

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

VOLUME 12 (Pages 977 - 1081)

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

Pertains to: ELAINE JORDAN

Case No.: 2013-CA-008903-XXXX-MA

Jury Trial before The Honorable Virginia
Norton, Circuit Court Judge, in the above-entitled
action, in Courtroom 601 at the Duval County Courthouse,
501 West Adams Street, Jacksonville, Florida, on
Thursday, July 16, 2015, at 9:00 a.m., before Celeste O.
Werkheiser, RMR, CRR, and a Notary Public in and for the
State of Florida at Large.

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<p style="text-align: right;">Page 1038</p> <p>1 defective and unreasonably dangerous.</p> <p>2 4. That the Engle defendants concealed or</p> <p>3 omitted material information not otherwise known or</p> <p>4 available, knowing that material was false or</p> <p>5 misleading or failed to disclose a material fact</p> <p>6 concerning the health effects or addictive nature of</p> <p>7 smoking cigarettes or both.</p> <p>8 5. That the Engle defendants agreed to conceal</p> <p>9 or omit information regarding the health effects of</p> <p>10 cigarettes or their addictive nature with the</p> <p>11 intention that smokers and the public would rely on</p> <p>12 this information to their detriment.</p> <p>13 6. That all of the Engle defendants were</p> <p>14 negligent.</p> <p>15 In the event these findings apply to</p> <p>16 plaintiff's claims in this case, your consideration</p> <p>17 and use of the findings will be subject to certain</p> <p>18 additional limitations about which I will instruct</p> <p>19 you in detail at the conclusion of the evidence.</p> <p>20 In order for you to clearly understand your</p> <p>21 duties and properly decide this case, I have</p> <p>22 determined that this trial should be conducted in</p> <p>23 two phases.</p> <p>24 At the end of each phase, you'll be asked to</p> <p>25 render decisions and make certain findings which</p>	<p style="text-align: right;">Page 1040</p> <p>1 serving, and we're looking forward to having a very</p> <p>2 nice few weeks with you all. And thank you so much</p> <p>3 for your attention.</p> <p>4 And, Ms. Shamp, when you're ready to begin.</p> <p>5 MS. SHAMP: Thank you, Your Honor.</p> <p>6 THE COURT: Thank you.</p> <p>7 MS. SHAMP: Good morning, ladies and gentlemen.</p> <p>8 MEMBERS OF THE JURY: Good morning.</p> <p>9 MS. SHAMP: First, let me thank you for your</p> <p>10 service. I know that you've spent a long three days</p> <p>11 so far getting selected as the jury. And there's</p> <p>12 going to be a lot of evidence, and I know that you</p> <p>13 all have been paying attention so far, and that</p> <p>14 you'll continue to pay attention.</p> <p>15 So, on behalf of myself and my client, Elaine</p> <p>16 Jordan, I want to thank you for your attention and</p> <p>17 for your service.</p> <p>18 I also want to introduce to you my team that</p> <p>19 will be helping me to present the evidence as we go</p> <p>20 through the trial.</p> <p>21 Sitting with me at counsel table is Laurie</p> <p>22 Speed, who is an attorney. Of course, Elaine</p> <p>23 Jordan. In the back, it's Michael Kalil. He'll be</p> <p>24 helping with the technology in the courtroom.</p> <p>25 Elaine Jones, behind him, and Leslie Bryan.</p>
<p style="text-align: right;">Page 1039</p> <p>1 will be binding on the Court and the parties and</p> <p>2 will affect the ultimate disposition of this case.</p> <p>3 In the first phase, you'll be asked to</p> <p>4 determine if Ms. Jordan is a member of the Engle</p> <p>5 class; if plaintiff has proven the various causes of</p> <p>6 action; the percentage of fault, if any, of each</p> <p>7 party; the amount, if any, of compensatory damages;</p> <p>8 and whether or not the plaintiff is entitled to</p> <p>9 punitive damages.</p> <p>10 If you find entitlement to punitive damages,</p> <p>11 then you will consider in phase 2 the amount of</p> <p>12 punitive damages, if any.</p> <p>13 At the end of phase 1, I will give you further</p> <p>14 instructions of law as to the issues in this case</p> <p>15 and your duties and responsibilities in reaching</p> <p>16 your verdict.</p> <p>17 And before I let the attorneys begin, I do just</p> <p>18 want to mention one thing. Some of you may have</p> <p>19 noticed the appearance of Ms. Jordan's nose. And I</p> <p>20 just want to let you all know that she was diagnosed</p> <p>21 and treated for nasal cancer. However, Ms. Jordan</p> <p>22 makes no claim for damages based on her nasal cancer</p> <p>23 in this case. I wanted to mention that.</p> <p>24 Once again, thank you so much for being here.</p> <p>25 I know that we're all so happy that you're here</p>	<p style="text-align: right;">Page 1041</p> <p>1 And from time to time, they'll all be assisting</p> <p>2 as we put on the evidence in this case.</p> <p>3 Elaine Jordan was born in 1949 in a rural town</p> <p>4 in south Georgia. She moved to Jacksonville when</p> <p>5 she was nine years old. Her father was a carpenter</p> <p>6 and an alcoholic. Her mother worked long hours.</p> <p>7 She was one of seven children, the second</p> <p>8 oldest. And oftentimes when her mother was working</p> <p>9 long hours, she would be responsible for taking care</p> <p>10 of the other five kids in the house.</p> <p>11 By the time she was 14, her oldest sister was</p> <p>12 married and out of the house, and these</p> <p>13 responsibilities fell to her. It's not an easy</p> <p>14 life.</p> <p>15 Elaine Jordan was shy, insecure, awkward, like</p> <p>16 many 14-year-olds are. Her mother and father argued</p> <p>17 a lot. She had a lot on her shoulders at a young</p> <p>18 age.</p> <p>19 One night when she was 14, she was at a</p> <p>20 carnival with her friends. One of them offered her</p> <p>21 a cigarette. She thought it looked cool, made her</p> <p>22 seem grownup, part of the crowd. She tried it, and</p> <p>23 physically, it almost made her sick, made her dizzy;</p> <p>24 but, emotionally, it made her feel great,</p> <p>25 sophisticated, grown up, confident. The nicotine in</p>

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1 it helped her relax.
2 It was 1963. She was 14 years old.
3 The next day at school, at Paxon Junior High,
4 she tried it again in the girls' bathroom. This
5 time it was a little easier. And, again, she liked
6 the way it made her feel sophisticated, grownup,
7 like the movies stars she had seen on television and
8 the movies, looked glamorous.
9 She continued to smoke. The more she smoked,
10 the more she wanted to.
11 By the time she was 16 years old, she was
12 smoking a pack a day. By the time she was 17, she
13 had tried to quit and couldn't.
14 When she tried to stop, she would shake, she
15 would get anxious, nervous, irritable, even sick.
16 And thus began a 35-year battle of Elaine Jordan
17 against addiction to nicotine. She tried repeatedly
18 over the years to quit, and repeatedly failed.
19 And then, in September of 1993, when she was 44
20 years old, she collapsed, unable to breathe, unable
21 to catch her breath. She was taken to Baptist
22 Hospital and diagnosed with COPD.
23 Then, in 1993, she recommitted to trying to
24 quit. Again, she failed. She cut down. She
25 decided to switch from the Marlboro Red cigarettes

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1 that she had smoked to Marlboro Lights. Been
2 advertised as having less tar. She thought they
3 would be safer for her. But she was unable to quit.
4 In 1999, she collapsed again and was
5 hospitalized and was referred to Dr. Rothstein,
6 who's a pulmonologist. And he sat down with her,
7 and he urged her to quit, and he prescribed some
8 drugs for her, Wellbutrin. He counseled her, gave
9 her the patch.
10 She threw away her cigarettes, she threw away
11 her ashtrays. Some days she was able to smoke less;
12 some days she cut down to under a pack; but, then
13 she would go right back up.
14 Addiction has plagued her and her family
15 throughout her life. Many of the members of her
16 family were addicted to nicotine. There were
17 smokers around her.
18 In 1999, when she was 50 years old, her COPD
19 was so bad that she couldn't walk to the mailbox and
20 back. She had to stop working. She told
21 Dr. Rothstein she had quit, but she hadn't. She was
22 trying. She had cut back.
23 And in February of 2002, she, again, was taken
24 to the hospital, so bad she ended up on a
25 ventilator. The doctors told her that her lungs

