

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

VOLUME 14 (Pages 1105-1160)

IN RE: ENGLE PROGENY CASES CASE NO.: 2008-CA-15000
TOBACCO LITIGATION DIVISION: Tobacco

Pertains To: Elaine Jordan
Case No. 2013-CA-8903-XXXX-MA

Jury Trial before The Honorable Virginia Norton,
Circuit Court Judge, in the above-entitled action,
Courtroom 601, at the Duval County Courthouse, 501 West
Adams Street, Jacksonville, Florida, on Thursday, July
16, 2015, at 1:45 p.m., before Terry T. Hurley,
Registered Professional Reporter, and Notary Public in
and for the State of Florida at Large.

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1 THE COURT: Okay. All rise for the jury,
2 please.

3 MR. BAILEY: Jurors entering the courtroom.
4 (The jury returned to the courtroom, was seated
5 in the jury box, and the following further
6 proceedings were had.)

7 THE COURT: Welcome back everyone. I hope
8 everyone had a very nice lunch. I do hear it's
9 someone's birthday on the jury.

10 Whose birthday is it?
11 A JUROR: It's mine.

12 THE COURT: Happy birthday. We're going to
13 have to do a belated celebration.

14 MR. COFER: Your Honor should we sing?
15 THE COURT: We can sing.

16 A JUROR: No, no.
17 THE COURT: We'll do something fun. We'll do
18 something tomorrow for you.
19 Please, be seated.

20 THE COURT: All right. Please proceed, sir.
21 MR. COFER: Thank you. May it please the
22 court?

23 Counsel, Mrs. Jordan, members of the jury, good
24 afternoon. In 1963 or 1964 when Elaine Jordan was
25 14 years old she was at a carnival with some

1 friends, and all of her friends were smoking, so she
2 decided she wanted to smoke too. She will tell you
3 that she didn't want to be the one who didn't smoke,
4 and she wanted to fit in with the crowd.

5 So she took that cigarette and she inhaled that
6 smoke into her lungs, and it made her gag, and it
7 made her cough, and it made her sick to her stomach.
8 And she will tell you it wasn't a very pleasant
9 experience.

10 The next day she was at school and she decided
11 she wanted to try another cigarette, so she and her
12 friends went into the bathroom to smoke, because
13 smoking wasn't allowed in school, so she had to hide
14 it from her teachers. She will tell you that second
15 cigarette was pretty much like the first cigarette,
16 except she said it was getting a little better.

17 For the next few years Mrs. Jordan would
18 occasionally get cigarettes from some friends, and
19 she will tell you she took some cigarettes from some
20 convenience stores, and she occasionally would sneak
21 cigarettes from her dad's cigarettes packs. But she
22 didn't sneak her dad's cigarettes very much, because
23 he smoked menthol, and she didn't like the taste of
24 menthol. But when she would sneak her dad's
25 cigarettes she would hide it because she knew her

1 dad didn't want her smoking.

2 Now, plaintiff's experts will tell you that one
3 of the most important factors in whether someone
4 smokes is whether their friends and family smoke,
5 and the evidence will be, members of the jury, that
6 most of the important people in Mrs. Jordan's life
7 were smokers.

8 Her dad smoked until 1970, when he died of a
9 stroke and emphysema from smoking. Her brothers and
10 sisters smoked, both of her husbands smoked, and her
11 children smoked. The evidence will be that given
12 the number of people in Mrs. Jordan's life that
13 smoked it's not a surprise that she was a smoker
14 too.

15 Now, I want to talk a little bit about
16 Mrs. Jordan's life, and I brought a timeline with me
17 that will hopefully help you follow along. At the
18 top of the timeline are some important events in
19 Mrs. Jordan's life.

20 Can everybody see that okay? Can you all see
21 it? I've actually got two. I'll hold this one up.
22 I don't have room for two easels.

23 At the bottom are events, information about the
24 risks of smoking. Okay. So the top is Mrs. Jordan
25 and the bottom is information about the risks of

1 smoking.

2 As you can see, Elaine Jordan was born in Alma,
3 Georgia on June 9, 1949. She moved to Jacksonville
4 by the time she was in third grade. I think Ms.
5 Shamp said she was nine years old at the time. And
6 as I told you, she had her first cigarette in 1963
7 or 1964 when she was 14 years old.

8 In 1965 or '66, after the 9th grade,
9 Mrs. Jordan dropped out of school. She'll tell you
10 that all her friends were quitting, it was just the
11 thing to do, so she quit school too.

12 In late December, or early 1966, when she was
13 16 years old Mrs. Jordan became pregnant with her
14 first child. She was living at home with her
15 parents, and that's when she decided to become a
16 regular smoker. And her parents told her that she
17 shouldn't smoke, that she was too young to smoke,
18 but she decided to smoke anyway.

19 So when she started buying her own cigarettes
20 the brand she bought was Marlboro, made by Philip
21 Morris. And the reason she bought Marlboro was
22 because everyone else was smoking Marlboro and she
23 liked the taste.

24 On January 1, 1966, about the same time -- and
25 you can see it on your screens in front of you too

1 -- about the same time Mrs. Jordan became a regular
 2 smoker the first warning label went on the cigarette
 3 pack. And you can see what it says: Caution.
 4 Cigarette smoking may be hazardous to your health.
 5 From that time on, from January 1, 1966, every
 6 cigarette that Mrs. Jordan smoked in her life came
 7 in a pack with a warning on it. Now, there are
 8 people who become regular smokers before the warning
 9 label, but Mrs. Jordan was not one of them.

10 Now, Mrs. Jordan, will also tell you that at
 11 the same time she decided to become a regular smoker
 12 she decided to quit smoking. Let me repeat that.
 13 Mrs. Jordan will also tell you that at the same time
 14 she decided to become a regular smoker she also
 15 tried to quit smoking. And she will tell you the
 16 reason why was that she was pregnant and she thought
 17 it was nasty looking to smoke while you were
 18 pregnant and that smoking made her morning sickness
 19 worse. So she decided she just didn't want to smoke
 20 anymore.

21 But even though she had just become a regular
 22 smoker, she will tell you that she just couldn't
 23 quit, and she will tell you that in 1966 when she
 24 first tried to quit she wasn't successful. That's
 25 when she realized she was addicted.

1 Mrs. Jordan want to work at Champion sawmill. She
 2 worked as lumber grader from '83 to '89. And the
 3 evidence will be, members of the jury, that as a
 4 lumber grader working for those 16 years at Champion
 5 she inhaled a lot of wood dust.

6 Sometime in the 1990's Mrs. Jordan began having
 7 trouble breathing and ultimately was diagnosed with
 8 emphysema and COPD.

9 Now, we talked about this in voir dir, but just
 10 everyone is on the same page, COPD stands for
 11 chronic obstructive pulmonary disease, and it's a
 12 disease of the small airways that includes
 13 emphysema. And COPD is a progressive disease that
 14 reduces a person's lung function. 25 percent of
 15 susceptible heavy smokers will develop COPD.

