

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	CA No. 99-2496(GK)
	:	January 19, 2005
Plaintiff,	:	
	:	9:30 a.m.
	:	
v.	:	Washington, D.C.
	:	
PHILIP MORRIS USA, et al.,	:	
	:	
Defendants.	:	

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VOLUME 51
MORNING SESSION
TRANSCRIPT OF TRIAL RECORD
BEFORE THE HONORABLE GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

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THE COURT: Good morning, everybody.

This is United States versus Philip Morris, CA 99-2496.

I just would mention to everybody that, in addition to the traffic issues that I have no doubt will exist this afternoon, at least according to the radio, there's an 80 percent chance of snow as well, so everybody can keep that in mind.

Mr. Goldfarb, having had the evening, give me a rough estimate of how much time you're going to need.

MR. GOLDFARB: Your Honor, I do think it's still going to take an hour and a half to two hours. There are some areas. Obviously, it depends in part on the witness's response to questions, but I hope we can move through it.

THE COURT: Where is Ms. Keane?

Okay. Would you please come forward? Ms. Keane, you're still under oath this morning.

DENISE KEANE, Government's witness, RESUMES

DIRECT EXAMINATION (Cont'd.)

BY MR. GOLDFARB:

Q. Good morning, Ms. Keane. Andrew Goldfarb for the United States.

THE COURT: Ms. Keane, I know both Mr. Wells and I had some trouble yesterday occasionally hearing you. Try, to the extent you can, to talk into the mike.

1 I noticed that lowering it didn't help an awful lot, it
2 was my impression, but I know our court reporter was able to
3 hear you. But, in any event, just keep that in mind, please.

4 THE WITNESS: Thank you.

5 BY MR. GOLDFARB:

6 Q. Ms. Keane, prior to receiving your proposed written direct
7 from the United States you had met with your attorneys; is that
8 correct?

9 A. Yes, I did.

10 Q. And you had met with your attorneys concerning your
11 anticipated testimony in this case?

12 A. Yes, I have.

13 Q. And you had met with them and you had discussed, had you
14 not, your cross-examination, by which I mean your examination by
15 your own attorneys; is that correct?

16 A. Yes, we did.

17 Q. And how many attorneys did you meet with?

18 A. Primarily my discussion was with Mr. Wells and with Tom
19 Fredericks.

20 Q. And that occurred prior to receiving the written direct from
21 the United States on January --

22 A. We just had --

23 Q. Excuse me. Let me ask the question.

24 A. I'm sorry.

25 Q. That occurred prior to your receiving your written direct

1 examination on January 10th from the United States; is that
2 right?

3 A. As part of the work that we are doing in conjunction with
4 this case, Mr. Wells and I and Mr. Fredericks and I would have
5 occasion to meet.

6 In the context of one of those meetings we had some
7 general discussion about how we were going to proceed once we
8 got the government's written direct.

9 Q. Okay. And in the course of that, did you look at documents?

10 A. Yes.

11 Q. Approximately how many documents did your counsel show you
12 during those discussions?

13 A. The document review was basically the depositions to the
14 written direct when we got them. It was a couple of our
15 submissions, including the FTC petition I looked at. I also
16 looked at our comments in response to the 1997 FTC request for
17 comments.

18 Q. And the deposition -- when you say you referred to
19 deposition, that was the deposition that you gave in this case?

20 A. I did look at that, also, in the context of the week after
21 we got the government's written direct, yes.

22 Q. Did you look at other depositions as well?

23 A. No, I did not.

24 Q. Okay. And then when you received the written direct
25 examination from the United States, that was on January 10th?

1 A. It was Monday. Late Monday, yes, that was the date.

2 Q. Okay. And the process is -- I assume you read through it
3 and then began to discuss some changes to make with your
4 attorneys?

5 A. The process that I followed was I received it that day.
6 And, in fact, we had a phone call Tuesday afternoon, but I
7 basically reviewed it and reflected on it.

8 Q. Okay. And then you made changes to the proposed
9 examination; correct?

10 A. Correct.

11 Q. And did you discuss those proposed changes with your
12 counsel?

13 A. Yes, I did.

14 Q. And in the course of the -- making those changes and
15 discussing the changes you're going to make to your direct
16 examination with counsel, you continued also, did you not, to
17 discuss the cross-examination they would have of you at the
18 close of your direct examination?

19 A. Quite honestly, given the amount of time that we had to
20 conduct this in -- you know, within, we had a very limited
21 conversation about what we were going to do thereafter.

22 The bulk of it was an effort to go through and try to
23 correct to the best of my ability the written direct.

24 Q. But part of those discussions --

25 A. We did have some general discussions, yes.

1 Q. And those occurred after you had received and reviewed the
2 proposed written direct examination?

3 A. Yes.

4 Q. And you received -- I assume you received, when you did
5 receive the direct examination, you also received the documents
6 submitted with your testimony?

7 A. I did.

8 Q. And you reviewed those documents?

9 A. I have.

10 Q. And during the course of the week during which you were
11 making changes, from a week ago Monday to Friday, did you review
12 other documents as well?

13 A. Basically, what I described to you.

14 I would have looked at the FTC petition, our response
15 to the FTC request for comments.

16 Q. If I could ask you to turn to page 10 of your corrected
17 written examination.

18 A. Is that what I find here?

19 Q. Yes, that should be the one with the blue cover on it.

20 And if we -- the question from lines 1 to 10, the
21 portion of your testimony from lines 1 to 10 was a question
22 about the work of Altria and the work of Altria Corporate
23 Services. Do you see that?

24 A. I do.

25 Q. And Altria Corporate Services was formerly known as the

1 Philip Morris Management Corporation; correct?

2 A. Yes. Philip Morris Management Services.

3 Q. So I will use -- I may use the phrase Altria Corporate
4 Services or PMMC interchangeably, but you understand --

5 A. That's fine. I'll understand what you mean.

6 THE REPORTER: Excuse me, Your Honor. Could I have one
7 at a time?

8 THE COURT: You all did this yesterday, too. So
9 please, Mr. Goldfarb, it's your major responsibility.

10 Go ahead.

11 BY MR. GOLDFARB:

12 Q. And the question was, in line 12, "Much of the work of
13 Altria is done by people who are technically employed by Altria
14 Corporate Services, Inc., which is formerly known as Philip
15 Morris Management Corp; correct?"

16 And you struck Yes, and said No, and then added the
17 answer that you added. Correct?

18 A. Correct.

19 Q. Now, you were the head of the Worldwide Regulatory Affairs
20 Department from 1998 to 2000 at Altria; correct?

21 A. Yes.

22 Q. And that was an Altria department?

23 A. Worldwide Regulatory Affairs, basically the people who
24 worked there were employees of Philip Morris -- excuse me -- you
25 know, Altria, you know, Management Corp or Philip Morris

1 Management Services. So it was within the parent company, yes.

2 Q. Okay. Worldwide Regulatory Affairs was within the parent
3 company Altria?

4 A. Yes.

5 Q. And the people who performed the work of Worldwide
6 Regulatory Affairs were PMMC employees, technically?

7 A. Correct.

8 Q. And they were --

9 A. With one exception.

10 Q. You?

11 A. Which was me.

12 Q. Because you were the head of the department?

13 A. Yes.

14 Q. And --

15 THE COURT: Just one minute now.

16 You indicated that the people who worked in Worldwide
17 Regulatory Affairs were within Altria but were PMMC employees;
18 right?

19 And I just want to make sure what PMMC is, which is
20 Philip Morris Management Corporation. Is that right?

21 THE WITNESS: Right.

22 I apologize, Your Honor, I was going back and forth.
23 In a sense, we're talking about the same entity, but after the
24 change of name to Altria Group, that same group changed their
25 name to Altria Corporate Services. Previously, that same group

1 was Philip Morris Management Corp.

2 MR. GOLDFARB: Any further questions on that, Your
3 Honor, for clarification?

4 THE COURT: Go ahead, please.

5 BY MR. GOLDFARB:

6 Q. And so again taking, for example, the -- one of the
7 functions that you had when you were the head of Worldwide
8 Regulatory Affairs was to be the chair of the Strategic Issues
9 Task Force; correct?

10 A. Yes.

11 Q. And that was your appointed -- you were asked to serve in
12 that role by Geoffrey Bible?

13 A. That's correct.

14 Q. And he at that time was the chairman, CEO of Philip Morris
15 Companies?

16 A. Correct.

17 Q. And the -- as you indicate somewhere in your testimony, you
18 made a change. I think four of the eight people who served on
19 the Strategic Issues Task Force were PMMC employees,
20 technically; correct?

21 A. The people who were identified to work on it -- I'm just now
22 thinking through the list in my mind -- included people who were
23 from the Philip Morris International, included people from
24 Philip Morris USA, and included myself.

25 I would have used the support of some people who were

1 in my group, and yes, there might have been one or two other
2 people from PMMC. But it was basically a distribution from both
3 parent company and the two operating companies that were focused
4 on tobacco. Plus, I have to add, that it also included in our
5 meetings representation from Miller and representation from
6 Kraft.

7 Q. Okay. If I could just have U.S. Exhibit 41574 up quickly,
8 please, and I'm....

9 A. Thank you.

10 MR. GOLDFARB: Can you pull that up, please, Charles?

11 If you can just pull out the bottom box, please.

12 So, this is a -- I'm sorry, Charles. Go back to the
13 full page for a second.

14 Q. Ms. Keane, this a document that was cited in your written
15 direct examination; correct?

16 A. It is, yes.

17 Q. And you recognize it to be a product of the Strategic Issues
18 Task Force?

19 A. I do.

20 Q. And it's dated July 9, 1999?

21 A. Correct.

22 Q. And if you look at the members of the Strategic Issues Task
23 Force --

24 Which is the lower box, Charles, please.

25 -- you can see that, in fact, four of the people listed

1 are PMMC employees; correct?

2 A. Yes, that's correct.

3 Q. In fact, there are other people -- as you indicated, there
4 are other people who also assisted the work of the Strategic
5 Issues Task Force; correct?

6 A. Yes.

7 Q. And Mr. Mark Berlind was one of them?

8 A. Correct.

9 I was drawing the distinction, though, between people
10 who worked for me who would have supported it, and sort of early
11 on we realized that since we were working to support a corporate
12 site, we included representation from the other operating
13 companies.

14 Q. And Mark Berlind, when he worked for you in Worldwide
15 Regulatory Affairs, was technically a PMMC employee as well; is
16 that correct?

17 A. Yes, that's correct.

18 Q. And he was one of the people who was responsible for
19 drafting the website statements on smoking and health issues
20 that ended up on the Philip Morris USA corporate website;
21 correct?

22 A. He was responsible for helping us collect the information
23 and he was one of the scribes. He did, in fact, help draft the
24 information.

25 Q. In fact, when you were the senior vice president and general

1 counsel of Philip Morris USA from 1995 to 1997, you were also
2 technically a PMMC employee; correct?

3 A. Yes. The entire law department was.

4 Q. Now, you gave some testimony around pages 4 and 5 of your
5 corrected written direct examination in response to questions
6 concerning --

7 A. Go back to that?

8 Q. Yes, for reference. I'm just going to refer to them
9 generally.

10 But there are some questions that asked about your
11 litigation responsibilities when you were general counsel of
12 Philip Morris USA; correct?

13 A. Correct.

14 Q. And in response to a few questions about your litigation
15 responsibilities, you indicated that in fact there is a group of
16 attorneys at PMMC who are responsible for smoking and health
17 litigation.

18 A. Yes, correct.

19 Q. And they are responsible for supervising smoking and health
20 litigation; correct?

21 A. Yes.

22 Q. Now, did those -- those attorneys reported to you ultimately
23 as general counsel for Philip Morris USA; correct?

24 A. We were all members of PMMC.

25 When I was general counsel of Philip Morris, you know,

1 Incorporated back in that period we were all PPMC employees and
2 the structure was such that my responsibilities were meant to be
3 forward looking. And the litigation department, given the
4 nature of the litigation at that point in time, which was
5 primarily retrospective, they managed it and they would keep me
6 apprised.

7 Q. Okay. And who had ultimate supervisory responsibility at
8 Philip Morris for the defense of the smoking and health
9 litigation while you were general counsel of Philip Morris?

10 A. While I was general counsel, I would have been apprised. I
11 would have been kept informed.

12 In addition, given the importance of the litigation to
13 the parent company, they also would have been kept informed.

14 Q. So they didn't report to anybody. Is that your testimony?

15 A. The way the department was structured at that point, lawyers
16 reported to lawyers, so I reported to Mary Bring who was the
17 general counsel of Philip Morris, Incorporated.

18 Q. And my question, just so we can move on from this, is the
19 lawyers who you're saying had supervisory responsibility at PPMC
20 for Philip Morris's smoking and health litigation, which lawyers
21 did those lawyers report to?

22 A. Technically, in terms of, you know, actually on an
23 organizational chart, they did not report to me; however, it was
24 their job to keep me apprised.

25 Q. And on an organizational chart who did they ultimately

1 report to?

2 A. They would have reported in to another PMMC attorney who had
3 overall responsibility for litigation who reported into the
4 general counsel of, you know, Philip Morris.

5 Q. Of Philip Morris Companies?

6 A. Companies.

7 Q. And that would be Mary Bring?

8 A. At the time.

9 Q. At the time. Okay.

10 Now, if I could ask you to turn to page 26 of your
11 corrected examination.

12 If we can cull out the first question and answer,
13 please.

14 Now, Ms. Keane, in this section of your direct
15 examination the question was asked, "Before October 1999, Philip
16 Morris had historically denied publicly that smoking cigarettes
17 was a proven cause of disease, right?"

18 And the proposed answer was that, "To my knowledge,
19 Philip Morris has not historically discussed smoking publicly.
20 Philip Morris has sold a product that has carried a warning
21 notice that has communicated to the public the risks and the
22 dangers of smoking cigarettes. Philip Morris, when it came to
23 the Hatch Statement, basically did communicate more publicly."

24 "Without a doubt, Philip Morris historically has made
25 public --". Oh, I'm sorry. That was the proposed answer and

1 you struck that answer; correct?

