

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 99-CV-2496 (GK)
	)	
v.	)	Next Scheduled Court Appearance:
	)	Trial (ongoing)
PHILIP MORRIS USA INC. (f/k/a	)	
PHILIP MORRIS INCORPORATED), <u>et al.</u> ,	)	
	)	
Defendants.	)	

**WRITTEN DIRECT EXAMINATION OF  
MARY ELIZABETH WARD**

***AS CORRECTED BY MARY ELIZABETH WARD  
Pursuant to Order #471A***

1    **Q:     Can you please state your full name for the record?**

2    A:     Yes. Mary Elizabeth Ward.

3    **Q:     Have you ever gone by the name Mary Ward Root?**

4    A:     Yes.

5    **Q:     You worked for R.J. Reynolds for 19 years, correct?**

6    A:     Yes.

7    *Yes, assuming that you are referring to R. J. Reynolds Tobacco Company, and I will continue to*

8    *assume that, when you refer to “R.J. Reynolds,” you are referring to R.J.Reynolds Tobacco*

9    *Company.*

10   **Q:     Ms. Ward, prior to your retirement on September 30, 2004, what was your position**

11   **with R.J. Reynolds?**

12   A:     I was Senior Counsel, Research and Development.

13   **Q:     Ms. Ward, did you begin your employment with R.J. Reynolds in 1985?**

14   A:     Yes.

15   **Q:     When you started with R.J. Reynolds were you Assistant Counsel for Research and**

16   **Development?**

17   A:     Yes.

18   *Yes. My title was Assistant Counsel; and I was assigned to the Research & Development*

19   *Department.*

20   **Q.     What was the next position you held at R.J. Reynolds?**

21   A:     In 1987, I became Associate Counsel for Research and Development.

22   **Q     And that was a promotion, correct?**

23   A:     Yes.

1 **Q: Ms. Ward, have you always been assigned to provide legal counsel to the Research**  
2 **and Development Department in essentially the same position with increasing**  
3 **responsibilities?**

4 A: Yes.

5 **Q: Did you ever do legal work for other departments at R.J. Reynolds?**

6 A: Yes.

7 **Q: To whom did you report when you began working at R.J. Reynolds?**

8 A: When I joined the company, I was reporting to Suzanne Jowdy.

9 **Q: What was Ms. Jowdy's position at the time you reported to her?**

10 A: Ms. Jowdy was Counsel at that time.

11 *I believe she was Counsel at that time, but I am not certain.*

12 **Q: Is Suzanne Jowdy now known as Suzanne Jabbour?**

13 A: Yes.

14 **Q: Did there come a time when you reported to Charles Blixt?**

15 A: Yes. Within a couple years, I began reporting to Mr. Blixt.

16 *Yes. Within two or three years, I began reporting to Mr. Blixt.*

17 **Q: And currently, Mr. Blixt is General Counsel of R.J. Reynolds, correct?**

18 A: Yes.

19 **Q: In 1989, did your title change from Associate Counsel to Counsel?**

20 A: Yes.

21 **Q: That was a promotion, correct?**

22 A: Yes.

1 **Q: What was your next position with R.J. Reynolds?**

2 A: In 1992, I became Counsel to Research & Development.

3 *In 1992, my title changed to Counsel - Research & Development.*

4 **Q: And that was a promotion, correct?**

5 A: Yes.

6 *No.*

7 **Q: What was your next position with R.J. Reynolds?**

8 A: In 1995, I became Senior Counsel of Research & Development, the position I held until  
9 I retired this year.

10 *In 1995, I became Senior Counsel - Research & Development, the position I held until I retired*  
11 *this year.*

12 **Q: And that was a promotion, correct?**

13 A: Yes.

14 **Q: Are there other attorneys who work for the Research and Development group?**

15 A: Yes.

16 **Q: During your time at R.J. Reynolds, who was outside counsel on ETS matters?**

17 A: Jeff Furr at Womble Carlyle.

18 *For most of the time I was at R.J. Reynolds, Jeff Furr of Womble Carlyle was the primary*  
19 *outside counsel on ETS matters.*

20 **Q: And you worked with Mr. Furr from time to time, correct?**

21 A: Correct.

1 **Q: Is it accurate to say that you had direct responsibility as of 1989 for the legal affairs**  
2 **of R&D Administration, P&AT, Packaging Technology, PT& D, and primary**  
3 **responsibility for legal issues on ETS and low ignition propensity cigarettes?**

4 A: Yes.

5 **Q: What is the difference between Research and Development Administration and**  
6 **Research and Development?**

7 A: At this time the head of Research and Development had groups reporting to him and the  
8 groups had various names, and one of those groups was Research and Development  
9 Administration. Research and Development *Administration* had as a part of its responsibilities  
10 the administration of the building and parking lots, things like that. It was just the name of the  
11 group.

12 **Q: Were there other groups in the Research and Development Department?**

13 A: Yes.

14 **Q: Were Biochemical/Biobehavioral and the Fundamental Research Groups under the**  
15 **Research and Development Department?**

16 A: Yes.

17 **Q: Do you recall what "P&AT" is?**

18 A: No.

19 **Q: Do you recall what this group did?**

20 A: No.

21 **Q: You do not have any recollection of what this group did, although you had direct**  
22 **responsibility for its legal affairs?**

23 A: Correct.

1 *There were periodic reorganizations within the department that resulted in the groups' names*  
2 *changing from time to time. This is one I simply do not recall.*

3 **Q: Does "PT&D" stand for Process Technology and Development?**

4 A: Yes.

5 **Q: What does the Process Technology and Development group do?**

6 A: They work on ways to make the manufacturing process run more efficiently. They work  
7 on new machines, new gauges, and things of that sort.

8 **Q: Was there ever a time during which you were Counsel to all groups in the Research**  
9 **and Development Department?**

10 A: No.

11 **Q: Immediately prior to your retirement, which groups in the Research and**  
12 **Development Department were you Senior Counsel to?**

13 A: I worked on low emission propensity cigarettes, ingredients, occasionally consumer  
14 relations, as well as issues that fall within the rubric of state regulatory requirements.

15 *I worked on low ignition propensity cigarettes, ingredients, occasionally consumer relations, as*  
16 *well as issues that fall within the rubric of state regulatory requirements. During the last few*  
17 *years of my employment, we divided responsibilities by issues, not by group.*

18 **Q: Can you describe what you mean by state regulatory requirements?**

19 A: Some states have ingredients reporting requirements and requirements that the tobacco  
20 manufacturers report to them alternate or alternative nicotine yields.

21 *Some states have ingredients reporting requirements and requirements that the tobacco*  
22 *manufacturers report to them alternate or alternative nicotine yields, for example.*

23 **Q: Immediately prior to your retirement, did you work on ETS issues as Senior**

1 **Counsel?**

2 A: Yes.

3 **Q: Do you recall the last ETS-related legal issue you worked on?**

4 A: Other than the occasional issue here and there, the last significant thing would have been  
5 the first Broin trial.

6 **Q: Did the Broin case involve ETS exposure claims?**

7 A: Yes.

8 **Q: When was the first Broin trial?**

9 A: It was in the summer of 1997.

10 **Q: Before you retired, while you were Senior Counsel responsible for ETS, did any  
11 other lawyer in the Research and Development group handle ETS matters?**

12 A: No.

13 *Essentially no, although in the last few months other attorneys began to assume these  
14 responsibilities.*

15 **Q: Are you familiar with the allegations made in the current litigation, United States v.  
16 Philip Morris as they relate to ETS?**

17 A: Yes.

18 *Yes. In a very general way.*

19 **Q: Have you read the complaint or any other pleadings?**

20 A: No.

21 **Q: Has anyone summarized the allegations in this case for you?**

22 A: Yes, my lawyer, Bob McDermott summarized the allegations in preparation for my first  
23 deposition.

1    *Yes, the company's lawyer who defended me at the deposition, Bob McDermott, summarized*  
2    *the allegations in preparation for my first deposition.*

3    **Q:     You had responsibilities for legal issues on ETS from the time you joined**  
4    **R.J. Reynolds, didn't you?**

5    A:     Yes.

6    **Q:     Did your first supervisor, Ms. Jowdy work on ETS prior to your employment at**  
7    **R.J. Reynolds?**

8    A:     Yes.

9    **Q:     And did Ms. Jowdy train you on the ETS legal issues for which you became**  
10   **responsible?**

11   A:     Yes.

12   **Q:     In addition to Ms. Jowdy, did anyone else train you on how to be a legal**  
13   **advisor regarding ETS?**

14   A:     No.

15   **Q:     In addition to Ms. Jowdy, did anyone else educate you generally about ETS?**

16   A:     Yes, R.J. Reynolds scientists, lawyers, and public relations people gave me instruction on  
17   that topic.

18   *Ms. Jowdy did not educate me generally about ETS, scientists did that.*

19   **Q:     Was that training formal or informal?**

20   A:     It was informal.

21   **Q:     Did you have any formal scientific training at R.J. Reynolds?**

22   A:     Only in the way of some scientific seminars.

23   **Q:     Were these seminars on ETS or general scientific seminars?**



1 A: A couple of them were on ETS and at least one I recall was not.

2 **Q: Do you have any scientific training beyond what you received at R.J. Reynolds?**

3 A: Other than at the undergraduate level, no.

4 **Q: But you are a lawyer, correct?**

5 A: Yes.

6 **Q: Have you assisted outside counsel in preparing the defense of R.J. Reynolds in ETS**  
7 **litigation?**

8 A: Yes, I have.

9 **Q: Can you recall any cases where ETS litigation took place but you didn't work on the**  
10 **matter?**

11 A: I have not assisted on what is called the Broin II cases.

12 *I have not assisted in all of what are called the Broin II cases, which are individual follow-on*  
13 *cases to the Broin class action suit.*

14 **Q: Can you recall which cases involving ETS litigation you have worked on?**

15 A: I remember working on the Butler case, the Dunn-Wiley case, the Broin case, the  
16 Proposition 65 litigation in California, and the EPA Risk Assessment case.

17 *In addition, I recall working on some of the Broin II cases.*

18 **Q: The EPA ETS Risk Assessment case involved a challenge by the tobacco industry to**  
19 **the Environmental Protection Agency's study about ETS, correct?**

20 A: Yes.

21 *It was a challenge by R.J. Reynolds and other parties to the EPA's risk assessment on ETS.*

22 **Q: Ms. Ward, did you work on any ETS-related cases that took place internationally?**

23 A: No.

1 *I provided indirect assistance on one case that I can recall.*

2 **Q: Did you enter appearances in any of the ETS litigations you worked on?**

3 A: No.

4 **Q: What was your primary role in these litigations?**

5 A: I worked on preparing the R.J. Reynolds defense, on the summary judgment motions,  
6 preparing witnesses, and in the case of the EPA Risk Assessment case, working on the appeal.

7 **Q: And that litigation was Flue-Cured Tobacco Cooperative Stabilization Corp. v. U.S.**  
8 **EPA?**

9 A: Yes.

10 **Q: And the 4th Circuit vacated the District Court's opinion in that matter?**

11 A: Yes.

12 *No. The 4<sup>th</sup> Circuit vacated the judgment for lack of subject matter jurisdiction. It did not*  
13 *vacate the opinion.*

14 **Q: Has one of your jobs been to identify witnesses who could testify for R.J. Reynolds?**

15 A: Yes.

16 **Q: Have you ever identified anyone outside of R.J. Reynolds as a potential or actual**  
17 **witness in any of the cases you worked on?**

18 A: No.

19 *Not that I recall.*

20 **Q: When you identified in-house scientists for use as witnesses, were they people who**  
21 **had worked on ETS issues?**

22 A: Yes.

23 *Yes, in ETS cases.*

1 **Q: Was there ever a time where you made a judgment about a potential witness,**  
2 **recommending that R.J. Reynolds *not* use him or her?**

3 A: No.

4 **Q: When you say you worked to prepare witnesses, do you mean preparing them for**  
5 **depositions or trial?**

6 A: I prepared witnesses for both deposition and trial testimony.

7 *I assisted in preparing witnesses for both deposition and trial testimony.*

8 **Q: How did you provide assistance?**

9 A: I conducted mock depositions.

10 *I attended deposition preparation sessions, including mock deposition sessions.*

11 **Q: Ms. Ward, did you ever give any witnesses materials to review?**

12 A: No.

13 **Q: Did you ever educate a witness about ETS issues?**

14 A: No.

15 **Q: Did you ever appear as counsel at a deposition?**

16 A: No.

17 **Q: Did you prepare expert or fact witnesses?**

18 A: I prepared both expert and fact witnesses.

19 *I assisted in preparing both expert and fact witnesses.*

20 **Q: Can you identify who those witnesses were?**

21 A: Yes. I helped to prepare Dr. Mike Ogden, Dr. Carr Smith, and Dr. Stephen Sears,  
22 *although there may have been others.*

23 **Q: Were you aware of all the in-house scientists who would be testifying in cases**

1 regarding ETS litigation even if you were not involved in their witness preparation?

2 A: Yes.

3 *Yes, probably.*

4 Q: When Dr. Ogden has appeared as a witness, was that as an expert or fact witness?

5 A: I believe he has appeared as both an expert and a fact witness.

6 Q: When you prepared Dr. Ogden was he an expert or fact witness?

7 A: He was a fact witness.

8 *I think he was both when I assisted in his preparation.*

9 Q: Did you prepare Dr. Ogden for his deposition or trial testimony in the Butler case?

10 A: Yes.

11 *I assisted in preparing Dr. Ogden at some of his preparation sessions in the Butler case. I do*  
12 *not specifically recall whether those sessions related to his deposition testimony, trial testimony,*  
13 *or both.*

14 Q: Did you review his trial testimony or did you watch it as it was delivered?

15 A: I watched it at trial.

16 Q: Did you review his deposition testimony?

17 A: I am not certain if he was deposed, but if he was, I did not attend it or review  
18 the transcript.

19 *I am not certain if he was deposed, but if he was, I did not attend the deposition, and I*  
20 *don't remember reviewing a deposition transcript.*

21 Q: When you helped to prepare Dr. Carr Smith, was he an expert or fact witness?

22 A: Dr. Smith was designated in the Proposition 65 litigation which settled before he was  
23 deposed. The same goes for Dr. Sears.

1 *Dr. Smith was designated in the Proposition 65 litigation as the California equivalent of a*  
2 *Fed. R. Civ. P. 30(b)(6) witness. The litigation settled before either Dr. Smith or Dr. Sears,*  
3 *who also was designated in the same capacity, was deposed.*

4 **Q: Are there in-house scientists who have served as expert witnesses for R.J. Reynolds?**

5 A: Yes.

6 **Q: Are these scientists used in ETS-related as well as non ETS-related litigation?**

7 A: Some scientists have appeared in litigations relating to ETS and litigation not relating to  
8 ETS, *although not necessarily in both.*

9 **Q: Taken as a group, how are these scientists identified as expert witnesses by**  
10 **R.J. Reynolds?**

11 A: If there is a requirement for an expert witness, then the person who is the most  
12 knowledgeable on that particular topic will be identified. Usually the in-house lawyers like  
13 myself will be familiar with who the person is, based on their publications or work in the given  
14 subject matter.

15 *If there is a requirement for an expert witness, then the person who is the most knowledgeable*  
16 *on that particular topic will be identified. Usually the in-house lawyers and Research &*  
17 *Development Department management will be familiar with who the person is, based on their*  
18 *publications or work in the given subject matter.*

19 **Q: Are these witnesses picked out for a certain trial or more generally for a certain**  
20 **topic?**

21 A: It could be either way. There may be a trial, for example a non-ETS trial where there is a  
22 unique scientific issue. Other times, because there are often a lot of cases pending against  
23 R.J. Reynolds with common issues, one person will serve in multiple trials.

1 **Q: How is an in-house scientist prepared to serve as an expert witness?**

2 A: Generally these individuals work with lawyers so they can understand issues in the case  
3 and so that the lawyers can learn to understand the science of what the witnesses are testifying to.