16 But while we all lose lung function with age,
 17 if you see the chart in front of you, on the left
 18 axis it has percent of lung function. Now, that's
 19 as good as your lungs are ever going to be, and down
 20 here it shows age, and what you see are those top
 21 three lines. Well, that shows that as we all get
 22 older, whether we had COPD or not, we all just
 23 naturally lose some of our lung function. Some of
 24 us who have the benefit of a few years have started
 25 to experience that.

1 So according to Mrs. Jordan, in 1966, she was
 2 17 years old, she had just become a regular smoker,
 3 but it's her testimony she was already so addicted
 4 that she simply could not quit smoking.

5 On September 25, 1966, her son Tim was born,
 6 and at first Mrs. Jordan and her son lived with her
 7 mom and dad, but four months later, on February 4,
 8 1967, Mrs. Jordan married Mitchell Johnson, Tim's
 9 father, and they moved into a house of their own. A
 10 couple years after that, I think 18 months, their
 11 daughter Cheryl was born. Can we see that? And
 12 then in 1970 that's when her father died of a stroke
 13 and emphysema caused by smoking. Then two days
 14 after Christmas in 1972 her second daughter, her
 15 last child, Tanya was born.

16 Unfortunately, on May 15, 1964, she and Mr.
 17 Johnson divorced, and Mrs. Johnson moved in with her
 18 current husband, her longtime husband, Clarence
 19 Jordan. Her children were 7, 4 and 17 months old at
 20 the time, and after she and Mr. Johnson separated
 21 Mrs. Jordan's children continued to live with their
 22 father, and never lived with Mrs. Jordan again on a
 23 full-time basis.

24 Seven years later, in 1981, Mrs. Jordan married
 25 Clarence Jordan, and in 1983 moved to Macclenny and

1 But for susceptible smokers COPD causes them to
 2 lose lung function at a much faster rate. But --
 3 here is the good news -- because there is so much
 4 lungs, if a person stops smoking and had COPD caused
 5 by smoking, his or her rate of loss of lung function
 6 goes back to basically that of a nonsmoker.

7 This is from the Surgeon General report. See
 8 what happens if you stop at age 50, or even if you
 9 stop at age 65.

10 So the evidence will be that if a person quits
 11 smoking before they get COPD they will never get
 12 COPD, at least from smoking. If they quit when it's
 13 mild it's very unlikely they go on to become
 14 moderate or severe COPD.

15 So that's just something that will be an issue
 16 in this case, and I want to give you a little sense
 17 of COPD and how it progresses.

18 By 2002 Mrs. Jordan's lungs were so damaged
 19 that she was in the hospital and she went on the
 20 lung transplant list. Ms. Shamp told you about that
 21 this morning. And the doctors told her, you know,
 22 you need to quit smoking or you're going to die.

23 But in order to be accepted on the list you
 24 have to quit smoking. So she put her cigarettes
 25 down and never smoked a single cigarette the rest of

1 her life.
2 Now, I think we all understand why she quit,
3 but the evidence will be that after she adapted to
4 her new lung she had the ability to smoke if she
5 wanted to. She lost the desire to smoke, and she
6 never smoked again.

7 In October 2002, Mrs. Jordan underwent a left
8 lung transplant, and also had the right lower lobe
9 removed. Ten years later, as Ms. Shamp told you
10 this morning, in December of 2012 she underwent a
11 second left lung transplant, and she also had a
12 kidney transplant.

13 So why are we here? Elaine Jordan has brought
14 this lawsuit asking you to award her money for her
15 decisions to begin and to continue smoking.

16 MS. SHAMP: Objection, Your Honor.

17 THE COURT: Would you like to come to sidebar,
18 Ms. Shamp.

19 (The following sidebar was had outside the
20 hearing of the jury.)

21 MS. SHAMP: The issue I raised this morning.

22 MR. COFER: This was argued this morning. I'm
23 now moving on to membership.

24 THE COURT: I thought about it during lunch, I
25 want to let you know, and because he's moving on

1 real issues in the case.

2 First, there is no dispute that cigarette
3 smoking can cause a number of diseases, including
4 emphysema. In fact, since 1985 there's a warning on
5 the pack that says smoking causes emphysema, and
6 that quitting smoking now greatly reduces serious
7 risk to health. That latter one is for all the
8 reasons I just showed you about the lung function
9 and what happens when you quit smoking.

10 So since 1985, for the last 30 years, there has
11 been a warning on the pack that specifically says
12 smoking causes emphysema, and quitting now greatly
13 reduces serious risk to health.

14 Second, there is no dispute that nicotine
15 occurs naturally in the tobacco plant and nicotine
16 is addictive. Of course, not everyone who smokes is
17 addicted. There are many reasons why people smoke,
18 and addiction is only one of them. There is also no
19 dispute that even addicted smokers can and do quit
20 smoking. To quote Ms. Shamp from this morning,
21 addicted people quit every day. And that will be
22 the evidence, members of the jury.

23 The evidence will be that 60 million Americans
24 have quit smoking. Each and every day thousands of
25 smokers quit. In fact, the data shows that between

1 with it and it s not becoming the focus of his
2 opening. I think for appellate purposes, because I
3 don't think I ever officially ruled before we went
4 to lunch, I'm going to construe that as a
5 plaintiff's objection, as long as you're about to
6 move on. I think it simply speaks to the issue of
7 comparative as part of the trial.

8 MR. COFER: Exactly.

9 THE COURT: As long as you're moving on.

10 MR. COFER: I'm moving on right now. That's
11 all I'm going to say.

12 THE COURT: That's what the court is going to
13 rule. Thank you.

14 MR. COFER: Thank you.

15 (Following sidebar.)

16 MR. COFER: Mrs. Jordan claims that she was
17 addicted to the nicotine in the cigarettes that she
18 smoked and that her addiction was a legal cause of
19 her COPD and her lung transplants and her kidney
20 transplant.

21 You know, in thinking about my opening
22 statement I realize a lot of things we disagree
23 about. There are some issues that we do agree on.
24 So I thought I would address those first so we could
25 take those off the table and we can focus on the

1 1 and 2 million people in this country quit smoking
2 every year. Many of those smokers were addicted,
3 but when they made the choice to smoke and they made
4 the effort or efforts to quit they were successful.

5 Now, let me be clear right now. I am not
6 saying it's easy for everyone to quit. Some people
7 can just put them down and it is easy. For others
8 it's really hard, and they have to try, and most of
9 them have to try more than once. But there is no
10 dispute, all of the experts agree and the parties
11 agree, that addicted smokers can and do quit
12 smoking. Indeed, Mrs. Jordan quit smoking and
13 hasn't smoked in 13 years.

14 Members of the jury, there is no dispute that
15 if you look back over the last 60 years at the
16 millions of pages of documents written by thousands
17 of employees at Philip Morris, they said some things
18 that when taken out of context, frankly, look pretty
19 bad. Statements where they said that smoking was
20 not a proven cause of cancer or other diseases, or
21 smoking was not addictive. Philip Morris hung its
22 hat on too many technical distinctions, and they
23 held onto those views for way too long, and we admit
24 that.

25 You know, given the number of people that

1 worked at the company over the last 60 years is it
2 surprising that some of them had some bad ideas? Or
3 others, even with best intentions, made some
4 mistakes.