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1 were so diseased that her only chance of surviving
2 was a lung transplant. She could barely breathe.
3 But they told her that in order to go on the
4 transplant list, she had to quit. She couldn't have
5 nicotine in her system. She was on oxygen
6 full-time, had to sleep with it, use it all the
7 time. She could barely breathe.
8 But in February -- and the doctor told her that
9 if she tried to light up with the oxygen, it could
10 explode in her face.
11 And in February 2002, she finally quit.
12 Since then, she's had two lung transplants, a
13 kidney transplant. She's been on and off oxygen.
14 She's permanently disabled. She's 66.
15 This is my opening statement. It's my
16 opportunity to talk to you about what we believe the
17 evidence will be in this case. And, obviously,
18 there's going to be a lot more evidence than I can
19 preview for you today, but what I want to try and do
20 is to try and give you a sense of what the evidence
21 will be and how it fits into what you're going to be
22 called upon to decide.
23 Now, the Judge has already told you that this
24 case arose out of the Engle case which happened in
25 1994. So let me talk to you a little bit about that

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1 case.
2 In that case, the plaintiffs alleged that
3 Philip Morris and the other Engle defendants -- and
4 those are the major cigarette manufacturers -- that
5 Philip Morris and the other major cigarette
6 manufacturers had lied to the American public about
7 the dangers of smoking, the health risks and the
8 addictive nature of smoking.
9 They alleged that the product itself as
10 manufactured was unreasonably dangerous and
11 defective.
12 They alleged in that suit that nicotine was
13 addictive, and it was an addictive product.
14 They alleged that it caused diseases, including
15 lung cancer and COPD.
16 And in 1994 when that case was brought, Philip
17 Morris denied all of those things. That case then
18 went to trial and was tried for over a year in front
19 of a jury. And Philip Morris contested all of those
20 things in that trial, including that nicotine was
21 addictive -- in 1999 -- including that nicotine
22 caused -- I mean, that cigarette smoke can cause --
23 MR. COFER: Objection, Your Honor. May we
24 approach?
25 THE COURT: Yes.

18 (Pages 1042 to 1045)

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1 (The following took place at the bench:)

2 MR. COFER: There will be no evidence of this

3 whatsoever, and it's clearly inappropriate to talk

4 about defendants and what we did in the first case

5 and all of that.

6 The only purpose is to explain that this is a

7 continuation of a class action and the findings

8 apply, not what our positions were, not what the

9 witnesses were, none of that.

10 THE COURT: I think we had this issue in Ellis.

11 I think this was an issue in Ellis. I didn't mean

12 to cut you off, sir.

13 Are you going to go through this?

14 MS. SHAMP: What I said is that they denied --

15 and these were findings of the -- and then I was

16 going to say they denied it, and these are the

17 findings that the jury found. And I think I'm

18 entitled to say these are findings by the jury, not

19 things that are admitted.

20 THE COURT: If they're findings of the jury,

21 that's fine.

22 MR. COFER: Sure, but you can't go into the

23 evidence how the defendant -- what the arguments

24 were. All of that is collateral. And, in addition,

25 there's no evidence of that in this case. This is

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1 just counsel summarizing what she thinks the trial

2 was, and it's inappropriate, and they can't

3 essentially argue the evidence based on the

4 findings. The findings are what they are, and they

5 apply.

6 MS. SHAMP: I'll move on to the findings then,

7 Your Honor.

8 THE COURT: Let me put what I would just like

9 to say for the record. I think the point of having

10 the findings, those were the findings of the jury,

11 is that we don't have go into how the findings were

12 found.

13 MR. COFER: Can I ask for an instruction to

14 disregard?

15 THE COURT: I don't think anyone paid that much

16 attention to it. I would hate to ring the bell.

17 I'm sorry.

18 (Bench conference concluded.)

19 THE COURT: Please proceed.

20 MS. SHAMP: And after a year-long trial, the

21 jury came back with certain findings, and the Judge

22 read those findings to you.

23 Now, you're probably saying everyone knew,

24 everyone knows smoking causes these diseases. So

25 let me take you back, talk a little bit about

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1 smoking in the first half of this century.

2 In the early 1900's, very few people smoked

3 cigarettes. It was rare. And there became an

4 explosion of cigarette smoking in the first half of

5 the 19th century for four basic reasons, some

6 technological.

7 One, the flue curing came about. Used to be

8 that when people smoked tobacco, they smoked them in

9 pipes and in cigars. The tobacco leaf was not

10 inhalable because of the high pH in it. Couldn't be

11 inhaled.

12 And then they invented flue curing. And

13 through flue curing, they were able to reduce the pH

14 so that the cigarette smoke became inhalable and

15 could go into the lungs.

16 The second thing was the invention of machine

17 rolling in the late 18th century. They were able to

18 now manufacture cigarettes that once had to be

19 hand-rolled, thousands and thousands of them at a

20 time off of a machine.

21 Third was mass media. The invention of mass

22 media was able to spread cigarette advertising and

23 marketing across the country.

24 And, four, World War II. And in World War II,

25 our military had cigarettes put in their rations.

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1 And many, many, many of our soldiers became addicted

2 to cigarette smoking while they were overseas.

3 So, as you can see here, the cigarette smoking

4 in the 1900's was almost none, all the way up to the

5 1950s and 1960s.

6 And in 1960, almost one-half of all Americans

7 were smoking cigarettes. It's an amazing number.

8 Half of everybody. 60 percent of the doctors in the

9 United States smoked cigarettes. Smoking was

10 everywhere. There was almost nowhere that you

11 couldn't smoke.

12 It's hard to imagine now. People smoked on

13 airplanes. People smoked in hospitals, doctors'

14 offices, movie theaters. It was in movies, Humphrey

15 Bogart in the forties smoking cigarettes. James

16 Dean, Marilyn Monroe, celebrities, all of them

17 smoking.

18 Mike Wallace on television interviewing

19 somebody with a cigarette in his hand. It's hard to

20 imagine today. That's Johnny Carson with a

21 cigarette in his hand on his desk.

22 Coaches on the football field smoking

23 cigarettes while they're coaching their players.

24 Teachers in the classroom, in high schools, there

25 were smoking areas for people to smoke.

19 (Pages 1046 to 1049)

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1 Nurses. People smoking in the hall of the
2 hospital.
3 Philip Morris actually using doctors to talk
4 about their cigarettes, report on the finding of a
5 group of doctors who talked about cigarette
6 smoking -- Philip Morris being less irritating to
7 the throat. Doctor's report on Philip Morris. Hard
8 to imagine now.
9 Bob Hope. In the 1950s, America loved I Love
10 Lucy. It was the number one show. And Lucy loved
11 Philip Morris. And Ricky, too.
12 Imagine this. Advertisement for Philip Morris
13 Chesterfield cigarettes, a nurse handing out
14 cigarettes to servicemen.
15 MR. COFER: Objection, Your Honor. May we
16 approach?
17 THE COURT: Yes.
18 (The following took place at the bench:)
19 MR. COFER: Philip Morris did not own
20 Chesterfield when this ad came out, and she never
21 smoked Chesterfield. And Philip Morris didn't own
22 it. And so they're suggesting -- she's suggesting
23 that Philip Morris put that ad out, and they didn't.
24 And I would ask that my objection be sustained,
25 and the jury be advised that Philip Morris did not

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1 own Chesterfield, and Philip Morris did not publish
2 that ad.
3 THE COURT: Talking about giving out to the
4 service people?
5 MR. COFER: No. I'm talking about the ad she
6 put up there about Chesterfield in 1997. When they
7 bought the brand, that was in '97. She's suggesting
8 that Philip Morris published these ads.
9 MS. SHAMP: I --
10 MR. COFER: Please let me finish.
11 Your Honor ruled yesterday that she couldn't
12 show brands of cigarettes that were owned by
13 companies other than Philip Morris.
14 MS. SHAMP: We did. And Chesterfield is a
15 Philip Morris brand. I think it was in 1950 that
16 they bought --
17 MR. COFER: Philip Morris bought Benson &
18 Hedges. That's a completely different brand.
19 Philip Morris didn't buy Chesterfield until '97.
20 She's now suggesting to the jury that Philip
21 Morris published these ads. And I would like a
22 curative instruction that Philip Morris did not own
23 Chesterfield back then, that Philip Morris did not
24 publish those ads.
25 She did the same thing with Bob Hope, and I let

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1 that slide just on quickly. And I thought, okay,
2 maybe that was inadvertent, but now we're at the
3 point where it's happened again, in direct violation
4 of Your Honor's ruling just yesterday.
5 MS. SHAMP: All right. I did look up, and I
6 thought Chesterfield was owned by Philip Morris at
7 the time. They do currently own Chesterfield. '97
8 is my mistake. And I'm happy to take that down. I
9 think I have another Chesterfield, so I need to pull
10 that out.
11 THE COURT: Okay. I think I need to let the
12 jury know, though, that that ad that they just saw
13 was inadvertently --
14 MR. COFER: I would just say --
15 THE COURT: I don't want to place undue
16 attention --
17 MR. COFER: Just say that was not a Philip
18 Morris ad.
19 (Bench conference concluded.)
20 THE REPORTER: Wait a second. My audio went
21 out. Hold on.
22 (Pause.)
23 THE COURT: Are you ready, Madam Court
24 Reporter?
25 THE REPORTER: Yes, thank you.