4 *Generally, the in-house scientists know what they know by virtue of their scientific training and*  
5 *experience. The in-house scientists work with the lawyers who are litigating the case so that the*  
6 *in-house scientists can understand the issues in the case and so that the lawyers can understand*  
7 *the scientific issues about which the witness can testify.*

8 **Q: Ms. Ward, directing your attention to U.S. Exhibit 30,555 (bates range 52413 2096**  
9 **to 2099), do see that you were copied on this document?**

10 A: Yes.

11 **Q: Is this a memo dated March 20, 1990 from Dr. Green to Dr. Hayes with the subject**  
12 **line "ETS Division Weekly Highlights"?**

13 A: Yes.

14 **Q: Turning your attention to page 2 of this memo, do you see the section labeled**  
15 **"Assistance to Law Department"?**

16 A: Yes.

17 **Q: The first paragraph reads: "Dr. Guy Oldaker met with Mr. Jeff Furr (Womble**  
18 **Carlyle Sandridge and Rice) to continue efforts in connection with the ETS expert witness**  
19 **project. Epidemiological principles and positions were reviewed within the framework of a**  
20 **mock deposition", correct?**

21 A: Yes.

22 **Q: Did R.J. Reynolds create this ETS expert witness project due to anticipated**  
23 **litigation?**

1 A: Yes.

2 **Q: Do you remember this event that's described in U.S. Exhibit 30,555, Dr. Oldaker**  
3 **meeting with Mr. Furr as part of the ETS expert witness project?**

4 A: Yes.

5 *I don't remember this specific event, but remember that at one time Dr. Oldaker was being*  
6 *considered as a possible witness for ETS litigation or hearings relating to ETS.*

7 **Q: Dr. Oldaker was Director of CIAR at one time, correct?**

8 A: Yes.

9 *To my knowledge, Dr. Oldaker was never a member of CIAR's Board of Directors, but was the*  
10 *acting or interim Executive Director before Max Eisenberg became CIAR's Executive Director.*

11 **Q: And in 1988, Oldaker was Executive Director of CIAR, correct?**

12 A: Yes.

13 *Dr. Oldaker was CIAR's interim or acting Executive Director at or about that time.*

14 **Q: Dr. Oldaker was also member of the TI-ETS Advisory Committee, correct?**

15 A: Yes.

16 *I knew that he attended some meetings, but I never considered him to be R.J. Reynolds'*  
17 *representative on or a member of the Committee.*

18 **Q: Mr. Furr had input as to the selection or participation of Dr. Oldaker as an expert**  
19 **witness, did he not?**

20 A: He did.

21 **Q: Mr. Furr was an attorney at Womble Carlyle,**  
22 **correct?**

23 A: Yes.

1 **Q: Do you recall if Dr. Oldaker was being approached to be a witness in a particular**  
2 **case, or generally in ETS-related cases?**

3 A: I think it was a general inquiry.

4 **Q: Other than reviewing epidemiological principles and positions within the**  
5 **framework of a mock deposition, do you know what else happened with respect to**  
6 **Dr. Oldaker's participation in the ETS expert witness project?**

7 A: No.

8 **Q: Were any non-scientists identified for or participate in the ETS expert witness**  
9 **project?**

10 A: No.

11 **Q: Was Dr. Oldaker identified as an expert witness due to his scientific expertise on**  
12 **ETS issues as well as his expressed interest in testifying?**

13 A: Yes.

14 **Q: In March 1990, or at any other time, did R.J. Reynolds have an epidemiologist on its**  
15 **staff?**

16 A: No.

17 **Q: You testified that R.J. Reynolds did not have an epidemiologist on staff. Was there**  
18 **any discussion to hire an epidemiologist, whether on a permanent, consulting or**  
19 **contractual basis?**

20 A: Yes, there were such discussions.

21 **Q: Were these epidemiologists being considered for testifying about and evaluating the**  
22 **information that you said was epidemiologically based forthcoming from the EPA?**

23 A: Yes.



1 **Q: And you chose to develop Dr. Oldaker as that person, rather than hire an**  
2 **epidemiologist, correct?**

3 A: Yes.

4 *That is not correct. Dr. Oldaker was being considered as a potential witness on ETS scientific*  
5 *issues in general. He had worked on ETS scientific issues since joining the company. We*  
6 *anticipated that the company might be asked to name a company 30(b)(6) witness on ETS issues,*  
7 *including epidemiology. Dr. Oldaker was attempting to become conversant with*  
8 *epidemiological principles in that context. The company consulted or retained epidemiologists*  
9 *as experts on several occasions.*

10 **Q: Did Dr. Oldaker have any formal training in epidemiology?**

11 A: No.

12 **Q: Prior to 1990, did R.J. Reynolds ever work with anybody else besides Dr. Oldaker to**  
13 **be a potential witness regarding epidemiological studies?**

14 A: No.

15 *Yes.*

16 **Q: After 1992, when Dr. Oldaker left the company, did anyone else take over the role as**  
17 **expert for ETS epidemiology?**

18 A: Yes.

19 *Both before and after Dr. Oldaker left the company, R J. Reynolds consulted and retained*  
20 *outside experts on epidemiology. Upon Dr. Oldaker's departure, other R.J. Reynolds scientists*  
21 *began to familiarize themselves with epidemiological issues.*

22 **Q: Who did so?**

23 A: Dr. Sears, Dr. Odgen and Mr. Steichen.

1    **Q:     Is Dr. Sears an epidemiologist?**

2    A:     No.

3    **Q:     Is Dr. Odgen an epidemiologist?**

4    A:     No.

5    **Q:     Is Mr. Steichen an epidemiologist?**

6    A:     No.

7    **Q:     Did R.J. Reynolds ever hire an epidemiologist to evaluate information or prepare as**  
8    **a witness to respond to the EPA epidemiological report?**

9    A:     No.

10   *R. J. Reynolds consulted and engaged epidemiologists, but no epidemiologist was ever a company*  
11   *employee.*

12   **Q:     Have you ever known R.J. Reynolds to employ an epidemiologist?**

13   A:     No.

14   **Q:     Is it your position that you don't have to be an epidemiologist to understand**  
15   **epidemiology?**

16   A:     Yes.

17   **Q:     Turning back to U.S. Exhibit 30,555, do you see the paragraph on page two which**  
18   **reads: "Dr. Guy Oldaker assisted Ms. Mary Ward (Law) in efforts to obtain a listing of**  
19   **compounds possibly present in ETS that can originate from sources other than ETS, and**  
20   **that have been designated as toxic by the U.S. Environmental Protection Agency. Mr. Rick**  
21   **Williams (Information Services) prepared this list which was sent by Ms. Ward to Dr. Gary**  
22   **Huber, who is serving as an expert witness in connection with ETS litigation in Australia"?**

23   A:     Yes.

1    **Q:     Did you work with Dr. Oldaker to prepare that list?**

2    A:     No.

3    **Q:     Did you want the list in order to provide it to Dr. Huber?**

4    A:     Yes.

5    **Q:     Did Dr. Huber request the list in order to use it in his testimony in the**  
6 **Australian case?**

7    A:     Yes.

8    **Q:     When did Dr. Huber request this list from you?**

9    A:     Probably just a couple weeks prior to the e-mail which is dated March 1990.  
10 *Probably just a couple weeks prior to the memo that is dated March 1990.*

11   **Q:     Other than Dr. Oldaker, who was involved at R.J. Reynolds in getting this list?**

12   A:     Rick Williams prepared the list.

13   **Q:     Did Rick Williams work in the Research and Development library ?**

14   A:     Yes.

15   **Q:     Was there any direct contact between Dr. Huber and the people in Research and**  
16 **Development?**

17   A:     No.  
18 *Not as far as I know regarding this request.*

19   **Q:     Did Dr. Huber call you on the telephone to ask you questions regarding this list?**

20   A:     Yes.  
21 *If you mean after he received the list, not that I recall.*

22   **Q:     Did you relay his questions to scientists at R.J. Reynolds?**

23   A:     Yes.

1 *I relayed his request for the list; I do not remember subsequent discussions.*

2 **Q: Can you recall any specifics of other requests by Dr. Huber?**

3 A: I think he had a question one time about a particle size of ETS, and he wondered what  
4 our scientists had done in that area. Eventually he asked if he could arrange to spend a day with  
5 our scientists to hear about their research and ask questions.

6 *This did not, however, relate to the Australian litigation.*

7 **Q: Did this meeting with R.J. Reynolds occur?**

8 A: Yes.

9 **Q: When Dr. Huber asked you about the particle size of ETS, to whom did you direct**  
10 **the question?**

11 A: I probably would have directed it to Dr. Green, who was the head of the ETS division.

12 **Q: During the time in which you were having communications with Dr. Huber, did**  
13 **R.J. Reynolds have a formal association or affiliation with him?**

14 A: I know that at one point, Dr. Gary Bugar asked Dr. Huber to give his scientific opinion on  
15 the Eclipse cigarette, and if he was on one of the panels assembled to discuss the cigarette, he  
16 was probably paid.

17 *Not at that time. At some later point, Dr. Gary Burger asked Dr. Huber to give his scientific*  
18 *opinion on the Eclipse cigarette, and if he was on one of the panels assembled to discuss the*  
19 *cigarette, he was probably paid.*

20 **Q: Was there a formal association or contract between Dr. Huber and R.J. Reynolds**  
21 **through TI or CTR?**

22 A: Not that I know of.

23 **Q: Do you know what Australian case Dr. Huber was testifying in?**

1 A: Yes.

2 **Q: Was R.J. Reynolds a party to that case?**

3 A: I don't believe so.

4 **Q: But Dr. Huber was a consultant to R.J. Reynolds, correct?**

5 A: Yes.

6 *Not at the time of the Australian case, as far as I know.*

7 **Q: Do you recall what the statement was which was the subject of the Australian**  
8 **litigation?**

9 A: Yes.

10 *I know generally that it was something like "There is little evidence and certainly nothing that*  
11 *proves that environmental tobacco smoke causes disease in humans."*

12 **Q: And was the statement made by the Tobacco Institute of Australia regarding the**  
13 **health effects of ETS being challenged by the Australian government?**

14 A: Yes.

15 *I believe the statement was made by the Tobacco Institute of Australia regarding the health*  
16 *effects of ETS and that it was being challenged by the Australian government.*

17 **Q: Was Dr. Huber's visit to R.J. Reynolds after he testified in Australia?**

18 A: Yes.

19 *I think so, but I really don't remember when it was.*

20 **Q: You considered Dr. Huber at one time to be a person R.J. Reynolds would use as a**  
21 **witness in litigation, correct?**

22 A: Yes.

23 *No.*

1 **Q:** Ms. Ward, directing your attention to U.S. Exhibit 29,936 (bates range 50798 4785  
2 to 4801), there is a section called Project XII "Assistance to Law Department" which reads  
3 "A meeting was attended with Dr. Gary Huber and Ms. Ward to summarize work being  
4 done by the Real Life Measures group regarding ETS. Dr. Huber was an expert witness  
5 for the tobacco industry and testified in Australia on advertising claims for ETS." Do you  
6 see that section?

7 A: Yes.

8 **Q:** Was the "Real Life Measures Group" a group at R.J. Reynolds or was it an external  
9 group?

10 A: It is a group at R.J. Reynolds.

11 *It was a group at R.J. Reynolds.*

12 **Q:** What was the Real Life Measures Group?

13 A: It was part of the Environmental Tobacco Smoke Division; Dr. Oldaker was its chief. He  
14 reported to Dr. Green, and they conducted real life measures of environmental tobacco smoke in  
15 various indoor environments.

16 **Q:** Does this document refresh your recollection that the purpose of Dr. Huber's visit  
17 was to find out about the kind of measurements in human environments, that kind of work  
18 R.J. Reynolds was doing?

19 A: Yes.

20 *Yes, that was part of the reason for his visit.*

21 **Q:** Did you spend time with Dr. Huber on that trip to R.J. Reynolds?

22 A: Yes.

23 **Q:** Did there come a time when Dr. Huber's consulting relationship with R.J. Reynolds

1 ended?

2 A: Yes.

3 Q: And was that in 1996, correct?

4 A: Yes.

5 *I do not recall the date, but Dr. Huber was a consultant for R.J. Reynolds only briefly in*

6 *connection with Eclipse.*

7 Q: Ms. Ward, turning your attention to U.S. Exhibit 22,790 (bates range 70072 1601 to

8 0703), this is an e-mail chain about Mike Ogden becoming a company expert witness on

9 ETS and are from March and April, 1997, correct?

10 A: Yes.

11 Q: Whose names appear on the first two e-mails?

12 A: Dr. Ogden, Dr. deBethizy, and Dr. Dolittle.

13 *Dr. Ogden, Dr. deBethizy, and Dr. Doolittle*

14 Q: Was Dr. Dolittle Dr. Ogden's supervisor?

15 A: Yes.

16 Q: Was Dr. deBethizy Dr. Dolittle's supervisor?

17 A: Yes.

18 Q: Does this e-mail refer to Dr. Ogden testifying in the Broin case?

19 A: Yes.

20 Q: The Broin case was a class-action flight attendant case, correct?

21 A: Yes.

22 Q: And this e-mail refers to the trial date being set in June 1997, correct?

23 A: Yes.

1 **Q:** The second e-mail of the chain refers to "conversations and meetings that have  
2 occurred on an on-again/off-again basis for over the past three years or so" during which  
3 Dr. Ogden agreed to cooperate with the Legal Department. Were some of those  
4 conversations with you?

5 A: Yes.

6 **Q:** Were those conversations about the Broin case or about ETS testifying in general?

7 A: The conversations were in connection with the ETS litigation in general, meaning both  
8 the class-action and the private plaintiff cases.

9 **Q:** So a couple of years before 1997, someone in the Legal Department started talking  
10 to Dr. Ogden about being an expert for the company?

11 A: Yes.

12 *I think it may have been three years.*

13 **Q:** And you were aware that Dr. Ogden was the person who was most appropriate to  
14 testify about all aspects of ETS?

15 A: Yes.

16 *No, by then we believed that we weren't going to have to provide an in-house person as a*  
17 *30(b)(6) witness on health effects or epidemiology. Certainly Dr. Ogden knew some things about*  
18 *those topics, but we believed what was going to be an issue at trial was the history of R.J.*  
19 *Reynolds' research efforts and Dr. Ogden certainly knew about that and had expertise in how to*  
20 *measure ETS in indoor air and what were typical ETS concentrations.*

21 **Q:** This e-mail says that you called him and said "it's time." Were you referring to the  
22 fact that it was time to start preparing to testify?

23 A: Yes.



1 **Q: Were you involved in the preparation of Dr. Ogden to testify?**

2 A: Yes.

3 *I was involved in about a quarter of the overall preparation of Dr. Ogden.*

4 **Q: Did that preparation involve helping Dr. Ogden to frame his testimony so that lay**  
5 **people could understand it?**

6 A: Yes.

7 **Q: Did that preparation also involve having Dr. Ogden explain the internal research on**  
8 **ETS to lawyers?**

9 A: Yes.

10 **Q: Yet, Dr. Ogden had no "specialized knowledge" on the subject, correct?**

11 A: Correct.

12 *That is incorrect.*

13 **Q: In the late 1990s, did R.J. Reynolds have a program for commendation or awards?**

14 A: Yes.

15 **Q: Will you describe the awards program?**

16 A: At this time there were several categories of awards that the company had in place. One  
17 was an award primarily given to people in the factory; those were cash awards. Another set of  
18 awards were given by the chairman of the company; those were more of a recognition type  
19 award.

20 **Q: When an award was given in monetary form, was it publicized within the company?**

21 A: Yes.

22 **Q: Did Dr. deBethizy nominate Dr. Ogden for a cash award?**

23 A: Yes.

1 *I do not believe I was aware of it at the time, but it appears that he did.*

2 **Q: Were you ever asked to support Dr. Ogden for an award either by writing**  
3 **something or speaking to someone about it?**

4 A: Yes.

5 *To the best of my recollection, the only time I was asked to write a recommendation in support of*  
6 *Dr. Ogden was in connection with his advancement on the technical ladder within the Research*  
7 *and Development Department. Since my deposition, I have seen documents that indicate that I*  
8 *was asked to provide information that, unbeknownst to me, was used in support of a*  
9 *recommendation for a cash award for Dr. Ogden.*

10 **Q: Who asked you to support the award for Dr. Ogden?**

11 A: One of Dr. Ogden's bosses.

12 *One of Dr. Ogden's bosses asked me to provide the recommendations I just described.*

13 **Q: Were you asked to write about his role as an expert witness?**

14 A: No.

15 *Not in connection with my recommendation concerning his advancement on the technical ladder,*  
16 *but apparently in connection with the proposed award.*

17 **Q: In your supporting document, did you write about your observations of Dr. Ogden?**

18 A: Yes.

19 **Q: Were there any kind of regular or intermittent mission statements regarding the**  
20 **strategic direction to be going in regards to ETS?**

21 A: Yes, there were.

22 **Q: Turning your attention to the first e-mail on U.S. Exhibit 22,790, this is dated**  
23 **April 11, 1997, correct?**

1 A: Yes.

2 **Q: And it states, "FYI. I am working with Charlie, Bob Suber, Rob Meine, Seth, Mary,**  
3 **and Hoy to hammer out a 'Strategic Direction' on ETS for the company. I am finding that**  
4 **this is not easy since everyone has a slightly different view of where were ought to go",**  
5 **correct?**

6 A: Yes.

7 **Q: You are the Mary this e-mail refers to, are you not?**

8 A: I am.

9 **Q: As far as a strategic goal, prior to your retirement, did you believe that**  
10 **R.J. Reynolds should undertake direct research on ETS?**

11 A: Although certainly not everything is known about ETS, I thought that it made sense for  
12 R.J. Reynolds to have a reduced role in ETS direct research.