5 But during trial we're going to do our best to
6 give you the appropriate context to understand the
7 documents, to understand what Philip Morris was
8 saying, and why they were saying it.

9 And, you know, we did talk yesterday about two
10 sides of the story and the importance of hearing
11 both sides. Let me give you just one example.

12 So in Ms. Shamp's opening statement she showed
13 you a document and suggested to you that Philip
14 Morris placed its cigarettes, and placed product
15 placement in the Muppets movie. I think we all
16 agree if they did that that would have been awful,
17 but they did not. They may have given some
18 cigarettes to the people that worked on the movie.

19 But their first live witness is Dr. Proctor.
20 I'm going to ask him, very first thing, may make a
21 note to do it, there were no cigarettes in the
22 Muppets movie. There was a cigar in the one
23 released in the United Kingdom, but there were no
24 Philip Morris signs, no Philip Morris cigarettes in
25 the Muppets movie.

1 But when you heard that I'm sure you thought,
2 are you kidding me? That's one example of context
3 and one example of you can't -- when you see a
4 document you need to know more about it before you
5 jump to a conclusion. And I promise you during this
6 trial we'll do our best to talk about that.

7 So if we agree on all these things is the case
8 over? Can we go home? Well, no, we can't. We
9 wouldn't have kept you here for three days picking
10 the jury if it was that simple. But the reason why
11 is that the plaintiff has to prove more than that
12 cigarettes cause disease, that nicotine is
13 addictive, and that Philip Morris and other
14 companies said or did some dumb things. Plaintiff
15 has to prove that something Philip Morris actually
16 did had a direct and substantial impact on
17 Mrs. Jordan.

18 MS. SHAMP: Objection, Your Honor.

19 THE COURT: Would you like to come over to
20 sidebar?

21 MS. SHAMP: Yes, Your Honor.

22 THE COURT: Thank you.

23 (The following sidebar was had outside the
24 hearing of the jury.)

25 MR. COFER: And here's what I'm going to say.

1 Permit not on the general public, but on
2 Mrs. Jordan, herself, that caused her to begin and
3 continue smoking. And again it goes to the same
4 issue. It also goes on the intentional tort claim.
5 They absolutely have to show reliance.

6 I'm not distinguishing between those at this
7 point because I think that it's just way too much
8 weeds.

9 THE COURT: And I think what you're saying,
10 sir -- make sure that I understand, that the
11 evidence that you're going to show is going to show
12 that why she started smoking was not as a result of
13 ads or things like that.

14 MR. COFER: Exactly.

15 THE COURT: Okay.

16 MR. COFER: Exactly.

17 MS. SHAMP: Your Honor, we don't have to show
18 that in order to prove class membership. All we
19 have to show is addiction. All we have to show is
20 addiction, that her addiction caused COPD during the
21 class period.

22 MR. COFER: They have to show lots of things to
23 recover. Remember we talked earlier, I had a case
24 where they determined class membership and got 0
25 damages because of 100 percent fault.

1 THE COURT: I think maybe -- is the difference
2 of opinion here the issue of class versus damages?
3 MR. COFER: I haven't gotten to class
4 membership yet. I'm going to get to that. What I'm
5 talking about basically -- here's the general point
6 I'm trying to make. You can put up evidence, a lot
7 of bad stuff, but the point is you have to show the
8 bad stuff harmed her. You have to show causation.
9 And that's just Hornbook law we learned in law
10 school. You've got to show duty, you've got to show
11 breach, you've got to show causation, and you've got
12 to show damages.

13 What they're really saying, what really
14 happened is -- what really happened is Florida
15 courts said that you bed in class membership
16 questions -- since it has a new cause requirement
17 you can bed in that that you can infer that you
18 don't have to have a separate class -- you don't
19 have a separate legal cause question for strict
20 liability or negligence.

21 MS. SHAMP: Exactly.

22 MR. COFER: But you still have to prove it, you
23 just don't have a separate question. If you
24 establish class membership then you -- because class
25 membership is did addiction to nicotine cause X

1 disease? Then you can say the addiction to nicotine
2 satisfies the legal cause requirement.

3 Let me tell you something. You still have to
4 prove that something we did directly and effectively
5 impacted her or you don't -- because you could
6 have -- if it didn't the jury can return 0 percent
7 fault to Philip Morris.

8 But I'm telling you this is -- we're dancing on
9 the head of a pin for purposes of the jury in this
10 opening statement.

11 MS. SHAMP: We are not dancing on the head, and
12 it's critical, and that's why I raised this exact
13 issue before he began, because it's what he does,
14 and it's an incorrect statement of the law. We do
15 not have to prove that, Your Honor.

16 In order to be a class member we have three
17 things to prove, and causation under Douglas does
18 not have to be shown with any acts of the defendant.
19 That's all we have to show. And then if we show
20 those things then all of the elements of strict
21 liability and negligence have been proven.

22 THE COURT: I think what you're really talking
23 about more is damages.

24 MR. COFER: Yes.

25 MS. SHAMP: That's not what he's talking about.

1 then under Douglas causation is established. He can
2 try and say, no, it was partly her fault, and if he
3 establishes that it was partly our fault then it
4 will go on the verdict. And that --

5 MR. COFER: Well, you still -- I'm sorry. I
6 apologize. I do. I am sorry. I did interrupt you.
7 I apologize. I'll try not to do that. I'm bad
8 about that. I'm sorry.

9 THE COURT: Everyone has a lot to say.
10 Are you done?

11 MS. SHAMP: I'm done, Your Honor. We do not
12 have to prove that. That's an affirmative defense,
13 and under Douglas the issue of causation has been
14 established if we prove class membership. We don't
15 have to prove anything else. We put up our damages.

16 MR. COFER: I'll move on.

17 THE COURT: We'll just move on. Let's just
18 move on.

19 MR. COFER: Okay.

20 (Following sidebar.)

21 MR. COFER: Okay. So with that let's talk
22 about what it is the plaintiff has to prove.

23 As Your Honor told you this morning, the first
24 you'll have to decide is whether Mrs. Jordan is a
25 member of the Engle class. And you heard Engle was

1 MR. COFER: I'm talking about comparative
2 fault. You have to show that prior actions --
3 plaintiff has the burden of proof on comparative
4 fault to show that prior actions or a percentage of
5 our actions that caused harm, and they have to show
6 from 0 to get it to whatever. It's their burden.

7 Unless they show that our actions contributed
8 to her harm, that her comparative fault, then they
9 don't get anything. They have the burden on
10 comparative fault and they have to show -- it's
11 comparative causation. They have to show causation.

12 You don't have a separate line. There's not --
13 there used to be a separate line on some verdict
14 forms that said, you know, was addiction to nicotine
15 a legal cause of her so-and-so. Then they say was
16 negligence a legal cause.

17 She's right. You don't have to have negligence
18 on there. You have to have strict liability. But
19 they must show -- they must show that our actions
20 caused her injury. Or how do you get now the case
21 to comparative fault?

22 MS. SHAMP: Comparative fault is an affirmative
23 defense. He's raised it as an affirmative defense,
24 therefore the burden of proof is on him.