2 A. Yes, I did.

3 Q. And you gave a response, "Without a doubt, Philip Morris
4 historically has made public statements that debated the link
5 between smoking and disease. The government's proposed response
6 accurately quotes my deposition testimony where it states that
7 Philip Morris has not historically discussed smoking. Clearly,
8 there was some misunderstanding at that point in the deposition,
9 as my statement, read literally, is incorrect, and does not
10 convey what I intended to communicate."

11 Did I read that answer correctly?

12 A. Yes, you did.

13 Q. I want to go back and look to see what was happening in your
14 deposition at that point to see whether there was, in fact, any
15 misunderstanding. And, if I could -- again, you have it before
16 you. Page 2 of your deposition.

17 MR. GOLDFARB: And let's first go to page 297, please,
18 Charles.

19 A. Is it in this?

20 Q. It's in day two of the deposition, which I don't think was
21 in a....

22 Have you found it?

23 A. I'm sorry. Where are you directing me to?

24 Q. Page 297, please.

25 Okay, if we look beginning at line 12 on page 297, you

1 were asked the question, "Do you believe that the way Philip
2 Morris has historically discussed the health effects of smoking
3 has been a barrier to its credibility among the public."

4 And your response was, answer, "From my perspective,
5 Philip Morris has not historically discussed smoking. Philip
6 Morris has sold a product that has carried a warning notice that
7 has communicated to the public the risks and the danger of
8 smoking cigarettes."

9 So, that's the answer that was proposed in response to
10 the government's question on page 26 of your written
11 examination; correct?

12 A. Yes.

13 Q. And so when you answered this question, the question was
14 about whether Philip Morris's discussion, public discussion of
15 the health effects of smoking, has been a barrier to its
16 credibility, you in fact took issue with the premise of the
17 question, which is whether Philip Morris had historically
18 discussed smoking at all; correct?

19 A. That's what it says in the deposition.

20 Q. Okay. And if you go -- your answer continued down onto page
21 298, your answer continued -- and if we look at -- beginning at
22 line 9 again, that paragraph, you continued to say, "But in
23 terms of --" you said, "But in terms of what the company did
24 historically, we have and will continue to take appropriate
25 measures in a litigation context to defend the product, again in

1 an appropriate fashion, but nonetheless, this company, to my
2 knowledge, has not been out historically doing anything to
3 communicate about the health risks other than to sell a product
4 for which there is a whole series of warnings that are
5 communicated to the public."

6 Did I read that correctly?

7 A. You did. But, Mr. Goldfarb --

8 Q. Excuse me. I read that --

9 A. You did.

10 Q. If you can just respond to my questions, please.

11 So in that answer you disputed the premise of the
12 question twice; correct?

13 A. We were having several conversations and I take
14 responsibility for any confusion that existed between you and I
15 over these several pages.

16 I mean, I think we had a very conversational deposition
17 for 16 hours and I would like to put this in context.

18 Q. Okay. Well, you will have a chance later on to put it in
19 context.

20 However, the answer to my question is in this answer --
21 what is the answer to my question, which is in this answer that
22 you provided at your deposition you took issue with the premise
23 that Philip Morris had historically discussed smoking twice;
24 correct?

25 A. But that's impossible. We were discussing the Hatch

1 Statement where we were focused on walking away --

2 Q. If you could answer my question --

3 MR. WELLS: Your Honor, she should be permitted to
4 finish her answer.

5 THE COURT: I'm going to allow her to finish the
6 answer.

7 Go ahead.

8 A. It's impossible -- I apologize if I am responsible for
9 creating a misimpression, given the literal interpretation of
10 that language.

11 However, if you put it in the context we were talking
12 about Hatch, about walking away from the debate, clearly this
13 company debated issues around smoking and health, there is no
14 way that I would have intended to convey that in fact we have
15 not discussed smoking.

16 Clearly, we did not discuss smoking in a proactive
17 aligned way with the public health community until we signed the
18 Hatch Statement. We were talking about Hatch.

19 But I never could have intended that this company was
20 not discussing issues relating to smoking and health.

21 Q. Okay. And when you made changes to your deposition, you
22 didn't make changes to these things which you now say are
23 blatantly incorrect; correct?

24 A. In terms of going over my deposition when it occurred, I
25 focused, I think as I indicated yesterday, on typographical

1 errors.

2 In fact, when I read this, I read it in the context of
3 what we were discussing. I did not go back and try to bring
4 literal accuracy to every single word that -- you know, despite
5 my responsibility for perhaps creating the situation, you know,
6 clearly it could not have been interpreted and should not be
7 interpreted as my saying something that in reality is so
8 preposterous.

9 Q. So just so you are clear. You did -- the answer to my
10 question --

11 A. I did not correct it at that time, no.

12 Q. And then if we can -- the question goes on -- the series of
13 questions goes on. At the bottom of page 298 you were asked the
14 question, at lines 24 and 25, "When is the first time that --

15 A. I'm sorry.

16 Q. I'm sorry. The bottom of that same page, 298, and we're
17 going to go on to 299.

18 A. Thank you.

19 Q. At the bottom of 298 the question is, "When is the first
20 time that Philip Morris acknowledged its agreement with the
21 content of those warnings?"

22 Do you see that question?

23 A. I do.

24 Q. And you understand at that point the deposition -- the
25 question concerned the content of the warnings under the Federal

1 Labeling Act?

2 A. Yes.

3 Q. And then your answer at the top of page 299 was, "Again,
4 it's just a matter of -- it's a subtle distinction, but I
5 apologize if I take a moment to try and re-reference it because
6 I think it is an important one.

7 "The company historically sold the product with a
8 warning and, in fact, was not debating the contents of those
9 conclusions."

10 Do you see that, Ms. Keane?

11 A. I do.

12 Q. And you give that answer at your deposition?

13 A. Yes.

14 Q. Okay. And you're now saying that that statement -- you've
15 corrected that statement in your written direct; right?

16 A. I'm sorry?

17 Q. So you reiterated in this answer what you now claim was an
18 error; correct?

19 This is the third -- strike the question. I'm sorry.

20 So this is the third time in which you have taken issue
21 with the premise that Philip Morris historically debated the
22 issues of whether smoking causes disease; correct?

23 A. There were several pages in this deposition at that point in
24 time where I think we were talking at cross purposes.

25 I was focused on Hatch, what was happening before

1 Hatch, and what was happening during my tenure as general
2 counsel. And these statements, when in fact you read them out
3 of that context, do not convey what I intended to convey at the
4 time.

5 Q. Okay. So the answer to my question....

6 (Pause) And so then if we can go down to the -- again,
7 on page 299, the question at line 15, please.

8 And the question is, "Is the Hatch --" The question
9 there that was asked at your deposition, "Is the Hatch Statement
10 the first time that Philip Morris had discussed whether or
11 not" -- or, excuse me -- "had discussed whether or not or had
12 discussed its position on whether or not smoking causes
13 disease?"

14 I read that correctly?

15 A. Yes.

16 Q. And your answer, over an objection, "Clearly, Philip Morris
17 has discussed issues relating to smoking and disease in a number
18 of contexts. For example, in a litigation context the issues of
19 smoking and disease would be the paramount focus of a lawsuit by
20 a smoker alleging health effects."

21 "So no, without a doubt, the company has in fact
22 inappropriate forums, expressed its genuinely held belief and
23 its issues relating to understanding causation, understanding
24 the way in which cigarette smoking results in disease."

25 And then you go on to say at line 8 of page 300 of your

1 deposition, "That having been said, to my knowledge, this
2 company has not been out doing anything to impact or undermine
3 the very important message that has been carried on cigarette
4 products that have been sold in this country since the late
5 1960s."

6 So, again, you responded to a question, which you
7 didn't indicate you didn't understand. You understood the
8 question, correct, at the deposition?

9 A. I heard your question. Obviously we were talking at cross
10 purposes.

11 But you've accurately read what I had in my deposition.

12 Q. So.... You raised four times at your deposition, did you
13 not, Ms. Keane, the fact that in your answer Philip Morris had
14 not historically publicly disputed that smoking causes disease;
15 is that correct?

16 A. But, Mr. Goldfarb, we were talking about Hatch where the
17 whole commitment was to walk away from the fact that we had been
18 debating. I mean, clearly that was the focus of much of our
19 discussion. So I absolutely never intended for those statements
20 to be interpreted that way, and...

21 Q. Because those statements are wrong; correct?

22 A. Absolutely.

23 Q. Now, looking at page 28 of your deposition.

24 A. 28?

25 Q. In your corrected direct examination.

1 A. Thank you.

2 Q. Looking at -- culling out the question and answer from lines
3 12 to 21.

4 This is a section of your testimony where you're
5 discussing the Philip Morris' website statements on the health
6 effects of smoking; correct?

7 A. Correct.

8 Q. And the question in line 12 states the Philip Morris'
9 statement on causation that was placed on the website in October
10 of 2000 replacing an earlier statement, and I'll just read what
11 the -- into the record the question was.

12 "As you can see from U.S. Exhibit 77683, in October
13 2000, Philip Morris revised the first sentence in its website
14 statement on causation to state, 'We agree with the overwhelming
15 medical and scientific consensus that cigarette smoking causes
16 lung cancer, heart disease, emphysema and other various diseases
17 in smokers.'"

18 And then the question was, "And that was the first time
19 Philip Morris told the public that it agreed with the
20 overwhelming medical and scientific consensus on causation."

21 And the proposed answer was, "Yes, it was."

22 You struck that; correct?

23 A. Yes.

24 Q. And you stated -- your response is, "This was the first time
25 such a statement appeared on the website. I believe that

1 company representatives had made substantially similar
2 statements in courtroom testimony before this time."

3 Now, certainly no company representatives had made that
4 statement in courtroom testimony prior to October 1999; correct?

5 A. Correct, to my knowledge. Yes, correct to my knowledge.

6 Q. And October 1999 was when Philip Morris launched originally
7 its corporate website?

8 A. That is right.

9 Q. And in that corporate website Philip Morris acknowledged
10 that there is an overwhelming medical and scientific consensus
11 that smoking causes lung cancer and other diseases; right?

12 A. Right. Those earlier statements follow a philosophy that I
13 think we generally brought to the website, which is to capture
14 and communicate the conclusions of the public health community.

15 Q. Okay. And so when you say that "other company
16 representatives had made substantially similar statements in
17 courtroom testimony before this time," you're referring, are you
18 not, to Mr. Szymanczyk's testimony in the Engle case in June of
19 2000?

20 A. Yes, I am.

21 Q. And so the record is clear. Mr. Szymanczyk refers to
22 Michael Szymanczyk who is the -- who at that time was the
23 chairman and CEO of Philip Morris?

24 A. Correct.

25 Q. And he gave that testimony at trial in the punitive damage

1 stage of the Engle trial in Florida; is that correct?

2 A. Yes. It's my understanding that he was asked if he agreed
3 with, in fact, the conclusions of the public health community.

4 Q. Okay. And that was the first -- that was the first time
5 anyone at Philip Morris had ever made such a public statement on
6 behalf of Philip Morris; correct?

7 A. To my knowledge, yes.

8 Q. Now, looking at the bottom of that page of your corrected
9 testimony, Ms. Keane, at the last question that goes over onto
10 page 29, the question is, "However, it is your view, is it not,
11 that there is no substantive difference whatsoever between
12 Philip Morris's website statement on smoking and disease as it
13 appeared from October 13th, '99 to October 10, 2000, and the
14 statement that has been on the website since October 11, 2000."

15 And the proposed answer was, Yes, and you added to that
16 and you said, "Yes, because I think the important and overriding
17 principle was to communicate and encourage the public to be
18 guided by the position of the public health community in both
19 instances."

20 So Philip Morris considered -- even though you see no
21 substantive difference -- Philip Morris considered this change
22 in its website to be an important one, did it not?

23 A. What had happened is, in order to have a website you really
24 need to have -- or a public communication platform, you need to
25 have a principle.

1 So the company's principle has been to communicate the
2 position of the public health community. In this case, given
3 the fact that historically issues surrounding causation and
4 addiction were such a point of disalignment, the company thought
5 it was appropriate, particularly given the conversations that
6 were taking place, to indicate its agreement.

7 Q. Okay. Ms. Keane, my question was that Philip Morris thought
8 it was a significant change, did it not?

9 A. It thought it was an appropriate thing.

10 In terms of a significant change, I think -- and I
11 believe the company would in fact agree with me -- that the most
12 significant change was the philosophy to defer to the judgment
13 and communicate the position of the public health community.

14 Q. Okay. My question, Ms. Keane -- if you could just answer it
15 yes or no -- is, it is true, is it not, that Philip Morris
16 considered the change in its website statement from recognizing
17 that there exists a public health consensus to agreeing --
18 stating its agreement with that public health consensus was a
19 significant and important change?

20 A. It was an important change, yes. It was an important
21 change.

22 But I don't think -- I mean, I just -- I apologize,
23 Mr. Goldfarb, if I come back to draw the distinction. I
24 think -- I don't want to lose sight of the fact that the most
25 important change is the principle.

1 Q. Now, the court has received testimony from Geoffrey Bible.
2 It's been submitted into evidence. You know who Mr. Bible is?

3 A. Yes, I do.

4 Q. And you said earlier -- you confirmed earlier that he was,
5 until 2002, the chairman and CEO of Philip Morris Companies?

6 A. Yes.

7 Q. And part of the testimony that has been submitted to the
8 court by Mr. Bible is Mr. Bible indicating that he believed that
9 it was a significant and important change when Philip Morris
10 switched its website in October of 2000 to state its agreement.
11 And you're not disagreeing with Mr. Bible, are you?

12 MR. WELLS: Your Honor, I object to the reference to
13 another witness's deposition testimony. Mr. Bible said what he
14 said. She's not here as an expert witness.

15 MR. GOLDFARB: It's not an expert question. I'm asking
16 whether she disagrees, as general counsel of Philip Morris, as
17 to whether it was an important change.

18 MR. WELLS: She has just said it was important. She
19 said that two minutes ago.

20 THE COURT: I'm going to sustain the objection.

21 BY MR. GOLDFARB:

22 Q. In fact, it was -- it was a significant enough change that
23 Mr. Szymanczyk sent around an e-mail to all the employees in the
24 company announcing the change; correct?