13 **Q: Did you ever hold a contrary view?**

14 A: When I first joined the company, I accepted and adopted for myself the views of the  
15 scientists with whom I was in contact that good quality scientific research could add to the  
16 general store of knowledge regarding ETS and that it would be beneficial to the company to have  
17 various truths about ETS known, whether they involve the chemistry and physics, measurements,  
18 all kinds of things about ETS.

19 **Q: In fact, if R.J. Reynolds avoids direct research it is then in a position to deny that its**  
20 **own research has revealed information which might be damaging, correct?**

21 A: Correct.

22 *Absolutely not. My view about the proper role R.J. Reynolds can play in direct ETS research*  
23 *changed because, by the time of my retirement, R.J. Reynolds had performed and published*

1 *much of the research outlined in my prior answer, and, in addition, research by R. J. Reynolds*  
2 *was poorly received by parts of the scientific community simply because it had been conducted*  
3 *by R. J. Reynolds.*

4 **Q: Ms. Ward, do you believe research funded by the tobacco industry is widely**  
5 **published in medical journals?**

6 A: No.

7 **Q: And you know that certain medical journals have a policy not to accept research**  
8 **done by the tobacco industry, correct?**

9 A: Yes.

10 **Q: You have heard it discussed by others at R.J. Reynolds that the reason for the**  
11 **medical journal policy is that because of its interests, the tobacco industry is perceived as**  
12 **biased, correct?**

13 A: Yes.

14 **Q: Ms. Ward, turning your attention to U.S. Exhibit 52,775 (bates range 52171 1857 to**  
15 **1860), this is an e-mail chain among you, Charles Green, Don deBethizy, Carl Ehmann,**  
16 **Charles Blixt, Betsy Annese, and Tom Griscom, correct?**

17 A: Yes.

18 **Q: Was the proposal discussed in this e-mail chain a study on whether it was easier for**  
19 **anti-smoking groups to get published than industry-related groups?**

20 A: Yes.

21 **Q: Was Tom Griscom at this time the Executive Vice President of External Relations?**

22 A: Yes.

23 **Q: Tom Griscom is not a scientist, is he?**

1 A: No.

2 **Q: Ms. Ward, does U.S. Exhibit 61,901 (bates range 70078 2863 to 2866), continue the**  
3 **e-mail chain regarding the same topic?**

4 A: Yes.

5 **Q: And does Tom Griscom recommend that the research should not be funded through**  
6 **the CIAR?**

7 A: Yes.

8 *Mr. Griscom agrees that CIAR should not fund this research.*

9 **Q: Your understanding of the reason for this recommendation was because CIAR**  
10 **scientists had been recently analyzed in a demeaning manner?**

11 A: Yes.

12 *No.*

13 **Q: Does U.S. Exhibit 52,775, state: "I've never understood why tobacco-funded**  
14 **scientists have a conflict of interest while anti-smoking scientists don't. I am personally**  
15 **motivated to do something about this unfair situation and Richard Carchman from Philip**  
16 **Morris shares my belief"?**

17 A: Yes.

18 **Q: Charles Green wrote that statement, correct?**

19 A: Yes.

20 **Q: Charles Green was an R.J. Reynolds scientist at this time, correct?**

21 A: Yes.

22 **Q: And Richard Carchman was a scientist at Philip Morris, was he not?**

23 A: He was.

1 **Q: So R.J. Reynolds and Philip Morris were coordinating with one another in order to**  
2 **address a perceived problem with publications about industry science, in particular, ETS?**

3 A: Yes.

4 *Not to my knowledge.*

5 **Q: Has R.J. Reynolds ever commissioned groups to do ETS research for it?**

6 A: Yes.

7 **Q: And those groups are compensated by R.J. Reynolds?**

8 A: Yes.

9 **Q: Have you ever heard of the Interuniversity Working Group on Passive**  
10 **Smoking?**

11 A: Yes.

12 **Q: Did R.J. Reynolds through its parent company, RJR Nabisco provide money to**  
13 **Rockefeller University to lead a group of scientists to evaluate the ETS evidence?**

14 A: Yes.

15 *RJR Nabisco, R.J. Reynolds' parent, provided the money.*

16 **Q: And did Rockefeller University select Dr. Seitz and Dr. Spitzer to head up that**  
17 **effort?**

18 A: Yes.

19 *No, I believe that the initial contact was with Dr. Seitz of Rockefeller University, and that Dr.*  
20 *Seitz selected Dr. Spitzer to perform the work.*

21 **Q: Rockefeller University is in Canada, correct?**

22 A: Correct.

23 *I believe it is in New York.*

1 **Q: Looking at U.S. Exhibit 65,527 (bates range TIBU 34458 to 34469), these are**  
2 **handwritten minutes of a CIAR meeting on September 15, 1988, are they not?**

3 A: They are.

4 *The exhibit appears to be handwritten notes dated September 15, 1988 of a meeting and the first*  
5 *line of the notes reads: "Center for Indoor Air Research." But the notes are not mine, and I do*  
6 *not recall the meeting.*

7 **Q: Your name appears as an attendee at the top of these minutes, correct?**

8 A: Correct.

9 **Q: And these minutes indicate that "RJR-PM through Rockefeller University gave**  
10 **money (220K) to Spitzer to evaluate the data in the NAS and SG reports", correct?**

11 A: Correct.

12 *The notes state that, but to my knowledge Philip Morris did not sponsor this. Further, my*  
13 *recollection is that the charge to the Spitzer group was to evaluate the ETS literature as a whole,*  
14 *not necessarily to evaluate the data in these two reports.*

15 **Q: And the NAS and SG reports referred to the National Academy of Sciences and**  
16 **Surgeon General's 1986 Report, correct?**

17 A: Yes.

18 **Q: The Surgeon General's 1986 Report found that involuntary smoking caused lung**  
19 **cancer in non-smokers, correct?**

20 A: Correct.

21 **Q: And the reports of the NAS and the Surgeon Generals were seen by the industry as**  
22 **the most troubling studies on ETS, correct?**

23 A: Yes.

1    *To my mind, they were not studies, they were reports evaluating other studies. They appeared to*  
2    *be, in certain respects, poor evaluations of the science that reached unwarranted conclusions.*  
3    *For that reason, they were certainly troubling to me, and I heard others at R.J. Reynolds express*  
4    *concerns about them.*

5    **Q:     Turning your attention to U.S. Exhibit 51,950 (bates range 51554 1733 to 1736), is**  
6    **this a memo from you to George Newton and Samuel Witt, dated March 15, 1989?**

7    A:     Yes.

8    **Q:     Does this memo discuss the draft report issued by the Interuniversity Working**  
9    **Group?**

10   A:     Yes.

11   **Q:     Samuel Witt was general counsel for the R.J. Reynolds tobacco company at the time**  
12   **of this report, correct?**

13   A:     Yes.

14   *I don't believe he was.*

15   **Q:     And George Newton was general counsel for R.J. Reynolds Nabisco, correct?**

16   A:     Correct.

17   *Not to my knowledge.*

18   **Q:     R.J. Reynolds Tobacco knew about the funding of this group even though it was**  
19   **commissioned by RJR Nabisco, correct?**

20   A:     Yes.

21   **Q:     And you got a draft of what is now referred to as the Spitzer ETS study, correct,**  
22   **even though the study was commissioned by RJR Nabisco?**

23   A:     Yes.



1 **Q: And this memo you wrote indicates that the draft was "distressing" does it not?**

2 A: Yes.

3 **Q: You were concerned about this document because you didn't feel that it could be**  
4 **"fixed", correct?**

5 A: Yes.

6 *I was very concerned about this document because, after talking to R.J. Reynolds' scientists*  
7 *about it, I thought it came to a lot of unjustified conclusions.*

8 **Q: And by fixed, you meant sufficiently edited to address statements and findings**  
9 **inconsistent with R.J. Reynolds's positions on ETS, correct?**

10 A: Yes.

11 *No.*

12 **Q: You were also surprised with the content, correct?**

13 A: Correct.

14 **Q: From what source did you glean information about the report?**

15 A: I spoke with Dr. Oldaker and Dr. Green.

16 *I believe I spoke with Dr. Oldaker and Dr. Green.*

17 **Q: You were distressed, were you not, that this document, funded by R.J. Reynolds and**  
18 **announcing information damaging to R.J. Reynolds was going to be published?**

19 A: Yes.

20 *No, I was distressed because this appeared to be another example of scientists taking very*  
21 *equivocal and inconsistent evidence and reaching strong conclusions about the health effects of*  
22 *ETS. And the fact that R.J. Reynolds' parent's money had gone to supporting this effort was*  
23 *particularly galling to me.*

1 **Q: You knew that when the final report came out it was going to state that it was**  
2 **sponsored by R.J. Reynolds?**

3 A: Yes.

4 *Yes. I expected it to acknowledge funding by RJR Nabisco.*

5 **Q: In your experience, it was unusual to have the company fund a report with the**  
6 **end result being so damaging, correct?**

7 A: Correct.

8 *I had no experience prior to this with funding reports of this type. R.J. Reynolds directly or*  
9 *jointly has funded scientific studies, the results of which could be viewed as "damaging" on*  
10 *other occasions.*

11 **Q: In fact, R.J. Reynolds typically wanted to know what the general results of a given**  
12 **study would be, before the study was completed, correct?**

13 A: Correct.

14 *No.*

15 **Q: In your memo which is marked as U.S. Exhibit 51,950, you state that: "This draft is**  
16 **distressing in many respects. I fear that no amount of polishing or wordsmithing can make**  
17 **this report a helpful document; what is worse, this document can be very damaging when**  
18 **we are confronted with it in a legislative or litigation context", correct?**

19 A: Yes.

20 **Q: You were concerned, were you not, that it would be potentially damaging for**  
21 **R.J. Reynolds to take one position regarding ETS, and then have a study published,**  
22 **attributing the funding to R.J. Reynolds, which reported results contrary to that position?**

23 A: Yes.

1 **Q: Your reference to "polishing and wordsmithing" indicates that lawyers were**  
2 **involved in edits to scientific reports, prior to publication or distribution, correct?**

3 A: Correct.

4 *No.*

5 **Q: You were involved in editing draft scientific reports, correct?**

6 A: Yes.

7 *I was only rarely involved in reviewing scientific reports from scientists outside R.J. Reynolds.*

8 **Q: This memo discussing the draft report was not sent to any scientists, was it?**

9 A: No.

10 **Q: Yet the memo discusses, primarily, scientific issues and findings, correct?**

11 A: Yes.

12 **Q: Did Mr. Newton ask for your opinion on this report?**

13 A: Yes.

14 **Q: And U.S. Exhibit 51,950 expresses your views on the report it describes, correct?**

15 A: Yes.

16 **Q: Did Mr. Newton ask for your recommendation regarding future funding of this**  
17 **group?**

18 A: Yes.

19 **Q: Did you tell him that you did not believe further funding should be given for**  
20 **the publication of the study?**

21 A: Yes.

22 **Q: And at least one of the reasons for your recommendation had to do with the**  
23 **findings, correct?**

1 A: Correct.

2 *Correct. I thought the findings were unjustified.*

3 **Q: You state in your memo: "I realize that I have not been commenting on the final**  
4 **draft and that Jim suggested waiting until a final draft is received before circulating it for**  
5 **comment. I suppose I am pessimistic that all of my concerns will disappear in that final**  
6 **draft" and then you say "At present, I would not recommend funding any publication of**  
7 **this report", correct?**

8 A: Yes.

9 **Q: Your memo regarding this report is quite detailed, is it not?**

10 A: It is.

11 **Q: As a lawyer, with no specialized scientific training, you were responsible for telling**  
12 **your tobacco company clients how they should talk about ETS, weren't you?**

13 A: I was.

14 *No.*

15 **Q: Was the Spitzer report published?**

16 A: Yes.

17 **Q: Did the study acknowledge the funding of R.J. Reynolds?**

18 A: Yes, it did.

19 *No. It acknowledged funding by "R.J. Reynolds Nabisco".*

20 **Q: Did the study present evidence that a relative risk of lung cancer based on ETS**  
21 **exposure from as little as a tenth of a cigarette equivalent per day is about 1.5?**

22 A: Yes.

23 *No.*

1 **Q: Your memo discussing the Spitzer report, U.S. Exhibit 51,950, states: "I believe that**  
2 **we have consistently maintained that there is no biological plausibility to extrapolating**  
3 **between exposure to ETS and active smoking. This report will play into the hands of those**  
4 **(such as Darby-Pike who claim a relative risk of lung cancer based on ETS exposure from**  
5 **as little as a tenth of a cigarette equivalent per day in the neighborhood of 1.5", does it not?**

6 A: It does.

7 **Q: Did R.J. Reynolds use this study in its litigation or legislation efforts?**

8 A: No.

9 *Not to my knowledge.*

10 **Q: What did you mean when you said "I would not recommend funding any**  
11 **publication of this report"?**

12 A: I plainly meant that if they were asking for more money, then we shouldn't give it to them  
13 for publication.

14 *I meant that R.J. Reynolds' parent had funded the study, which included writing a report, and I*  
15 *saw no reason to provide additional funding.*

16 **Q: So you didn't want RJR Nabisco to pay for them to create a final draft?**

17 A: Correct.

18 *That is incorrect. RJR Nabisco had already paid for the final draft.*

19 **Q: You thought, did you not, that if you found a way to cease the funding that was**  
20 **flowing to this project, you might be able to dissociate Reynolds's name from the finished**  
21 **report?**

22 A: Yes.

23 *No. I was under the impression that all the agreed-upon money had already been paid for this*

1 *project.*

2 **Q: Despite the fact that you did not recommend funding any publication, you did**  
3 **anticipate receiving a final report, correct?**

4 A: Yes.

5 **Q: And did you receive one?**

6 A: Yes.

7 *I do not recall, but I probably did.*

8 **Q: And this was because R.J. Reynolds had provided funding, correct?**

9 A: Correct.

10 *Correct, because R.J. Reynolds' parent, RJR Nabisco, had provided the funding.*

11 **Q: Turning your attention to U.S. Exhibit 22,956 (bates range 25014 7517 to 7522), is**  
12 **this a document reflecting a presentation given by Charles Green at an INFOTAB**  
13 **Workshop in October, 1986?**

14 A: Yes.

15 *That is what the document appears to be.*

16 **Q: Does this document say "One of the things that the lawyers always ask us before we**  
17 **do any experiment is what the results are going to be. So oftentimes we conduct pilot**  
18 **studies"?**

19 A: Yes.

20 **Q: And a "pilot study" was initial work revealing certain results to determine if the**  
21 **work should be done?**

22 A: Yes.

23 *No, it is my understanding that a "pilot study" is an initial study performed to test, for example,*

1 *an experiment's methods, instruments, apparatus, or protocol and is conducted to refine a*  
2 *study's design or to determine whether a more comprehensive study is feasible.*

3 **Q: So lawyers were involved with studies before, during, and after their completion?**

4 A: Yes.

5 *If I understand your question correctly, the answer is no. It was certainly not the general*  
6 *practice or policy.*

7 **Q: You worked closely with Dr. Green, did you not?**

8 A: Yes.

9 **Q: Your office was located in the Research and Development building, with the**  
10 **scientists, correct?**

11 A: Correct.

12 **Q: Have you ever given non-legal advice at R.J. Reynolds?**

13 A: Yes, frequently.

14 *Yes.*

15 **Q: Have you responded to media inquiries?**

16 A: Yes, frequently.

17 *Yes.*

18 **Q: Have you provided the media unsolicited information, for an example, writing a**  
19 **press release?**

20 A: Yes.

21 *I recall reviewing and editing press releases, but I do not recall drafting or providing them to the*  
22 *media.*

23 **Q: Did you review press releases for both substantive content and legal phrasing?**

1 A: Yes.

2 *I reviewed press releases, primarily those relating to ETS, to insure that their substantive content*  
3 *was accurate, including when they related to legal proceedings.*

4 **Q: Did you ever have to ask a scientist to confirm information contained in those press**  
5 **releases?**

6 A: Yes.

7 *Yes, frequently. The scientists had the final say on all scientific questions.*

8 **Q: From whom did you receive your information about ETS?**

9 A: From R. J. Reynolds public relations individuals, lawyers, and scientists.

10 *I received information about the physical and chemical properties, biological and health effects,*  
11 *and other scientific aspects of ETS from scientists. News accounts about ETS, information about*  
12 *legislation, ordinances, or regulations concerning ETS, and information about ETS-related*  
13 *litigation came to me from a wide-variety of sources, including public relations personnel and*  
14 *fellow attorneys.*

15 **Q: Have you done any writing about scientific issues?**

16 A: I have drafted such things as responses to government agencies, which would contain  
17 scientific information I had learned from the R.J. Reynolds scientists.