25 What we have to prove is class membership. And

1 a case that was tried in Miami a number of years
2 ago, and the jury in Engle made certain findings,
3 and if the plaintiff proves she's a member of the
4 Engle class then those findings apply to her, and
5 there are other important issues for you to decide.

6 But the first question is, is she a member of
7 the Engle class? So let's talk about this for a
8 second.

9 Ms. Shamp told you all we have to prove is that
10 Mrs. Jordan was addicted, and her addiction was a
11 legal cause of her injuries. Actually they have to
12 prove that and more.

13 What they have to prove is, first, that she was
14 in fact addicted. Secondly, that her addiction was
15 a legal cause. And Ms. Shamp told you -- and I'll
16 accept her definition of legal cause -- did she
17 smoke because she was addicted?

18 So they have to establish she was addicted, she
19 smoked because she was addicted, and that smoking
20 caused her COPD, because if something else caused
21 it, which we'll talk about, it doesn't matter. And
22 then finally they have to show that her COPD
23 manifested between -- or rather before November 21,
24 1996.

25 I know that's a mouthful, and you're going to

1 hear about -- you'll hear the evidence, and we'll
2 talk with you about it in closing argument, but here
3 is the takeaway. It's an Engle case. They have to
4 establish class membership. They have to establish
5 she was addicted, that addiction was the legal
6 cause, that smoking caused her COPD, and that it
7 manifested before November 21, 1996.

8 So here is a demonstrative I put together to
9 help you kind of understand the manifestation issue.
10 I want to talk with you about the manifestation
11 first.

12 Okay. So there's no question, it's true that
13 Mrs. Jordan has COPD. But in order for her to be a
14 member of the Engle class you must find that her
15 COPD manifested between May 5, 1990, and
16 November 21, 1996. If it manifested before May 5,
17 1990, and we have the burden on this, it's barred by
18 the statute of limitations. That's why I talked
19 with you yesterday about the statute of limitations.
20 If it didn't manifest until after November 21, 1996,
21 she isn't a class member.

22 Now, I'm sure you're wondering why November 21,
23 1996? All I can tell you is that that rule is a
24 legal rule that applies to this case, and it's a
25 requirement to be an Engle class member.

1 Now, at the end of the case Her Honor is going
2 to instruct you on what manifests means, and she
3 will instruct you on exactly what it is plaintiff
4 has to prove. But as a threshold matter before we
5 even get to issues of addiction and addiction
6 causation and medical causation, unless you find
7 that her COPD manifested between May 5, 1990 and
8 November 21, 1996, she is not a class member, and we
9 all go home.

10 So let me just talk briefly about what I think
11 the evidence will be about when her COPD manifested.

12 At some point in the 1990's Mrs. Jordan was
13 diagnosed with COPD. Mrs. Jordan and her daughter
14 Tonya will tell you she was diagnosed in 1993, and
15 Mrs. Shamp talked about that. But the overwhelming
16 weight of the evidence will be that Mrs. Jordan was
17 not diagnosed until the 1998 or 1999 time period.

18 The evidence will be that Mrs. Jordan was
19 having problems with asthma and asthma attacks in
20 1993, and not COPD. And while asthma can have some
21 of the same symptoms as COPD, it is a different
22 disease. It is not caused by smoking, and it's not
23 an Engle disease.

24 Now, Ms. Shamp told you that the first record
25 we have for Mrs. Jordan is dated October 24, 1998.

1 This was her family doctor. It's actually
2 pronounced Tecson like somebody from the state even
3 though it's spelled T-e-c-s-o-n.

4 So what happened was, in October '98
5 Mrs. Jordan was feeling poorly, and she was vomiting
6 and she had a headache. She had had it for about a
7 week, and so she went to the doctor. And she used
8 to see Dr. Tecson, but she hadn't seen him in
9 15 years. The last time she saw him was back in
10 1983.

11 And so he diagnosed her with emphysema on that
12 visit because of her smoking history. He didn't do
13 any tests, he didn't take any x-rays. He testified
14 he diagnosed her in '98 with emphysema simply
15 because she was a smoker. And Dr. Tecson wrote,
16 Mrs. Jordan told him, that she had a history of
17 asthma attack five years ago, and then he wrote, had
18 also emphysema.

19 Ms. Shamp said Dr. Tecson will say that Mr.
20 Jordan told him she had a history of emphysema. I
21 don't believe that's what he's going to say, because
22 Dr. Tecson clarified at his deposition that
23 Mrs. Jordan told him she had an asthma attack five
24 years ago, but did not tell him that she had
25 emphysema for five years. The reference to

1 emphysema was an independent diagnosis that he made
2 on that visit based simply on her smoking history.

3 Now, Mrs. Jordan has had asthma since at least
4 the 80's. In fact, she has used a Ventolin rescue
5 inhaler, Albuterol -- Ventolin I think is the trade
6 name for Albuterol -- since at least the late 80's.

7 One of her co-workers will talk about an
8 incident that happened at the sawmill in the late
9 80's where she fell down, was having trouble
10 breathing, got her inhaler and then she was fine.

11 So this is the first record we have. Then the
12 next year, in May of 1999, Mrs. Jordan came back to
13 Dr. Tecson because she coughed up blood. So
14 obviously that's not a good sign, so he referred her
15 to Dr. Rothstein, a pulmonologist. And Mrs. Jordan
16 testified that it was Dr. Rothstein who first
17 diagnosed her with COPD. And she said he diagnosed
18 her with COPD in 1993 or 1995.

19 But you know what? The evidence will be that
20 Dr. Rothstein never met Mrs. Jordan until June of
21 1999. Mrs. Jordan was a new patient on June 8,
22 1999. And this is the new patient registration
23 information form she completed in her handwriting,
24 and it says: Date. Elaine Jordan. Purpose of
25 visit, coughing blood, asthma. Referred by Dr.

1 Tecson. Her family doctor.
 2 So this is the first record we have that was
 3 completed by Dr. Rothstein. It says: New patient
 4 consultation. Reason for consultation, dyspnea --
 5 that means shortness of breath -- hemoptysis -- that
 6 means coughing up blood. Mrs. Jordan has been
 7 having trouble with progressive shortness of breath
 8 for about the last month to a month and-a-half. She
 9 was told she has asthma in the past, and has been
 10 using a Ventolin inhaler for about the last ten
 11 years.

12 Mrs. Jordan told Dr. Rothstein she had asthma,
 13 but she never told him she had been diagnosed with
 14 COPD. It's nowhere in his records. He didn't meet
 15 her until June of 1999.

16 So what Dr. Rothstein did is he performed a
 17 pulmonary function test, and based on those tests he
 18 diagnosed Mrs. Jordan with severe airflow
 19 obstruction, or COPD.

20 And what you will learn is that PFT's are the
 21 gold standard for diagnosing COPD, and that's the
 22 standard. And there is no evidence, members of the
 23 jury, that Mrs. Jordan ever had a pulmonary function
 24 test before June of 1999 when she met Dr. Rothstein.
 25 And in fact, it wasn't until after Dr. Rothstein

1 symptoms started in May of 1999, and that she never
 2 had the same or similar condition.