25 A. I believe that was right. I was not in PM-USA at that time,

1 but I do believe that there was a communication that went around
2 to PM-USA.

3 Q. And Mr. Szymanczyk hasn't sent around an e-mail to every
4 employee in the company every time there's been another change
5 on the website; isn't that correct?

6 A. Well, in fact, there are, you know, frequent communications.
7 And I think --

8 Q. I'm sorry. I didn't mean to interrupt you.

9 A. I think that, given the sort of historic disconnect that the
10 company had on these issues, this was a topic that the company
11 chose to communicate on and share information as it related to
12 its public communications, in particular with its employees, so
13 that we could be assured that there was alignment, that our
14 employees understood where the company was going.

15 Q. Because this was a significant issue; correct?

16 A. It was important.

17 Q. Do you disagree with my characterization of significant?

18 THE COURT: Everybody. Let me hear the question,
19 please. The witness answered the last question.

20 MR. GOLDFARB: I'm sorry, Your Honor. I'm interrupting
21 you as well.

22 BY MR. GOLDFARB:

23 Q. Do you disagree with my characterization of it as a
24 significant change, Ms. Keane?

25 A. No, Mr. Goldfarb, I'm not disagreeing with you.

1 Q. And again, to answer my previous question. Mr. Szymanczyk
2 does not routinely send out e-mails to all employees about every
3 change that's made to the website; correct?

4 A. Not every change, but there are frequent communications.

5 Q. Okay. And Philip Morris as -- Philip Morris undertook a
6 significant preparation, did it not, as it prepared to make this
7 change to the website?

8 A. I'm sorry. I don't know what you're referring to.

9 Q. If I could have U.S. Exhibit 25234, please.

10 You have it before you, Ms. Keane.

11 A. I do.

12 Q. If we could just focus on the top. This is an e-mail, a
13 Philip Morris' e-mail; correct?

14 A. Yes.

15 Q. Sent --

16 A. It's an e-mail -- right, it is.

17 Q. And it was sent to -- it was sent from J. Poole on October
18 10, 2000, at 7:20 PM; correct?

19 A. Yes.

20 Q. And that's the day before Philip Morris made the website
21 change?

22 A. I believe so, yes.

23 Q. And it's sent to -- well, I counted, it's over 55 people.

24 You have no reason to dispute that it's a lot of people are
25 copied on this e-mail.

1 A. I agree.

2 Q. And you're one of them. If you look at the first name --

3 THE COURT: Wait a second. Wait, wait.

4 The question is -- has everybody looked at the real
5 time on this, namely the question, "And it's sent to -- well, I
6 counted, it's over 55 people. You have no reason to dispute
7 that it's a lot of people are copied on this e-mail."

8 Now, the real time says, "I agree." My recollection
9 was slightly different. But if everybody agrees on the real
10 time, that's fine.

11 BY MR. GOLDFARB:

12 Q. Ms. Keane --

13 MR. GOLDFARB: I can clarify, Your Honor.

14 Q. Ms. Keane, do you accept my representation that there are
15 about 55 people copied on this e-mail?

16 A. Yes, that's fine, yes.

17 Q. And you in fact are -- received it twice.

18 If you look at the first CC and then the one that's
19 highlighted already, your name appears in two instances;
20 correct?

21 A. I think that's because they have automatic distribution
22 lists that are often used that create that.

23 Q. And the subject is the website update, and it's dated
24 October 10th; correct?

25 A. Yes.

1 Q. And the summary line, the topic line, the first line of the
2 e-mail, is, "The following is the working plan/time line for
3 activities associated with the website change." Correct?

4 A. Yes, I see that.

5 Q. And then if you look down under heading number one, it talks
6 about the website update.

7 And then the sentence under the timing of the website
8 update states, "Please note the change in time. This change was
9 made out of an abundance of caution in order -- in an effort for
10 this to not be an issue in the U.S. presidential debate which
11 will be conducted tomorrow evening."

12 Do you see that?

13 A. I do.

14 Q. By the way, do you recall receiving this e-mail, Ms. Keane?

15 A. I would have received it.

16 Q. And so -- and then -- so that indicates, does it not,
17 Ms. Keane, that the time of the website change was carefully
18 chosen by Philip Morris?

19 A. Yes.

20 Q. And if you look at the -- at the, under heading number two,
21 it talks about Philip Morris updating all of its employees,
22 Philip Morris USA, Philip Morris, Incorporated and PMMC.
23 Everybody in the company was going to be advised that this
24 change was being made; correct?

25 A. Correct.

1 Q. And this change -- again, just so the record is clear -- is
2 Philip Morris changing to state for the first time, in a
3 communication directed and available to the public, that it
4 agrees that smoking causes disease; correct?

5 A. Correct.

6 Q. And it agrees that smoking is addictive?

7 A. I think your mike is off.

8 Q. And then if you look further....

9 And then, Ms. Keane, if you look further down at number
10 3, it discusses David Davies' press briefing and WHO testimony.
11 Do you see that?

12 A. Correct.

13 Q. And the change in the Philip Morris' website when it was
14 uploaded was carefully coordinated with Mr. Davies' press
15 briefing in Europe; is that correct?

16 A. No. There appears to be an effort to make sure that he was
17 aware of it -- this was a time when we were trying to reach out
18 and work with WHO on the framework --

19 Q. In fact, Mr. Davies was about to give testimony that, for
20 the first time, made a public statement directed at the public
21 acknowledging that smoking -- that Philip Morris agrees smoking
22 causes disease and that smoking is addictive; correct?

23 A. I think the sequence was, we had a series of presentations
24 and meetings that went on around the WHO process, and clearly if
25 David Davies was going to be doing that, it was necessary that

1 he, you know, properly reflect the most current communication
2 that the company would have had on its website.

3 Q. So all of these changes around the time of the change were
4 closely coordinated; correct?

5 A. Yes.

6 Q. And looking at number 4, Philip Morris prepared media
7 activities in connection with the change; correct?

8 A. Well, this is all part of a process that happens at a
9 company when, in fact, we have Corporate Affairs Departments
10 that need to be apprised, so it was an effort to make sure that
11 they understood the change and could properly respond to any
12 questions.

13 Q. Okay.

14 A. So yes.

15 Q. There was media preparation in association with the change;
16 correct?

17 A. Right.

18 Now, it's not that it was a proactive media, it was --
19 as I'm reading this here -- let's see. It was intended to have
20 a communication platform prepared if, in fact, we received
21 questions.

22 Q. And Philip Morris doesn't prepare press materials, press
23 releases, Q and A for media in response to every change of its
24 website, does it?

25 A. No, but you would be amazed at how many responsive

1 communications we prepare.

2 Q. And, in fact, if you go further down -- if you look at
3 number 6 on the second page, Charles -- you indicate that Philip
4 Morris -- or Mr. Poole indicates that on a case-by-case basis
5 Philip Morris employees will be briefing local business partners
6 and other interested parties to alert them to this change in the
7 website position; correct?

8 A. One of our --

9 Q. Can you -- Ms. Keane, if you can answer my question. The
10 answer is yes?

11 A. Yes.

12 Q. Ms. Keane, if you can turn to page 35, please, of your
13 corrected examination. And it's --

14 A. I'm sorry. I'm just taking one second --

15 Q. Sure. Let me know when you're there.

16 A. -- to organize this.

17 Page 20?

18 Q. Page 35, please.

19 A. Thank you.

20 Q. Do you have it?

21 Looking at the question from lines 10 to 22. The
22 question was posed, "Since October 2000, Philip Morris hasn't
23 told its customer" -- excuse me, let me start again.

24 "Since October 2000, Philip Morris hasn't told its
25 consumers, on or with the cigarette package, that it agrees that

1 cigarette smoking causes diseases -- causes cancer and other
2 diseases in smokers, has it?"

3 And the proposed answer was "No", and you add to that
4 to reverse -- to change the meaning of the answer and you
5 stated, "No, that is not correct." And then you go on to
6 provide a longer answer. And I want to go through different
7 parts of that answer. Okay?

8 A. Yes. Fine.

9 Q. Now, first of all, the first sentence that you add to that
10 response is that "Philip Morris has included the website address
11 on cigarette packs and onserts on cigarette packs referring
12 smokers to its website where it states its agreement that
13 smoking cigarettes causes cancer and other diseases in smokers."

14 Have I read that correctly?

15 A. Yes.

16 Q. Okay. So providing the website address on or with the
17 cigarette package is not a statement that Philip Morris agrees
18 that smoking cigarettes causes cancer and other diseases;
19 correct?

20 A. It is a way to direct people to that information.

21 Q. But it does not provide it -- it does not make that
22 statement or provide that information that Philip Morris agrees
23 smoking causes cancer on or with the cigarette pack itself;
24 correct?

25 A. Correct, it's not on the pack. It is on the onsert or with

1 the address.

2 Q. According to your testimony here, the statement is not on an
3 onsert, it's only the website statement that's on the onsert;
4 correct?

5 A. Well, there are two things, I think, I'm referring to here.

6 One is that there's a website address and a phone
7 number that exists on the pack so people can call for complete
8 website brochure or booklet.

9 Then, in addition to that, there have been onserts that
10 have been used on the pack which both include the website
11 address and, in addition, talk to about, in one of the
12 executions, the company's position on smoking and health.

13 Q. Okay. When did Philip Morris start circulating an onsert
14 that includes the statement that Philip Morris agrees that
15 smoking cigarettes causes cancer and other diseases?

16 A. Right -- I think yesterday what I indicated is I couldn't
17 remember the -- what I call the omnibus onsert that talks about
18 causation and addiction. I can't remember how much detail it
19 goes into, and given the court's instruction, I did not go back
20 to investigate.

21 Q. Now, this is -- you have it.

22 Ms. Keane, I'm handing you U.S. Exhibit 92048.

23 A. Thank you.

24 Q. Is this what you consider the omnibus onsert, Ms. Keane?

25 A. Yes.

1 Q. And nowhere on this statement does it say Philip Morris
2 agrees that smoking causes cancer; correct?

3 A. That's correct.

4 Q. And nowhere on this statement does it say that Philip Morris
5 agrees that cigarette smoking is addictive; correct?

6 A. No. It indicates serious health effects of smoking and it
7 indicates that there is information on health issues.

8 Q. Okay. But all this onsert does is tell someone to go
9 somewhere else to look for information; correct?

10 A. That's what this says, yes.

11 Q. And it doesn't actually provide information?

12 Strike the question.

13 It doesn't provide substantive information about Philip
14 Morris's position on smoking and health issues; it provides
15 information about where to go to find additional information;
16 correct?

17 A. Correct.

18 Q. Now, while we are on the question of the onsert, I just want
19 to contrast it briefly to -- can I have U.S. Exhibit 52963?

20 And this exhibit, which is already in evidence, is a
21 copy of an onsert that was put on packages of cigarettes by a
22 company called Star Tobacco.

23 You've heard of Star Tobacco before, have you not?

24 A. Yes, I have.

25 Q. And you're aware that they market cigarettes?

1 A. Yes.

2 Q. And if you look at this --

3 A. I don't know if they still do, but yes, they do.

4 Q. And for a time when they were marketing a cigarette called
5 Advanced they affixed to the cigarette packages an onsert of --
6 the same sort of onsert that Philip Morris has used. Do you
7 understand that?

8 A. Yes.

9 Q. Now, if you look at this -- if you look at this onsert, you
10 need to sort of look at it vertical because page 1 and page 2
11 actually run -- it's sort of a continuation of what was included
12 with the pack.

13 And this is the top -- this is the top of the onsert;
14 correct?

15 A. Yes.

16 Q. And it says, "Star is providing this series of information
17 strips so adult consumers have a sound basis for making informed
18 choices."

19 Do you see that?

20 A. I do.

21 Q. If you look down at the bottom -- it's actually the bottom
22 of that first column, which is actually on the second page of
23 the document, Bates number ending in 2389 -- you see in that --
24 toward the last two paragraphs are by "adding" -- it states, and
25 I'll quote the onsert that Star put on its package.

1 "By adding filters and putting tiny ventilation holes
2 in the filters, cigarette makers developed many brands which
3 tested as having reduced tar and nicotine, even though the
4 tobacco itself was relatively unchanged."

5 Have I read that correctly?

6 A. Yes.

7 Q. And Philip Morris's onsert which we discussed yesterday
8 didn't explain -- didn't provide any of this type of information
9 in its onsert about low-tar cigarettes; correct?

10 A. It did not.

11 I add, however, that Philip Morris had a, and has, a
12 myriad of communication vehicles which, in fact, we used to
13 provide information which I don't believe is the case for Star.

14 Q. Okay. But you did indicate yesterday that one of the
15 reasons why Philip Morris uses onserts is because it is the most
16 direct -- the packing of cigarettes is the most direct
17 communication with smokers; correct?

18 A. I don't believe -- I'm not, you know, quibbling with you,
19 Mr. Goldfarb.

20 I don't think that was my exact language. I do think
21 onpack is very important. I do however think that you need to
22 look at the overall range of communication vehicles that exist.

23 Q. Okay.

24 A. Because I think there are different ways to reach consumers.

25 Q. And then the Star onsert goes on to say, "Because many

1 smokers smoke to get nicotine they tend" -- and then you have to
2 go back to page 1 because the second column begins -- "they tend
3 to smoke more intensely when smoking lights or ultralights."

4 And then it goes on -- it has a paragraph about the
5 phenomenon of compensation; correct?

6 A. Correct. This tracks, I mean, the topics that are covered
7 on our lights onsert, yes.

8 Q. Okay. But there's no mention of nicotine in your lights
9 onsert to tell smokers that the reason why they compensate and
10 the reason why they might get more smoke from a light cigarette
11 is because they smoke for nicotine; correct?

12 A. That is correct.

13 Q. Okay. If we go down to the second -- bottom of the second
14 column, which is again on page 2 of U.S. Exhibit 52963, it also
15 provides the information to smokers, "All smoke tobacco products
16 are addictive and pose serious health hazards."

17 Do you see that?

18 A. I do.

19 Q. And none of the onserts that Philip Morris has put out have
20 included that information on the packets, have they?