18 **Q: Ms. Ward, turning your attention to U.S. Exhibit 29,860 (bates range 50772 7305 to**  
19 **7320), is this your handwriting that appears on the document?**

20 A: Yes.

21 **Q: What is this document?**

22 A: It is a draft response to an article appearing in Readers Digest.

23 *It appears to be a draft response to an article appearing in Readers Digest.*



1    **Q:**     And the article that you are addressing in U.S. Exhibit 29,860 discussed the EPA's  
2    **findings that second hand tobacco smoke was a human carcinogen, correct?**

3    A:     Yes.

4    **Q:**     Who is the Betsy to whom you are referring?

5    A:     Betsy Annese.

6    **Q:**     Betsy Annese is not a scientist, is she?

7    A:     No.

8    **Q:**     Ms. Annese worked in Public Relations at R.J. Reynolds, did she not?

9    A:     Yes.

10   **Q:**     Were you editing this piece at Ms. Annese's request?

11   A:     Yes.

12   **Q:**     And this document is a response to the EPA ETS Risk Assessment declaring ETS to  
13   **be a Group A carcinogen, correct?**

14   A:     Yes.

15   *I believe this is a response to a Readers Digest article concerning, among other things, the 1990*  
16   *review draft of the EPA Risk Assessment which concluded that ETS should be a Group A*  
17   *carcinogen.*

18   **Q:**     The EPA had analyzed 24 research projects, among them studies investigating the  
19   **link between lung cancer and spousal smoking, correct?**

20   A:     Yes.

21   **Q:**     Those studies are referred to as "spousal studies," correct?

22   A:     Yes.

23   **Q:**     And this document is an attempt by R.J. Reynolds to interpret the findings

1     **underlying that Risk Assessment in a way that is favorable to R.J. Reynolds, correct?**

2     A:     Yes.

3     No.

4     **Q:     Do you see the sentence in the second page of the typed portion of the document that**  
5     **says: "The recent research on ETS and heart disease Dr. Ruben referred to was not**  
6     **original research at all but merely a statistical review by a California doctor of previously**  
7     **published studies."**

8     A:     Yes.

9     **Q:     And then your handwriting says: "together with a very strained analysis which**  
10    **attempted to demonstrate that it was biologically possible for ETS to cause heart disease"?**

11    A:     Yes.

12    **Q:     Had you read this study by Dr. Ruben?**

13    A:     Yes.

14    *I believe Dr. Reuben wrote the Readers Digest article, and believe I had read the underlying*  
15    *report that Dr. Reuben was referring to in his article.*

16    **Q:     Did you get your information about the study anywhere other than the study itself?**

17    A:     My information about the study would have come from what our scientists had to say  
18    about it.

19    *In addition to reading the underlying report, my information about the report would have come*  
20    *from what our scientists had to say about it.*

21    **Q:     Is it your opinion that the spousal studies were a very strained analysis or is that the**  
22    **opinion of one of the R.J. Reynolds scientists who you spoke to about the study?**

23    A:     I held this opinion and I know that more than one of our scientists who looked at the

1 study also held this opinion.

2 *I think you may be confused. I was referring here to the fact that the review article Dr.*  
3 *Reuben discussed in his Readers Digest piece contained not only a statistical review of*  
4 *previously published research, it also contained a discussion arguing the biological*  
5 *plausibility of heart disease being caused by ETS exposure. I held the opinion that this*  
6 *biological plausibility argument was very strained, and so did more than one of our*  
7 *scientists.*

8 **Q: This document indicates, does it not, that your concern was finding a way to**  
9 **distinguish the findings indicating the link between ETS and lung cancer?**

10 A: Yes.

11 *No.*

12 **Q: This document does not indicate that you sought to inform the public about**  
13 **avoiding ETS exposure?**

14 A: Correct.

15 *Correct, the document was not intended to address that issue.*

16 **Q: Did you frequently review documents for Ms. Annese or anyone else in the Public**  
17 **Relations Department?**

18 A: Yes.

19 **Q: Ms. Ward, turning your attention to U.S. Exhibit 61,605 (bates range 70090 0313 to**  
20 **0314), is this an e-mail dated February 6, 1997, from Peggy Carter to you passing along a**  
21 **draft of an R.J. Reynolds statement about ETS and children?**

22 A: Yes.

23 *Yes, the exhibit includes such an email.*

1 **Q: Peggy Carter worked in the Public Relations Department, correct?**

2 A: Yes.

3 **Q: She was not a scientist, was she?**

4 A: No.

5 **Q: Did the information in this statement come from R.J. Reynolds scientists?**

6 A: Yes.

7 **Q: Did the scientists tell you that because of potential risk from airborne particles like**  
8 **second hand smoke and others listed here, parents should consult doctors of all young**  
9 **children, especially ill children or those prone to respiratory problems?**

10 A: Yes.

11 **Q: Do you know from where the scientists had obtained this information?**

12 A: I believe their understanding was from a review of the then extant literature.

13 **Q: The statement in U.S. Exhibit 61,605 reads: "Reynolds Tobacco believes that**  
14 **parents should consult their children's or their own doctor about the advisability of**  
15 **exposing young children to high concentrations of any type of airborne particles—second-**  
16 **hand smoke, hair spray, cleaning product sprays, baby powder, among others—especially**  
17 **for those children who might be ill or prone to respiratory problems", correct?**

18 A: Yes.

19 *Yes, reading the revised version of the draft.*

20 **Q: Ms. Ward can you recall what literature showed that the children who were ill or**  
21 **prone to respiratory problems were at greater risk of potential harm from exposure to**  
22 **airborne particles of second hand smoke?**

23 A: No.

1 *Not specifically.*

2 **Q: Do you know what the specific risks that were posed to either all children or those**  
3 **prone to respiratory problems?**

4 A: No.

5 *I believe the literature reflects that the specific risks are for upper respiratory tract infections.*

6 **Q: Do you know how long it had been R.J. Reynolds's position that parents should do**  
7 **what is outlined in this document?**

8 A: I don't remember a time when this was not the company position.

9 **Q: Turning your attention now to U.S. Exhibit 30,651 (bates range 52631 9367 to 9370),**  
10 **is this document a draft of the ETS page on the R.J. Reynolds website?**

11 A: Yes.

12 **Q: It is marked "attorney-client privilege." Did you make that designation?**

13 A: No.

14 **Q: Did someone send this to you for your review?**

15 A: Yes.

16 **Q: Did you review it?**

17 A: Yes.

18 **Q: Did you make any changes to it?**

19 A: No.

20 *I don't recall that I did.*

21 **Q: Do you see the statement regarding studies showing that "secondhand smoke" was**  
22 **one of the factors that have been identified as possibly contributing to sudden infant death**  
23 **syndrome?**

1 A: Yes.

2 **Q: Did you make any changes to that statement?**

3 A: No.

4 *Not that I recall.*

5 **Q: Who drafted this statement?**

6 A: Mr. Moskowitz.

7 *Mr. Moskowitz was the scribe, but he met with scientists regarding the substance of the positions*  
8 *set forth in the process of drafting this statement.*

9 **Q: Mr. Moskowitz works for the Public Relations Department, correct?**

10 A: Yes.

11 **Q: This statement in U.S. Exhibit 30,651 says: "Parents and others should minimize the**  
12 **exposure of infants and young children to tobacco smoke and other airborne irritants." Do**  
13 **you know what led to the change in warning from "*especially children* who are ill or prone**  
14 **to respiratory problems" to "*all children* and infants"?**

15 A: No.

16 *I believe I do.*

17 **Q: This same language appears on the R.J. Reynolds website as of today, does it not?**

18 A: It does.

19 **Q: You approved the language in both 1997 and 2002, correct?**

20 A: Yes.

21 **Q: At that time, did you know why the R.J. Reynolds position was broadened to**  
22 **include more children in the ETS warning statement?**

23 A: No.

1 *I believe it was done so that the company would not seem to be drawing unduly fine distinctions*  
2 *where children were involved.*

3 **Q: The 2002 statement was based on scientific evidence, correct?**

4 A: Yes.

5 **Q: Did you review the first study that is hyperlinked in U.S. Exhibit 30,651?**

6 A: Yes.

7 *Yes, although it is not a study per se.*

8 **Q: That study is the 1986 Surgeon General Report, correct?**

9 A: Yes.

10 **Q: Did R.J. Reynolds accept the correctness of the 1986 Surgeon General Report?**

11 A: No.

12 *R.J. Reynolds did not accept all the conclusions reached in that report.*

13 **Q: But it decided to post it on its website?**

14 A: Yes.

15 **Q: Did R.J. Reynolds recognize epidemiological evidence as something that could allow**  
16 **the company to make conclusions about the level of harm posed or not posed by ETS?**

17 A: Yes.

18 *In my view, epidemiological evidence is one of the factors considered by R.J. Reynolds in making*  
19 *assessments about ETS.*

20 **Q: Was the epidemiological evidence linking ETS and illness in children broader in**  
21 **2002 than it was in 1997?**

22 A: No.

23 *I believe there were more studies in 2002 than there were in 1997.*

1 **Q:** In your April 23, 2003 deposition in this case, were you asked if R.J. Reynolds  
2 accepted the epidemiological evidence as of 2002 as valid?

3 A: Yes.

4 **Q:** And in response to that question did you answer "The company accepted that  
5 evidence as a reason to minimize the exposure of infants and young children because of the  
6 risk."?

7 A: Yes.

8 **Q:** And in your June 3, 2003 deposition did you go back during your counsel's  
9 examination of you to correct your testimony from April saying, "I said that Reynolds  
10 accepted that the epidemiology showed an association between living in a smoking  
11 household and childhood respiratory disease among young children and I meant to be  
12 precise about that. And I don't want to have left the impression that Reynolds accepts that  
13 the epidemiology shows that ETS exposure is positively associated with childhood  
14 respiratory disease because as a matter of fact, although it might be the exposure to the  
15 environmental tobacco smoke, there are lots of differences, I'm told, between smoking and  
16 nonsmoking households, and we frankly don't know what accounts for the difference in  
17 childhood disease in smoking and nonsmoking households. But Reynolds accepts and I  
18 believe that it is a real difference"?

19 A: Yes.

20 **Q:** Were you instructed by counsel to correct your testimony?

21 A: Yes.

22 No.

23 **Q:** Ms. Ward, other than the R.J. Reynolds website, does R.J. Reynolds warn people



1 that "parents and others should minimize the exposure of infants and young children to  
2 tobacco smoke and other airborne irritants"?

3 A No.

4 *I believe we have made public statements to this effect one or more times in the past.*

5 **Q: Does this warning appear on the packages of cigarettes that R.J. Reynolds sells?**

6 A: No.

7 **Q: Is this information conveyed in advertisements promoting R.J. Reynolds cigarettes?**

8 A: No.

9 **Q: Do you know why R.J. Reynolds does not warn that smoking near infants or young  
10 children may pose risks to them?**

11 A: No.

12 *It is my understanding that Congress has prescribed specific designated warnings that are to be  
13 placed on packages and that is the limit of my knowledge on the subject.*

14 **Q: Is it your understanding that R.J. Reynolds cannot put more warnings on the  
15 packages than those that are already there?**

16 A: No.

17 *There are others in the Law Department who are more conversant with the requirements of the  
18 Federal and Cigarette Labeling and Advertising Act. I don't know the answer to that.*

19 **Q: Is it your understanding that you can't voluntarily make those statements in  
20 advertising?**

21 A: No.

22 *I don't know.*

23 **Q: Does a gentleman named Seth Moskowitz work in the Public Relations Department?**

1 A: Yes.

2 **Q: Both you and Mr. Moskowitz reviewed scientific publications before publication**  
3 **and commented on them, correct?**

4 A: Yes.

5 *I have. I am not certain whether Mr. Moskowitz has reviewed and commented on ETS*  
6 *publications before publication.*

7 **Q: Turning your attention to U.S. Exhibits 61,767 (bates range 70090 0121 to 0125) and**  
8 **61,768 (bates range 70090 0119 to 0120), are these a series of cover memos describing an**  
9 **op-ed piece that Seth Moskowitz indicates he and Dr. Oldaker have prepared regarding**  
10 **Airline Smoking Legislation, which was reviewed by John Rupp, correct?**

11 A: Yes.

12 **Q: Do these memos indicate that you reviewed the op-ed piece?**

13 A: Yes.

14 **Q: And in that same memo does Mr. Moskowitz ask for several people to review the**  
15 **piece and forward the comments to him?**

16 A: Yes.

17 **Q: Does U.S. Exhibit 61,767 indicate that you passed the piece along to Mr. Rupp for**  
18 **comments?**

19 A: Yes.

20 **Q: According to this same memo, Mr. Rupp made several comments on this draft**  
21 **which were taken into account, correct?**

22 A: Yes.

23 **Q: In fact, the memo says in reference to Mr. Rupp "he further strengthened it by**

1 including the fact that no study has shown ETS is harmful to airline crew members,  
2 either", correct?

3 A: Correct.

4 **Q: And Mr. Rupp is not a scientist, is he?**

5 A: No, he is a lawyer with Covington & Burling and Counsel to the Tobacco Institute.

6 *No, he is a lawyer with Covington & Burling. Covington and Burling was outside counsel to the*  
7 *Tobacco Institute.*

8 **Q: So counsel to the Tobacco Institute was involved in the drafting of substantive**  
9 **information for a op-ed piece which was to be published under Dr. Oldaker's name with no**  
10 **attribution to the Tobacco Institute?**

11 A: Correct.

12 *In this instance, Mr. Rupp provided comments that appear to have been incorporated.*

13 **Q: It was R.J. Reynolds's intent with this op-ed piece to influence public opinion,**  
14 **correct?**

15 A: Yes.

16 *Yes, both public and political opinion.*

17 **Q: Ms. Ward, turning your attention to U.S. Exhibit 61,588 (bates range 70090 0657 to**  
18 **0663), do you see that this is an e-mail dated June 6, 1997 from Seth Moskowitz to Mary**  
19 **Trudelle?**

20 A: Yes.

21 **Q: Does this e-mail from Mr. Moskowitz say that he is attaching "a piece I ghosted for**  
22 **one of our scientists years ago?"**

23 A: Yes.

1 **Q: This attached document is the op-ed piece purportedly written by Dr. Oldaker**  
2 **about ETS on airplanes, correct?**

3 A: Yes.

4 **Q: And in fact Mr. Rupp's reference to airline crew members appears on page 1 of this**  
5 **piece, does it not?**

6 A: It does.

7 **Q: And this is the document you commented on in 1989, that was described in U.S.**  
8 **Exhibit 61,767, correct?**

9 A: Yes.

10 **Q: Do these documents indicate that Mr. Moskowitz performed ghostwriting for Dr.**  
11 **Oldaker, an R.J. Reynolds scientist?**

12 A: Yes.

13 *The document says that.*

14 **Q: The piece at U.S. Exhibit 61,588, ghostwritten by Mr. Moskowitz for Dr. Oldaker is**  
15 **critical of Senator Lautenberg, isn't it?**

16 A: Yes.

17 *My belief is that Dr. Oldaker had the ideas for this piece and Mr. Moskowitz edited the document*  
18 *to make it suitable for use in a newspaper and, in that sense, "ghost wrote" it. The piece*  
19 *certainly is critical of positions and judgments taken by Senator Lautenberg.*

20 **Q: It's true that the first paragraph of the piece Mr. Moskowitz indicates he "ghosted"**  
21 **says: "Observing the recent congressional activity surrounding airline smoking**  
22 **restrictions, I was reminded of what the Queen said during Alice's trial in Wonderland:**  
23 **"Sentence first—verdict afterwards." U.S. Sen. Frank Lautenberg seems to have taken**

1 much the same approach in his recent judgments concerning environmental tobacco smoke  
2 (ETS)", correct?

