer is I do not.

25 Q. And that's a very good point, so let me make sure I

1 have a clean question --

2 A. Yeah.

3 Q. -- for somebody maybe to use at trial.

4 You do not have any information as to what

5 Mr. Martin Tully specifically knew about the dangers of

6 smoking or believed about the dangers of smoking or their

7 addictiveness at any point in time, correct?

8 A. That's correct.

9 Q. And with regard to questions related to smokers

10 understanding what it means to be diagnosed with stage four

11 lung cancer, again, that is something you do not know whether

12 or not it applies to Mr. Geist or Mr. Tully -- Mrs. Geist or

13 Mr. Tully, correct?

14 A. Correct.

15 Q. Now, there was some questions you were asked about

16 Joe Camel earlier. Do you know whether or not any of the

17 individuals who smoked in these cases, Tully or Geist, were

18 smokers of Camel cigarettes?

19 A. No.

20 Q. Do you know if either of them reported even remotely

21 seeing a Joe Camel advertisement in their depositions or

22 Mr. Geist's deposition?

23 A. No.

24 Q. You were asked a number of questions about the No

25 Bull campaign or the additive-free campaign that Winston

1 cigarettes ran at one point. Just to be clear, you do not
2 have any information specifically as to what Mrs. Geist may
3 have thought or -- about the No Bull or additive-free Winston
4 campaign, if she was even exposed to it, correct?

5 A. Correct. As to what she actually knew, I --
6 (Certified Stenographer clarification.)

7 THE WITNESS: That's correct.

8 I don't know what she actually knew or thought about
9 that.

10 BY ATTORNEY HENNINGER:

11 Q. Okay. And your -- you answered some questions for
12 Mr. Reyes about how consumers' expectations may have been
13 altered by various advertising campaigns that the cigarette
14 manufacturers had over times, but you are not testifying
15 specifically as to Mrs. Geist's consumer expectations or her
16 expectations, correct?

17 A. Yeah. The answers I was giving are with regard to
18 consumers in general.

19 Q. Okay. And that -- same for Mr. Tully, correct?

20 A. Yes.

21 ATTORNEY HENNINGER: Okay. I believe that I have
22 now no further follow-up questions, Dr. Proctor. Thank
23 you for your time.

24 THE WITNESS: Thank you.

25 ATTORNEY REYES: Thank you.

1 Madam Court Reporter, we're going to order just one
2 copy for me. I don't think Ms. Wald is going to order a
3 copy.

4 (The videoconferenced videotaped deposition of
5 ROBERT PROCTOR, PH.D., concluded at 2:15 p.m. PST
6 Reading and signing were not waived.)

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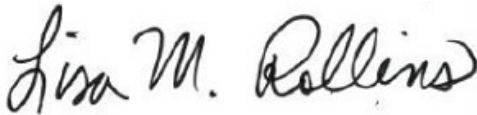
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CERTIFICATE OF OATH

STATE OF FLORIDA }
COUNTY OF SARASOTA }

I, the undersigned authority, certify that
ROBERT PROCTOR, PH.D. appeared remotely via video conference
and was duly sworn on Tuesday, January 18, 2022.



Lisa M. Rollins, RPR, FPR
Notary Public - State of Florida
My Commission No. HH 111560
Expires: July 1, 2025

Personally Known _____
OR Produced Identification X
Type of Identification Produced: Driver's License

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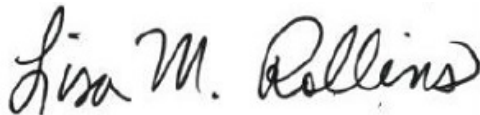
DEPOSITION CERTIFICATE

STATE OF FLORIDA }
COUNTY OF SARASOTA }

I, LISA M. ROLLINS, Registered Professional
Reporter, Florida Professional Reporter, Notary Public in and
for the State of Florida at Large, do hereby certify that I
was authorized to and did stenographically report the
foregoing videoconferenced deposition of ROBERT PROCTOR,
PH.D., and that the transcript is a true record of the
testimony given by the witness.

I FURTHER CERTIFY that I am neither an attorney nor
counsel for the parties to this cause, nor a relative or
employee of any attorney or party connected with this
litigation, and that I have no financial interest in the
outcome of this action.

IN WITNESS WHEREOF, I have hereunto subscribed my
name and affixed my seal this 26th day of January, 2022, at
City of Sarasota, Sarasota County, Florida.



Lisa M. Rollins, RPR, FPR, Notary Public
State of Florida at Large

1 RE: Tully vs. Philip Morris USA, Inc., et.al.
CASE NO: A-19-807657
2 DATE OF DEPOSITION: Tuesday, January 18, 2022

3 ERRATA SHEET

4 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

5 PAGE # LINE # DESCRIPTION

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19 Under penalties of perjury, I declare that I have read my
20 deposition and that it is true and correct subject to any
changes in form or substance entered here.

21

22

23
24 ROBERT PROCTOR, PH.D.

DATE

25

MARTIN TULLY, ET AL. vs PHILIP MORRIS USA, INC., ET AL.

Robert Proctor, Ph.D. on 01/18/2022

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