21 A. Not in this fashion, no.

22 Q. "Not in this fashion" meaning --

23 A. No.

24 Q. -- it's only referred people to the website where they can
25 find additional information.

1 I don't know. I just don't know if the court reporter
2 got an answer to the last question, which is -- the question was
3 just clarifying when you said "not in this fashion," you meant
4 the only way that Philip Morris has in your view provided that
5 information in onserts is by referring smokers to other places
6 where they might be able to find that information?

7 A. Right. If we're talking about that particular issue and
8 onserts, yes.

9 Q. Okay. Looking back at page 35 of your testimony. The next
10 sentence that you added to this answer states, "It has also
11 placed brochures at points of sale -- at point of sale with its
12 cigarettes containing excerpts from its website, including an
13 excerpt stating that Philip Morris agrees that smoking causes
14 cancer and other diseases in smokers."

15 Now, brochures placed at point of sale, those are
16 printed brochures that might be on the counter at a retail
17 outlet?

18 A. Exactly. Usually, they would be placed at the cash register
19 where, in fact, somebody would be consummating a purchase. They
20 would have that information there.

21 Q. But it would be voluntary.

22 If you purchased a package of cigarettes, the clerk --
23 it's not affixed to the package; correct?

24 A. Correct. But we have printed thousands and thousands and
25 thousands, and they have all in fact been, you know, taken

1 advantage of --

2 Q. Okay. But --

3 A. -- because we --

4 Q. I'm sorry. But the answer to my question is no, they are
5 not affixed to the package?

6 A. Correct.

7 Q. And the clerk is not mandated to hand one of these pamphlets
8 every time someone purchases a pack of cigarettes?

9 A. No.

10 Q. Okay. And I'm guessing you don't print 780 million of these
11 pamphlets per month; correct?

12 A. We print thousands and thousands. 780 million, no.

13 Q. But you distribute 780 million packs of cigarettes a month?

14 A. Correct. But in fact we have a process -- number one, that
15 number is somewhat misleading because when you have a carton
16 purchase it is going to be a consolidated purchase. You're
17 going to have 10 packs.

18 But I think the important thing is that we have a
19 process to fill that up. I mean, there is an ongoing, you know,
20 flow of brochures when in fact they are made available at
21 retail.

22 Q. But placing brochures at point of sale, it's not -- is not
23 telling smokers that Philip Morris agrees on or with the
24 cigarette packaging that smoking cigarettes causes cancer and
25 other diseases; correct?

1 A. It's with the package, but not in the same way that you mean
2 "with."

3 You mean affixed on to is I think the distinction
4 you're drawing. And if that is the distinction, no, it is not
5 affixed onto the pack.

6 Q. And then the next sentence states, "The website address
7 appears in the advertising for Philip Morris' brands, including
8 that placed at point of sale."

9 Do you see that?

10 A. I do.

11 Q. And again, you've previously agreed that just stating the
12 website address is not a substantive statement that Philip
13 Morris agrees that smoking causes disease and other -- cancer
14 and other diseases in smokers; correct?

15 A. No. It directs people to that, but it does not -- it
16 directs people to the website, so I'm agreeing with
17 Mr. Goldfarb.

18 Q. Now, when you're talking about the advertising for Philip
19 Morris' brands, including that placed at point of sale, what are
20 you referring to?

21 A. When, in fact, we have, you know, any sort of advertisement
22 at the point of purchase -- in fact, there's information on it
23 that will direct people to the website.

24 There are two different communications we're talking
25 about here. One are the brochures that would appear at point of

1 sale, the other has to do with what we call you know POS pieces,
2 point of sale pieces, that would include information, including
3 the website, address, and a telephone number that consumers who
4 are not as facile or don't have access to a website can call.

5 Q. But again just to be clear. Those advertisements don't
6 again include Philip Morris's positions on smoking and health?

7 A. No.

8 Q. And then.... So if a person didn't have access to a
9 computer, it would be -- it would be more difficult to get -- to
10 get to information; correct?

11 A. That's why we give -- as I just mentioned, that's why we
12 give the telephone number. And that is why we have printed up
13 a, what I call a mini website brochure that we mail out. If
14 anyone calls that number, we have a process whereby they can get
15 that brochure which gives them that same information, because we
16 have contemplated that there may be people who are not
17 comfortable in using a website or may not have access to it.

18 Q. And then you go on to say in your answer on page 35, "It has
19 also communicated its agreement that smoking cigarettes causes
20 cancer and other diseases in smokers in nationwide television
21 advertising, direct mail, freestanding inserts included in 30
22 major newspapers throughout the United States, and in materials
23 mailed in response to requests." Correct?

24 A. Yes.

25 Q. And again, none of those are communications made on or with

1 the cigarette package; isn't that correct?

2 A. Yes.

3 Q. Now, if you could turn to page in your written direct
4 examination to the top of page 36. I just want to clarify one
5 point here in a change that you made to your written direct
6 examination.

7 The question at lines 1 through 9, the question and
8 answer. The question states, "Before October 2000, Philip
9 Morris's publicly-stated position was that smoking was a risk
10 factor for disease, and that whether smoking is actually a cause
11 of disease was unknown, right?"

12 And the proposed answer is -- was, "That is right."
13 And you changed that to say "That is not right." Correct.

14 A. Correct.

15 Q. And then you added the next sentence, "Beginning in October
16 1999, Philip Morris stated on its website that, quote, there is
17 an overwhelming and medical and scientific consensus that" --
18 excuse me -- "there is overwhelming medical and scientific
19 consensus that cigarette smoking causes lung cancer, heart
20 disease, emphysema, and other serious diseases in smokers."

21 Have I read that correctly?

22 A. Yes.

23 Q. Now, just so your testimony is clear. You are not saying in
24 October 1999 that Philip Morris's position was that it agreed
25 with the medical and scientific consensus on causation; correct?

1 A. In October of 1999, what we did was communicate the position
2 of the -- of the public health community on that issue. The
3 clarification we made in 2000 was to accept the company's
4 agreement with, you know, that statement.

5 Q. So again just so the testimony is clear. What you intended
6 to mean by that answer is, beginning in October of '99 Philip
7 Morris's publicly-stated position on the issue of causation was
8 that everyone else agrees that smoking causes disease in
9 smokers; correct?

10 A. In fact, its only position was that there was an
11 overwhelming consensus. That is the only thing it communicated
12 to the public.

13 Q. Ms. Keane, in 19 -- I'm sorry -- in 2004, what was your
14 entire compensation package?

15 A. In 2004 my salary was -- and still is -- \$525,000, and I've
16 received a bonus in the area of about, I think it was about
17 \$400,000.

18 Q. And did you receive --

19 A. 350. I can't quite remember.

20 Q. Did you receive any other compensation?

21 A. We receive stock options.

22 How our compensation package works is that there is a
23 salary, and then based on the company's performance, there are
24 incentive packages that include a bonus and stock, which varies;
25 you know, varies from year-to-year.

1 Q. Do you know the current value of the stock options that you
2 received in 2004?

3 A. No, I don't. They haven't vested. They vest over a period
4 of years. So, I'm sorry.

5 Q. How many stock options did you receive in 2004?

6 A. It was probably in the area of -- I'm guessing now in terms
7 of value -- about \$300,000, but I truly don't recall.

8 Q. And that was just -- that was just for 2004; correct?

9 A. Right. I don't own them at this point in time.

10 Q. I understand.

11 A. If I continue to be with the company they will vest at some
12 point.

13 Q. At this point you have no plans to leave the company; is
14 that correct?

15 A. No. I don't.

16 THE COURT: Are there 401(k) contributions made by the
17 company?

18 THE WITNESS: We have something called a deferred
19 profit -- deferred profit sharing that there is, you know,
20 generally a percentage of salary that varies from year-to-year.
21 Some years, it's been 10 percent. It varies based on a variety
22 of factors. And that will be contributed to your retirement
23 fund.

24 THE COURT: But that 10 percent, is that paid by you or
25 is that paid by the company?

1 THE WITNESS: Paid by the company.

2 THE COURT: So, in effect, with your \$525,000 salary,
3 there's an additional 52 five contributed by the company into a
4 deferred 401(k) of some sort. Is that accurate?

5 THE WITNESS: That is correct.

6 THE COURT: And then, of course, you get health
7 benefits as well.

8 THE WITNESS: Yes, we get that and...

9 BY MR. GOLDFARB:

10 Q. Ms. Keane, if I could direct you to page 43 of your
11 corrected written examination.

12 A. I'm sorry?

13 Q. Page 43. Are you there, Ms. Keane?

14 A. Yes, I am. Thank you.

15 Q. I want to focus on the questions -- the question and answer
16 at lines 4 to 12.

17 And just to orient the court. The prior question
18 concerned Philip Morris's placing of Marlboro Man imagery on
19 cigarette packs, the cellophane of cigarette packs in January of
20 2005; is that correct?

21 A. Yes.

22 Q. And Philip Morris has printed several different variations
23 of this pack; correct?

24 A. Yes.

25 Q. And the question that is highlighted on the screen now asks

1 that "When Philip Morris counsel previously represented in this
2 case that Philip Morris has stopped using the Marlboro Man
3 imagery today, except in direct mail marketing and on display
4 racks behind the counter at retail outlets, that was not
5 accurate, was it?"

6 And the proposed answer was, "No, it was not accurate."

7 And you struck that; correct?

8 A. Yes.

9 Q. And you added, "This is not what Philip Morris counsel said.
10 He said in relevant part: 'The second place you could see some
11 images of the Marlboro Man and that western motif is at points
12 of sale because Philip Morris -- we still, where we sell our
13 cigarettes, we do believe we have a right to let our customers
14 know that our products are available for sale at that
15 location.'"

16 And you added, "There is nothing inconsistent between
17 this statement and the distribution of Marlboro cigarettes with
18 the image of the Marlboro Man on the pack."

19 Did I read that correctly?

20 A. Yes, you did.

21 Q. Well, I'd like to go back and show the court, since you
22 quoted Philip Morris' counsel, what Philip Morris' counsel
23 actually said during the opening statement on the subject of
24 where today the Marlboro Man or Marlboro imagery can be seen.

25 Can we call up page 390 of the trial transcript? And

1 if we can, beginning at line 10, 10 to 13.

2 Now, this is a section before the section you quoted,
3 just an introduction for the court, at page 390 of the opening,
4 counsel stated, "The only place you can see the Marlboro Man
5 western motif today is in two places and I'll talk about them.
6 You can see it in what we call direct mail and you can see it,
7 to a limited extent, at retail stores where we sell our
8 products."

9 Did I read that correctly?

10 A. Yes, you did.

11 MR. GOLDFARB: And then if you can go to the next page
12 of the trial transcript, please, and cull out page --

13 Q. And then counsel goes on to talk about the first area, the
14 direct mail marketing communications, and then at page -- at
15 lines 7 to 19, he discusses the second place, and he states, and
16 I'll quote for the court.

17 "The second place you could see some images of Marlboro
18 Man and that western motif is today at points of sale, because
19 Philip Morris -- we still, where we sell our cigarettes, we do
20 believe we have a right to let our customers know that our
21 products are available for sale at that location.

22 "But, Your Honor, the days are gone when there's these
23 huge signs on the door or all over the store. They basically
24 appear -- what I'm going to show you -- this is what's called a
25 point of -- I don't think it gets any bigger. This is the point

1 of sale sign that you can see in stores today."

2 And if I can have JD 053405.

3 A. Thank you.

4 Q. No, it's -- is that the one? I may have -- let me put --

5 Charles, you can pull that down, it's the wrong one.

6 A. No, I do believe it's the one he handed me.

7 Q. Yes. And that, in fact, is the wrong exhibit, so I just
8 want to put up the right....

9 And, I'm sorry. To correct the record, that's
10 JD-053405.

11 And counsel held up a sign or pointed to the screen
12 where the sign was displayed and it says, "This is the point of
13 sale sign you can see in stores today, usually behind the
14 counter, above where cigarettes are being sold that tell
15 consumers, that's it. That's where the Marlboro Man can be seen
16 today in America."

17 Do you see that?

18 A. I'm sorry. I see -- you're pointing to the POS.

19 Q. I'm pointing to the transcript there.

20 A. Oh, the transcript?

21 Q. Do you agree that's what counsel stated?

22 A. Yes.

23 Q. And so he indicated two places.

24 Now, this, Ms. Keane, do you agree that's the type of
25 sign that would go above a cigarette rack behind -- behind the

1 counter behind -- at the point of sale?

2 A. There are different types of POS execution. This is an
3 example of a particular sign.

4 Q. And you're saying that another type of POS execution is to
5 put the Marlboro Man on every pack of cigarettes?

6 A. When I read the statement that was made, it was clear that
7 in fact we were identifying that point of sale is a place where
8 the Marlboro image could be found. POS is an example of that.
9 I think the packs that you were referring to are another
10 example. And just to kind of complete that.

11 Yes, there are packs that were available, I think, for,
12 you know, a 2-week period at point of sale that in fact had that
13 imagery.

14 Q. And -- but the packs don't stay at point of sale like the
15 signs do; correct?

16 A. No. But what happens -- the answer to that is no -- but
17 what happens is you take the cellophane off and it's disposed
18 of.

19 Q. Right. But sometimes people purchase packs of cigarettes
20 and walk around with them, so they leave the point of sale;
21 correct?

22 A. Right.

23 I mean, point of -- communications on package and
24 imagery on package is not unique. It is not something that has
25 never been done before.

1 And this particular execution that you are referring to
2 happened the beginning of this year, but as I read the
3 communication that you've shared with me I think it is
4 accurately captured.

5 Q. And you said they ran for a 2-week period?

6 A. I believe it was -- it was a limited period. I think it was
7 just a sale, approximately. It was a limited period.

8 Q. And it was available -- the cigarettes were made available
9 nationally?

10 A. Yes.

11 Q. Do you know roughly how many -- how many packs of these
12 cigarettes Philip Morris distributed?

13 A. No, I'm sorry, I wouldn't.

14 Q. And, Ms. Keane, if I can now direct your attention to page
15 44 of your corrected examination, the question at lines 6 to 13.

16 This question reads -- The prior questions have
17 confirmed that Philip Morris still utilizes several different
18 vehicles to communicate with the public.