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1 THE COURT: I just want to let you all know
2 that you just saw an ad concerning Chesterfield
3 cigarettes. And at the time that ad was produced,
4 Philip Morris did not own Chesterfield, so Philip
5 Morris did not produce that ad.
6 Please proceed. Thank you.
7 MS. SHAMP: Thank you, Your Honor.
8 In 1953, the public did not think smoking was
9 dangerous. They did not associate major illnesses
10 or disease. It was a normal part of everyday life.
11 Imagine, every car built in America during that
12 period of time, up until very recently, had a
13 cigarette lighter in it. It was a normal part.
14 Fifty percent of Americans smoked. Far from being
15 thought of as dangerous.
16 People did not associate it with risk of lung
17 cancer. Even doctors did not associate it with the
18 risk of lung cancer.
19 There may have been a lone voice out there --
20 in fact, there were some people who were noting an
21 association earlier, in the 1920s, a few people who
22 were coming out and saying they thought there was an
23 association, but the public at large thought it was
24 a harmless, normal part of life.
25 But then something important happened in the

20 (Pages 1050 to 1053)

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1 1950s. Doctors started looking -- or scientists
2 started looking at a very strange epidemic of lung
3 cancer that was sweeping across the United States.
4 Early 1900's, lung cancer was almost not heard
5 of. In fact, there's a story about a doctor who was
6 pulled out of bed in the middle of the night for an
7 autopsy because it was lung cancer, and his
8 professors said, you might not ever see one of these
9 again. It was that rare.
10 If you'll look at the pink line, that is the
11 increase in cases of deaths related to lung cancer
12 in the United States. And if you look at the black
13 line, of course, that's smoking, cigarette
14 consumption.
15 And scientists started noticing this rapid
16 increase of lung cancer and how it matched the
17 increase in smoking consumption, and this was a
18 major concern. It was an epidemic of lung cancer in
19 America. People started trying to understand what
20 is the cause of this, what's going on.
21 And then in 1953, two scientists, Ernst and
22 Wynder (SIC), started painting, and they painted the
23 tar from cigarettes onto the skin of mice, and in 70
24 percent of mice, cancerous tumors developed.
25 This was big news. Imagine, half of America

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1 smoked cigarettes at the time. And America turned
2 to the cigarette manufacturers. This is in 1953.
3 People asked the people who made the cigarettes.
4 Elaine Jordan's four years old. They asked the
5 cigarette companies, is it true? Is this true?
6 And internally, the cigarette manufacturers
7 knew it was true. This is a study from Claude
8 Teague, who was an R. J. Reynolds scientist, from
9 1953. So this is an internal document where he said
10 his studies tend to confirm the relationship between
11 heavy and prolonged tobacco smoking and cancer of
12 the lung. They knew.
13 But when America turned to them and asked them,
14 is this true about your product, it was the
15 beginning of an amazing, fascinating story. Because
16 all the cigarette manufacturers in America, Philip
17 Morris, Lorillard, American, Brown & Williamson, all
18 came together, these fierce competitors, for a
19 meeting at the Plaza Hotel in New York in December
20 of 1953.
21 And we know that they came because we have the
22 documents now that show that meeting. This is a
23 memorandum from that meeting that shows who was
24 there. And, of course, you see the President of
25 Philip Morris was there, Benson & Hedges, American

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1 Tobacco. And they all got together and said, what
2 are we going to do? This is a great risk to our
3 industry.
4 They had a chance to make, right then, 1953 --
5 when Elaine Jordan was four years old, Philip Morris
6 was a large tobacco company -- right then they had a
7 choice whether to come clean; to say yes, we see
8 these schedules showing this; to begin marketing
9 responsibly; to begin trying to figure out ways to
10 reduce the addictiveness of the product.
11 They had a choice to make. And what they
12 decided to do: It was the feeling of those present
13 that the industry could most effectively face this
14 problem by jointly engaging a PR firm.
15 They hired a publications firm called Hill &
16 Knowlton. They hired a PR firm to seek together
17 what to do.
18 And that PR firm then went out and talked to
19 the Presidents and the research directors of these
20 major companies. We have the report of what they
21 said. This is a forwarding memorandum. It's an
22 important document because it was after the Plaza
23 meeting about what was going to be their plan.
24 And they spoke to the research directors of
25 these various organizations, and this is what they

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1 said. One of the men said: "It's fortunate for us
2 that cigarettes are a habit that they can't break."
3 It's fortunate for us.
4 Said another: "Boy, wouldn't it be wonderful
5 if our company was the first to produce a
6 cancer-free cigarette."
7 1953, they knew their product was both
8 addictive and caused cancer. And so what they did
9 was the heads of these major companies linked arms,
10 so the very heads of the great corporations
11 themselves -- and these were big corporations in
12 America, R. J. Reynolds, Philip Morris, big -- they
13 linked arms. "The great corporations themselves
14 signalled the end of the old days when they linked
15 arms and walked together to consult with us."
16 Together. This is the beginning of the conspiracy.
17 And what they had to do was -- they discussed
18 the problem. The first problem is to establish some
19 public confidence in the industry's leaders
20 themselves, so that the public will believe their
21 assertions about their interests in public health.
22 Problem two, they need to reassure the public,
23 to reassure the public so that they'll continue
24 smoking.
25 "We might as well just continue on enjoying the

21 (Pages 1054 to 1057)

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<p style="text-align: right;">Page 1058</p> <p>1 smoke in this interim while research pursues the 2 facts, with full assurance that if any cancer 3 causing agent is really found in tobacco, the 4 manufacturers will quickly find a way to eliminate 5 it." 6 This is their PR campaign. And this forwarding 7 memorandum sets out what they're going to do. 8 They're going to try and convince the public that 9 you can count on the cigarette companies who have 10 obligated themselves to pour millions of dollars 11 into cancer research to take anything out of your 12 cigarette that is a health hazard, if our science 13 ever really finds such hazards in the wonderful 14 tobacco we use. 15 After the meeting -- so Philip Morris, along 16 with the other cigarette manufacturers, chose to 17 what? They chose to deny that there was proof that 18 cigarettes caused lung cancer. They chose to deny 19 that loudly and publicly. 20 And they issued jointly "A Frank Statement." 21 And what they did was they formed a company. I 22 think I asked you if you knew the names of some of 23 these entities in voir dire, the Tobacco Industry, 24 the T. I., or the TIRC. They formed those things in 25 order to put forth this message that they wanted to</p>	<p style="text-align: right;">Page 1060</p> <p>1 like this to all the doctors in the country making 2 claims that more testing is needed, claims that the 3 clinical data that supports Ernst and Wynder (SIC) 4 and these other reports that were coming out saying 5 that smoking caused lung cancer were questioned, 6 when they knew -- and you remember the Teague 7 memorandum -- that the studies confirmed it. 8 This is a memorandum by -- a speech that was 9 given by the President of Philip Morris: "If we had 10 any thought or knowledge that in any way we were 11 selling a product harmful to consumers, we would 12 stop business tomorrow." 13 That was not true. In fact, that was -- a lot 14 of people said they thought they should stop because 15 the product is injurious to health. In fact, the 16 President of Philip Morris was saying that when he 17 knew. 18 This is a speech by the President of Philip 19 Morris in 1957: "I'll merely assert that there's 20 not one shred of conclusive evidence to support the 21 link between cigarette smoking and lung cancer." 22 This was a massive campaign. 23 In 1960, the New England Journal of Medicine, 24 one of the major publications by doctors, that 25 doctors read, and they commented upon the state of</p>
<p style="text-align: right;">Page 1059</p> <p>1 send. 2 And the first thing that they did was to put 3 out what's called "A Frank Statement to Cigarette 4 Smokers." And this is a full-page ad that was put 5 in every major newspaper across the United States in 6 January of 1954. Every single newspaper that had a 7 publication or circulation of 50,000 or more, this 8 was in there. 9 And what they said was that: "There is no 10 proof that cigarette smoking is one of the causes of 11 lung cancer." What they said was: "We believe the 12 products we make are not injurious to the public 13 health." What they said was: "We accept an 14 interest in people's health as a basic 15 responsibility paramount, number one, to every other 16 consideration in our business." 17 Remember, this is after the forwarding 18 memorandum, where they said it's lucky for us that 19 cigarettes are a habit they can't break. 20 And so what they did was they engaged in a 21 massive campaign to try and instill doubt among 22 cigarette smokers that smoking caused major disease. 23 They published papers like this, which was 24 called the White Paper, a scientific perspective on 25 cigarette controversy. And they circulated papers</p>	<p style="text-align: right;">Page 1061</p> <p>1 the knowledge in 1960 about cigarette smoking and 2 lung cancer, but also on the tobacco companies' 3 response. Let me read it to you. 4 "It is over 20 years since doctors Lombard and 5 Doering in these pages," meaning in the New England 6 Journal of Medicine, "first suggested an association 7 between smoking and cancer. Since that time, there 8 have been over two score similar studies, all of 9 which have shown the same association and have 10 progressively indicated cigarette smoking. No 11 responsible observer can deny this association, and 12 the evidence is now sufficiently strong to suggest a 13 causative role. In the face of this evidence, the 14 response of the tobacco manufacturers and their 15 spokesperson has been deplorable. They have 16 distorted the facts beyond recognition. A 17 bewildering array of paper tips have been added to 18 their products ostensibly to filter out harmful 19 substances, the very existence of which they deny." 20 They issued press releases, press releases that 21 were covered. This is the Tobacco Institute in 22 1972. "Some government officials maintain that 23 cigarette smoking is the number one public health 24 problem. We believe the number one public health 25 problem is the extent to which officials knowingly</p>