3 A: Yes.

4 Q: U.S. Exhibit 61,588 was intended in part as an attack upon a U.S. Senator, wasn't it?

5 A: Yes.

6 *I would not characterize this as an attack upon a U.S. Senator; it is critical of positions and*  
7 *judgments Senator Lautenberg espoused.*

8 Q: In fact, your colleague Herb Osmon questioned the wisdom of attacking Senator  
9 Lautenberg, didn't he?

10 A: Yes.

11 Q: In U.S. Exhibit 61,768, Seth Moskowitz noted as follows: "Herb Osmon, Mary  
12 Ward and Charlie Green have reviewed the piece. Herb questions the wisdom of singling  
13 out a senator for attack. Mary wonders whether publication of the piece prior to  
14 compromise committee resolution could hurt our chances for negotiations favorable to the  
15 industry", correct?

16 A: Yes.

17 Q: And those negotiations involved discussions with the government regarding smoking  
18 restrictions on U.S. airlines, correct?

19 A: Yes.

20 *I believe this referred to a political compromise within Congress, rather than "discussions with*  
21 *the government".*

22 Q: Who is Herb Osmon?

23 A: Mr. Osmon worked for Mr. Kampe who was the head of the Premier project.

1 *I think Mr. Osmon worked for Mr. Kampe who was the head of the Premier project.*

2 **Q: Was Mr. Osmon a scientist?**

3 A: No.

4 **Q: Did he work in the External Affairs/Public Relations Department?**

5 A: Yes.

6 *Yes, at the time he retired from the company.*

7 **Q: Turning your attention back to U.S. Exhibit 61,767, it says: "Herb Osmon, Mary**  
8 **Ward, and Charlie Green reviewed the piece", do you see anywhere that states Dr.**  
9 **Oldaker reviewed it?**

10 A: No.

11 *The document states "he prepared it" and he was copied on the memo. I therefore assume he*  
12 *reviewed it.*

13 **Q: Turning your attention to U.S. Exhibit 61,982 (bates number 70044 5714). Is this an**  
14 **e-mail from Carr Smith to Mr. Burger, Dr. deBethizy, Dr. Dolittle, Dr. Ogden, Mr.**  
15 **Steichen and yourself?**

16 A: Yes.

17 **Q: Was Dr. Wagner a consultant to R.J. Reynolds?**

18 A: Yes.

19 **Q: Was he a professor emeritus at NYU?**

20 A: Yes.

21 **Q: Did Dr. Wagner head a purportedly independent committee evaluating**  
22 **R.J. Reynolds's claims about Eclipse?**

23 A: Yes.

1 *I wouldn't use the word "purportedly," but he was the chair of that committee.*

2 **Q: Is Tom Steichen a statistician?**

3 A: Yes.

4 **Q: Is Carr Smith a scientist at R.J. Reynolds?**

5 A: Yes.

6 *He was at this time.*

7 **Q: And this e-mail indicates that Mr. Smith sent a draft letter to Dr. Wagner, correct?**

8 A: Yes.

9 *Yes, it says that Dr. Smith sent a draft letter to Dr. Wagner.*

10 **Q: Did Mr. Smith ask you and Mr. Steichen to review the letter before it was sent to**  
11 **Dr. Wagner?**

12 A: Yes.

13 **Q: When you reviewed it were you aware that Dr. Wagner had requested information**  
14 **on the Howard study?**

15 A: Yes.

16 **Q: And did the Howard study deal with the width of carotid arteries and exposure to**  
17 **ETS?**

18 A: Yes.

19 **Q: Was it your understanding that Dr. Wagner wanted this information so that he**  
20 **could write a letter about it?**

21 A: Yes.

22 **Q: Did R.J. Reynolds think it was a good idea for Dr. Wagner to take information from**  
23 **R.J. Reynolds and write a response to the Howard study?**

1 A: Yes.

2 *R.J. Reynolds acceded to Dr. Wagner's request for information about the study.*

3 **Q: But he was a consultant to R.J. Reynolds, correct?**

4 A: Yes.

5 **Q: Can you say with certainty that it was Dr. Wagner who originally had the idea to**  
6 **write a response to the Howard study?**

7 A: No.

8 *That is certainly my belief.*

9 **Q: Therefore the idea could have originated within R.J. Reynolds, correct?**

10 A: Correct.

11 *I do not believe that it did.*

12 **Q: Dr. Wagner was not given any instructions to attribute the information he used in**  
13 **writing this response to R.J. Reynolds, was he?**

14 A: That is correct.

15 *I don't know.*

16 **Q: Turning your attention to U.S. Exhibit 61,983 (bates range 70044 5012), this is an e-**  
17 **mail between Jan Fulton Smith and Seth Moskowitz, correct?**

18 A: Yes.

19 *Yes, it includes such an email.*

20 **Q: At the time of this e-mail they both worked in the Public Relations Department,**  
21 **correct?**

22 A: Yes.

23 **Q: And this e-mail discusses how Carr Smith put together some information for**



1 **Dr. Wagner to use in drafting op-eds or letters to the editor about the Howard study,**  
2 **correct?**

3 A: Yes.

4 **Q: Isn't it true that from time to time, R.J. Reynolds scientists would send**  
5 **information to outside scientists to assist these scientists in writing something using that**  
6 **information?**

7 A: Yes.

8 *It was not a practice, and I do not recall any other time this happened.*

9 **Q: The two e-mails at U.S. Exhibits 61,982 and 61,983 indicate that this practice**  
10 **occurred, don't they?**

11 A: Yes.

12 *On one occasion.*

13 **Q: Turning your attention to U.S. Exhibit 61,889 (bates range 70072 1801 to 1802), this**  
14 **is an email from Dr. Dolittle to Mr. Burger, Dr. deBethizy, Dr. Ogden, Mr. Steichen and**  
15 **yourself, correct?**

16 A: Yes.

17 **Q: And this e-mail states: "Carr et al, this is a well-written study--well-written**  
18 **scientifically robust response. I do not understand why you are not submitting this to**  
19 **JAMA yourself. I have heard the standard argument that 'we don't have credibility' ... "I**  
20 **urge you to send this in yourself", correct?**

21 A: Yes.

22 *Yes, it includes such an email.*

23 **Q: The results of the Howard study, indicating that there were cardiovascular**

1 effects from exposure to or living with a smoker, was contrary to the position that  
2 **R.J. Reynolds was taking on ETS at the time of its publication, correct?**

3 A: Yes.

4 *Yes, it was contrary to our assessment of the evidence.*

5 **Q: Therefore, it would be productive for R.J. Reynolds to have literature published**  
6 **that challenged the findings of the Howard study, correct?**

7 A: Yes.

8 *According to our scientists, the Howard study had a lot of problems in the way it was done and*  
9 *in the way the thickness of the carotid arteries was measured. I would say that the company*  
10 *would have been interested in having those questions raised in the scientific literature.*

11 **Q: And R.J. Reynolds would be interested in providing information to someone**  
12 **unconnected with the company who could publish such a criticism, correct?**

13 A: Yes.

14 *Certainly in this instance we were willing to respond to Dr. Wagner's request.*

15 **Q: You testified in your deposition that R.J. Reynolds and the tobacco industry had**  
16 **trouble getting the truth out about ETS because nobody would publish anything that had**  
17 **R.J. Reynolds's name on it, correct?**

18 A: Yes.

19 *No, I don't believe I testified that "nobody would publish anything that had R.J. Reynold's name*  
20 *on it." I testified that some scientific journals would not publish articles resulting from research*  
21 *funded by members of the tobacco industry, including R.J. Reynolds.*

22 **Q: Therefore, having a professor emeritus from NYU publishing an article written by**  
23 **R.J. Reynolds under the professor's name would be consistent with R.J. Reynolds's**

1 **interests, correct?**

2 A: Yes.

3 *It would not be inconsistent with R.J. Reynolds' interests if Dr. Wagner or anyone had published*  
4 *an article raising questions about the Howard study. To the extent your question implies it*  
5 *would be in R. J. Reynolds' best interest to hide its involvement in such an article, I don't believe*  
6 *that happened or that it would be consistent with R.J. Reynolds' interests.*

7 **Q: Was the Public Relations Department aware that information was being passed to**  
8 **Dr. Wagner for inclusion in a response to the Howard study?**

9 A: Yes.

10 *Yes after the fact.*

11 **Q: And the Legal Department was certainly aware of this fact as well?**

12 A: Yes.

13 **Q: You yourself approved what was sent by Mr. Smith to Dr. Wagner, correct?**

14 A: Yes.

15 *I reviewed it and may have commented on it, but was not asked to approve it in the sense of*  
16 *thumbs up or thumbs down.*

17 **Q: You made no substantive changes to what Mr. Smith had written, correct?**

18 A: Correct.

19 **Q: Does this series of e-mail correspondence, set forth at U.S. Exhibits 61,982 and**  
20 **61,983 indicate that there was indeed a practice at R.J. Reynolds whereby R.J. Reynolds**  
21 **scientists would send information to outside scientists and have them publish something**  
22 **using that information?**

23 A: Yes.

1    No.

2    **Q:     In regards to ETS-related activities, there has been collaboration amongst**

3    **R.J. Reynolds, Philip Morris, BATCo, and Lorillard, correct?**

4    A:     Yes.

5    *Yes, R.J. Reynolds and one or more of these entities have collaborated at various times in*  
6    *connection with different ETS activities.*

7    **Q:     For certain types of projects related to ETS, were there formal working groups**  
8    **or informal structures set up to address the issue at hand?**

9    A:     Typically it is on an ad hoc basis, project by project.

10   **Q:     Was there inter-company work on the measurement of ETS on board long-**  
11   **range aircraft in the late 1980s?**

12   A:     Yes.

13   **Q:     Other than R.J. Reynolds and Philip Morris, were any other tobacco**  
14   **companies involved in this study?**

15   A:     No.

16   *Not that I recall.*

17   **Q:     Turning your attention to U.S. Exhibit 30,363 (bates range 52073 7744 to 7745), does**  
18   **this memo discuss your involvement with the aircraft study?**

19   A:     Yes.

20   *No, I believe this memo refers to another study.*

21   **Q:     And there was a committee set up to work on this ETS issue, among others, correct?**

22   A:     Correct.

23   No.

1 **Q: Who at R.J. Reynolds brought you in to work on this committee?**

2 A: Mr. Ogburn.

3 *I believe you are referring to a group that met for a short time in the late 1980's with*  
4 *representatives from R.J. Reynolds and Philip Morris. Mr. Ogburn asked me to attend a meeting*  
5 *of that group.*

6 **Q: And did both lawyers and scientists attend the meeting that occurred on this**  
7 **committee prior to its dissolution?**

8 A: Yes.

9 *Yes, and business people as well.*

10 **Q: And the committee imploded after the announcement that R.J. Reynolds**  
11 **was introducing the Premier cigarette?**

12 A: Yes.

13 **Q: And it was your impression that Philip Morris thought that R.J. Reynolds was going**  
14 **to introduce a cigarette that could be smoked in places where smoking was otherwise**  
15 **prohibited and would represent an answer to ETS, correct?**

16 A: Correct.

17 **Q: And you believed that Philip Morris was concerned about their market**  
18 **share, correct?**

19 A: Yes.

20 **Q: And you believed that Philip Morris was upset that the study you had**  
21 **collaborated on would result in R.J. Reynolds taking a competitive advantage?**

22 A: Yes.

23 **Q: You did not believe that Philip Morris was upset that R.J. Reynolds was making**

1 **ETS a health issue, did you?**

2 A: No.

3 **Q: Were there specific actions by Philip Morris that led you to these conclusions?**

4 A: Yes. They would not return any of Mr. Ogburn's calls, and the committee meetings were  
5 cancelled.

6 **Q: Did this group ever reunite?**

7 A: No.

8 **Q: Did this fallout over the Premier cigarette lead to the calling off of any other  
9 intercompany collaborative research projects?**

10 A: No.

11 **Q: Were you aware that Philip Morris was similarly working on a low ETS cigarette?**

12 A: I became aware that they introduced one, yes.

13 *I subsequently became aware that they introduced one, yes.*

14 **Q: Ms. Ward, are you familiar with the TI-ETS Working Group, sometimes called the  
15 TI- ETS Advisory Group?**

16 A: Yes.

17 **Q: Turning your attention to U.S. Exhibit 75,274 (bates range 50549 1406 to 1410), is  
18 this a memo from Dr. Green to Dr. Rodgman dated December 9, 1986?**

19 A: Yes.

20 *No. I believe you are referring to U.S. Exhibit 75,275.*

21 **Q: And you were copied on this memo, correct?**

22 A: Correct.

23 **Q: Does this memo state that the "TI-ETS Advisory Committee is composed of**

1    **scientist[s] from the various companies, TI staff members, legal counsel, and public**  
2    **affairs experts", correct?**

3    A:     Yes.

4    **Q:     Was this group in existence in 1985 when you joined R.J. Reynolds?**

5    A:     Yes.

6    **Q:     And in fact, you began attending TI-ETS Advisory Committee meetings the same**  
7    **year you began working at R.J. Reynolds, correct?**

8    A:     Yes.

9    **Q:     Directing your attention to U.S. Exhibit 20,339 (bates range 202100 4058 to 4064),**  
10    **does this document indicate that the TI-ETS Advisory Group met once a month and had**  
11    **been active since October 1984?**

12   A:     Yes.

13   **Q:     And does the memo say: "to be useful and effective, approved research projects: 1)**  
14   **should be conducted in independent, outside laboratories (Not obviously connected with**  
15   **the tobacco industry); 2) must be conducted in a high quality manner with the use of state-**  
16   **of-the-art methodology; and 3) must have their results published in appropriate (refereed)**  
17   **scientific journals. Translation: We can not fight our enemies with 'shlock stuff'?"**

18   A:     Yes.

19   **Q:     Does this memo also say: "While neither Liggett nor American directly**  
20   **participate in the group both are participating with the funding of approved projects"?**

21   A:     Yes.

22   **Q:     Who was the chairperson of the TI-ETS Advisory Group?**

23   A:     Don Hoel.

1    **Q:**     And was Mr. Hoel an attorney at Shook Hardy and Bacon?

2    A:     Yes.

3    **Q:**     Did Mr. Hoel put out the agenda and run the meetings of the TI-ETS Advisory

4    **Group?**

5    A:     Yes.

6    **Q:**     Was the TI-ETS Advisory Group comprised of representatives from R.J. Reynolds,

7    **Philip Morris, Lorillard and Brown & Williamson?**

8    A:     Yes.

9    **Q:**     And did this group meet at the Tobacco Institute?

10   A:     Yes.

11   **Q:**     Was it a part of the Tobacco Institute?

12   A:     No.

13   *Not to my understanding.*

14   **Q:**     Is it your testimony that the title of the group including the letters "T" and "I" is

15   **due to the fact that the Tobacco Institute is where the meetings were held?**

16   A:     Yes.

17   **Q:**     Did you attend the meetings of the TI-ETS Advisory Group?

18   A:     Yes.

19   **Q:**     Did anyone from the Tobacco Institute attend these meetings of the TI-ETS

20   **Advisory Group?**

21   A:     Yes.

22   **Q:**     Do you recall specifically who from the Tobacco Institute ever attended the

23   **meetings?**



1 A: Kay Thomas Packett, Susan Stuntz, Brennan Dawson, Bill Kloepper, and Marvin  
2 Kastenbaum.

3 *Kay Thomas Packett, Susan Stuntz, Brennan Dawson, Bill Kloepper, and Marvin Kastenbaum.*

4 **Q: Was Bill Kloepper the Vice President of the Tobacco Institute at this time?**

5 A: Yes.

6 *Yes, he was a Vice President.*

7 **Q: Was Brennan Dawson a Tobacco Institute spokesperson?**

8 A: Yes.

9 **Q: Did Mr. Rupp attend these meetings?**

10 A: Yes.

11 **Q: And he was an attorney from Covington and Burling, who represented the Tobacco**  
12 **Institute, correct?**

13 A: Correct.

14 **Q: Did all four companies send scientists to these meetings?**

15 A: Yes.

16 **Q: Did Philip Morris, Lorillard and Brown and Williamson send anyone to these**  
17 **meetings besides scientists?**

18 A: Sometimes lawyers from Philip Morris attended.

19 *Sometimes lawyers from Philip Morris may have attended, but I can't recall*

20 **Q: Was a function of the group to recommend for funding various scientific projects**  
21 **and research regarding ETS?**

22 A: Yes.

23 **Q: To whom were these recommendations made?**

1 A: They were made to the tobacco companies through the Committee of Counsel.

2 **Q: And through what organization was the research funded?**

3 A: Through the Council for Tobacco Research.

4 *Through the Council for Tobacco Research with additional funds provided by the companies.*

5 **Q: And outside institutions would eventually conduct the research?**

6 A: Yes.

7 **Q: The research would be recommended by the TI-ETS Advisory Group, and funded**  
8 **by the tobacco companies, and carried out by outside groups, correct?**

9 A: Yes.

10 **Q: Under the system of the TI-ETS Advisory Group, once a project got recommended**  
11 **to the Committee of Counsel, and once that project got sent to CTR, the TI-ETS Advisory**  
12 **Group would be the group to monitor the project?**

13 A: Yes.

14 **Q: So under this system the TI-ETS Advisory Group had the responsibility of**  
15 **monitoring the research?**

16 A: Yes.

17 **Q: Are you aware of any researchers who did not wish to perform studies funded by**  
18 **CTR?**

19 A: Yes.

20 **Q: Can you name one such researcher?**

21 A: Yes. Delbert Eatough at Brigham Young did not want to be a CTR grantee, but later was  
22 a CIAR grantee.

23 *Yes. Delbert Eatough at Brigham Young did not want to be a CTR grantee, but had been an RJR*

1     grantee and later was a CIAR grantee.