19 And this question then asks, "In none of these public
20 communication vehicles -- the corporate website, cigarette
21 packaging, package onserts, newspaper inserts, point of sale
22 materials, or television advertisements has Philip Morris told
23 its customers or the public that it agrees that nicotine
24 delivered in cigarettes is addictive, right?"

25 And the proposed answer is, "That is true." And you

1 left out there and added, "But the website expressly references
2 public health statements that nicotine is addictive. In
3 addition, Philip Morris has delivered what it believes is a
4 broader and more relevant statement for smokers: We agree with
5 the overwhelming medical and scientific consensus that cigarette
6 smoking is addictive."

7 Now, Ms. Keane, you agree that it is also a -- it is
8 also a relevant point of information to smokers that cigarettes
9 deliver what Philip Morris agrees to be an addictive drug;
10 correct?

11 A. What I think is relevant is that smoking really is composed
12 of both the product and the sort of -- the habit of smoking. So
13 that is why the company has always viewed the statement
14 cigarette smoking is addictive to be the broadest statement
15 possible. You know, kind of giving people the broadest warning,
16 because that truly has been our objective.

17 Q. Now --

18 A. So that is the vehicle that the company has chosen in its
19 communication.

20 Q. Okay. But my question is, is it not true that it is
21 important to smokers, as a relevant fact to smokers, that Philip
22 Morris knows that its product delivers nicotine, an addictive
23 drug?

24 A. Clearly, people know that the product delivers nicotine, and
25 the information is there. We in fact have communicated, I

1 think, the --

2 THE COURT: Ms. Keane, keep your voice up.

3 THE WITNESS: I'm sorry, Your Honor.

4 A. I think we have communicated the broadest message, and a far
5 broader message in talking about cigarette smoking being
6 addictive.

7 Q. Okay. Ms. Keane, the two statements are not mutually
8 exclusive; correct?

9 A. No.

10 Q. Okay. So, Philip Morris might believe that the message is
11 broader, but --

12 A. And, in fact -- I'm sorry, Mr. Goldfarb -- but I add that
13 you can in fact obtain the specifics of the public health
14 community position on that on the website.

15 Q. I understand that, Ms. Keane. I'm asking you about Philip
16 Morris's position, because as of October 2002, it is true, is it
17 not, that Philip Morris agreed to state publicly in an
18 interrogatory response to the United States that it agrees that
19 nicotine delivered in cigarette smoke is addictive; correct?

20 A. That was in the interrogatory. I think it might have been
21 in 2003, but you, perhaps, you quote the right date.

22 Q. Okay. But in your testimony you confirm that in
23 October 2002 is when Philip Morris agreed that it could state
24 that publicly; correct?

25 A. At or around that time, yes. I couldn't give --

1 Q. But Philip Morris has never told that to the public;
2 correct?

3 A. Other than in the way that I've described in which it can be
4 found on the website.

5 Q. Okay. Now, Philip Morris has told people that it agrees
6 that cigarette smoking is addictive?

7 A. Correct.

8 Q. It hasn't told people it agrees that the nicotine delivered
9 in cigarette smoking is addictive; correct?

10 A. Correct.

11 The only thing that it has done, just to be fully
12 complete on that, is Mike Szymanczyk has, in fact, made
13 different communications. And, in fact, I believe a transcript
14 of his testimony before Congress where he spoke to the fact that
15 nicotine in cigarette smoke is addictive can, in fact, be found
16 on the website.

17 Q. Okay. But -- so then you agree that it is -- it's a
18 material fact for smokers to know that Philip Morris agrees that
19 its products deliver nicotine, an addictive drug; correct?

20 A. We try to be as --

21 Q. Ms. Keane, could you answer my question, please?

22 A. Yes. Please repeat it for me, Mr. Goldfarb.

23 Q. My question is, you agree, do you not, that it's a material
24 fact for smokers to know that Philip Morris agrees that its
25 products deliver nicotine, an addictive drug?

1 A. I think it is material for people to have information.

2 When I look at those words and parse them out, I think
3 they are on the website and communicated in a way that gives
4 people the most complete information.

5 Q. Okay. And again, Philip Morris doesn't say "we agree that
6 nicotine in cigarette in cigarettes is addictive." Correct?

7 A. It does not in the section under addiction. But, as I said,
8 there is information, including the link to Mr. Szymanczyk's
9 testimony, that says nicotine in cigarette smoke is addictive.

10 Q. So again in the section at -- the section of the website
11 that discusses smoking and addiction, it doesn't say "Click here
12 to see Philip Morris's views on nicotine addiction," does it?

13 A. Not in that fashion.

14 Q. Okay. So someone would have to search around the website
15 and locate, and the person wouldn't necessarily know what
16 Mr. Szymanczyk testified to or who he is or what the content of
17 his testimony is; correct?

18 A. Well, I wouldn't quite describe it that way.

19 But to your broader point, it is not found in the same
20 section. But I believe personally that the broader message is
21 found in that section.

22 Q. Again, you agree that the two statements are not mutually
23 exclusive. Philip Morris could make both statements?

24 A. Yes, I do.

25 MR. GOLDFARB: I have no further questions at this

1 time, Ms. Keane.

2 THE COURT: All right. Let's take our break now, then.

3 And, Mr. Wells, I think you anticipated three hours.

4 Is that right?

5 MR. WELLS: Yes, Your Honor.

6 THE COURT: 15 minutes, everybody.

7 **(Recess began at 10:53 a.m.)**

8 **(Recess ended at 11:12 a.m.)**

9 THE COURT: Mr. Wells, cross, please.

10 MR. WELLS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WELLS:

13 Q. Ms. Keane, during its examination the government asked you
14 questions about the Hatch Statement; correct?

15 A. Yes.

16 Q. And you testified that Altria submitted the Hatch Statement
17 to Senator Hatch on October 2, 1997. And my question is: What
18 was happening in the summer and fall of 1997 that caused Altria
19 to issue the Hatch Statement?

20 A. At the time preceding the Hatch Statement Philip Morris was
21 involved in negotiating what we referred to as the proposed
22 resolution. It was a very, very far reaching proposal that was
23 negotiated with the state Attorneys General that was intended to
24 sort of bring forth a regime that would deal with product,
25 controlling the product. It would relate to advertising. It

1 would relate to a whole host of things, including the resolution
2 of some litigation issues.

3 Q. Could you give us a fuller background as to the proposed
4 resolution you referred to? Proposed resolution of what?

5 A. It was, in a sense, an effort to try to work with the states
6 and then support federal legislation that would introduce a
7 whole new environment as it related to cigarettes in the United
8 States.

9 It would have bought into and supported an FDA control
10 over the product in the communications around the product. It
11 also would have entailed a whole series of, you know, very
12 specific restrictions as to how the product would in fact have
13 been sold in this country.

14 THE COURT: Who were you negotiating that with?

15 THE WITNESS: What happened -- I was not personally --

16 THE COURT: I don't want a long explanation. First of
17 all, who were you negotiating it with?

18 THE WITNESS: The negotiation was with the state
19 Attorneys General along with communication with the federal
20 government through the White House is my understanding of how it
21 was taking place.

22 THE COURT: And were other defendants in this case
23 involved in those negotiations?

24 THE WITNESS: Yes.

25 THE COURT: Mr. Wells, go ahead, please.

1 BY MR. WELLS:

2 Q. Could you generally describe the Medicaid reimbursement
3 lawsuits that were brought by the various state Attorney
4 Generals and how those lawsuits related to the resolution that
5 you just discussed?

6 A. Philip Morris had, in fact, been sued by a series of states
7 who were trying to collect what they had identified as expenses
8 associated with the, you know, use of the product.

9 They were lawsuits where the damages being requested
10 were very, very significant, and in fact where the relief being
11 requested by the states from a -- in terms of, you know, product
12 restriction and product control was very extensive.

13 I mean, ultimately, although the proposed resolution
14 didn't go ahead, we ended up signing what we call as the Master
15 Settlement Agreement and the four separately-settled states
16 agreements, which took a very critical portion of the proposed
17 resolution and, you know, incorporated them in state specific
18 deals that the company has signed.

19 Q. What is the relationship, if any, between the proposed
20 resolution that is discussed in the Hatch Statement and the
21 Master Settlement Agreement?

22 MR. GOLDFARB: Your Honor, I'm going to object at this
23 point. There's nothing in Ms. Keane's testimony that makes
24 reference to the settlements or that called for testimony
25 concerning the state settlements or the MSA. So it's beyond the

1 scope of the witness's --

2 THE COURT: Well, the MSA is certainly a major element,
3 issue, factor -- whatever word you want to use -- in this
4 litigation. And certainly we've heard a lot of testimony from
5 this witness about the Hatch Statement. And to the extent that
6 there is any relationship between the two, it's relevant. So I
7 will allow the question.

8 A. The proposed resolution, number one, as it related to the
9 content of some of the restrictions that were going to be
10 imposed as it related to the way in which the product was going
11 to be sold, those, in fact, were followed through and carried up
12 and adopted in the MSA.

13 In addition, the proposed resolution also contemplated
14 a series of consent decrees and things of that nature so as to
15 ensure enforcement and the companies, you know, obligation, you
16 know, under the various agreements, and that also is carried
17 forward into the MSA.

18 Q. Is it correct that the original plan was that there would be
19 a proposed resolution with the states who were parties to the
20 Medicaid reimbursement suits and the next thing that would
21 happen was that there would be have been federal legislation?

22 A. Yes, absolutely.

23 Q. And did the federal legislation pass?

24 A. No, it did not.

25 There was a period of time, I have to add, that the

1 company was, in fact, actively engaged in trying to support the
2 enactment of federal legislation which would have included a
3 Medicaid -- an FDA component and things of that nature, but that
4 never passed.

5 Q. And the federal legislation that was pending at that time,
6 how did that relate to the Hatch Statement?

7 MR. GOLDFARB: Objection, Your Honor. The court has
8 ruled, I think on more than one instance, that testimony about
9 proposed but not enacted legislation is irrelevant.

10 THE COURT: Well, that -- that litigation before me
11 pertained to the McCain bill, it is my recollection, and
12 certainly there's not going to be any extensive questioning on
13 this issue. So I will allow this question, although the former
14 rulings that I made regarding the McCain legislation are in
15 effect.

16 Go ahead, please.

17 THE WITNESS: I'm sorry.

18 BY MR. WELLS:

19 Q. The question, Ms. Keane, was in the federal legislation that
20 was pending at that time, how did that relate to the Hatch
21 Statement?

22 A. The Hatch Statement was, in fact, communicated because the
23 company was very interested in making sure that the proposed
24 resolution was properly considered on Capitol Hill.

25 And so as part of those discussions, the question was

1 asked, you know, how can we be assured that the company is going
2 to, in fact, live up to its alignment with the public health
3 community on critical issues?

4 So the Hatch Statement was formally issued to, I
5 believe it was the Judiciary Committee, Senator Orrin Hatch,
6 wherein the company made a formal commitment that, in fact, it
7 would walk away from the debate, it would no longer debate
8 critical issues around product relating to causation or
9 addiction, and in fact, it would stand to -- it would stand with
10 the public health community to support a single consistent
11 message.

12 Q. Now, you indicated that the proposed federal legislation did
13 not pass; is that correct?

14 A. That is correct.

15 Q. And is it correct that when the proposed federal legislation
16 failed, that was when it was necessary to enter into the Master
17 Settlement Agreement with various states?

18 A. Yes.

19 Q. And had the legislation passed, is it fair to say there
20 would not have been a need for the Master Settlement Agreement?

21 A. No, absolutely not.

22 Q. Now, I would like to show you a copy of the Hatch Statement,
23 and I would like to call up U.S. Exhibit 39734, which is a copy
24 of the Hatch Statement. And I want to focus your attention on
25 the first paragraph which the government did not quote in the

1 examination that it supplied you in the written direct.

2 The first paragraph of the Hatch Statement states, "We
3 are entering into an historic resolution of much of the
4 controversy that has been focused on tobacco and its use in the
5 United States. The resolution should be the beginning of a new
6 era for the industry and its relationship with the public and
7 government. Hopefully, it will be an era characterized by
8 cooperation and agreement.

9 "We are fully committed to the objective of
10 discouraging and reducing underage smoking, as embodied in the
11 terms of the comprehensive agreement we entered into on June 20,
12 1997. We support and will work for passage of legislation
13 incorporating all the provisions of that agreement, including
14 the required new health warnings.

15 "In this regard, we have been asked by various members
16 of Congress, Attorneys General, representatives of the public
17 health community, and others, to state our views on a number of
18 issues related to tobacco, and we are pleased to do so."

19 To what extent would you characterize Philip Morris's
20 issuance of the Hatch Statement as constituting a see change in
21 how Philip Morris had historically communicated with the
22 American public on the issues of health and smoking?

23 MR. GOLDFARB: Objection, leading.

24 MR. WELLS: I said to what extent.

25 THE COURT: No. The objection is overruled.

1 A. One of the things that, in fact --

2 THE COURT: It may be a puff ball question, but that's
3 different than leading, everybody. Make that clear.

4 (Laughter)

5 THE COURT: All right. Mr. Wells, go ahead.

6 A. One of the things that I discussed with Mr. Goldfarb
7 yesterday related to my responsibilities at WRA, and in fact,
8 Hatch was, I think, a critically important development.

9 One of the things that we did was to make sure that the
10 operating companies, you know, understood the commitment and, in
11 fact, that there was a mechanism in place to ensure compliance
12 with it because, you know, this represented -- I think it was
13 the first in a whole series of events.

14 I mean, there were clearly things that were building up
15 to Hatch, but it was the first in a series of events where we so
16 publicly communicated our objective to be aligned with the
17 public health community.

18 Q. And to what extent has the decision by Philip Morris to
19 align itself with the public health community been an
20 evolutionary decision and process?

21 A. There are, you know, things that started -- I would really
22 sort of pick, you know, the mid-90s.

23 But, you know, Hatch, I think, was a critical step and
24 it was soon followed, particularly with PM-USA, with really
25 trying to create a process because you can't manage a large

1 organization without a process.

2 So along with the Hatch, you know, we had a, you know,
3 CEO who was, you know, focused on trying to create a vision and
4 a values, and creating an infrastructure to ensure that the
5 company continued marching in this direction.