22 (Pages 1058 to 1061)

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1 mislead the American public."
2 That's the tobacco company's response to the
3 science and evidence showing the link between them
4 and cancer, to deny it.
5 They continued, 1979, to assert that there was
6 still a controversy about cigarette smoking, when in
7 1960 the New England Journal of Medicine said no
8 responsible observer can say that. This is within
9 that publication: "Scientists have not proven that
10 cigarette smoke or any of the thousands of its
11 constituents as found in cigarette smoke can cause
12 human disease." Simply not true.
13 1963, Elaine Jordan tries her first cigarette.
14 The Plaza meeting was in 1953. This is ten years
15 later. Ten years of their lies and
16 misrepresentations.
17 In 1963, the Surgeon General is commissioned to
18 come out with a report about smoking and health that
19 same year. And that report comes out in 1964. But
20 before the report comes out, the Surgeon General
21 asks the tobacco companies to tell them what they
22 know, what their research is. It's their product.
23 What are the constituents of the disease? What do
24 you know? What does your science show?
25 This is a memorandum from the Tobacco Institute

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1 that agrees "submission of the Battelle and Griffin
2 developments to the Surgeon General is undesirable."
3 The Surgeon General comes out with this report
4 in January of 1964. And what was tobacco companies'
5 response to that? Certainly, by then, they were
6 going to accept the findings.
7 This is a memorandum from Philip Morris dated
8 January of 1964, right after the release of the
9 Surgeon General's report. "We must in the near
10 future provide some answers" -- 1964 -- "some
11 answers which will give smokers a psychological
12 crutch and a self-rationale to keep smoking."
13 Philip Morris, we need to give smokers a
14 psychological crutch so that they'll keep smoking.
15 1967, they're still putting out White Papers.
16 They go on television, spokespeople. You'll see
17 this as the evidence of the case goes forward.
18 You're actually going to see videotape of Tobacco
19 Institute spokespeople, of Philip Morris
20 representatives, going on television and saying we
21 don't believe there's a link between smoking and
22 cancer. We don't believe that it's associated.
23 1984, they are still denying.
24 And in 1994, Congress convened hearings because
25 what they were trying to decide was whether the FDA

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1 should regulate tobacco as an addictive substance.
2 And the tobacco companies did not want the FDA to
3 regulate that, so they denied that cigarettes were
4 addictive.
5 In 1994, the President of Philip Morris put his
6 hand up in front of Congress and said -- and you're
7 going to watch the tape -- smoking is not addictive.
8 1994.
9 When they had a choice, Philip Morris chose to
10 lie. They denied that there was proof that
11 cigarettes caused lung cancer.
12 And then, that wasn't enough. They engaged in
13 a massive advertising campaign to portray smoking as
14 part of a healthy and active lifestyle. Massive.
15 We all know the Marlboro man. It's engrained
16 in our consciousness, all of us. We think of
17 rugged, outdoors, healthy. This was one of the most
18 successful advertisement campaigns in history, the
19 Marlboro man and launched Marlboro from a minor
20 brand to number one, portraying it as part of this
21 healthy, individualistic lifestyle.
22 People wanted to be the Marlboro man. Girls
23 liked the Marlboro man.
24 They also sponsored race cars. They sponsored
25 athletic events. They put their name anywhere they

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1 could. Massive amounts of advertising.
2 Sponsored -- this one I like particularly. It's a
3 football player, a football player, an athlete
4 throwing a pack of Marlboro cigarettes. Paul
5 Hornung, who was a Hall of Fame football player, I
6 think, for the New York Giants. Using athletes in
7 their advertising.
8 Virginia Slims sponsoring tennis tournaments,
9 cigarettes. Benson & Hedges, the Grand Prix of Ski
10 and Slalom, skiing ads. Benson & Hedges, Philip
11 Morris brand.
12 The FTC, Federal Trade Commission, started
13 investigating the amount of money that tobacco
14 companies spent on advertising, and some of their
15 findings will be evidence in this case.
16 This one, in 1981, after the company knows it
17 causes lung cancer, it is the most heavily
18 advertised product in America. "So pervasive is
19 cigarette advertising that it is virtually
20 impossible for Americans of almost any age,"
21 including children, "to avoid cigarette
22 advertising."
23 In 1990, cigarette advertising and promotional
24 expenditures grew to 4 billion dollars.
25 Now, after 1953, certainly after 1964,

23 (Pages 1062 to 1065)

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1 Americans were worried, worried that this might be
2 harmful to them. There is news about it now, news
3 reports. The Surgeon General's report made front
4 page news, and Americans were worried.
5 So in response, what the tobacco companies did
6 is started putting filters on cigarettes and arguing
7 about filtration. These are going to be safer.
8 "The cigarette that takes the fear out of smoking."
9 It's a Philip Morris ad for a filter on the
10 cigarettes. Lower in tar than 95 percent of all
11 cigarettes sold, the Multifilter, which is a Philip
12 Morris cigarette. And here's why. They show the
13 filter over there. They knew this was false.
14 This is so embedded in our thinking that
15 Americans today still think filters are somewhat
16 safer -- or somehow safer. They're not. Completely
17 false.
18 This is a report from the United States
19 Congress. United States Congress got so mad about
20 it that they looked into it. "False and misleading
21 advertising. The cigarette manufacturers have
22 deceived the American public through their
23 advertising of filter-tipped cigarettes. Without
24 specifically claiming that filter tip removes the
25 agents alleged to contribute to heart disease or

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1 lung cancer, the advertising has emphasized such
2 claims as clean smoking, snowy white, pure, miracle
3 tip, 20,000 filter traps, giving you more of what
4 you changed to a filter for, and other phrases
5 implying health protection, when actually most
6 filtered cigarettes produce as much or more nicotine
7 and tar as cigarettes without filters. As a result,
8 the connection between filter tips and protection
9 has become deeply embedded in the public's mind."
10 False. People switched, thinking instead of
11 quitting, we'll switch to filters, that will be
12 safe.
13 This is part of their marketing program. And
14 this is a marketing document from Philip Morris that
15 you'll see during the evidence in this case, where
16 they said: "The illusion of filtration is as
17 important as the fact of filtration."
18 Now, you're probably wondering why I've gone
19 through all of that because I started this by
20 saying, what was the Engle class, right? That's how
21 I started this conversation, what was the Engle
22 class about?
23 In the Engle class, this evidence and more was
24 put up, and the Engle jury came up with these
25 findings. This is what the Engle jury found:

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1 1. Smoking causes COPD.
2 2. Nicotine in cigarettes is addictive.
3 3. Philip Morris and other tobacco companies
4 placed cigarettes on the market that were defective
5 and that were unreasonably dangerous.
6 Finding 4. All defendants, all of the Engle
7 defendants concealed, hid, or omitted material
8 information not otherwise known or available,
9 knowing that the material was false or misleading or
10 failed to disclose a material fact concerning the
11 health effects and addictive nature of cigarette
12 smoking or both.
13 Fraud. They found the fraud. And conspiracy.
14 5. That Philip Morris entered into an
15 agreement, a conspiracy, to conceal or omit
16 information regarding the health effects of
17 cigarettes or their addictive nature, with the
18 intention, with the intention that smokers and the
19 public would rely on this information to their
20 detriment.
21 And they did.
22 6. All of the defendants, including Philip
23 Morris, were negligent.
24 Those are the findings of the Engle jury.
25 Now, I want to talk about what the issues are

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1 that you have to decide since the Engle jury found
2 those findings.
3 So you're going to have five issues to decide:
4 The first is class membership, whether Elaine Jordan
5 is a member of the Engle class; two, whether the
6 conspiracy and fraud was the legal cause of her
7 injuries; three, comparative fault; four,
8 compensatory damages; and, five, punitive damages.
9 I just want to briefly, in the time I have
10 left, touch on these topics because we're going to
11 present evidence on each of these things for your
12 consideration.
13 A class action, as I discussed earlier, is when
14 a small group of people pursue a claim on behalf of
15 a large group for purposes so that every single
16 person doesn't have to have a year-long trial.
17 It's a convenience. It's a way of making
18 things move more easily to prove things.
19 So a few people, the Engle plaintiffs, brought
20 a case on behalf of this larger group of people.
21 And that's the Engle class, class members.
22 So in this case, the first thing that plaintiff
23 has to prove is that Elaine Jordan is a member of
24 the Engle class. She's one of the people that the
25 Engle case was brought for, brought on behalf of.