2     **Q:     Did CTR have a Scientific Advisory Board?**

3     A:     Yes.

4     **Q:     And ETS projects did not go through the CTR Scientific Advisory Board?**

5     A:     No.

6     **Q:     And was it your understanding that ETS-related projects were outside the scope of**  
7     **what CTR was set up to do?**

8     A:     Yes.

9     **Q:     Do you know why the ETS Advisory Group went through the Committee of**  
10    **Counsel to get to CTR to get the ETS projects moving instead of going straight to CTR?**

11    A:     No.

12    **Q:     That wasn't very efficient, was it?**

13    A:     No.

14    *This aspect of the process did not strike me as inefficient at the time.*

15    **Q:     Did you ever recommend studies to the TI-ETS Advisory Group?**

16    A:     Yes.

17    *Yes, R. J. Reynolds did.*

18    **Q:     Looking at U.S. Exhibit 22,180 (bates range 202926 9781 to 9792), is this a research**  
19    **proposal of Dr. Deskin that you forwarded to the TI-ETS Advisory Group?**

20    A:     Yes

21    *I don't remember forwarding it, but I could have. It is the proposal you described.*

22    **Q:     And does the first sentence of Dr. Deskin's research proposal say: "Sidestream**  
23    **smoke has been implicated as being more toxic than mainstream smoke and as being the**

1    **causative agent in several diseases that are not implicated by mainstream smoke exposure**  
2    **alone''?**

3    A:     Yes.

4    **Q:     Did you give legal advice to the R.J. Reynolds scientists regarding the ETS research**  
5    **that was being conducted through the TI-ETS Advisory Group?**

6    A:     Yes.

7    **Q:     Did you report to R.J. Reynolds in writing regarding the progress of this group?**

8    A:     Yes.

9    *Yes, sometimes I did.*

10   **Q:     Turning your attention to U.S. Exhibit 50,663 (bates range 50475 0832 to 0833), is**  
11   **this one of the written status reports you created?**

12   A:     Yes.

13   *This was a report to Mr. Juchatz in which I was reporting on several of my pending matters,*  
14   *including the "TI-ETS Working Group."*

15   **Q:     This October 3, 1985 document discusses your attendance at an October 1, 1985**  
16   **meeting of the TI-ETS Working Group, correct?**

17   A:     Yes.

18   **Q:     Did Mr. Hoel ever bring research ideas to the meetings of the TI-ETS Advisory**  
19   **Group?**

20   A:     Yes.

21   **Q:     Did Mr. Rupp ever bring research ideas to the meetings of the TI-ETS Advisory**  
22   **Group?**

23   A:     Yes.

1 **Q: When Mr. Rupp had ideas of research projects, did he also have a group in mind**  
2 **that he proposed would conduct the research?**

3 A: Yes.

4 *Yes, but I can't say that this was true on every occasion*

5 **Q: Did anyone from the Tobacco Institute ever have ideas about research to be**  
6 **funded?**

7 A: Yes, Mr. Kastenbaum did.

8 *Yes, I believe Mr. Kastenbaum might have.*

9 **Q: Turning your attention back to U.S. Exhibit 75,274, is the subject of this memo**  
10 **"TIETS Advisory Committee Delegation Trip to Tokyo And Meeting With Scientists From**  
11 **Japan Tobacco Incorporated"?**

12 A: Yes.

13 *I believe you are referring to U.S. Exhibit 75,275 and, in that event, the answer is yes.*

14 **Q: And this memo states: "RJR was asked to support PM's position concerning the**  
15 **ETS inhalation study planned by the VdC. Because of studies conducted at INBIFO, PM**  
16 **believes that the planned studies will show no effect of ETS exposure. They want Dr.**  
17 **Adlkofer to go ahead with these studies. PM has concern over the quality of the scientists**  
18 **designing and conducting the studies. Dr. Osdene suggested that Dr. Sthul might want to**  
19 **call Richmond to discuss the situation", does it not?**

20 A: Yes.

21 **Q: Does this memo indicate that Philip Morris and R.J. Reynolds cooperated to take**  
22 **like positions on studies relating to ETS?**

23 A: Yes.

1    *No.*

2    **Q:     Does this memo also indicate that Philip Morris shared information about future**  
3    **results of studies with R.J. Reynolds?**

4    A:     Yes.

5    *No, it appears to me that a Philip Morris scientist, Dr. Osdene, shared information about a*  
6    *completed Philip Morris study.*

7    **Q:     So the industry often had information about the results of a study prior to the study**  
8    **being conducted?**

9    A:     Yes.

10   *No.*

11   **Q:     Dr. Osdene of Philip Morris invited Dr. Green of competitor R.J. Reynolds to visit**  
12   **INBIFO, correct?**

13   A:     Yes.

14   *Yes, but on the conditions that Dr. Green not count people and instruments and that he not make*  
15   *a full disclosure of what he saw.*

16   **Q:     And INBIFO was a Philip Morris research center in Cologne, Germany, correct?**

17   A:     Correct.

18   **Q:     Turning your attention to U.S. Exhibit 22,828 (bates range 202293 2502 to 2506), are**  
19   **these minutes for an INFOTAB meeting on April 8, 1986?**

20   A:     Yes.

21   **Q:     Is this the meeting referenced in the memo marked as U.S. Exhibit 20,739 (bates**  
22   **range 50534 7172 to 7174)?**

23   A:     Yes.

1 **Q:** And you are copied on this memo from Dr. Green to Dr. Rodgman, dated April 15,  
2 **1986, correct?**

3 **A:** Yes.

4 **Q:** Does Dr. Green describe a joint meeting of ETS Advisory Groups in London?

5 **A:** Yes.

6 **Q:** And does Dr. Green's memo state: "According to Dr. Adelkofer, sidestream smoke  
7 is reported to contain many mutagenic and/or carcinogenic substances. The toxicity of  
8 sidestream smoke must be evaluated by animal experiments and dose response  
9 relationships need to be developed. Industry sponsored epidemiological studies should be  
10 conducted because in Adelkofer's opinion the results of such studies have been the most  
11 effective argument used by our opponents against smoking"?

12 **A:** Yes.

13 **Q:** Does this memo indicate that representatives from companies around the world  
14 were meeting to discuss scientific and public relations problems relating to ETS?

15 **A:** Yes.

16 *Yes, that is what the memo says.*

17 **Q:** Ms. Ward, turning your attention to U.S. Exhibit 75,279 (bates range 50822 6799 to  
18 6804), this is also memo from Charles Green to Alan Rodgman, and it is dated April 6,  
19 **1987, correct?**

20 **A:** Correct.

21 **Q:** And the memo copies G.R. DiMarco, A.W. Hayes, R.J. Marcotullio, D.M. Guilfole,  
22 **W.D. Dahne, Oskar Stuhl, C.W. Nystrom and yourself, correct?**

23 **A:** Yes.

1 **Q: This memo discusses a joint meeting of industry scientists and public affairs**  
2 **specialists including representatives from Tobacco Advisory Counsel, VdC, Japan Tobacco**  
3 **Incorporated, and the TI-ETS Advisory Committee, correct?**

4 **A: Correct.**

5 **Q: And you attended this meeting in March of 1987, did you not?**

6 **A: I did.**

7 **Q: This memo summarizes the meeting, focusing on industry-sponsored research on**  
8 **ETS, non-industry sponsored research, and public affairs/political concerns, correct?**

9 **A: Yes.**

10 **Q: This memo says: "The first session of the second day included presentations by**  
11 **Trevor King, Gerhardt Scherer, Y. Shimitzu, Bill Kloefer, and John Rupp. There**  
12 **were many similarities among all the presentations and the need for close cooperation**  
13 **between scientist and public relations professionals was expressed repeatedly.**  
14 **R.J. Reynolds was praised by several speakers as an example of an effective research**  
15 **and public relations relationship", correct?**

16 **A: Yes.**

17 **Q: Public relations has been an important aspect of R.J. Reynolds's response**  
18 **to growing information about ETS, has it not?**

19 **A: It has.**

20 **Q: And this memo cites praise of R.J. Reynolds for an effective combination of research**  
21 **and public relations, correct?**

22 **A: Yes.**

23 *It cites praise of the relationship between research and public relations.*



1 **Q: This April 6, 1987 memo also says, does it not that "Dr. Spears stated that the**  
2 **Industry has only a short time (5 years) to solve the ETS problem. Vigorous denial is not a**  
3 **satisfactory defensive strategy. All agreed that the most significant ETS problem facing the**  
4 **Industry is the result of epidemiological studies which indicate a low risk related to ETS**  
5 **exposure. More industry sponsored research is needed to address this issue"?**

6 A: Yes.

7 **Q: And this memo does not indicate, does it, that impartial, independent research is**  
8 **needed to address the ETS issue?**

9 A: No.

10 *No, it does not specifically address questions of impartiality or independence.*

11 **Q: Does this memo summarize by saying: "All of the attendees left this meeting with a**  
12 **better appreciation of the international ETS problem. Concerted action is needed to**  
13 **improve the Industry's position."**

14 A: Yes.

15 **Q: And does the memo mention a proposed follow-up meeting "with the purpose of**  
16 **generating a world-wide ETS action plan"?**

17 A: Yes.

18 **Q: This memo which represents minutes from a joint meeting contemplates industry**  
19 **sponsored research and concerted action in order to address the ETS problem, does it not?**

20 A: It does.

21 *It appears to be an internal memo, not minutes, and was not circulated outside the company. It*  
22 *reflects discussions regarding possible industry-sponsored research and concerted action to*  
23 *address the ETS problem.*

1 **Q:** You yourself were acutely aware that public perceptions were at the heart of the  
2 **ETS issue, correct?**

3 **A:** Yes.

4 *Public perceptions certainly were important to the ETS issue, and I was acutely aware of that.*

5 **Q:** Turning your attention to U.S. 62,084 (bates range TI0068 1926 to 1933), this is a  
6 **"Report on Industry Meeting on ETS", is it not?**

7 **A:** It is.

8 **Q:** You are listed as a participant at this meeting, correct?

9 **A:** Yes.

10 **Q:** This report is dated July 2, 1987, correct?

11 **A:** Yes.

12 **Q:** According to this report, at this meeting Mr. Rupp indicated three major causes for  
13 the increase in smoking restrictions: "The perception by the public that ETS is a health  
14 risk which is visited on them involuntarily. ETS is, in fact, a visible indoor air pollutant. It  
15 is a nuisance. The perception by the public that the tobacco industry is intransigent", did  
16 he not?

17 **A:** He did.

18 **Q:** You noted at this meeting that: "We must accept the fact that there will be smoking  
19 regulations and work toward making them least harmful to the industry. We must help  
20 frame them in such a way as to make our customers more comfortable", did you not?

21 **A:** Yes, I did.

22 *Yes I did according to the report.*

23 **Q:** And Mr. Rupp also warned at this meeting that there was a need for everyone to be

1    **"scrupulously accurate and prudent in discussing ETS", correct?**

2    A:     Correct.

3    *Correct, according to the report.*

4    **Q:     And you have been sure to frame statements about ETS carefully, haven't you?**

5    A:     Yes.

6    *Yes, I have taken great care to frame them accurately and truthfully.*

7    **Q:     In fact, you have been adamant about the terminology used when referring to ETS,**  
8    **haven't you?**

9    A: Yes.

10   *Yes, I have urged that accurate and precise terminology be used.*

11   **Q:     Recognizing Mr. Rupp's admonitions and your own sense that consumers need to be**  
12   **comfortable, you have edited out references to "passive smoking" that you have seen in**  
13   **documents describing ETS, have you not?**

14   A:     Yes.

15   *I have made editorial comments regarding using the term "passive smoking" because it is not a*  
16   *precise and accurate term for describing ETS exposure.*

17   **Q:     And you did this because "passive smoking" sounds more dangerous**  
18   **than "environmental tobacco smoke", correct?**

19   A:     Correct.

20   *No.*

21   **Q:     Did you view the TI-ETS Advisory Group as an efficient means by which to**  
22   **do scientific research?**

23   A:     No.

1 **Q: But the TI-ETS Advisory Group was a good means by which to coordinate with**  
2 **other tobacco companies on ETS issues, correct?**

3 A: Yes.

4 *It was not a particularly good means to coordinate with other tobacco companies on ETS issues,*  
5 *but it was a reasonable means for exchanging information on what the companies were doing.*

6 **Q: And you were interested in making a change to the TI-ETS Advisory**  
7 **Group, correct?**

8 A: Yes.

9 **Q: Eventually the TI-ETS Advisory Group was replaced with another group, the**  
10 **Center for Indoor Air Research, also known as CIAR, correct?**

11 A: Correct.

12 **Q: Now at the time when CIAR was formed, was the TI-ETS Advisory Group doing the**  
13 **legislative and regulatory work while CIAR was doing scientific work?**

14 A: Yes.

15 *The non-scientific activities were continued by the TI-ETS Advisory Group and other groups.*

16 **Q: And you were largely responsible for the creation of CIAR, correct?**

17 A: I chaired the subcommittee set up to decide how to organize CIAR.

18 **Q: Who appointed this subcommittee?**

19 A: Don Hoel.

20 **Q: Turning your attention to U.S. Exhibit 62,087 (bates number TI0068 2042), is this a**  
21 **memo from you to the TI-ETS Advisory Group dated February 9, 1987?**

22 A: Yes.

23 **Q: Does this memo discuss the formation of the subcommittee by Chairman Hoel to**

1 investigate "an alternate method of funding ETS research"?