6 I mean, Hatch was a step that was irrevocable. We
7 could never move back from Hatch. And then, in fact, you had
8 the next step, you know, continue that, because we had our
9 efforts to, and in fact, our successful efforts to resolve our
10 disputes with the Attorneys Generals.

11 You had what I would call a pronounced increase in the
12 way in which we have tried to reach out and work both with
13 regulators and elected officials; you know, whether it's on a
14 state level or on a federal level, to try to make sure that we
15 were no lodger so disengaged and so isolated from what was going
16 on about our product.

17 I mean, we have -- if you look at the past, I mean that
18 is a place that the company was committed to creating
19 infrastructure and making commitments that we could ensure that
20 that would not happen again.

21 Q. Now, I want to read -- or focus your attention on two other
22 portions of the Hatch Statement, and I want to start with the
23 section entitled Causation, which is the first paragraph at the
24 top of the second page, and that paragraph reads:

25 "Despite the differences that may exist between our

1 views and those of the public health community, in order to
2 ensure that there will be a single, consistent public health
3 message on this issue, we will refrain from debating the issue
4 other than as necessary to defend ourselves and our opinions in
5 the courts and other forums in which we are required to do so.
6 For that reason, we are also prepared to defer to the judgment
7 of public health authorities as to what health warning messages
8 will best serve the public interest, as reflected in the
9 proposed new health warnings."

10 Was a similar statement also made with respect to the
11 issue of addiction?

12 A. Yes.

13 Q. Is it fair to say that, with respect to the issue of disease
14 causation and addiction, that Hatch contained two separate
15 commitments?

16 One was to defer to the judgment of public health
17 authorities on warning labels, and the other was to withdraw
18 from the debate on smoking and health and addiction?

19 A. Correct.

20 Q. What was the company's purpose in making those commitments?

21 A. The company's purpose was, number one, to make in a very
22 public way its commitment to no longer being part of what I
23 would call an old world, but to take a step that would codify
24 really for all purposes going forward the fact that it was going
25 to be aligned with the public health community, that it was

1 going to communicate the message of the public health community.

2 And when we talk about what's on the website, you know,
3 to me, the guiding principle is communicating the message of the
4 public health community, and really that is -- to me, the Hatch
5 is where that principle -- you know, the principle comes from
6 Hatch.

7 Q. Is it fair to say that when you use the phrase, old world,
8 that the old world involved a world where Philip Morris and
9 other tobacco companies had been involved in an intense public
10 debate with the public health community over smoking and health
11 issues for many years?

12 MR. GOLDFARB: Objection, Your Honor. That's leading.

13 THE COURT: I think we need to get that clarified -- or
14 to get an answer in order to clarify the last answer to the last
15 question, so I'm going to allow it.

16 A. Yes, it is true.

17 Q. Now, when Mr. Goldfarb asked you questions about some
18 language in your deposition testimony where if we had literally,
19 you indicated that Philip Morris had not been historically
20 discussing smoking and health issues and you said that was
21 preposterous on its face, what did you mean by that?

22 A. Well, clearly, we had been debating issues around causation
23 and addiction.

24 It is true that we were not discussing smoking and
25 health in an aligned fashion, but it is absolutely preposterous

1 to suggest that we were not discussing the company's beliefs at
2 the time around smoking and health and addiction, and they were
3 beliefs that were not aligned with the public health community.

4 Q. And as you indicated in the pages that Mr. Goldfarb
5 questioned you about, you and he -- in those pages and other
6 pages preceding those pages and following those pages -- had
7 been talking about the Hatch Statement and the website; is that
8 right?

9 A. You know, it's true. I mean, there are topics, because of
10 my personal involvement, that mean a great deal to me. And to
11 the extent to which I was not totally responsive to
12 Mr. Goldfarb, it was not for any -- because I was intending not
13 to be.

14 I was intending to communicate what was happening at
15 the time, to communicate -- clearly, we were not doing something
16 that was aligned. What we were doing was in fact debating and
17 we had been discussing the debate, and Hatch led up to a
18 commitment not to debate. So to suggest we never discussed
19 smoking is -- just doesn't make any sense. It's nonsensical.

20 Q. So there was some type of misunderstanding, as you indicated
21 you will take responsibility for it.

22 But in your testimony in this courtroom today and in
23 your corrected testimony, you made it clear that there's
24 absolutely no question that Philip Morris had historically been
25 involved in a public debate with the public health community

1 over smoking and health issues.

2 A. I agree with that.

3 Q. Now, is it true that despite the failure of federal
4 legislation referenced in the Hatch Statement, that Philip
5 Morris has continued to maintain its commitments expressed in
6 the Hatch Statement?

7 A. Yes.

8 Q. Please explain in general terms how it has maintained that
9 commitment.

10 A. Well, clearly, it is, you know, something that has been
11 communicated, and is communicated, to our employees.

12 And you know, to some extent, you know, Hatch really
13 became a tool internally. I think it was a very important thing
14 for the company, not just as it related to our external
15 audience, but also as it related to our internal audience, to
16 make sure that people in the company understood what the company
17 was intending to accomplish.

18 This has been held out as a compliance objective. You
19 know, people again in the organization are judged, not just by
20 what they do, but how they do it, and do they do it in a way
21 that is in full compliance with the company's commitments and
22 this is a critical one.

23 Q. Well, as general counsel of Philip Morris USA, what type of
24 responsibilities do you have with respect to insuring that
25 Philip Morris and its employees comply with the Hatch Statement?

1 A. Well, one of the things that we do is we have substantial
2 training. In addition -- and this is just a very sort of small
3 example, but I think it's hopefully somewhat illustrative.

4 I mean, you know, the concept of the HOW (sic), which
5 is what to me Hatch is so much about, is an element that we even
6 bring down to performance appraisals now. It is, you know, the
7 company has objectives and initiatives, but it's not just
8 getting it done, it's the way in which one gets it done which is
9 an equally important part of how individuals within the
10 organization are evaluated.

11 And this is, you know, sort of one of the guiding
12 principles. You know, how we talk about issues around our
13 product. I mean, the company internally now talks about issues
14 around the product in a way that is fully aligned with Hatch and
15 fully aligned with what is going on with the public health
16 community.

17 I mean, what we are doing with youth smoking
18 prevention, what we're doing now with regard to cessation, the
19 way in which we endeavor to update our website in a timely
20 fashion to capture important communications like a Monograph,
21 you know, 13, which, you know, had to do with, you know, light
22 and low-tar cigarettes.

23 Those are things that have really been built into the
24 institution that I think have only been augmented by what our
25 president and CEO talks about as mission and values. And, you

1 know, this is a way in which the organization has, in fact, been
2 trained to operate and the way in which the organization is
3 evaluated in terms of its performance.

4 Q. And in terms of performance evaluations, would a person's
5 bonus perhaps be tied to whether or not that person advanced the
6 commitments --

7 A. Absolutely.

8 Q. -- set forth in Hatch?

9 A. Absolutely.

10 Q. Now, you testified that in Hatch Philip Morris committed to
11 withdrawing, withdrawing from the debate on public -- on
12 important smoking and health issues; correct?

13 A. Yes.

14 Q. Now, to what extent has Philip Morris done more than simply
15 withdraw from discussing smoking and health issues?

16 A. Well, I think the website is a very good example of that.

17 Technically, Hatch told us to withdraw and to support,
18 but it did not necessarily go into specifics about what our
19 communication platform needed to be.

20 So, I mean, the website is a vehicle where, in fact,
21 the company's alignment with the public health community is, in
22 fact, communicated broadly across the wide range of issues that
23 are implicated by our product.

24 It then in a sense becomes a launching pad for things,
25 such as a freestanding insert, a POS brochure, an onsert, a

1 television commercial. You know, all of it goes back to, you
2 know, having a plan and a vision for how communication should
3 take place.

4 But I think I would call the website the core, you
5 know, the real basis on which, you know, we try to create the
6 broadest platform possible.

7 We can't take every word of the website and communicate
8 it through each of these vehicles, but the overall gestalt or
9 objective of the communication platform is to ensure that there
10 are multiple ways that people can get information that reflect
11 our commitment.

12 Q. You indicated that Hatch is issued in October of 1997, and
13 the website was launched October 13, 1999; is that right?

14 A. Yes.

15 Q. Is it fair to say that, in terms of this evolutionary
16 process you referred to, that the Hatch Statement begins with a
17 statement of withdrawing from the public debate but that evolved
18 into affirmative efforts to communicate to the American public
19 the positions of the public health community about smoking and
20 health?

21 A. Yes, it did. And, in fact, it even became a specific
22 business initiative.

23 Q. What did?

24 A. The commitment to try to advance and identify further
25 platforms in which to try to communicate with our consumers

1 about, you know, health-related issues around the product.

2 Q. Now, the Hatch Statement in the third sentence says,
3 "Hopefully it will be an error characterized by cooperation and
4 agreement."

5 And the second sentence I should have read first. "The
6 resolution should be the beginning of a new era for the industry
7 and its relationship with the public and government."

8 Even though the federal legislation was not passed, to
9 what extent was the Hatch Statement the beginning of a new era
10 for Philip Morris and its relationship with the public and
11 government?

12 A. What the company has tried to do -- and I have to say that,
13 you know, what I've tried to do. I think every person whose in
14 a job such as mine can make certain decisions as to what they
15 think is important in helping an organization achieved its
16 mission and its values.

17 For me, I probably spend an inordinate amount of time
18 doing what I think is critical for the organization, and that is
19 focusing on an outreach, trying to communicate with elected
20 officials, such as, you know, state AGs, talking to regulators.
21 You know, those are things that I think accomplish two purposes.

22 Number one. It enables us to understand where our
23 critics -- and I still -- you know, we still are. We have
24 critics, as we should have critics. But understand where our
25 critics are, but also to be able to communicate and share what

1 the company is doing and, quite honestly, get feedback.

2 You know, I spend a lot of my time talking to the AGs.
3 I've spent a lot of my time at various periods talking to some
4 of our regulatory agencies. And I think that is an important
5 thing for a company that had been historically characterized by
6 such a sense of isolation.

7 Q. Now, you testified that you headed a group called the
8 Strategic Issues Task Force. What was that?

9 A. The first Strategic Issues Task Force was really the Website
10 Task Force. It was -- I was asked to pull together a group to
11 think about, number one, how do you create a platform for
12 communicating?

13 And number two, you know, if the recommendation was to
14 have a website, to what extent do you talk about tobacco
15 specific issues?

16 Q. And it was that task force that ultimately was responsible
17 for developing the website as it first was launched in October
18 of 1999?

19 A. Yes.

20 Q. So it's fair to say you were the leader and the person at PM
21 that was the point person in terms of developing and overseeing
22 the website?

23 A. Correct.

24 Q. And who appointed you to be head of that task force?

25 A. I was asked to head it up by Jeff Bible.

1 Q. Now, I'd like to call up JD 054555 and ask, Ms. Keane, if
2 you can identify that document?

3 A. I can.

4 Q. What is it?

5 A. It is a memo that I received -- a memo that I sent to Jeff
6 Bible sort of following up on recommendations that were being
7 made with regard to the website.

8 Q. And could I go to page 2 of the memo? It's dated August 10,
9 1999; correct?

10 A. Yes.

11 Q. And in that memo you wrote, "Our objective is to present
12 materials in an accessible fashion. We will attempt to avoid
13 lengthy position statements and focus on a concise format that
14 we believe Internet users prefer when seeking information.

15 "We intend to present our views in an open and direct
16 manner and provide references reflecting the viewpoints of
17 others. Our perspective has been to view the website less as a
18 place for advocacy, but rather as a way to provide consumers
19 with a range of information. We believe this approach is
20 consistent with our overall philosophy, which is based on
21 informed choice."

22 To what extent does the website as ultimately
23 developed -- to what extent is the website as ultimately
24 developed consistent with the statement you made in that memo?

25 A. I believe it is consistent.

1 I mean, that was the website that was, in fact, shared
2 with both Jeff Bible and ultimately approved by the operating
3 companies took this approach. We were trying to balance --
4 there are different ways to go about communicating.

5 The choice that we made was to keep things very simple
6 and to just give people more information. Right click to get
7 the information of the public health community was the best way
8 to make sure that there was clarity.

9 What we didn't want was, you know, multiple pages that
10 people had to plow through to get -- to understand what you were
11 saying.

12 You know, this was a first time for us. We had never
13 done it before. It was a very -- we had a lot of issues that we
14 were grappling with, but this I think was one of the guiding
15 objectives, to bring clarity and to bring as complete
16 information as we could in the context of this website.

17 Q. Now, is the version of the website that the public can view
18 today the same as what appeared on October 13, 1999?

19 A. Not totally. I mean, you know, the website is a living
20 document. And we've already discussed with Mr. Goldfarb, or I
21 discussed with Mr. Goldfarb some changes that have been made.

22 Changes are made on a somewhat regular basis; as, in
23 fact, something like Monograph 13 comes out, we would put it on
24 the website. When we put it an onsert on our pack we would put
25 it on the website.

1 So it is something that kind of gives you the tool to
2 ensure that you can change and include things on a timely basis.

3 Q. Is it fair to say that you're constantly involved in trying
4 to improve the website?

5 A. Yes. No, we have people who have that responsible -- very
6 specific responsibility.

7 Q. When you say it's a living document, what do you mean by
8 that?

9 A. Well, I mean, I think one of the challenges when, in fact,
10 you use, you know, traditional printed word is how do you update
11 things? How quickly can you update it? How quickly can you get
12 it out the door?

13 When have a website you have the ability to go and act
14 in a timely basis. So that's why I call it the core platform
15 for our communication, because we are able to very efficiently
16 include information on a timely basis and include it with as
17 much detail as people might be interested in.

18 Because, you know, if you use a website the way we
19 structured it was to give people a simple platform, but then
20 give them the ability to drill down, integrate in greater detail
21 if that is, in fact, what they wanted.

22 Q. I want to ask you some questions about the statements that
23 appeared on the website when it was first launched in
24 October 1999.

25 And I'd like to give you a copy of JD 046719, which is

1 a copy of the website as it existed in October 1999, and ask you
2 to briefly review that document.