24 (Pages 1066 to 1069)

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1 And it's very simple. Very simple. All we
2 have to prove is that Elaine Jordan was addicted.
3 She was addicted. That's number one.
4 Two, was her addiction to smoking cigarettes a
5 legal cause of her disease? And we're going to put
6 on evidence of both of those things. The first one,
7 pretty straightforward, addiction.
8 Now, addiction is a medical concept. And we
9 throw around that word a lot. I sometimes tell
10 people I'm addicted to buying shoes. But addiction
11 is a medical diagnosis, all right? And so we're
12 going to bring on medical professionals who are
13 going to talk about what it takes to be diagnosed
14 with addiction.
15 And one of the things we're going to bring and
16 talk about is this, which is called the DSM-5. It's
17 the Diagnostic & Statistical Manual, 5th Edition,
18 which is for mental disorders. And in here, there's
19 how you diagnose schizophrenia, how you diagnose
20 bipolar disorder, how you diagnose a number of
21 mental illnesses and conditions, including addiction
22 to many substances, heroin, cocaine, and addiction
23 to nicotine.
24 And we're going to bring in an expert, Susan
25 Blank, Dr. Susan Blank, who is a psychiatrist, and

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1 she is an addiction medicine specialist, and she
2 literally wrote the book. She is the person who
3 authored the chapter in the American Society of
4 Addiction Medicine, their guidelines for the
5 treatment of addiction. She wrote the chapter on
6 nicotine addiction.
7 And so we brought her in here. And we took
8 Elaine Jordan up to Atlanta, where she is, and she
9 interviewed her. And she diagnosed her as addicted
10 to nicotine. And she's going to come in and talk
11 about how she went through the various criteria.
12 And I'm going to belabor, but let me talk about
13 a few -- some of them make sense, some of them
14 you've probably figured out before -- one,
15 withdrawal. If you take the substance away, the
16 person suffers withdrawal symptoms.
17 And the typical withdrawal symptoms -- we heard
18 some of them in voir dire -- anxiousness,
19 irritability. Irritability is a withdrawal symptom
20 when you take nicotine away. Anxiety, appetite,
21 cravings.
22 So Susan Blank will testify that when nicotine
23 was withdrawn from Elaine Jordan, she suffered
24 withdrawal, the classic withdrawal symptoms.
25 Second, cravings. She had cravings for

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1 nicotine after cigarettes were taken away from her.
2 Another criteria to look at is unsuccessful
3 efforts to quit, people who try to stop and can't,
4 try to stop and can't. That is a sign under the
5 criteria for addiction.
6 Some maybe you didn't think of, like first
7 cigarette in the morning. People who are addicted
8 oftentimes, as soon as their feet hit the floor,
9 they want to light up. As soon as they wake up in
10 the morning, they want to light up because their
11 body has gone through withdrawal overnight, so their
12 body wants that cigarette first thing in the
13 morning.
14 And Dr. Blank will talk about and go through
15 all of the criteria and say that she diagnosed
16 Elaine Jordan as addicted to nicotine.
17 We're also going to bring in her pulmonologist,
18 Dr. Rothstein. You heard him mentioned earlier. He
19 saw her in 1999. In 1999, he diagnosed her as
20 addicted.
21 Remember, I told you he sat down and counseled
22 her and talked to her about various medications that
23 she could use, talked to her about how to cut back,
24 talked to her about the patch, using the patch. So
25 he's going to come in and testify that she was

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1 addicted.
2 Now, very important, the issue of whether she
3 was addicted is not a question of whether or not she
4 could quit. That's not the issue here.
5 Fortunately, addicted people quit every day. And,
6 in fact, addiction medicine specialists, all of them
7 will tell you, we tell every single patient who
8 comes to us, whether it's cocaine, heroin, alcohol,
9 you can quit. We would never say to anybody that
10 you can't quit.
11 So it's not about whether or not somebody could
12 quit; it's whether they meet the criterion for
13 addiction. Whether or not you can quit doesn't.
14 Fortunately, Elaine Jordan was able to quit in
15 2002. She was able to beat the addiction in 2002.
16 But that's not a factor under the criterion for
17 addiction, whether or not someone could quit.
18 So the second thing that we have to prove under
19 class membership is was her addiction a legal cause
20 of her disease, which basically means did she smoke
21 because she was addicted? Did she smoke because she
22 was addicted to nicotine, and not for some other
23 reason?
24 Nicotine is going to be a very interesting and
25 important part of this trial. You're going to hear

25 (Pages 1070 to 1073)

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1 a lot about nicotine. It is a drug, a powerful
 2 drug. And we're going to talk about how it affects
 3 the brain; and that there are nicotine receptors in
 4 the brain; and that what happens when people smoke,
 5 it fills up those nicotine receptors. And it's
 6 going to make sense, when those nicotine receptors
 7 get filled up, more are created in the brain. And
 8 then when you withdraw the substance from them,
 9 those nicotine receptors say, fill me up.
 10 And it's a very, very basic part of the brain.
 11 We call it the limbic system. It's the lizard part,
 12 the back of the brain, because it's tied to the
 13 dopamine reward system, which is our survival.
 14 It's the same part of our brain that controls
 15 wanting to eat, controls wanting to procreate, in
 16 the back of our brain. It is the strongest part of
 17 our brain.
 18 And addiction to nicotine affects that part of
 19 the brain. It hijacks it, and it tells people,
 20 essentially, I need that to survive. That's what
 21 the brain is telling them.
 22 And they've studied this. They've looked, and
 23 we're going to show some studies where they're
 24 looking at the brain and looking at PET scans and
 25 MRIs of the brain and show these areas of the brain

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1 and what happens when you withdraw nicotine from
 2 someone who's addicted.
 3 So I say all that to say that nicotine is the
 4 fundamental reason that people persist in smoking
 5 cigarettes, to get the nicotine. And Philip Morris
 6 knows this about its product, and we're going to
 7 show evidence of the fact.
 8 This is a 1965 document about cigarettes from
 9 Philip Morris. "Nicotine delivery," where they talk
 10 about the level of nicotine that they need to have
 11 in every cigarette. "Nicotine delivery should be at
 12 .7 milligrams minimum. Add nicotine to cigarettes
 13 and define the contribution of nicotine to flavor."
 14 They studied nicotine. They know how much
 15 nicotine needs to go in their cigarettes, know what
 16 they need in order to sustain addiction.
 17 Another one: "Nicotine delivery can be
 18 controlled via filler or smoke pH adjustment. pH
 19 indicated nicotine efficiency increases with
 20 nicotine availability rather than smoking."
 21 This is a Philip Morris document, which I think
 22 is very telling. "No one has ever become a
 23 cigarette smoker by smoking cigarettes without
 24 nicotine." It is the fundamental reason people
 25 smoke.

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1 This is Philip Morris' own document. Any
 2 evidence where they suggest that there is a
 3 different reason why people smoke is belied by their
 4 own documents. No person ever became a cigarette
 5 smoker by smoking a cigarette that did not contain
 6 nicotine. It is why people smoke.
 7 This is the Surgeon General's report. I should
 8 mention -- and we will talk a lot about Surgeon
 9 General's reports. The first one was in 1964 about
 10 smoking and health, and there has been one almost
 11 every year since 1964. There was one in 2010.
 12 There was one that was just released in 2014, which
 13 was the 50th anniversary of the first one.
 14 And the Surgeon General is charged with looking
 15 at smoking in America because of the enormous
 16 mortality and morbidity, illness and disease and
 17 death that is caused by cigarette smoking.
 18 And this is a report from the Surgeon General
 19 in 2010: "Nicotine addiction is the fundamental
 20 reason that individuals persist in using tobacco
 21 products." And we'll talk about how these Surgeon
 22 General's reports are created in the testimony that
 23 comes in.
 24 So the class action portion.
 25 MR. COFER: Objection, Your Honor. May I

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1 approach?
 2 THE COURT: Yes.
 3 (The following took place at the bench:)
 4 MR. COFER: She was putting up a definition of
 5 "manifest." Manifest is a term of art, and there's
 6 a legal definition for manifest, and it's a legal
 7 issue that Your Honor will instruct them on. So I'm
 8 happy to put on any sort of definition of manifest,
 9 except to say they have to show that the COPD
 10 manifested within a class period, and Her Honor will
 11 instruct you on a meaning of manifest.
 12 MS. SHAMP: All right. I believe I'm entitled,
 13 just like he's entitled, to say what his belief is,
 14 what the law is with respect to manifest. All I'm
 15 going to say is it means show up, for the people
 16 that don't know what the definition of that word
 17 means.
 18 THE COURT: There's a legal definition, though,
 19 I'm going to give.
 20 MR. COFER: There is Castleman case, and I
 21 won't further -- but this is --
 22 THE COURT: He's one of our bailiffs, isn't he?
 23 Mr. Castleman. He's actually in the courthouse.
 24 MR. COFER: It's the same person?
 25 Anyhow. It's that a person has a reason to