2 A: Yes.

3 **Q: And does this memo say that "During 1985, concerns about the methods of funding**  
4 **industry research on environmental tobacco smoke (ETS) received the attention of the TI-**  
5 **ETS Advisory Group (TI-ETSAG, also known as the Hoel committee). Although several**  
6 **research projects funded under the auspices of TI-ETSAG had and were continuing to**  
7 **produce some results, members of the group began to express the opinion that a more**  
8 **efficient mechanism to search out and supervise the research needed to be considered"?**

9 A: Yes.

10 *Yes, with the exception that it says 1986 in the initial phrase.*

11 **Q: And it is your testimony, is it not, that the impetus to create the CIAR was to have a**  
12 **professional staff who would monitor funding and supervise the execution of these ETS-**  
13 **related scientific studies?**

14 A: Yes.

15 **Q: Turning your attention to U.S. Exhibit 21,861 (bates number TI1063 0369), are**  
16 **these the proposed by-laws for the CIAR?**

17 A: Yes.

18 *Yes, it is an intermediate draft.*

19 **Q: Does the mission statement read "The Center for Indoor Air Research (the Center)**  
20 **shall exist to encourage scientific inquiry and appropriate public policy related to the**  
21 **composition and possible health effects of indoor air"?**

22 A: Yes.

23 *This draft says that.*

1 **Q: ETS is not mentioned in this mission statement, is it?**

2 A: No.

3 *No. It is not mentioned in this draft.*

4 **Q: Monitoring the research projects is not mentioned in this mission statement, is it?**

5 A: No.

6 *No. It is not mentioned in this draft.*

7 **Q: When the transition was made from the TI-ETS Advisory Group to the CIAR, did**  
8 **the personnel change?**

9 A: Yes.

10 *They were two different types of entities, but some of the personnel involved in the TI-ETS*  
11 *Advisory Group also were involved in CIAR.*

12 **Q: Can you recall anyone from the TI-ETS Advisory Group remained to work**  
13 **for CIAR?**

14 A: Dr. Green from R.J. Reynolds, Dr. Spears from Lorillard, Dr. Pages and Dr. Osdene  
15 from Philip Morris.

16 *Dr. Green from R.J. Reynolds, Dr. Spears from Lorillard, Dr. Pages and Dr. Osdene from*  
17 *Philip Morris had attended the TI-ETS Advisory Group Meetings and became members of*  
18 *CIAR's Board of Directors*

19 **Q: Who became the leader of the CIAR?**

20 A: Mr. Max Eisenberg was the Executive Director and the Chairman of the Board was  
21 a rotating position.

22 *Dr. Max Eisenberg was the Executive Director, and the Chairman of the Board was a*  
23 *rotating position.*

1 **Q: Mr. Eisenberg did not have a background in ETS, did he?**

2 A: No.

3 *I believe Dr. Eisenberg had a background in public health and environmental science, as well as*  
4 *in managing research projects, but he did not have a specific background in conducting research*  
5 *relating to ETS.*

6 **Q: Was the primary funding for CIAR its three charter members, Lorillard,**  
7 **Philip Morris, and R.J. Reynolds?**

8 A: Yes.

9 **Q: And did the CIAR have other members who were non-charter members but**  
10 **had access to the research, the reports, and the CIAR library?**

11 A: Yes.

12 *Yes, they were associate members.*

13 **Q: And was there another class of members who paid a certain amount of money, and**  
14 **based upon that amount negotiated for a seat on the board of directors?**

15 A: Yes.

16 *Yes. These were regular members.*

17 **Q: Was there a distinction between voting members of the board and other members of**  
18 **the board?**

19 A: No.

20 *No, all of the members of the Board of Directors voted.*

21 **Q: But whether you were on the board or not depended on whether you were a charter**  
22 **member, and then how much money you had supplied?**

23 A: Yes.

1 **Q: Were minutes of the CIAR meetings kept?**

2 A: Yes.

3 *To the best of my knowledge, minutes of the Board of Directors meetings were kept.*

4 **Q: Your subcommittee came up with the name CIAR, did it not?**

5 A: Yes.

6 *I am not sure who came up with the name.*

7 **Q: It was the members of tobacco companies who paid for the research, who got**  
8 **together to decide how to continue funding for ETS research and they broadened that to**  
9 **research indoor air?**

10 A: Yes.

11 *Yes, this is essentially how the CIAR was formed.*

12 **Q: Turning your attention to U.S. Exhibit 51,554 (bates range 51125 2621 to 2626), this**  
13 **is a June 11, 1987 memo from Charles Nystrom to Alan Rodgman on which you, Charles**  
14 **Green, Tom Ogburn, Oscar Stuhl, Richard Marcotullio, A. Wallace Hayes, G.R. DiMarco**  
15 **and John Viren are copied, correct?**

16 A: Yes.

17 **Q: The re: line on this memo is "TI-ETS Advisory Group Meeting–May 26, 1987",**  
18 **correct?**

19 A: Yes.

20 **Q: And this memo describes a meeting of the TI-ETS Advisory Group at the offices**  
21 **of Covington and Burling, correct?**

22 A: Yes.

23 **Q: And it indicates, does it not, that the attendees were Dr. Tom Osdene, Dr. Robert**



1 **Pages of Philip Morris, Dr. Alex Spears of Lorillard, Dr. Gil Esterle of Brown and**  
2 **Williamson, Mr. John Rupp of Covington and Burling, Mr. Peter Sparber, Jr. and Mr. Bill**  
3 **Kloepfer of the Tobacco Institute, Mr. Bill David, Dr. Jim Cholakis, and Mr. Don Hoel of**  
4 **Shook Hardy and Bacon, and Dr. Charles R. Green, Dr. Charles Nystrom, and yourself**  
5 **from R.J. Reynolds?**

6 A: Yes.

7 *Yes, except is was Bill Davis, not Bill David.*

8 **Q: Under the heading "ETS Research Funding Organization" the memo states**  
9 **"The proposed name for the ETS research funding organization recommended by Ms.**  
10 **Ward's subcommittee is The Center for Indoor Air Research (CIAR) in order to avoid**  
11 **confusion with the name of The Tobacco Institute", does it not?**

12 A: Yes.

13 **Q: Now turning your attention to U.S. Exhibit 20,756 (bates range 50630 0804 to**  
14 **0815), this is a draft version of this same memo, is it not?**

15 A: It is.

16 **Q: It would not be seen as a good thing for the new organization to be confused**  
17 **with the Tobacco Institute, correct?**

18 A: Correct.

19 *Correct, since the Tobacco Institute was a trade organization that lobbied and did public*  
20 *relations for the industry and CIAR was an organization designed to fund scientific research.*

21 **Q: And in this version the memo indicates that the proposed name was recommended**  
22 **"in order to dissociate it and avoid confusion with the Tobacco Institute", does it not?**

23 A: It does.

1 *It does, although there are handwritten edits.*

2 **Q: And this is your handwriting on this document, providing edits, is it not?**

3 A: Yes it is.

4 *No.*

5 **Q: So you changed the language from "dissociate" to "avoid confusion", correct?**

6 A: Yes.

7 *No.*

8 **Q: Turning your attention to U.S. Exhibit 37,464 (bates range 202355 4658 to 4660), is**  
9 **this a memo from William Adams and Mary Masi to Daniel Milway, John Rupp, and Peter**  
10 **Sparber?**

11 A: Yes.

12 **Q: Does the first page of this memo, dated September 4, 1987, state "The Center for**  
13 **Indoor Air Research will be a subset of the Tobacco Institute, Inc. It will not be a separate**  
14 **corporation"?**

15 A: Yes.

16 *Yes it says that, but that is not what happened.*

17 **Q: Does the first page also say: "Invoices will be paid using a check which will display**  
18 **Center for Indoor Air Research (see attached example) as the holder of the account;**  
19 **however, funds to cover these checks will be drawn from the Institute's Riggs National**  
20 **Bank general checking account. Recipients will receive CIAR checks which have the**  
21 **appearance of being issued by an independent entity. From an accounting standpoint these**  
22 **checks will be manual Institute checks"?**

23 A: Yes.

1 *Yes it says that, but that is not what happened.*

2 **Q: Did the CIAR wait for the TI Executive Committee to approve its formation?**

3 A: No.

4 **Q: Turning back to U.S. Exhibit 51,554, the memo continues, "One company has**  
5 **expressed concern about the method of funding the CIAR although they approved the**  
6 **general concept, and the organization will not be formally approved until the TI Executive**  
7 **Committee meets in New York City on June 18th", correct?**

8 A: Yes.

9 **Q: And at the bottom of the page there is a sentence which reads "The group agreed**  
10 **that the position description for Executive Director should be submitted to the search firm,**  
11 **Brissenden, McFarland, and Wagnoer, Inc., as soon as the formation of the CIAR has been**  
12 **approved", correct?**

13 A: Yes.

14 **Q: Turning your attention to U.S. Exhibit 62,782 (bates range TIMN 0014390 to 4393),**  
15 **is this document minutes from a TI Executive Committee Meeting?**

16 A: Yes.

17 **Q: And these minutes are dated December 10, 1987, correct?**

18 A: Correct.

19 **Q: And these minutes reflect that the meeting "afforded an opportunity for the**  
20 **presentation of a proposal for the formal organization of a research organization to date**  
21 **with issues related to indoor air quality", correct?**

22 A: Yes.

23 *Yes, they state that.*

1    **Q:     Was the proposal referred to here the CIAR?**

2    A:     Yes.

3    **Q:     Turning your attention to U.S. Exhibit 21,251 (bates range TI1041 1343 to 1350), is**  
4    **this a memo from Peter Sparber to Samuel Chilcote dated June 15, 1987?**

5    A:     Yes.

6    *Yes, it is a memo addressed to Mr. Chilcote and William Kloepper, Jr.*

7    **Q:     Peter Sparber was Vice President for Public Relations for the Tobacco Institute,**  
8    **correct?**

9    A:     Yes.

10   *Mr. Sparber worked at The Tobacco Institute, but I don't recall his title.*

11   **Q:     And Samuel Chilcote was President of the Tobacco Institute, correct?**

12   A:     Yes.

13   **Q:     In this memo, Mr. Sparber passes along a budget for CIAR, as well as a position**  
14   **description for Executive Director, as well as a letter of agreement from Covington &**  
15   **Burling, does he not?**

16   A:     Yes.

17   *Yes. The memo recites that it does, but the attachments are not part of the exhibit.*

18   **Q:     Do these three documents (U.S. Exhibits 51,554 62,782, and 21,251), indicate that**  
19   **the CIAR was subject to approval by the TI Executive Committee?**

20   A:     Yes.

21   *I am not sure. The chief executives of R.J. Reynolds, Lorillard and Philip Morris approved the*  
22   *formation of CIAR. They, along with others, made up TI's Executive Committee. I am not sure*  
23   *of the capacity in which they were acting when they approved the formation of CIAR.*

1 **Q: Is it your testimony that the TI Executive Committee was an Executive Committee**  
2 **that met at the Tobacco Institute but was not the Executive Committee of the Tobacco**  
3 **Institute?**

4 A: Yes.

5 *I said that in my deposition, but, on reflection, I am not sure of that.*

6 **Q: It is also your testimony, is it not, that the TI-ETS Advisory Group was not a part of**  
7 **TI but was named that because it met at the TI building?**

8 A: Yes.

9 *Yes, that is my understanding.*

10 **Q: Can you describe who made up the TI Executive Committee that is mentioned in**  
11 **this document?**

12 A: It was comprised of the chief executives of all the tobacco companies.

13 *I believe it was composed of the chief executives of the member companies of The Tobacco*  
14 *Institute.*

15 **Q: So it was not the executives of the Tobacco Institute?**

16 A: Correct.

17 *That is my understanding.*

18 **Q: Who made up the TI Committee of Counsel?**

19 A: The general counsel of the member companies of the Tobacco Institute.

20 *I think it was the general counsel of the member companies of The Tobacco Institute, but I am*  
21 *not sure.*

22 **Q: And this TI Committee of Counsel was not otherwise a part of the Tobacco**  
23 **Institute?**

1 A: Correct.

2 *I didn't think so, but I am really not sure.*

3 **Q: Turning your attention to U.S. Exhibit 30,105 (bates range 51554 1814 to 1815), this**  
4 **is a memo you wrote to Mr. Juchatz on November 11, 1987, correct?**

5 A: Yes.

6 **Q: And Mr. Jucatz was one of your supervisors, correct?**

7 A: Yes.

8 **Q: In this memo describing your third quarter activities you state "Final decisions by**  
9 **upper management of the affected companies regarding the administrative structure of the**  
10 **CIAR are expected to be made in December", correct?**

11 A: Yes.

12 **Q: In this memo you are reporting what is going on with respect to the formation of**  
13 **CIAR, correct?**

14 A: Yes.

15 *Yes, at least certain aspects.*

16 **Q: And you describe CIAR as a "de facto" operation, correct?**

17 A: Yes.

18 *No. I described it as "in de facto operation."*

19 **Q: Did you have any involvement in the interviews of candidates for the position of**  
20 **Executive Director?**

21 A: Yes.

22 **Q: Do you recall recruiting any companies other than the three charter members,**  
23 **R.J. Reynolds, Philip Morris and Lorillard to participate in the CIAR?**

1 A: No.

2 *I do not recall recruiting potential members, but I did have some involvement in the recruiting*  
3 *process.*

4 **Q: Turning your attention to U.S. Exhibit 51,287 (bates range 50978 4343 to 4344), do**  
5 **you see that this document is an "ETS Division Weekly Highlights"?**

6 A: Yes.

7 **Q: And on the second page of this document there is a section entitled "CIAR**  
8 **Recruitment," correct?**

9 A: Yes.

10 **Q: This document says does it not: "In an effort to recruit additional sponsors for**  
11 **the Center for Indoor Air Research, CIAR, Dr. C.R. Green and Ms. M.E. Ward have**  
12 **been gathering a list of top management officers at other U.S. companies who might be**  
13 **interested in indoor air quality. It is anticipated that each of these individuals would be**  
14 **contacted concerning CIAR membership"?**

15 A: Correct.

16 **Q: Does this document indicate that you were indeed involved in recruiting**  
17 **new members to the CIAR?**

18 A: Yes.

19 *It indicates that I was involved in some aspects of the recruiting process.*

20 **Q: Did the non-tobacco company members of CIAR have any influence over who sat on**  
21 **the CIAR Scientific Advisory Board?**

22 A: They could only make suggestions.

23 *They could only make suggestions, just as the tobacco companies could only make suggestions.*

1 **Q: Is it true that Mr. Eisenberg ultimately made those decisions?**

2 A: Yes.

3 *It is my belief that Dr. Eisenberg chose his own SAB.*

4 **Q: Do you recall what the threshold amount of money was in order to sit on the board**  
5 **of directors?**

6 A: One hundred thousand dollars.

7 *I believe it was one hundred thousand dollars.*

8 **Q: You attended the CIAR board meetings for while and then you stopped doing so,**  
9 **correct?**

10 A: Yes.

11 *Yes, if you mean CIAR Board of Directors meetings, but I did not attend CIAR Scientific*  
12 *Advisory Board meetings.*

13 **Q: Did you continue attending annual meetings?**

14 A: Yes.

15 **Q: Did Mr. Rupp attend the CIAR board meetings with regularity?**

16 A: Yes.

17 *I believe he attended the CIAR Board of Director meetings until he relocated to Paris.*

18 **Q: Can you name any other attorneys who attended the CIAR board meetings?**

19 A: No.

20 *I believe Clausen Ely attended as counsel to the CIAR after Mr. Rupp relocated to Paris.*

21 **Q: The non-tobacco company members sent scientists to sit on the board of directors,**  
22 **correct?**

23 A: Correct.



1 *I believe all the directors were scientists.*

2 **Q: Turning to the operation of CIAR, did CIAR make requests for proposals?**

3 A: Yes.

4 **Q: Did those requests explain from where the funding for the proposed research would**  
5 **come?**

6 A: Yes.

7 **Q: And the requests invited research proposals to be sent to the CIAR?**

8 A: Yes.

9 **Q: And Mr. Eisenberg would divide up the research proposals among the members of**  
10 **the Science Advisory Board as well as outside reviewers?**

11 A: Yes.

12 *Yes, that is my understanding.*

13 **Q: And the reviews of the projects submitted by the outside reviewers were then**  
14 **discussed in a meeting with the Science Advisory Board, correct?**

15 A: Yes.

16 *Yes, that is my understanding.*

17 **Q: How many Science Advisory Board members would read each research proposal?**

18 A: About nine.

19 *I believe it was about three.*

20 **Q: Following the Science Advisory Board meeting, the members would make**  
21 **recommendations to the board of directors, correct?**

22 A: Yes.

23 *Yes, the SAB members' recommendations were transmitted to the Board of Directors by Dr.*

1 *Eisenberg.*

2 **Q: And that recommendation would be worthy of funding or not worthy of**  
3 **funding, correct?**

4 A: Yes.

5 *Yes, that is my understanding.*

6 **Q: The Science Advisory Board was not concerned with a budget for the research,**  
7 **correct?**

8 A: Correct.

9 *Correct, that is my understanding.*

10 **Q: And the CIAR board of directors had the final say on whether a project was funded,**  
11 **correct?**

12 A: Correct.

13 **Q: There was another way that projects got funded through CIAR, correct?**

14 A: Yes.

15 **Q: And this was called applied studies, correct?**

16 A: Yes.

17 **Q: Applied studies would result from someone at CIAR identifying a specific topic or**  
18 **study and looking for a researcher who would be willing to undertake the project, correct?**

19 A: Yes.

20 *Yes, members of the Board of Directors and perhaps others suggested applied studies.*

21 **Q: The applied studies would be managed by CIAR, correct?**

22 A: Yes.

23 **Q: Did Mr. Rupp ever suggest a topic for research by CIAR?**

1 A: Yes.

2 *Yes, I believe he did.*

3 **Q: When you helped to create CIAR, was it your goal to make the research**  
4 **independent of the tobacco industry?**

5 A: Yes.

6 *Yes, it was my goal that the research be conducted independently with absolute freedom to*  
7 *publish the research results and take the research wherever it led without interference.*

8 **Q: You wanted the research to be absolutely independent with freedom to publish**  
9 **research without interference?**

10 A: Yes.

11 **Q: And you believed the oversight by Dr. Eisenberg and his staff was necessary to**  
12 **ensure that if the researchers encountered difficulties they would have support?**

13 A: Yes.

14 *Yes, and to make sure the work got done.*

15 **Q: Turning your attention to U.S. Exhibit 50,974 (bates range 8767 5277 to 5292), does**  
16 **this memo dated July 15, 1988 discuss the "Industry Interface Meeting on ETS" that is**  
17 **referenced here?**

18 A: Yes.

19 *Yes, although this exhibit has a bates number that differs from the one you describe.*

20 **Q: And you were present, correct?**

21 A: Yes.

22 **Q: And do the last two pages reflect the participants at this meeting?**

23 A: Yes.

1 **Q:** That list indicates that there were representatives from Verband der  
2 Cigarettenindustrie, BAT, Reemtsma GmbH, Philip Morris USA, Gallaher Limited,  
3 Rothman's International Services Limited, Shook Hard & Bacon, Imperial Tobacco  
4 Limited, Rothman's UK, R.J. Reynolds, Imperial Tobacco Company, Japan Tobacco  
5 Incorporated, BAT Cigaretten-Fabriken GmbH, Austria Tabakwerke, Covington &  
6 Burling, Tobacco Institute, Brown & Williamson, Lorillard, Tobacco Advisory Counsel,  
7 Philip Morris International, and TAC, correct?