3 And do you recognize it?

4 A. I do.

5 Q. Now that is a copy of the website as it appeared in
6 October 1999; correct?

7 A. Correct.

8 Q. Now, that exhibit is in black and white. Is it correct that
9 the original version was in color?

10 A. Yes.

11 Q. Now, I'd like to direct your attention to page 5 where it
12 refers to the topics.

13 Now, is it correct if someone wanted to get information
14 about the various topics set forth on page 5, all they would
15 have to do is click on to those sections?

16 A. Yes.

17 Q. Okay. And the topics that were included when the website
18 was first launched in October of 1999 were youth smoking
19 prevention, cigarette marketing practices, cigarette smoking,
20 health issues for smokers; quitting smoking, ingredients in
21 cigarettes; understanding tar and nicotine numbers, and
22 second-hand smoke; is that correct?

23 A. Right.

24 Q. Now, you were asked some questions by Mr. Goldfarb about
25 causation and addiction, so I want to direct your attention to

1 those pages of the 1999 website that refer to causation and
2 addiction.

3 I would like to go to page 11 of the website. So when
4 the website was originally launched in October 1999, what it
5 said with respect to causation and addiction was as follows:

6 "Cigarette smoking and disease in smokers. There is
7 an overwhelming medical and scientific consensus that cigarette
8 smoking causes lung cancer, heart disease, emphysema and other
9 serious diseases in smokers. Smokers are far more likely to
10 develop serious diseases, like lung cancer, than nonsmokers.
11 There is no safe cigarette. These are and have been the
12 messages of public health authorities worldwide. Smokers and
13 potential smokers should rely on these messages in making all
14 smoking-related decisions."

15 And then at the bottom, it says, "Cigarette smoking and
16 addiction. Cigarette smoking is addictive as that term is most
17 commonly used today. It can be very difficult to quit smoking,
18 but this should not deter smokers who want to quit from trying
19 to do so."

20 Now, do you recall Mr. Goldfarb asking you some
21 questions whether or not the website, as originally launched in
22 October 1999, stated that Philip Morris agreed with the
23 overwhelming medical and scientific consensus concerning
24 causation?

25 A. Yes, I do.

1 Q. And he also asked you questions about whether, as originally
2 launched, the website stated that Philip Morris agreed that
3 cigarette smoking was addictive. Do you recall those questions?

4 A. Yes, I do.

5 Q. My first question is, is there anything on the website, as
6 launched in October 1999, that indicated in any way that Philip
7 Morris disagreed with the statements on the website concerning
8 the positions of the public health community?

9 A. No.

10 Q. Now, a year later Philip Morris amended the language on the
11 website to indicate that it did agree; is that correct?

12 A. Yes.

13 Q. Is that part of the evolutionary process in terms of
14 constantly trying to improve the content of the website?

15 A. Yes.

16 Q. Now, is it correct that the 1990 website provides links to
17 other sources of information regarding smoking and disease?

18 A. Yes, it does.

19 Q. Describe for the court just how the links work and how they
20 are reflected on the page on the board.

21 MR. GOLDFARB: I object. Just to clarify for the
22 record. Your question referred to the 1990 website.

23 MR. WELLS: I apologize. Thank you. It means 1999.

24 Q. With that amendment, you can answer.

25 A. What would happen is if you go to the first bolded section,

1 you could click on any of those dates and you could get to, you
2 know, the Surgeon General's Reports and information from the
3 Surgeon General.

4 You could go down to, you know, the section below and
5 choose whether or not you wanted to get information from WHO.

6 These links in many instances link automatically to the
7 principal site of the public health community so that people
8 can, as they are going through our website, they can go back
9 and, you know, dive down and if they want to see the WHO
10 framework convention on tobacco control, there would be a way
11 from our website to have access to it.

12 Q. So if you wanted to see highlights and conclusions from the
13 U.S. Surgeon General's Report of 1964, what would you do?

14 A. You would just go to 1964 and you would double click.

15 Q. Now you were asked some questions concerning whether or not
16 Philip Morris on its website indicated that nicotine was
17 addictive as opposed to just saying that smoking is addictive.

18 Do you recall those questions?

19 A. I do.

20 Q. Now, let me first direct your attention to the 1990
21 website -- 1999, I apologize -- to the 1999 website regarding
22 the links to addiction, which should be the next page, on page
23 12.

24 So, on the page, the link page of the 1999 website
25 there are links that will take you to public health reports

1 concerning addiction; right?

2 A. Yes.

3 Q. And is it correct that right on the page before you even go
4 to a link, there's a statement for anyone to read that the
5 nicotine in cigarettes and smokeless tobacco causes and sustains
6 addiction, and then in paren, it says US Food and Drug
7 Administration. Is that correct?

8 A. Correct.

9 Q. So there's no question that there was no attempt by Philip
10 Morris to hide in any way the concept that there was nicotine in
11 cigarettes and that the public health community was taking the
12 position that that sustains addiction; right?

13 A. Correct.

14 Q. And if you clicked on to the link page regarding the Surgeon
15 General's 1988 report, what would you get?

16 A. You would basically get information from the Surgeon General
17 on exactly that point.

18 Q. Now, if we look at the website as it exists today with
19 respect to the question of addiction -- I would just like to
20 call up J-DEM 40178.

21 And is this a copy of the website on addiction as it
22 reads today?

23 A. Yes.

24 Q. And if anybody goes to the addiction page, the first thing
25 they will see is, "Addiction, Philip Morris USA agrees with the

1 overwhelming medical and scientific consensus that cigarette
2 smoking addictive." Correct?

3 A. Correct.

4 Q. And right on the face of that Web page is a statement, to
5 the right, that says, "US Surgeon General's Report -- nicotine
6 addiction, 1998." Is that right?

7 A. Yes.

8 Q. And then if you click on that, you will go to the report?

9 A. Yes.

10 Q. And, in fact, it appears to be a typo because it really says
11 "1998" and it should be "1988"?

12 A. Correct. Constant improvement.

13 Q. Okay. But when you click on, what jumps out at you is a
14 copy of 1988 Surgeon General's Report that is titled Nicotine
15 Addiction; right?

16 A. Correct.

17 Q. Now, I've been asking you questions about causation and
18 addiction. Is it correct that in terms of the Philip Morris
19 website as it exists today, that it also covers other topics?

20 A. Absolutely.

21 MR. WELLS: Could I bring up J-DEM 40018 which is a
22 page from the current Philip Morris' website.

23 Q. Could you describe to the court what other topics are
24 contained in the Philip Morris' website as it exists today?

25 A. Okay. This is an example of the first page.

1 So when you come to the website, this is what would
2 greet you. And you can go down, and if you look under Health
3 Issues, you can click on this box and go immediately to talk
4 about cigarette smoking and disease, or addiction, or
5 information about quitting smoking.

6 You could get information on low-tar cigarettes. In
7 that, it would have information on, you know, descriptors, vent
8 holes, all the things that we have been discussing over the past
9 two days.

10 You could go to issues about smoking and pregnancy.

11 You could talk about ETS second-hand smoke and, of
12 course, along with other public health information you can
13 specifically go to the Surgeon General reports.

14 Q. Now, I've asked you some questions about disease causation
15 and addiction but, as you indicated, the website also has
16 information about low-tar cigarettes; correct?

17 A. Correct.

18 Q. Now, you were asked a lot of questions by Mr. Goldfarb about
19 your dealings with the FTC with respect to the meaning of the
20 FTC numbers, and I'm going to ask you questions after lunch
21 about the information on the website concerning low tar. I'm
22 not going to do that now. I'm going to return at a later time
23 and do the low tar questions all in one set. Okay?

24 A. Okay.

25 Q. Now, in order to save time and rather than put up each page

1 of the current website, I'd like to show you a summary exhibit
2 marked as J-DEM 040028, which summarizes some of the key
3 positions set forth on the Philip Morris' website as it exists
4 today with respect to smoking and health issues.

5 THE COURT: Mr. Goldfarb.

6 MR. GOLDFARB: I'm going to object, Your Honor.

7 This talks about subjects that were not remotely
8 connected to anything covered by the witness's testimony.

9 To the extent that the witness's direct testimony
10 concerned particular statements about smoking disease,
11 addiction, low-tar cigarettes, we have no objection, but to the
12 extent that counsel is going to a general discussion of the
13 contents of Philip Morris's website, that starts to get beyond
14 the scope of what the direct examination covered.

15 MR. WELLS: I will give him comfort. I have no
16 intention beyond having her say this is a fair and accurate
17 representation of the topics that are covered. I have no
18 intention of going beyond the three areas Mr. Goldfarb covered:
19 Smoking disease, addiction, and low tar.

20 I'm showing the court the topics so the court can see
21 it. Other witnesses will deal with ETS, youth smoking and other
22 issues. I am not going -- I'm not drilling down, so to speak.

23 THE COURT: All right. Fine.

24 MR. WELLS: I'm trying to save time. I think, given
25 her responsibility as the developer of the website, responsible

1 for the website and all the questions, I think I could take time
2 and go through it. I'm not doing that. I just want the
3 court -- I'm trying to do this quickly -- I just want the court
4 to see a summary and have her lay a foundation for the fact this
5 is a fair and accurate representation of the core information on
6 the website concerning smoking and health.

7 BY MR. WELLS:

8 Q. And you've indicated that this chart does represent a fair
9 and accurate representation of the smoking and health messages
10 on the website as it exists today; is that right?

11 A. Correct.

12 Q. And to what extent do these messages line up with the
13 positions of the public health community?

14 A. I think they fully align with the positions of the public
15 health community. That's the guiding principle on the website,
16 which is to identify with the public health community, provide
17 more information and access to their communications.

18 You know, even something like, you know, quitting
19 smoking, you know, is a way that we try to develop programs that
20 are developed for us in conjunction with people who are quite
21 significant participants on this issue in the public health
22 community.

23 THE COURT: What's the objection?

24 MR. GOLDFARB: The objection is, again, just as to the
25 subjects Mr. Wells asked questions about alignment with the

1 public health community on topics that were not the subject of
2 this witness's testimony. And the question went to all --

3 THE COURT: The objection is overruled.

4 The only possible topic just mentioned by Ms. Keane
5 that was not discussed in the direct is quitting smoking, but
6 it's a harmless error.

7 Go ahead, please.

8 MR. WELLS: Thank you.

9 BY MR. WELLS:

10 Q. Ms. Keane, I want to hand you JD 053199, and I know it's
11 somewhat of a large document, but I want to have it identified
12 for the record for its admissibility.

13 Can you look briefly through that document and confirm
14 whether it is a current version of the Philip Morris USA
15 website.

16 A. Yes, I believe it is. It is.

17 Q. Thank you.

18 Now, you responded to questions by Mr. Goldfarb about
19 how Philip Morris tries to communicate with the public in myriad
20 ways. Do you recall that testimony?

21 A. Yes, I do.

22 Q. I want to ask you some questions about how Philip Morris has
23 communicated with the public with respect to the existence of
24 its website and the content of the website. Okay?

25 A. Okay.

1 Q. Has Philip Morris taken steps to tell the public what they
2 can expect to find on the website?

3 A. Yes, we have.

4 Q. Now, I want to place before you a board, and it's been
5 marked as J-DEM 40177, and ask if this board is a fair and
6 accurate illustration of the various ways that Philip Morris has
7 communicated with the public about its website.

8 A. Yes.

9 THE COURT: Do you happen -- good, you do, Mr. Wells.
10 I'll take that, please. For the record, this is just a paper
11 version of the board that is being used as a demonstrative.

12 BY MR. WELLS:

13 Q. And what I'd like to do, Ms. Keane, is walk you through the
14 items reflected on the board and have you give testimony about
15 each item.

16 Now, the board indicates that the website was launched
17 October 13, 1999; correct?

18 A. Correct.

19 Q. And on that day the board indicates that Philip Morris
20 issued a press release announcing the launching of the website?

21 A. Correct.

22 Q. I'd like to put up on the board a copy of that press release
23 which is JD 54558.

24 So on the day the website was launched, Philip Morris
25 issued a press release that indicated that "the Philip Morris'

1 family of companies will expand its efforts to communicate more
2 openly with the public about its people, products and values
3 through an Internet website and national television advertising.
4 Beginning today, these tools will help tell the company's story
5 and underscore its desire to engage the public in a more
6 constructive manner on issues of importance."

7 Now, the third item on the website indicates that
8 beginning in December of 1999 webkits were provided -- I'm
9 sorry, I misspoke.

10 The second item on the website indicates that Beginning
11 in 1999 website -- the website address was included on packs,
12 including Marlboro, Marlboro Lights, Players and Virginia Slims'
13 brands.

14 Could you explain to the court what that involved?

15 A. What it entailed is to go to our cigarette packaging and put
16 down the website address, along with a number that people could
17 call if, in fact, they wanted a copy of the webkit.

18 So, it did two things. It gave them the address they
19 could independently go to the site or it gave them a number, you
20 know, that they could call for a brochure that attempted to
21 capture the critical information on the website.

22 MR. WELLS: Could I call up on the screen JD 54561,
23 which is a copy of a pack of Marlboro cigarettes? And could I
24 have the cull out, please?

25 Q. J-DEM 40179. Could you explain to the court just what is

1 reflected on the actual pack of cigarettes?

2 I'll hand you an actual pack that you can use for
3 purposes of your testimony.

4 A. Right. Focusing on this panel?

5 Q. Yes.

6 A. What it includes is first our name and address as required
7 by the BATF, and then it goes on to give a phone number that
8 consumers can call for information and it also includes the Web
9 address that consumers can, in fact, visit for direct
10 information on our website.

11 Q. Why does Philip Morris provide this toll free number?

12 A. I think, as I mentioned to Mr. Goldfarb, we thought it was
13 important to make sure that people who did not feel facile in
14 using a website or perhaps wouldn't have access to a website,
15 that they could just make a phone call, call the toll free
16 number and get that information sent to them directly by the
17 company free of charge.

18 Q. And what information is provided to individuals who call the
19 toll free number?

20 A. There's a what we call a website brochure. It takes the
21 critical smoking and health issues and it, you know, puts them
22 in a website along with some information about youth smoking
23 prevention and things of that nature.