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1 know that they have a smoking-related disease, when
 2 they have a reason to know that they have a disease
 3 caused by smoking.
 4 And, you know, the circuits are split. That's
 5 the one that applies in this circuit, and the only
 6 definition. And she certainly can say there's an
 7 issue manifested. I think if it manifested in
 8 '93 -- but she can't talk about the definition of
 9 manifest because it's a term of art, and Your Honor
 10 will instruct on that.
 11 THE COURT: I think we're going to talk about
 12 manifest. I think you're going to put a definition
 13 up there -- concern about it's going to confuse the
 14 jury if it's different than the legal definition.
 15 MR. COFER: It's also not relevant if it's
 16 different than the legal definition.
 17 MS. SHAMP: I think what I described is very
 18 simple. I think it means to show itself. That's
 19 what the word "manifest" means, to show itself.
 20 MR. COFER: You're policing my objection. It's
 21 a term of art, and you're going to instruct them.
 22 And one of the issues is going to be whether it
 23 manifested during the class period.
 24 There shouldn't be any confusion. Your Honor
 25 is going to tell them what the definition is, and

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1 they're going to apply the facts of that definition.
 2 And I'm going to talk about diagnosis. I'm going to
 3 say manifest, but I'm going to say Her Honor will
 4 instruct you on what manifest means.
 5 THE COURT: I think if you use this you're
 6 going to have to say the Court will later give you
 7 the legal definition.
 8 MS. SHAMP: I will, but manifest basically
 9 means to show up.
 10 MR. COFER: Well, see, I think that's
 11 misleading. I think that's misleading because I
 12 tell you --
 13 MS. SHAMP: What my actual slide says.
 14 THE COURT: I need to go back there very
 15 briefly. This might be a good time to take a break.
 16 MS. SHAMP: Okay.
 17 THE COURT: Why don't we do that.
 18 (Bench conference concluded.)
 19 THE COURT: Ladies and gentlemen, I'm going to
 20 give you all a brief break, reminding you of the
 21 Court's order not to discuss the case among
 22 yourselves, not to do any -- or with anyone else,
 23 for that matter, or do any independent research.
 24 It's approximately 11:40. I will see you back
 25 at 11:55.

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1 All rise for the jury, please.
 2 (Jury out.)
 3 (Trial recessed at 11:40 a.m.)
 4 (Proceedings continued in Volume 13.)
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1 CERTIFICATE
 2
 3 STATE OF FLORIDA)
 4 COUNTY OF DUVAL)
 5
 6 I, Celeste O. Werkheiser, RMR, and Notary
 7 Public, certify that I was authorized to and did
 8 stenographically report the foregoing proceedings and
 9 that the transcript is a true and complete record of my
 10 stenographic notes.
 11 DATED July 16th , 2015.
 12
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 25

Celeste O. Werkheiser, RMR, CRR

C. O. Werkheiser



1083	<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 Attorneys for Plaintiff</p> <p>4 LAURA M. SHAMP, Esquire LAURIE SPEED, Esquire Shamp, Speed, Jordan & Woodward 1718 Peachtree Street, N.W., Suite 660 Atlanta, Georgia 30309</p> <p>6 LESLIE J. BRYAN, Esquire Doffermyre Shields Canfield & Knowles, LLC, 1355 Peachtree Street, N.E., Suite 1600 Atlanta, Georgia 30309</p> <p>9 JOHN S. KALIL, Esquire Law Offices of John S. Kalil, P.A. 6817 Southpoint Parkway, Suite 1402 Jacksonville, Florida 32216</p> <p>11 Attorneys for Defendant Philip Morris USA, Inc.</p> <p>12</p> <p>13 WALTER L. COFER, Esquire DAVID B. THORNE, Esquire Shook, Hardy & Bacon, LLP 2555 Grand Boulevard Kansas City, Missouri 64108-2613</p> <p>16 BONNIE C. DABOLL, Esquire Shook, Hardy & Bacon, LLP 100 North Tampa Street, Suite 2900 Tampa, Florida 33602</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	1085	<p>1 PROCEEDINGS</p> <p>2 Thursday, July 16, 2015 11:55 a.m.</p> <p>3 * * * * *</p> <p>4 (Proceedings continued from Volume 12.)</p> <p>5 * * * * *</p> <p>6 THE COURT: All right. Thank you. You may be 7 seated.</p> <p>8 All right. Are we ready?</p> <p>9 MS. SHAMP: Well, I don't -- I think we need a 10 ruling on -- I wasn't sure --</p> <p>11 THE COURT: I think what I told you, Ms. Shamp, 12 was -- unless you have additional argument -- you're 13 able to discuss -- you know, if you want to speak in 14 general terms.</p> <p>15 MS. SHAMP: This is what -- the slide I was 16 going to put up -- and I wanted the Court to look at 17 it.</p> <p>18 THE COURT: It doesn't mean simply to show 19 itself. I mean, there's a legal definition I'll be 20 later giving them. I'm uncomfortable with that.</p> <p>21 MS. SHAMP: Okay. If you'll just give me one 22 moment, then I can take that out.</p> <p>23 THE COURT: I wasn't really done speaking.</p> <p>24 MS. SHAMP: I'm sorry.</p> <p>25 THE COURT: That's okay. I get to talk, too.</p>
1084	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Opening statement by Ms. Shamp (Cont'd) 1085</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	1086	<p>1 Simply -- what worries me is the word simply in</p> <p>2 there. I just want this for the record because</p> <p>3 there's a legal definition. So we're going to</p> <p>4 remove the slide, okay?</p> <p>5 MS. SHAMP: Thank you.</p> <p>6 THE COURT: Thank you so much. I really</p> <p>7 appreciate that.</p> <p>8 MR. COFER: Yeah. And I'm going to object to</p> <p>9 the next slide, too, when you have it up.</p> <p>10 MS. SHAMP: This one?</p> <p>11 THE COURT: I don't know what the next slide</p> <p>12 is.</p> <p>13 MR. COFER: It was just up there. It was --</p> <p>14 yeah. Legal causation was a part of why. There</p> <p>15 is -- also, Your Honor will be giving an instruction</p> <p>16 on legal cause. And I don't think it's part of it.</p> <p>17 It has to be a substantial factor such that but for.</p> <p>18 And so I don't think you say part of why. I think</p> <p>19 you can say substantial factor but for.</p> <p>20 MS. SHAMP: I don't think in my opening</p> <p>21 statement I need to give the actual full</p> <p>22 instruction. I think I can discuss generally what</p> <p>23 the evidence is going to be about.</p> <p>24 THE COURT: I don't have a problem -- I don't</p> <p>25 have a problem.</p>