3 And this is just one example. You will see
 4 medical records, other medical records, that are
 5 consistent with this. And what you will also see
 6 are medical records that were prepared after
 7 Mrs. Jordan was diagnosed where she told her doctors
 8 at the Mayo Clinic that she was diagnosed in the
 9 1998, 1999 timeframe.

10 Let me show one example. So this is in May of
 11 2002, and it was -- remember this is about the time
 12 period where she was hospitalized and she was on the
 13 lung transplant list. Her treatment had been
 14 transferred from Dr. Rothstein's office to the Mayo
 15 Clinic. The Mayo Clinic would take care of her from
 16 that point on, 2002 up through the present.
 17 Actually it was with Dr. Keller.

18 And so when you go in for this you fill out a
 19 form, and this was filled out in Mrs. Jordan's own
 20 handwriting, and she is asked: Please describe in
 21 the space to the right your main symptoms or
 22 problems and how long you have had them. And look
 23 what she wrote: COPD/emphysema four years. And she
 24 circled asthma.

25 Again, you know, this was prepared in 2002 when

1 diagnosed Mrs. Jordan with COPD in June of '99 that
 2 she stopped working at Champion sawmill and applied
 3 for disability.

4 So in order to get disability she and Dr.
 5 Rothstein had to fill out a disability benefit
 6 attending physician's statement. And here it is.
 7 At the top it says: Any person who knowingly files
 8 a statement of claim containing any
 9 misrepresentation or any false, incomplete, or
 10 misleading information may be guilty of a criminal
 11 act punishable under the law, and may be subject to
 12 civil penalties. And it's signed by Elaine Jordan.
 13 At the bottom of the form -- and you see it's also
 14 signed by Dr. Rothstein -- it says: What's the
 15 diagnosis? COPD. When did symptoms first appear or
 16 accident happen? May of 1999. About a month ago
 17 when she was having shortness of breath. Has
 18 patient ever had same or similar condition? No.

19 This is a document that was completed by
 20 Mrs. Jordan and Dr. Rothstein, and signed by them,
 21 back in May of 1999, and both of them clearly state
 22 -- and this was prepared nine years before this
 23 lawsuit was filed. This was prepared long before
 24 there was any thought of the lawsuit, and both
 25 clearly state that she had COPD and that the

1 the only purpose in preparing this record was to
 2 make sure she got the care and treatment she needed
 3 to address the problem she had with her lung, to
 4 give her doctors the information she needed to help
 5 her get well, and it was prepared much closer in
 6 time than today. It was prepared 13 years ago, back
 7 when Mrs. Jordan's memory was fresher than it is
 8 today.

9 So this is just kind of a summary. Members of
 10 the jury, you will see many more records and you're
 11 going to hear testimony from Mrs. Jordan's family
 12 and co-workers that are consistent with, one, what
 13 Dr. Rothstein and Mrs. Jordan both reported in a
 14 disability statement, and, two, what Mrs. Jordan
 15 told her doctors at the Mayo Clinic about when her
 16 COPD manifested.

17 So sorry for taking all your time on that, but
 18 it is an important issue. Here is kind of the
 19 bottom line. In order to be a member of the Engle
 20 class then you must find, and Mrs. Jordan must
 21 prove, that her COPD manifested on or before
 22 November 23, 1996, and if she fails to prove that
 23 then she is not a member of the Engle class, the
 24 case is over and we all go home.

25 So now let's move on and talk about another

1 part of the class definition, because I told you
 2 there were four things she has to prove to be a
 3 class member. And let's talk about legal cause.
 4 You may have noticed when Your Honor was
 5 reading the instructions this morning she used the
 6 words legal cause several times. I think Ms. Shamp
 7 talked about it too. You may remember yesterday in
 8 voir dire I gave you an example of the difference
 9 between the cause in fact and legal cause. You
 10 remember the example I used was the guy who walks
 11 out in the street and gets run over by a truck. You
 12 know, so what's the cause in fact of his injury?
 13 Well, he got run over by a truck. But what was the
 14 legal cause? Before you can determine that you need
 15 to know more. Why did he get run over by the truck?
 16 Was he texting, not paying attention, was the truck
 17 driver speeding, or whatever? There's a bunch of
 18 different reasons to explain the why. We know what
 19 happened. The issue is why.
 20 In this case it is not enough for plaintiff to
 21 prove that she was in fact addicted. She must also
 22 prove that her addiction was a legal cause, not the
 23 only legal cause, but a legal cause of her COPD and
 24 her lung transplants and all the things that
 25 happened after, and in order for addiction to have

1 been a legal cause of her illness, and Her Honor
 2 will give you the instruction, but Mrs. Jordan has
 3 to show that she was in fact addicted, and her
 4 addiction was so strong and substantial that but for
 5 her addiction she would have quit smoking and she
 6 would not have gotten sick. And if an addiction was
 7 not a legal cause of her COPD, then again she is not
 8 a member of the Engle class.
 9 And finally, plaintiff has to prove to be a
 10 class member that smoking is what actually caused
 11 her COPD and her lung problems. So you're going to
 12 have to decide how does such a young woman develop
 13 lung disease that was so severe by age 53 she needed
 14 a lung transplant? And the evidence will be smoking
 15 just doesn't reasonably explain that.
 16 While smoking can cause COPD, it's not the only
 17 thing that causes COPD. Asthma can cause COPD. And
 18 the evidence will be that Mrs. Jordan has a long
 19 history of asthma. Wood dust can cause COPD. And
 20 Mrs. Jordan told Dr. Tecson -- we'll she you the
 21 records -- that as a lumber grader she inhaled a lot
 22 of wood dust. You'll also see and hear evidence the
 23 wood dust exposure on her x-rays and in her lung
 24 tissue.
 25 And because Mrs. Jordan has three independent

1 risk factors for her COPD, smoking, asthma, and wood
 2 dust, there is no way to tell which of those three
 3 caused it. In addition, the evidence will be, that
 4 COPD is not the only disease process in
 5 Mrs. Jordan's lungs. Mrs. Jordan also has pulmonary
 6 fibrosis and hypersensitivity pneumonitis caused by
 7 her inhalation of wood dust.
 8 Pulmonary fibrosis is where the lung tissue's
 9 defense mechanisms create scar tissue to protect the
 10 lungs from the dust that's being inhaled.
 11 Hypersensitivity pneumonitis is just a fancy way of
 12 saying that dust she breathed caused inflammation in
 13 her lungs.
 14 In addition, you'll hear she had pleural
 15 thickening and pleural plaques, which are additional
 16 exposures -- additional markers of dust exposure.
 17 And you will hear evidence that these findings on
 18 x-ray and that you can actually see in the pathology
 19 of her lung tissue itself is the gold standard for
 20 determining whether someone has inhaled a
 21 significant amount of dust in the workplace.
 22 In addition, members of the jury, the evidence
 23 will be that smoking generally affects the upper and
 24 middle lobes of a person's lungs, and Mrs. Jordan
 25 had extensive damage in the lower lobes. In fact,