24 Q. Now, item 3 on the chart indicates that, "Beginning in 1999
25 webkits were provided to 1-800 callers." Do you see that?

1 A. Yes.

2 Q. I want to show you what is JD 52920 and ask you if that is a
3 copy of a webkit?

4 A. Yes. It is a cover page that, you know, thanks people for
5 requesting information from our website.

6 It, you know, talks about our mission and our
7 commitments, and it goes and provides information about the
8 topics that we've been discussing. You know, ingredients,
9 smoking and health, addiction, tar and nicotine, descriptors and
10 that whole range of topics.

11 MR. WELLS: Could I hand up a copy for the court of the
12 actual webkit.

13 Q. Is it fair to say that anybody who called the 1-800 number
14 was sent a copy of that webkit which, in essence, duplicates the
15 website in terms of smoking and health issues?

16 A. Yes.

17 Q. Now, item number 4 refers to the fact that in December of
18 1999 website information was sent to 29 million smokers on
19 Philip Morris's direct mail database. Could you explain that?

20 A. I see it. Thank you.

21 Philip Morris has a database of adult smokers, and what
22 we did is we did what I would call a proactive mailing. We went
23 and we took a -- put together a piece that we could mail to
24 these 29 million smokers to make sure that they understood that
25 we had a website where they could find critical information

1 about smoking and health.

2 Q. And could I call up JD 42707?

3 And could you explain to the court what that exhibit
4 is?

5 A. This is an example of -- this is, in fact, the mailing that
6 took place to the 29 million smokers on the database. Our
7 business, our values, our programs, youth smoking prevention,
8 health issues; goes on.

9 Q. You indicated that went to 29 million people; is that right?

10 A. Yes.

11 Q. Now, turn to the fifth item on the chart. It indicates that
12 beginning in January 2000 the website address was included in
13 brand advertising. What does that mean?

14 A. That any place where we would place an advertisement, all
15 right, at the time it would have included some magazines, even
16 though we really don't have a presence there today, but it would
17 have included magazines, it would have included POS, which is
18 point of sale display materials, things that are at retail.

19 So any place where we had an ad we would put down both
20 the toll free number and the website address so that if people,
21 you know, were looking at that time a magazine, or today, or at
22 a retail store and were looking at one of those headers, they
23 could, if they wanted to, you know, either jot down the phone
24 number or jot down the web address.

25 Q. Does Philip Morris USA currently adhere to that policy?

1 A. Of placing it on all those communications?

2 Q. Yes.

3 A. Yes, we do.

4 Q. I would like to direct your attention to item 6 which refers
5 to the fact that in July 2000 website Take One brochures were
6 distributed at approximately 200,000 retail locations.

7 Can you explain that?

8 A. Right. Philip Morris basically has, you know, some contact
9 with approximately, you know, 200,000 retail locations, and so
10 what we did was to prepare brochures that we could, in fact,
11 deliver to the retail universe with which we had dealings.

12 And it was an effort to have another, you know,
13 execution where smokers could, in fact, have ready access to
14 this information.

15 Q. Could I call up JD 53192?

16 A. Thank you.

17 Q. Now, is that a copy of one of the Take One brochures?

18 A. Yes. Don't have a home computer, log on at your local
19 library, shop cop or cyber cafe, or call this number.

20 Q. Could I go to the inside of the brochure?

21 So that brochure indicates that we invite you to log on
22 to our website for information. And, for example, under health
23 issues for smokers, it says, "We agree with the overwhelming
24 medical and scientific consensus that cigarette smoking causes
25 serious diseases in smokers and is addictive."

1 Is that correct?

2 A. Yes, it does.

3 Q. And that would be placed right in the retail store for
4 anyone to take; is that right?

5 A. Yes, it absolutely would have been.

6 Q. Now, if we go to item 7 which refers to the fact that in
7 September 2001 Take One brochures were distributed again at
8 retail locations, what did that involve?

9 A. Basically, the same thing that we were discussing.

10 It was another effort to go back and refresh and make
11 sure that brochures were available in retail locations across
12 the country.

13 Q. Okay. So you basically repeated in 2001 what you had done
14 in July of 2000; is that right?

15 A. Yes.

16 Q. Now, if we go to item 8, we see that it is stated that in
17 November 2002 over 15 million website inserts were included in
18 major newspapers nationwide. What did that involve?

19 A. This is a -- this is really a very significant undertaking.

20 It was a particular, what we call a freestanding
21 insert. It was sort of a brochure that was placed in 30 major
22 newspapers with a circulation across the country so that, you
23 know, when you would buy your, you know, Boston Globe, for
24 example, you could open it up and you would have a brochure that
25 had information on critical tobacco issues.

1 Q. Well, I'm going to hand you JD Exhibit 54554 and ask if you
2 can identify that document.

3 I'm going to hand one up to the court.

4 A. Yes. This is the FSI. I call the FSI, the freestanding
5 insert.

6 Q. So that insert was included right inside the newspaper?

7 A. Right inside the newspaper, and it would have been all the
8 major newspapers across the country.

9 Q. And that insert provides what type of information? Just in
10 general.

11 A. It provides information about serious health effects of
12 smoking, quitting smoking. The bullet points on the front were
13 meant to really bring people's attention to the fact that they
14 could get this information inside. You know, cigarette
15 ingredients, how to talk to your kids about not smoking. And so
16 if you opened it up, you would then two to specific Web page --
17 Web pages that would be reproduced.

18 Q. If he we could call up tab 84, which is pages 2 and 3 of the
19 insert, I'd like to have it reflected on the screen.

20 So if people all over America in their newspapers
21 received this insert, which included almost a replication of
22 what actually was on the website; is that right?

23 A. Right.

24 Q. And included information like, "We agree with the
25 overwhelming medical and scientific consensus that cigarette

1 smoking causes disease." Right?

2 A. Absolutely.

3 Q. And similar statements with respect to addiction and other
4 areas; correct?

5 A. Yes.

6 Q. Now I want to show you a copy of JD 052908 -- if we could
7 have that on the screen -- and ask if you can identify that
8 document?

9 A. This captures the newspapers in which the freestanding
10 insert could be found.

11 Q. And so this is an internal Philip Morris' business record
12 that shows how many -- well, shows the scope of the distribution
13 of the inserts?

14 A. Correct.

15 Q. And in terms of the number of inserts that Philip Morris
16 distributed in newspapers across the United States, the exhibit
17 shows it was 15.86 million?

18 A. Yes. Correct.

19 Q. And at a cost of 1.586 million?

20 A. Right. I don't believe that that includes the cost of the
21 materials; just the cost of the execution itself, meaning the
22 cost of the placement.

23 Q. Just so the record clear. Describe for the court the
24 difference between an insert and an onsert.

25 A. I know it's confusing, even for us sometimes.

1 An insert, we call them a freestanding insert,
2 something that is typically put inside the newspaper.

3 An onsert, at least in our internal jargon, is in fact
4 what would be put on the pack. It could either be put --
5 generally, it is put between the package and the cellophane. In
6 some cases it can be put on the cellophane. But it is something
7 that is in some fashion affixed to the pack and is meant to be
8 delivered to the smoker with the package.

9 Q. Okay.

10 THE COURT: Where did you get the information on total
11 general market circulation and total minority circulation?

12 Were the circulation figures supplied by the newspapers
13 themselves?

14 THE WITNESS: There would be a process through the
15 advertising agency that had arranged this placement.

16 You know, that type of information is, you know,
17 generally available to people who were in that part of the
18 business, those people who would have responsibility for that
19 type of execution.

20 Whether or not they would have an independent means of
21 verifying it or would just take those statistics from the
22 particular newspaper, I wouldn't know sitting here today. But
23 it is something that I believe is quite customary and, you know,
24 generally available when it relates to coming up with the media
25 plan.

1 THE COURT: To your knowledge, are advertising rates of
2 newspapers based on their asserted circulation figures?

3 THE WITNESS: Yes.

4 THE COURT: If you know.

5 THE WITNESS: I believe -- I'm speculating, but I think
6 I know.

7 BY MR. WELLS:

8 Q. Referring you to item number 9 on the chart which indicates
9 that in November 2002 reference to Philip Morris's website was
10 included in low tar pack onserts, could you explain that?

11 A. What happened in 2001 was Monograph 13 had come out, which
12 was a major communication from the public health community.

13 Somewhat contemporaneous at that time the company had
14 really developed the ability to use onserts in a way that we
15 could actually execute on a broad scale basis pack onserts.

16 So the company made the decision to take -- use the
17 onsert for purposes of a communication that dealt with, you
18 know, low tar products and issues around low tar products,
19 descriptors, problems with the -- what the test method was meant
20 to be and not be.

21 Q. Now I want to review that onsert concerning low-tar
22 cigarettes with you after lunch.

23 But the board indicates that that onsert was placed
24 inside 131 million packs.

25 A. Correct.

1 Q. Now, directing your attention to item number 10 which
2 indicates that beginning in June 2003, PM-USA airs TV
3 commercials highlighting the website. Could you describe the TV
4 commercials in general?

5 A. There have been a series of different executions, but there
6 have been a number of advertisements, the purpose of which is to
7 bring people to the website.

8 And what is communicated in those TV ads are, you know,
9 information about, you know, smoking and health, addiction,
10 quitting, you know, low-tar cigarettes, and things of that
11 nature. But it also showcases -- I'm sorry, Mr. Wells --
12 showcases the website as being a place where, you know,
13 additional more complete information can be found.

14 Q. I would like to play just one commercial for the court, one
15 30-second commercial. JD Exhibit 53157. Could we play that
16 commercial?

17 (Video shown.)

18 Q. And is it correct that there are multiple commercials like
19 this addressed to different health and smoking topics?

20 A. Yes. This particular commercial has been run, you know,
21 more or less in the same format. But there are also commercials
22 on youth smoking prevention initiatives, on quitting, and on
23 some other topics.

24 Q. Are these commercials run nationally?

25 A. Yes, they are.

1 Q. And is it fair to say Philip Morris has spent many, many
2 millions of dollars in terms of advertising these commercials?

3 A. Tens and tens of millions of dollars.

4 Q. Now, the final item on the chart is item number 11, which
5 indicates that in February 2004 over 130 million website onserts
6 were included on packs of cigarettes.

7 Could you explain that for the court?

8 A. Yes. There have been a series of onserts that we have, in
9 fact, put on product.

10 In 2004, the onsert directed people's attention to the
11 website and the website messages.

12 Q. Could we have placed on the board JD Exhibit 54553?

13 A. Thank you.

14 Q. What is that exhibit?

15 A. This is the exhibit of the onsert that was put on the
16 product in 2004 trying to direct people's attention to where
17 they could find information on tobacco issues.

18 Q. It refers, for example, the serious health effects of
19 smoking; right?

20 A. Exactly.

21 Q. Is the way the onsert works, it would be folded and actually
22 stuck down in the pack?

23 A. Correct.

24 Q. Now, Ms. Keane, I'd like to just ask you a couple of more
25 questions with respect to the website and then I'd like to turn

1 to low tar.

2 THE COURT: We will finish the website and then we will
3 take a lunch break.

4 MR. WELLS: Yes, Your Honor.

5 BY MR. WELLS:

6 Q. I want to show you JD 53088, which is a June 23, 2003,
7 letter from you to the California Attorney General and ask if
8 you are familiar with that letter?

9 A. Yes, I am.

10 Q. Why was the letter sent?

11 A. It wasn't just sent to General Lockyer. It is
12 representative of letters that would have been sent to other
13 AGs.

14 It also representative of what we tried to do, which
15 is, we think it's important -- I personally think it's
16 important, because of our extensive relationship with the states
17 over the Master Settlement Agreement, to make sure that they
18 find out from us what we are doing.

19 They have multiple ways to sort of surveil our
20 activities, but I think direct communication is an important
21 one.

22 So this is an example of what we would do in the course
23 of business, which would be to post, you know, the Attorneys
24 General and/or NAAG on particular steps that we were taking in
25 conjunction with our business.

1 Q. And as part of your job as general counsel of Philip Morris
2 USA, to what extent do you interface with people at NAAG?

3 MR. GOLDFARB: Objection, Your Honor. This calls --
4 this is directly related to Ms. Keane's involvement in issues
5 related to the Master Settlement Agreement and compliance that
6 are wholly beyond the scope of the direct examination.

7 MR. WELLS: Your Honor, Ms. Keane is not designated as
8 a witness in our affirmative case. She was not designated by
9 the government as a live witness.

10 The government put Ms. Keane on the list of its 10
11 additional witnesses, and the government has chosen to call
12 Ms. Keane.

13 I think Ms. Keane, like any other witness, has an
14 absolute right or has a right to advise the court about the
15 scope of her responsibilities and what she does. And I don't
16 think they can, in essence, give the court half the story by
17 saying, well, we only asked her about responsibilities 1 through
18 3 without letting her explain to the court what she does,
19 because ultimately the court has to make a decision about what
20 type of weight to give to her testimony.

21 THE COURT: I'll allow her to answer the question.

22 Go ahead, please.

23 A. The Master Settlement Agreement and dealings with the states
24 and NAAG is something that I spend a significant amount of my
25 time over. I think it's an important aspect of our business

1 because it touches almost every aspect of our business.

2 MR. WELLS: I have no further questions with respect to
3 the website, so we will now break for lunch and I'll return to
4 the area of low tar after lunch.

5 THE COURT: All right. Let's talk timing for a minute.

6 We usually, as everybody knows, take maybe an hour and
7 a quarter for lunch so some of us can work on a few other
8 things.

9 When we took our morning break, I don't know how many
10 of you looked out the window, but there was real snow out there.
11 I couldn't believe it. And if you think that it will help us
12 get through, I'm more than happy to do only an hour for lunch.

13 I have a feeling people are going to want to get out of
14 here on general principles, completely apart from Ms. Keane's
15 personal issues.

16 I see heads shaking, the record should reflect, so we
17 will take an hour, everybody, 1:30, and do as much as we can
18 this afternoon.

19 MR. WELLS: Thank you, Your Honor.

20 **(Recess began at 12:28 p.m.)**

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CERTIFICATE

I, EDWARD N. HAWKINS, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Edward N. Hawkins, RMR