1087	<p>1 MR. COFER: Okay. That's fine.</p> <p>2 MS. SHAMP: Thank you.</p> <p>3 THE COURT: All right. Bring them in.</p> <p>4 All rise for the panel, please. Thank you.</p> <p>5 THE BAILIFF: Jurors are entering the</p> <p>6 courtroom.</p> <p>7 (Jurors entered in courtroom.)</p> <p>8 THE COURT: Welcome back, everyone. Everyone</p> <p>9 may be seated. Thank you so much. I hope everyone</p> <p>10 had a nice break.</p> <p>11 Ms. Shamp, when you're ready to resume, you may</p> <p>12 do so.</p> <p>13 MS. SHAMP: Thank you, Your Honor.</p> <p>14 THE COURT: Thank you.</p> <p>15 MS. SHAMP: Thank you, Ladies and Gentlemen. I</p> <p>16 think we were just discussing what are the pieces of</p> <p>17 the class membership. We talked about the first</p> <p>18 piece was we have to show that Elaine Jordan was</p> <p>19 addicted; that her addiction caused her COPD. And</p> <p>20 the third part is that the disease had to manifest</p> <p>21 itself within a certain period of time. That period</p> <p>22 of time is prior to November 1996.</p> <p>23 And we will put on evidence about when the</p> <p>24 disease manifested itself. We believe there will be</p> <p>25 no question that the disease manifested itself in</p>	1089	<p>1 based on that that she had COPD in 1993.</p> <p>2 And, importantly, I don't believe there will be</p> <p>3 any medical testimony that said she did not have</p> <p>4 COPD in 1993.</p> <p>5 In fact, their own pulmonologist, the defense</p> <p>6 pulmonologist, if they bring him to trial, will say</p> <p>7 she had COPD in 1993.</p> <p>8 All right. So those are the factors for class</p> <p>9 membership. We will put on evidence of each of</p> <p>10 those factors, and we believe that the evidence will</p> <p>11 clearly support that Elaine Jordan is a member of</p> <p>12 this class that was brought way back in 1993. She</p> <p>13 is the purpose of bringing that class and to find</p> <p>14 these will apply in her case.</p> <p>15 Now, the next topic that we have -- the next</p> <p>16 issue for your consideration is whether the</p> <p>17 conspiracy and fraud was a legal cause of</p> <p>18 Mrs. Jordan's COPD. Conspiracy, fraud and legal</p> <p>19 causation. Now, unfortunately, that's not part of</p> <p>20 the question of whether she was a class member.</p> <p>21 That's issue number 1. It has nothing to do with</p> <p>22 whether or not the fraud was a legal cause. This is</p> <p>23 a separate claim that we have brought.</p> <p>24 And the separate claim, as the judge instructed</p> <p>25 you -- you remember that there were separate claims</p>
1088	<p>1 1993 when she was taken to Baptist Hospital and was</p> <p>2 diagnosed with COPD. And she'll talk to you about</p> <p>3 when she went to Baptist Hospital and that</p> <p>4 diagnosis.</p> <p>5 Now, unfortunately, because it was 1993,</p> <p>6 Baptist Hospital no longer has those records, so we</p> <p>7 don't have the record of that hospitalization of</p> <p>8 1993. But we have Elaine Jordan's testimony about</p> <p>9 what happened, and at that time, she got the</p> <p>10 diagnosis of COPD. And we also have the testimony</p> <p>11 of her daughter who will testify that she knows her</p> <p>12 mother was diagnosed at that time with COPD.</p> <p>13 Now, the first medical record that we have is</p> <p>14 from 1998, and that's the medical record of a</p> <p>15 Dr. Tecson. And you'll have that record with you.</p> <p>16 And in 1998, Dr. Tecson said that she has a history</p> <p>17 of emphysema. Emphysema is a form of COPD. So we</p> <p>18 know that in 1998, she had a history of the disease</p> <p>19 even though we don't have the record.</p> <p>20 And what plaintiff will also put on is the</p> <p>21 testimony of Dr. Rothstein who saw her in 1999, a</p> <p>22 pulmonologist. And Dr. Rothstein will say that</p> <p>23 clearly she had COPD in 1993.</p> <p>24 And we that by looking at the lung function</p> <p>25 tests of what her lung function was in 1999, we know</p>	1090	<p>1 that the plaintiff has brought -- was that the fraud</p> <p>2 and the conspiracy were a cause of her contracting</p> <p>3 COPD.</p> <p>4 Basically the question is: Did something they</p> <p>5 do contribute? Did she rely upon what was being</p> <p>6 done? And we're going to put on a timeline of</p> <p>7 evidence about that. The amount of money that was</p> <p>8 spent by the tobacco industry to inundate the market</p> <p>9 with both the claims that smoking was not harmful to</p> <p>10 health in order to provide, as the documents will</p> <p>11 show, a psychological crutch to keep people smoking.</p> <p>12 And it did provide a psychological crutch to keep</p> <p>13 people who were addicted continuing to smoke.</p> <p>14 But more importantly even than that is this</p> <p>15 filter and these tar and low-tar nicotine cigarettes</p> <p>16 and their assertion that they were healthier for</p> <p>17 you, and that they actually were -- which in 1993,</p> <p>18 you'll remember, Ms. Jordan switched to the light</p> <p>19 cigarettes. And we'll talk about that and how the</p> <p>20 advertisement for light cigarettes and that they</p> <p>21 were less tar than the other ones.</p> <p>22 So we believe that the evidence will be that</p> <p>23 their conspiracy did, in fact, on issue 2, cause or</p> <p>24 contribute significantly to Ms. Jordan's COPD.</p> <p>25 We'll have the Engle finding with you which</p>

<p>1091</p> <p>1 shows that the defendants concealed or omitted 2 material information knowing that it was false and 3 material. 4 And at the very bottom of that, that they did 5 that with the intention that the public would, in 6 fact, rely upon this information. That their very 7 intent, that they would rely upon it, to their 8 detriment. And the evidence will be that Ms. Jordan 9 did, in fact, rely upon it and relied upon it 10 falsely. 11 The third topic is comparative fault. And what 12 comparative fault is -- the judge will instruct you 13 as to what the law is -- but it simply allows the 14 jury on section 3, to allocate fault between 15 parties, so that the jury does not have to say it's 16 a hundred percent one place or a hundred percent in 17 the other. But the jury is allowed to allocate 18 fault. It's called comparative fault. 19 And we will put on evidence when you compare 20 the fault, that the fault of the tobacco industry is 21 far greater than the fault of Elaine Jordan who 22 started smoking when she was 14 years old and became 23 addicted to nicotine contained in cigarettes. 24 But the jury will have the option at the end of 25 the trial -- and I'll talk about this more in my</p>	<p>1093</p> <p>1 had to go through rehabilitation for that and was on 2 a series of anti-rejection medications during this 3 time. That was in 2002. 4 The lung did very, very well. It lasted 10 5 years. Usually they say lungs will last seven after 6 transplant. But in 2010, she started having the 7 same symptoms come back where the lung was failing. 8 And so in 2012, she had a second lung transplant. 9 She was very fortunate to be able to get a second 10 lung transplant. She got a second lung transplant, 11 but the antirejection medication that she had been 12 taking caused her to need a kidney transplant as 13 well. So she had to go through an additional kidney 14 transplant after that. And she's had various 15 episodes throughout this period of time, going back 16 into the hospital, on and off oxygen over the course 17 of this period of time. 18 Her medical expenses are over a million dollars 19 for the two lung transplants, the kidney transplants 20 and back and forth into the hospital. And we will 21 put on evidence of all of those damages. And under 22 the law, the plaintiff is entitled to recover for 23 compensatory damages, including her medical 24 expenses. 25 But even more important in this case is the</p>
<p>1092</p> <p>1 closing -- about looking at the conduct of Philip 2 Morris compared to the conduct of Elaine Jordan. 3 The fourth issue is compensatory damages. And 4 compensatory damages, as I talked about in voir 5 dire, there are certain categories of damages which 6 the law allows. And the law allows for the 7 plaintiff to recover for her medical expenses as a 8 result of the disease, as well as the fact that she 9 lost -- she had two lung transplants, wages that she 10 lost when she was forced into disability, and pain 11 and suffering for what she has gone through. 12 And I sort of stopped the story when I was 13 talking earlier, but let me fill that in a little 14 bit because you're going to hear evidence of what 15 those damages are. 16 In 2002, she had her first lung transplant. 17 Unfortunately, she had rejection of the transplant 18 and went back and forth in the hospital under 19 serious sorts of rejection medications. Finally, 20 they had to actually remove part of her right lung. 21 It was her left lung that was transplanted. She had 22 to go back and have part of her right lung removed 23 because the left lung was moving into that space. 24 So she had to go through another serious surgery and 25 have part of her right lung removed as well. She</p>	<p>1094</p> <p>1 pain and suffering that she went through and that 2 she is going through. 3 And, finally, punitive damages. And from the 4 plaintiff's perspective, this is a very important 5 piece of this case. And that's why I talked to you 6 about it in voir dire and made sure that everyone 7 who was on the panel was agreeable to the concept of 8 damages given in order to punish and to deter. 9 And so we will put on evidence about why 10 Philip Morris should be punished and deterred for 11 their conduct. We will put on evidence of how 12 egregious their conduct was. And I've reviewed some 13 of that for you today, but you'll hear more. 14 But perhaps even more important than how 15 egregious it was was the intent. And that's 16 something to think about. What was their intent? 17 Money. Money. Money. That's why they did it. 18 That is egregious. They did it with the intent to 19 addict. They controlled the nicotine in their 20 product in order to addict so that they could sell 21 more and more and more of their product. 22 The evidence will be that 80 percent of the 23 people who smoke want to quit. That they don't want 24 to use the product that the defendant makes. That 25 they try to quit and they can't. And that their</p>