1 when they took the right lobe out, they took the
 2 right lower lobe out, and the evidence will be that
 3 that damage to her lower lobes is much more
 4 consistent with being caused by inhalation of wood
 5 dust than smoking.
 6 I guess in general the evidence will be that it
 7 would be incredibly rare for a 53-year-old woman to
 8 have a smoking-related COPD that was so severe that
 9 it required a lung transplant. And in order to
 10 recover in this case it's plaintiff's burden to
 11 prove that it was cigarette smoke that caused her
 12 COPD and required her to have the lung transplants
 13 and kidney transplant.
 14 So what do we think this case is about? We
 15 think this is a case about Elaine Jordan and the
 16 decisions she made and what she knew and what she
 17 did with the information that she had. So I
 18 respectfully suggest, members of the jury, that as
 19 you listen to the evidence in the case you ask
 20 yourself, what does any of this have to do with
 21 Elaine Jordan? Is there any evidence that Philip
 22 Morris fooled her in any way, or did she have the
 23 information that she needed to make an informed
 24 decision whether to smoke or quit smoking? Did
 25 Mrs. Jordan smoke because she was addicted, or was

1 she just not ready to quit until her lungs finally
2 got so bad she had to do something?

3 We believe this case comes down to three pretty
4 straightforward questions. Why did Mrs. Jordan
5 smoke? Why did she wait so long to quit? Did
6 Philip Morris do something wrong that caused her to
7 smoke and caused her to get sick? And we believe
8 the evidence will show that Mrs. Jordan smoked
9 because her friends and family smoked and because
10 she liked to smoke, that she always had the ability
11 to quit smoking. Whenever she made up her mind that
12 she truly wanted to quit and, and was willing to
13 make a serious sincere sustained effort to quit.
14 And finally we believe the evidence will be that
15 nothing Philip Morris did or did not do, say or did
16 not say, caused Mrs. Jordan to begin or continue
17 smoking.

18 Now, in her opening statement Mrs. Shamp talked
19 a lot about filters and light cigarettes, and she
20 argued that Mrs. Jordan smoked filters and lights
21 because Philip Morris fooled her into thinking they
22 had less tar and nicotine so they were safer.

23 Well, in contrast to what you heard in opening
24 statement, what Mrs. Jordan will tell you is when
25 she started smoking filters she had no health

1 General's warning had already been on every
2 cigarette ad for over 20 years. So any time she saw
3 a Marlboro Lights ad it had the Surgeon General's
4 warning on it.

5 By the time she switched in the 90's the
6 warning said: Quitting smoking now greatly reduces
7 serious risk to health. These are on the Marlboro
8 Lights ads. And smoking causes lung cancer,
9 emphysema, and heart disease.

10 The other thing, Mrs. Jordan testified that
11 when she switched to lights, and the reason she did
12 is because she thought she would get less tar and
13 nicotine and that would be better, she admitted she
14 knew she started smoking more cigarettes. She said
15 she smoked an extra pack a day. So even though she
16 said she switched to lights to get less tar and
17 nicotine, she said it never occurred to her that by
18 smoking an extra pack a day she was defeating her
19 purpose. And finally, she admitted that the light
20 cigarettes had the same warnings on the pack as the
21 regular Marlboro.

22 But let's talk for a moment about what the
23 public was told about light cigarettes.

24 Members of the jury, the evidence will be that
25 Philip Morris didn't tell the public to switch to

1 concerns, that health concerns had nothing to do
2 with her decision to smoke filtered cigarettes in
3 general, or Marlboro in particular. She always
4 smoked filters. She didn't switch from unfiltered
5 to filter. And you know why she said she smoked
6 filters? She didn't want to get tobacco in her
7 mouth. So that's what the evidence will be.

8 Mrs. Jordan did testify that sometime in the
9 90's she switched to Marlboro Lights because they
10 had less tar and nicotine, that she thought they
11 were better for her. But she admitted that her
12 doctors were telling her to quit smoking. No doctor
13 ever told her to switch to lights, or told her
14 lights would be safer.

15 Ms. Shamp told you that advertising caused
16 Mrs. Jordan to switch to lights. Well, let's talk
17 about that for a second.

18 Marlboro Light didn't even come on the market
19 until after all of the ads were taken off television
20 and radio. So in this trial you're going to see
21 some TV and radio ads for Marlboro, but there was
22 never any for Marlboro Light, because you were no
23 longer allowed to broadcast advertising on the
24 airwaves. That was before lights even came out.

25 By the time she switched to lights the Surgeon

1 light cigarettes, that they were safer. The
2 evidence will be that the Surgeon General and the
3 public health community told the public to switch to
4 light cigarettes because they were safer.

5 The thinking was that since tar is bad, less
6 tar is less bad. And the Surgeon General never said
7 that light cigarettes were safe. The Surgeon
8 General said they are safer. So if you're not going
9 to quit, then smoke lower-delivery cigarettes. But
10 the Surgeon General and public health community was
11 clear about saying, if you want to avoid the risk
12 quit smoking entirely, but if you're not going to
13 quit then switch to lights. And you will hear that
14 evidence in the case, and we will show you where the
15 Surgeon General said it in his reports, we'll show
16 you where the American Cancer Society said it on the
17 airwaves, and we'll show you other places where
18 that's what the public health community was urging
19 people to do. First, quit. If you're not going to
20 quit, smoke a lower-delivery cigarette.

21 Okay. In her opening statement Ms. Shamp
22 suggested that Philip Morris and the companies hid
23 the risks of smoking from Mrs. Jordan, and that she
24 didn't have the information she needed to make an
25 informed decision or informed choice whether to

1 smoke or not smoke. So let's talk about what the
 2 evidence will be.

3 We know from the time that Mrs. Jordan smoked
 4 her first cigarette that she hid it from her parents
 5 and she hid it from her teachers. And you know why?
 6 That's because from the get-go she knew that
 7 cigarettes were bad for her and she shouldn't be
 8 smoking.

9 Now, as you can see -- remember I told you the
 10 way that I've got this timeline oriented, on the top
 11 half is information about Mrs. Jordan, and on the
 12 bottom is information about the risks of smoking,
 13 just some of the things that were important.

14 So starting in the early 50's, before
 15 Mrs. Jordan ever began smoking studies were being
 16 published that linked cigarette smoking with lung
 17 cancer. And so these studies were published in
 18 medical journals like the one Ms. Shamp showed you,
 19 but there are also tons of articles about them in
 20 the popular press, like Life Magazine, Reader's
 21 Digest, Time and Newsweek. And Ms. Shamp talked
 22 about one, the mouse skin painting study.

23 Here is an example. This is December 1953,
 24 Life Magazine. It was one of the most popular
 25 magazines in the country at the time. Big oversized

1 magazine that had a bunch of pictures. And it
 2 says -- this is December 1953 -- smoke gets in the
 3 news. Doctors report tobacco tar induces mouse
 4 cancer, note rise in cigarette use and human lung
 5 cancer. This is 1953.

6 Ms. Shamp said in 1953 the public did not think
 7 smoking was dangerous. There may have been a lone
 8 voice out there. Well, we do know for a fact that
 9 after December 1953, and when these studies were
 10 being published and reported, that people were
 11 talking about it, and they were talking about it big
 12 time.