<p>1095</p> <p>1 conduct is done with the intent to entice children 2 too. And we will put on evidence of youth marketing 3 marketed to children. 4 And what is the overriding theme of all of 5 those things? One word, addiction. And that's why 6 I said that's such an important piece of this case. 7 It's all about addiction. 8 First, what they did to create doubt in 9 smokers' minds, to give them a psychological crutch 10 because they were addicted; by lying about the 11 filters and the light cigarettes, giving them a 12 psychological crutch. 13 And, two, they designed their product in such a 14 way to sustain addiction, keeping the nicotine 15 levels at certain levels in order to keep people 16 smoking. 17 And, lastly, they marketed to children. And 18 why? Why is that important to their survival? It's 19 important to their survival because kids are the 20 only replacement smokers for the adults who quit. 21 14-year-olds, 15-year-olds. The evidence will be 22 that most people start before they're 18. 23 And you're going to hear evidence about the 24 brains of 14-year-olds and how they're different 25 than the brains of adults. And how when introduced</p>	<p>1097</p> <p>1 the initiation and progression of tobacco use among 2 young people. 3 Perhaps one of the maybe saddest things is one 4 of their major conclusions, which is on page 5 of 5 the report that you'll have with you: 6 Most adolescent smokers are addicted to 7 nicotine, and report that they want to quit but are 8 unable to do so. They experience relapse rates and 9 withdrawal symptoms similar to those reported by 10 adults. 11 So the evidence will show that Philip Morris 12 went after replacement smokers, the children. 13 One of the ways they did it was placing them in 14 movies. We'll talk about that. This is Monograph 15 19 from the National Cancer Institute. 16 Philip Morris products were placed in more than 17 191 movies. Placement by Philip Morris. They pay 18 in order to have their product placed in the movie. 19 And there's going to be testimony about that, and 20 you'll even have some clips of some movies with 21 Philip Morris products in it. Between 1978 and 22 1988, 48 were rated PG, 10 were PG-13, nine were 23 rated R, and one placement was in The Muppets Movie, 24 rated G. 25 This conduct -- this type of conduct merits</p>
<p>1096</p> <p>1 to drugs and substances in adolescence, how it 2 creates greater pathways of addiction. And they 3 knew that. And so they knew that people were 4 quitting. Adults were trying and adults were 5 quitting, and they needed replacement smokers. 6 People don't start smoking generally older. 7 They needed replacement smokers, so they marketed to 8 kids. And we have the documents to show that. 9 This is a Philip Morris marketing document. 10 The smoking patterns of teenagers are particularly 11 important to Philip Morris. This is one of the 12 Surgeon General's reports where they looked at 13 marketing to children. And there's a lot of 14 discussion in the Surgeon General's report. There 15 was an entire Surgeon General's report that was just 16 devoted to preventing tobacco use among youth and -- 17 I think I brought it -- this will be an exhibit that 18 you will have with you: 19 Preventing Tobacco Use Among Young People. An 20 entire Surgeon General's report where they put 21 together the evidence. 22 And one of the major conclusions in the report 23 is, the evidence is sufficient to conclude that 24 there is a causal relationship between advertising 25 and promotional efforts of the tobacco companies and</p>	<p>1098</p> <p>1 punitive damages, not only because of how outrageous 2 it was, but what was the intent that they did it 3 with. 4 Now, before I brought this case to you and this 5 trial and the effort of my team put it together to 6 present it to you, we had to consider certain things 7 and we did. We had to consider certain 8 possibilities. And one of the things we had to 9 think about was, did her smoking cause her COPD or 10 was it caused by something else? 11 So we talked to her doctors. They said it was 12 caused by her cigarette smoking. We had to think 13 about when did this manifest, since we didn't have a 14 medical record. So we talked to her doctors -- 15 MR. COFER: Objection, Your Honor. May we 16 approach? 17 THE COURT: Yes, sir. 18 (The following was held at sidebar out of the 19 hearing of the jury:) 20 MR. COFER: Yeah, this is improper argument. A 21 lawyer can't vouch for the facts. A lawyer can't vouch 22 give the opinions of facts. A lawyer can't vouch 23 for the witnesses. They can't say we have to 24 consider this. It seems so implicit we looked at 25 the evidence and we think it's sufficient.</p>

<p style="text-align: center;">1099</p> <p>1 She can say the evidence will be the doctors 2 are going to say, but they can't say -- they can't 3 vouch for it -- it's -- lawyers can't do that. 4 MS. SHAMP: I don't think I vouched for it. I 5 said we had to consider, and so we considered this 6 evidence. And then Dr. Rothstein, who is a witness 7 who is going to come in and testify -- and I think I 8 was talking about what the evidence is we're going 9 to present. 10 MR. COFER: And they can talk about the 11 evidence. They can't say we considered. They're 12 vouching for it. They're essentially saying we 13 wouldn't have filed this lawsuit if we hadn't done 14 our due diligence. 15 THE COURT: This is what I would do. I was not 16 being rude to you-all. I was looking at my realtime 17 at what was exactly said. I think as long as you do 18 not say what you consider and things like that -- 19 I see where your concern is, Mr. Cofer, is that 20 you perhaps -- I don't think you're doing this on 21 purpose, that it sounds personal. We're vouching 22 for the evidence and it was good enough for us. 23 I don't think you meant to do it on purpose, 24 though. I think as long as you stay away from that, 25 and stick with the evidence will show and things</p>	<p style="text-align: center;">1101</p> <p>1 And then, secondly, when someone is addicted, 2 choice is a very loose term. And we know that from 3 their own documents. This is a document from the 4 Tobacco Institute. 5 We can't defendant continued smoking as free 6 choice if the person was addicted. And that's from 7 their own document. 8 Mr. Cofer began his voir dire with a question, 9 y'all remember? And he said that there were two 10 sides to every story. This case is no different. 11 This is Elaine Jordan's story. Elaine's story of 12 her battle of addiction for 35 years, of her first 13 lung transplant, her second lung transplant. This 14 has been the battle of her life. It started when 15 she was 13 years old. 16 But there is another side of the story and 17 that's the story of Philip Morris's conduct. Philip 18 Morris chose, Philip Morris chose to portray its 19 product as healthy. Philip Morris chose to deceive 20 the American public about the addictive nature and 21 health consequences of their product. Philip Morris 22 chose to market their product to children. 23 There are two sides. Elaine Jordan is battling 24 for her life. Philip Morris is putting on 25 advertisements of the Marlboro man.</p>
<p style="text-align: center;">1100</p> <p>1 like that. 2 MR. COFER: Thank you, Your Honor. 3 THE COURT: I don't think you did it on 4 purpose. 5 (The sidebar ended.) 6 MS. SHAMP: As I was saying, the evidence that 7 we will present to you will show that she had COPD 8 in 1993. That she was addicted to cigarettes 9 containing nicotine. That her addition to smoking 10 caused her COPD. 11 We believe the evidence will show that when you 12 compare the fault of the tobacco company, Philip 13 Morris, to her fault, that their fault is 14 overwhelming. 15 We believe the evidence will show that she's 16 suffered enormous damages as a result of her 17 disease. 18 And the evidence will show the plaintiff is 19 entitled to an award of punitive damages. 20 One of the arguments that the defendant will 21 make, I suspect, and one of the things that was 22 discussed in voir dire was the issue of choice. And 23 there's going to be a lot of talk about choice. But 24 it's important to know that first off, the class 25 definition requires addiction.</p>	<p style="text-align: center;">1102</p> <p>1 The public health community is trying to get 2 the word out and has been trying to stop kids from 3 smoking. This is from the Federal Trade Commission 4 investigation in 1981: 5 The national tobacco industry spent more on 6 advertising cigarettes in one day than the National 7 Clearinghouse on Smoking and Health spent in a year. 8 That's two sides to the story. This is a very 9 serious case, Ladies and Gentlemen, and my team and 10 I will try our best to put it on with honesty and 11 integrity. We value your time and we'll try to put 12 it on as expeditiously as we can. 13 I thank you for your service and I look forward 14 to putting on the evidence. 15 THE COURT: Thank you very much. 16 And if the attorneys will approach sidebar just 17 on housekeeping. We don't need the court reporter. 18 On housekeeping just real quick. We don't need the 19 court reporter. 20 (Sidebar without reporter.) 21 THE COURT: Ladies and Gentlemen of the jury, 22 this is a good stopping point to send you-all to 23 lunch. Reminding you of the Court's order not to 24 discuss the case among yourselves or with anyone 25 else or not to do any independent research.</p>

1 It's about 12:30. I am going to give you-all
2 until 1:45. I will see you then.
3 All rise for the jury. We'll see you back in a
4 bit at 1:45. Thanks so much, everyone. Have a nice
5 lunch break. See you in a bit.
6 (The jury was excused and the following was had
7 in open court:)
8 THE COURT: And everyone may be seated.
9 Do we need to take care of anything at this
10 point?
11 MS. SHAMP: No, Your Honor. I think we've
12 worked out the cuts, the edits on the Burns
13 deposition, and that will be our first witness.
14 THE COURT: Okay. Dr. Burns will be up first?
15 MS. SHAMP: Yes.
16 THE COURT: Okay, great. Well, I will see
17 you-all in a bit. Okay. Thank you. Thank you.
18 (Break taken.)
19 (Proceedings continued in Volume 14.)
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1 C E R T I F I C A T E
2
3 STATE OF FLORIDA)
4 COUNTY OF DUVAL)
5
6 I, Deanne M. Moore, RMR, CRR, FPR, certify that
7 I was authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
9 and complete record of my stenographic notes.
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11 DATED July 16, 2015.
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17 Deanne M. Moore, RMR, CRR, FPR
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