13 How do we know that? Because here is a
 14 national Gallop poll, June 1954, Mrs. Jordan is five
 15 years old and hasn't smoked her first cigarette yet,
 16 and it says -- this is June of '54 -- have you heard
 17 or read anything recently to the effect that
 18 cigarette smoking may be a cause of cancer of the
 19 lungs? 90 percent said yes. 90 percent said yes.

20 Ten years later in 1964 the Surgeon General of
 21 the United States published his landmark report
 22 announcing to the world that cigarette smoking is a
 23 proven cause of lung cancer. And as Ms. Shamp told
 24 you, and plaintiff's experts will tell you, this was
 25 a big deal and it got a ton of attention. It was

1 literally front page news. And it was front page
 2 news here in Jacksonville too.

3 Here is an example of how it was reported in
 4 the print media. It was the lead story on the
 5 nightly newscasts, it was on the front page of
 6 newspapers and the cover of major national
 7 magazines. People were talking about it, and they
 8 were talking about it big time.

9 Now, some of you like me may be old enough to
 10 remember when there were only three channels: ABC,
 11 CBS, and NBC. Let me show you how the report was
 12 covered on the CBS news with Harry Reasoner.

13 (Video clip played as follows.)

14 This is a CBS news extra on smoking and health,
 15 the findings of the Surgeon General's committee.

16 Almost from the moment that cigarettes were
 17 introduced they were attacked, but the attack took a
 18 new turn ten years ago and culminated in today's
 19 report by the Surgeon General's committee. This in
 20 summary is what the committee says: Cigarette
 21 smoking is a major cause of lung cancer in men, and
 22 data on women smokers points the same way.
 23 Cigarette smoking is a significant cause of cancer
 24 of the larynx, and probably the most important cause
 25 of chronic bronchitis. Cigarette smoking may be

1 related to other lung diseases. Male smokers have a
 2 much higher death rate from heart disease, although
 3 it's not proven that smoking is the cause.

4 On the question of filters the committee says
 5 there is no evidence that they do any good, but it
 6 didn't exclude the possibility that an effective
 7 filter might be developed.

8 In short, the committee says if you smoke
 9 cigarettes you increase your chances of dying early.
 10 The sooner you start, the more you smoke, the more
 11 you inhale, the worse your chances are.

12 The Surgeon General's committee presented its
 13 report at a news conference in Washington.

14 After its long and exhaustive deliberations the
 15 committee has reached the overall judgment that
 16 cigarette smoking is a health hazard of sufficient
 17 importance to the United States to warrant remedial
 18 action. This overall judgment was supported by many
 19 converging lines of evidence, as well as by data
 20 indicating that cigarette smoking is related to a
 21 higher death rates in a number of disease
 22 categories. More specifically, the committee states
 23 on Page 61 of the report, and I quote, in view of
 24 the continuing and mounting evidence from many
 25 sources it is the judgment of the committee that

1 cigarette smoking contributes substantially to
2 mortality from certain specific diseases and to the
3 overall death rate.

4 Cigarettes have been an intimate and reassuring
5 companion. The familiar slogans, the familiar
6 packages have been a part of our lives. It's like
7 being told that an old friend has all along been
8 betraying you. In a case like that you give the old
9 friend every possible chance before you finally
10 decide to believe what you have been told, and maybe
11 even then you give him a chance to reform. In this
12 kind of a country it comes down to you whether you
13 like it or not. No one is going to forbid an adult
14 to smoke, and it is now quite clear that no one is
15 going to tell him it's good for him either. The
16 decision is his, the decision and the health that
17 may depend on it. This is Harry Reasoner.
18 Goodnight.

19 (Following the video clip.)

20 MR. COFER: That was how the report was covered
21 on CBS, but there were comparable reports and
22 programs on NBC and ABC. And again this was January
23 of 1964. Mrs. Jordan was 14 years old. This was
24 right around the time that she went to the carnival
25 with her friends and tried her first cigarette.

1 Now, you heard Ms. Shamp saying in opening
2 statement that Philip Morris denied that smoking was
3 addictive. Well, let's see what the Surgeon General
4 had to say about whether smoking was addictive.

5 In 1964, in addition to concluding that smoking
6 causes lung cancer, the Surgeon General determined
7 that smoking was a habit and not an addiction. And
8 why did the Surgeon General determine that? Because
9 at the time the definition of addiction required
10 that a substance be intoxicating, and cigarettes are
11 not intoxicating. And that was -- actually it
12 wasn't until -- it was 24 years later, in 1988, when
13 the Surgeon General adopted a different definition
14 and said cigarettes are now addictive.

15 But here is the point. Even in 1964 when the
16 Surgeon General called it a habit the Surgeon
17 General wasn't suggesting it was easy to quit. In
18 fact, they say that in the report: Thus correctly
19 designating the chronic use of tobacco as
20 habituation rather than addiction carries with it no
21 implication that the habit may be broken easily.

22 And you will hear, members of the jury, that
23 literally going back 200 years people have known
24 that cigarettes can be hard to quit, tobacco can be
25 hard to quit, chewing tobacco can be hard to quit.

1 Sometimes it's called an addiction, sometimes it's
2 called a habit, sometimes it's called dependence.
3 But the point is, it's been well-known that if you
4 use tobacco, for some people it can be hard to quit.
5 And the term that's been used has been varied
6 depending upon who was using it and when they were
7 using it. Again context.

8 Okay. So that was '64 the Surgeon General's
9 report came out. So what happened next? What
10 always happens. Congress held hearings, and
11 congress passed something called the Federal
12 Cigarette Labeling Act, and part of that required
13 the first warning label to go on the packs.
14 Congress wrote the warning and told the companies
15 exactly what the warning would say, how big it would
16 be, and where it would be located on the cigarette
17 pack. From this time on every package sold in this
18 country came with a warning on it.

19 Again this was right around the time that
20 Mrs. Jordan became a regular smoker.

21 Four years later, in 1970, the warning label
22 changed again. Congress changed it. This time it
23 said: Warning. The Surgeon General has determined
24 that cigarette smoking is dangerous to your health.
25 For the next 15 years this warning appeared on every

1 pack of cigarettes sold in this country.
2 Mrs. Jordan said she remembers this label. And 1970
3 was the same year that her dad died from emphysema
4 and a stroke from smoking. Mrs. Jordan was a
5 21-year-old woman and a mother of two, yet she
6 didn't try to quit.

7 In 1972 cigarette ads went off the airwaves.
8 From that point on -- I think from actually
9 January 2, 1971 never again was there a television
10 or radio cigarette commercial.

11 In 1972 the warning went on all print ads. In
12 1985 a series of rotating warnings went on that
13 included: Quitting now greatly reduces serious risk
14 to health. Smoking causes lung cancer, heart
15 disease, emphysema, and may complicate pregnancy.

16 So, members of the jury, we know for a fact
17 that the public was being warned that cigarette
18 smoking is dangerous, it causes serious diseases,
19 and that quitting smoking greatly reduces serious
20 risk to health. And we know that Mrs. Jordan saw
21 those warnings. The question is what did she do
22 with the information?

23 So one of the key issues in this case is
24 whether Mrs. Jordan was addicted to nicotine, and if
25 so, whether it was a legal cause of the COPD. And

1 one of the first things I told you is that there is
2 no debate, nicotine is addictive, and some people
3 who smoke will become addicted. But it's undisputed
4 that even addicted smokers can quit, can and do quit
5 smoking. I'll quote Ms. Shamp on that.

6 By the time of the 1990 Surgeon General's
7 report almost half of all the adults, living adults
8 in the United States that ever smoked had quit. The
9 vast majority of those quit without any kind of
10 stop-smoking aids, without Zyban or Chantix or
11 nicotine patches. They put them down cold turkey
12 and they quit.

13 The evidence you will hear in this case is the
14 single most important factor in successfully
15 quitting smoking, not surprisingly, is motivation
16 and persistence. You have to want it and you have
17 to try to. And you know what? When you fall down
18 you've got to pick yourself up and do it again.
19 Simply put, unless and until a smoker makes up his
20 or her mind that she truly wants to quit and is
21 willing to make a sincere effort to quit chances are
22 she's not going to.

23 So did Mrs. Jordan really want to quit? Did
24 she make a sincere sustained effort to quit? Did
25 she have the tools she needed to stay quit? Well,

1 but then she quickly added, I couldn't.

2 Mrs. Jordan admits that she liked to smoke.
3 She said it relaxed her, it calmed her down. She
4 said smoking helped her concentrate, that she liked
5 having a cigarette with a cup of coffee. She liked
6 to smoke and watch TV and relax.

7 She and her husband were close with her brother
8 and sister-in-law and on weekends they liked to get
9 together and play cards or play board games and
10 maybe have a Bacardi or two and smoke cigarettes.

11 Members of the jury, there is no question that
12 Mrs. Jordan had the ability to quit, because she did
13 quit. When she was told she couldn't smoke if she
14 wanted to stay on the lung transplant list she made
15 the decision to never smoke again, and she stuck by
16 that decision for 13 years.

17 Mrs. Jordan was able to stay quit even though
18 her husband, children, and brothers and sisters
19 continued to smoke. And Mrs. Jordan's own experts
20 will tell you it's really hard to quit and stay quit
21 when people around you smoke. Yet since 2002
22 Mrs. Jordan has done it.

23 The evidence will be that Mrs. Jordan always
24 had the ability to quit, and unfortunately she
25 waited until her lungs got so bad she needed a

1 let's talk about that.

2 Mrs. Jordan testified that over the years she
3 made several attempts to quit smoking. She would
4 eat candy and peppermints, she would chew gum, she
5 would sometimes hide her cigarettes, and a few times
6 she threw her ashtrays away. She said at one point
7 she used Nicorette gum, and she used a patch for
8 about a week, but no matter what she tried she just
9 couldn't quit.

10 But she admitted that she never went more than
11 a single day without smoking. Even when she said
12 she wanted to quit she would always smoke her
13 cigarette first thing in the morning.

14 She never asked any family members or friends
15 for help quitting. Her brother Jerry quit smoking
16 in 1978, but Mrs. Jordan never asked how he did it.
17 Dr. Rothstein offered to refer her to a
18 psychiatrist, but she didn't take him up on it. She
19 never joined a support group or tried hypnosis or
20 acupuncture.

21 One time she did ask one of her doctors for
22 help, Dr. Clower, for help in quitting, and he gave
23 her a list of things to do, but she admits she
24 didn't follow his advice. When we asked her how
25 come, she said, I guess I just didn't want to quit,

1 transplant before she did quit.

2 And why is that important? Well, because as we
3 all know, every time you go to the doctor the doctor
4 asks if you smoke. If you smoke what does the
5 doctor tell you? Quit smoking.

6 You know why the doctor tells you that?
7 Because when you quit smoking your risk of getting
8 sick from smoking goes down. And if the smoker
9 quits early enough and stays quit long enough he or
10 she eventually avoids almost all of the smoking-
11 related risk.

12 The evidence will be that if a person stops
13 smoking by the age of 35 they essentially avoid all
14 of the risks of smoking. Mrs. Jordan turned 35 in
15 1984. If they stopped by the age of 45 they avoid
16 90 percent of the risk. Mrs. Jordan turned 45 in
17 1994.

18 Members of the jury, the evidence will be that
19 only Mrs. Jordan was in control of her decision to
20 begin or continue smoking. The evidence will be
21 that in 1966 when that first warning on the pack she
22 quit, or in 1970 when that warning was stronger and
23 her dad died from emphysema from smoking, or in 1985
24 when the warning went on the pack that said smoking
25 causes emphysema, quitting now greatly reduces

1 serious risk to health, she would have basically
 2 avoided all of her smoking-related risk. But she
 3 made a different decision.

4 So what's this case about? Members of the
 5 jury, this is a case about one smoker, Elaine
 6 Jordan, and whether she is a member of the Engle
 7 class, and whether she is entitled to recover money
 8 for her decisions. It is a case about Elaine Jordan
 9 and what she knew about the risks about smoking and
 10 what she did with that knowledge.

11 We believe the evidence will be that
 12 Mrs. Jordan smoked because her friends and family
 13 smoked and she liked to smoke. We believe the
 14 evidence will be that Mrs. Jordan always had the
 15 ability to quit smoking whenever she made up her
 16 mind that she truly wanted to and was willing to put
 17 in the effort to make a sincere and sustained effort
 18 to quit.

19 We believe the evidence will be that
 20 Mrs. Jordan knew for decades that cigarettes were
 21 dangerous, they caused emphysema and other diseases,
 22 and that nothing that Philip Morris did or didn't
 23 do, said or didn't say, caused her to begin or
 24 continue smoking.

25 And finally, we believe that the plaintiff will

1 C E R T I F I C A T E
 2 STATE OF FLORIDA)
 3)
 4 COUNTY OF DUVAL)
 5
 6 I, Terry T. Hurley, RPR, certify that I was
 7 authorized to and did stenographically report the
 8 foregoing proceedings and that the transcript is a true
 9 record thereof.

10
 11 DATED this 16th day of July 2015.
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 TERRY T. HURLEY, RPR

1 not be able to meet her burden of proving that she's
 2 a member of the Engle class.

3 Thank you for listening to opening statement.
 4 Thanks for agreeing to be jurors in this case. We
 5 look forward to the opportunity in the next couple
 6 of weeks to bring the evidence.

7 Thank you very much.

8 THE COURT: Thank you, sir.

9 Ladies and gentlemen, of the panel, do you
 10 want -- you're about to catch a video deposition.
 11 Do you want to take a break?

12 Our court reporter does. That's the most
 13 important thing.

14 I'm going to send you back to the jury room to
 15 take a little stretch break, remind you of the
 16 court's order not to discuss the case among
 17 yourselves or with anyone else, not to do any
 18 independent research. I'll just ask that you stay
 19 in the jury room. I'm going to give you a
 20 ten-minute break, so I'll see you back at 3:10.

21 All rise for the jury, please.
 22 (The jury withdrew to the jury room.)
 23 (Short break.)
 24 (The trial continues in Volume 15.)
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