8 **A:** Yes.

9 *Yes, but it is "Shook, Hardy & Bacon".*

10 **Q:** Does this memo indicate that Don Hoel chaired this meeting?

11 **A:** Yes.

12 **Q:** Does this memo indicate that Mr. Rupp believed "the greatest threat to public  
13 smoking is not legislation, but rather social attitude. Public attitudes toward smoking are  
14 deteriorating because of concerns about ETS that were raised by the National Academy of  
15 Sciences' and the Surgeon General's reports" and "that Center for Indoor Air Research  
16 (CIAR) and Tobacco Institute (TI) programs may make some headway on this issue,  
17 however"?

18 **A:** Yes.

19 *Yes, that is what the memo states.*

20 **Q:** Do those statements by Mr. Rupp indicate that the CIAR was serving in a public  
21 relations role to affect social attitude towards smoking?

22 **A:** Yes.

23 *Not as I read this document, and not as I understand the role of CIAR.*

1 **Q: This memo details, does it not, a ten item list of strategies to be employed by the**  
2 **Tobacco Institute as "'holding actions' until science adequately counters the results of the**  
3 **1986 Surgeon General's Report"?**

4 **A: It does.**

5 **Q: And the stated objectives of this strategy were "(1) to prevent further bans on**  
6 **cigarette smoking and (2) to change adverse public attitudes toward smoking", were they**  
7 **not?**

8 **A: They were.**

9 **Q: On page 5 of this memo under the title "Summary", it states that Don Hoel noted**  
10 **"that anti-smoking activities are occurring in all of the represented areas. These activities**  
11 **are not only generated locally, but also by international organizations such as the World**  
12 **Health Organization, which has publicly stated that a causal link between ETS and human**  
13 **disease has been conclusively established", correct?**

14 **A: Yes.**

15 **Q: And at this meeting, Dr. Osdene discussed CIAR, did he not?**

16 **A: Yes he did.**

17 *Yes he did according to the memo.*

18 **Q: He said that the CIAR was a group that would support new research as well as**  
19 **oversee ongoing research that was once the responsibility of the ETS Advisory Group,**  
20 **correct?**

21 **A: Yes.**

22 *Yes, according to the memo.*

23 **Q: Dr. Osdene is quoted in this memo as saying "CIAR's independence will be**

1 maintained by distancing itself from the Tobacco Institute by encouraging participation by  
2 persons outside the industry", correct?

3 A: Yes.

4 *Dr. Osdene is quoted as saying: "CIAR's independence will be maintained by distancing it from*  
5 *the Tobacco Institute and by encouraging participation by persons outside the industry."*

6 **Q: So it was a goal for the CIAR to be independent from the Tobacco Institute?**

7 A: Yes.

8 **Q: Did you believe the confluence of CIAR and Tobacco Institute would affect the**  
9 **integrity of the CIAR?**

10 A: Yes.

11 *I am not sure what the "confluence of CIAR and Tobacco Institute" means, but I thought their*  
12 *roles were completely separate in purpose and function and that the the credibility and thus the*  
13 *perceived integrity of CIAR would be negatively influenced if it were thought to be a part of The*  
14 *Tobacco Institute.*

15 **Q: And the credibility of the CIAR would also be affected if the two organizations were**  
16 **not viewed as being independent from one another?**

17 A: Yes.

18 **Q: Did you believe the public perception of the validity of the research would be**  
19 **affected if the two organizations were not seen as independent?**

20 A: Yes.

21 **Q: Does U.S. Exhibit 51,554, about which you have already testified state that: "Dr.**  
22 **Tom Osdene (PM) indicated that his Company's management suggests that the permanent**  
23 **Executive Director should not have recent ties directly with a tobacco company because an**

1 ex-tobacco company employee might not lend the desired credibility to CIAR. Mary  
2 Ward's subcommittee will meet with search firm representatives to discuss some of these  
3 issues"?

4 A: Yes.

5 Q: The independence you wanted for CIAR was not accomplished, was it?

6 A: No, it was not.

7 *Yes, it was.*

8 Q: Once a CIAR-funded study was completed, who held the power to publish the  
9 results?

10 A: The researcher.

11 Q: Did the CIAR ever sponsor projects that would look at preliminary data before  
12 deciding whether to go forward with the entire project?

13 A: Yes.

14 *Yes, I recall one instance where this occurred.*

15 Q: Directing your attention to U.S. Exhibit 56,327 (bates range 8778 0455 to 0463), is  
16 the title of this document "TI-ETS Advisory Group Recommendation on ETS Research  
17 Funding"?

18 A: Yes.

19 Q: And does this document discuss ETS and provide the recommendation of the TI-  
20 ETS Advisory Group on future ETS Research Funding?

21 A: Yes.

22 *Yes, but I believe it is a draft of the subcommittee's recommendation to the TI-ETS Advisory*  
23 *Group.*

1 **Q:** And looking now at U.S. Exhibit 75,280 (bates number 50823 0855), is this a draft  
2 first page of that same recommendation with handwritten notes on the top right corner?

3 A: Yes.

4 **Q:** That is your handwriting, correct?

5 A: Yes.

6 **Q:** Your note says that the draft is a working document, but that WWJ felt the  
7 proposal was favorably received by the Committee of Counsel, correct?

8 A: Yes.

9 **Q:** And WWJ is Wayne Jucatz, general counsel of R.J. Reynolds, correct?

10 A: Correct.

11 *Correct, WWJ is Wayne Juchatz, general counsel of R.J. Reynolds.*

12 **Q:** Now turning your attention to U.S. Exhibit 30,103 (bates range 51554 1696 to 1701),  
13 is the MEW on the signature line referring to you?

14 A: Yes.

15 **Q:** And is the title of this document "ETS Coordinating Committee, September 15,  
16 1989"?

17 A: Yes.

18 **Q:** And you are the author of this document, correct?

19 A: Yes.

20 **Q:** John Lyons is a Tobacco Institute publicist, is he not?

21 A: Yes.

22 *Yes, he worked for The Tobacco Institute, but I do not recall his title.*

23 **Q:** And Brennan Dawson is a Tobacco Institute spokesperson, correct?



1 A: Correct.

2 *She was.*

3 **Q: Clausen Ely and John Rupp are Covington and Burling lawyers, correct?**

4 A: Yes.

5 **Q: Tom Borelli is a scientist from Philip Morris, correct?**

6 A: Yes.

7 **Q: And this document indicates, does it not, that a group from TI, Philip Morris and**  
8 **R.J. Reynolds met to discuss ETS issues?**

9 A: Yes it does.

10 **Q: The first section of this document discusses the Senate vote on the total smoking ban**  
11 **on domestic flights, correct?**

12 A: Yes.

13 **Q: It also discusses the release of the EPA's "Indoor Air Facts No. 5" which you**  
14 **indicate is "just as bad as the earlier draft we had seen and commented on",**  
15 **correct?**

16 A: Yes.

17 **Q: The document also discusses the fact that OSHA had recently stated "the available**  
18 **data demonstrate a causal relationship between the exposure to passive smoke in the home**  
19 **and lung cancer" and that ETS "may present a significant risk of excess cancer deaths to**  
20 **those exposed"**

21 A: Yes.

22 **Q: And the document also mentions that the California Air Resources Board had**  
23 **requested information to assist in a determination as to whether ETS should be listed as an**

1 **air toxin, correct?**

2 A: Yes.

3 *Yes, they had published a notice calling for information.*

4 **Q: On page two of this document, under a subject heading "Briefing-New ETS**  
5 **Strategies" the document says "Brennan Dawson and John Lyons of TI presented**  
6 **a briefing to the committee on TI's new ETS strategies", correct?**

7 A: Yes.

8 **Q: And this document, which you wrote refers to "the spate of recent bad news for**  
9 **the industry on this issue" does it not?**

10 A: It does.

11 **Q: And that was a reference to the EPA ETS report, the Senate vote on banning**  
12 **smoking on aircraft, the OSHA statement on ETS, and the California Air Resources Board**  
13 **inquiry into whether ETS was an air toxin, correct?**

14 A: Yes.

15 *I am not sure, but several of these were probably among the events to which I was referring.*

16 **Q: And the document goes on to list ETS strategies, indicating that TI concluded that "1)**  
17 **they should try to make the media more skeptical; 2) they should keep hammering away on the**  
18 **inconclusiveness of the studies; and 3) they should address the issue of scientific integrity. Some**  
19 **of these strategies involve the tactics of doing more of the same thing TI has been doing in the**  
20 **recent past." They in this section refers to TI, correct?**

21 A: Yes.

22 **Q: Does this document also indicate that the focus on scientific integrity is "really part**  
23 **of the old focus of putting ETS in the context of indoor air quality"?**

1 A: Yes.

2 *Yes. The document says this.*

3 **Q: Does this document indicate that there was a strategy in place to increase**  
4 **public awareness as to the fact that the ETS science was inconclusive?**

5 A: Yes.

6 **Q: And it is your testimony, is it not, that the tobacco industry was interested in getting**  
7 **out the message that there was no proof that exposure to ETS created a risk of chronic**  
8 **disease?**

9 A: Yes.

10 *In my view, the message was that the studies, and in particular the spousal studies, did not*  
11 *demonstrate that exposure to ETS was a risk for chronic disease. In short, the message was that*  
12 *the science was inconclusive and, while the science certainly doesn't exonerate ETS, the science*  
13 *doesn't demonstrate that it is a risk factor for chronic disease.*

14 **Q: Do any of the strategies in this document relate to getting more conclusive answers**  
15 **about the science?**

16 A: No.

17 *Not in this document.*

18 **Q: Do any of the strategies in this document relate to warning the public about the**  
19 **risks posed by ETS?**

20 A: No.

21 **Q: This document indicates, does it not, that the focus of R.J. Reynolds and the tobacco**  
22 **industry representatives who worked with Reynolds on this matter, was to portray the ETS**  
23 **issue as an "open question"?**

1 A: Yes.

2 *No.*

3 **Q: And do you recall any other meetings such as this during this time frame?**

4 A: Yes.

5 *Yes, I have a general recollection.*

6 **Q: Were those meetings in regards to the publication of the EPA report and**  
7 **the subsequent hearings?**

8 A: Yes.

9 *Yes, some of them were.*

10 **Q: You testified in your deposition, did you not that "the science is inconclusive.**  
11 **The science certainly doesn't exonerate ETS. The science doesn't demonstrate that it is a**  
12 **clear risk factor for chronic disease"?**

13 A: Yes.

14 **Q: And according to this document, the Tobacco Institute did not seek**  
15 **conclusive answers from science on the ETS issue?**

16 A: No.

17 *No, and I did not view that as The Tobacco Institute's role .*

18 **Q: But it was a strategy for the Tobacco Institute to make the public aware that**  
19 **the science was inconclusive?**

20 A: Yes.

21 **Q: Does this document indicate that another goal of TI was to "show that science is**  
22 **sometimes politically motivated"?**

23 A: Yes.

1 *Yes, the document states that.*

2 **Q: Does this document also say that "TI is also developing a white paper on how ETS is**  
3 **covered by the media, using the Judson Wells article and other examples. With the white**  
4 **paper in hand, the plan is to approach a big-time journalistic figure to write an article for**  
5 **publication in a journalism magazine. The white paper could continue to be shopped**  
6 **around, in an attempt to get some articles in the lay media. It could also be used in**  
7 **working with the media on other ETS stories, to encourage journalists to give us a fair**  
8 **shake"?**

9 A: Yes.

10 *Yes the document states this.*

11 **Q: Does this document indicate that R.J. Reynolds hoped to have a journalist write a**  
12 **piece on ETS using information from R.J. Reynolds?**

13 A: Yes.

14 *I did not see that in the document.*

15 **Q: Do you recall Mr. Rupp organizing the McGill Conference?**

16 A: Yes.

17 **Q: The McGill conference was designed to create a monograph on ETS which would**  
18 **provide the industry's position, and neutralize the NAS Report and the 1986 Surgeon**  
19 **Generals Report, correct?**

20 A: Yes.

21 *It was contemplated that the McGill conference would result in a monograph summarizing the*  
22 *proceedings. I did not believe the McGill conference was designed to neutralize the NAS report*  
23 *or the 1986 Surgeon General's report.*

1 **Q: And Mr. Rupp planned the McGill conference at the behest of Philip Morris**  
2 **International, correct?**

3 A: Yes.

4 *Yes, that is my understanding.*

5 **Q: And the McGill conference was by invitation only, correct?**

6 A: Yes.

7 *Yes, that was my understanding.*

8 **Q: Were the scientists listed on this document, (Brigham, McGrath, Hsi, Dunne, Duffy**  
9 **and Acubal) ETS scientists as of 1989?**

10 A: No.

11 *I am not aware of any scientists who identified themselves as ETS scientists at that time. I do not*  
12 *believe that the scientists you reference - - Brigham, McGrath, Hsi, Dunne, Duffy and Acubal - -*  
13 *had published on ETS issues, but I believe they had relevant experience and expertise.*

14 **Q: Were the scientists in the process of becoming more educated in ETS issues?**

15 A: Yes.

16 **Q: At this time were there other scientists who had researched and published on ETS?**

17 A: Yes.

18 **Q: But the scientists listed here were not among them?**

19 A: Correct.

20 *I'm not aware that any of the six scientists you initially asked me about had researched or*  
21 *published on ETS issues, but some of the other scientists mentioned earlier in the memo had, I*  
22 *believe, researched and published on ETS issues.*

23 **Q: And yet, these scientists are referred to as the "Academic First Team"?**

1 A: Yes.

2 *Yes, these scientists and others mentioned in the memo.*

3 **Q: And it is your testimony that the industry was not training these scientists at the**  
4 **McGill Conference?**

5 A: Yes.

6 **Q: But you wrote in this document, did you not, that "John Lyons pointed out that it**  
7 **was time we started doing something with these people besides training them and talking to**  
8 **them"?**

9 A: Yes.

10 **Q: Was a monograph planned to report the results of the McGill conference?**

11 A: Yes.

12 **Q: Turning your attention to U.S. Exhibit 28,169 (bates range 30115 0107 to 0114),**  
13 **is this a memo entitled "Asia ETS Project: Status Report"?**

14 A: Yes.

15 **Q: And is it dated September 27, 1989?**

16 A: Yes.

17 **Q: Are the names at the end of this memo John Rupp and David Billings?**

18 A: Yes.

19 **Q: On page 1 of this memo under the heading "ETS Symposium at McGill University"**  
20 **does it say "The purpose of the symposium is to produce an authoritative monograph that**  
21 **will serve to neutralize two reports that are scheduled to be released near the end of this**  
22 **year—an ETS risk assessment that is being prepared by the U.S. Environmental Protection**  
23 **Agency and a detailed assessment of ETS health effects that is being prepared in Canada**

1 under Professor Spitzer's supervision"?

2 A: Yes.

3 Q: And you foresaw the criticism, did you not, that would be leveled at the industry for  
4 holding a conference by invitation only?

5 A: Yes.

6 Q: And in the memo marked as U.S. Exhibit 30,103 you said, did you not that "Rupp's  
7 view is that the American Lung Association, Surgeon General, etc. are going to scream  
8 when the book comes out, but we'll still have the book. We scream when they come out  
9 with stuff, but they still have their books"?

10 A: Yes.

11 Q: Looking at this memo, it does not appear that the tobacco industry had any concern  
12 about the health effects its products have on any individual, does it?

13 A: No.

14 *That is not a fair interpretation of U.S. Exhibit 30,103.*

15 Q: This memo makes clear, doesn't it, that the industry was focused on expressing a  
16 view regarding ETS consistent with denial of potential risks?

17 A: Yes.

18 *No. I don't agree with that.*

19 Q: As of 1989, you cannot argue that there was no evidence linking ETS to disease, can  
20 you?

21 A: No.

22 *No, and I did not make that argument.*

23 Q: Turning your attention to U.S. Exhibit 61,650 (bates range 70090 0953 to 0954), this



1 is an e-mail from you to Ms. Jabbour, dated October 7, 1995, correct?

2 A: Yes.

3 Q: In it you state: "a few weeks ago, I had a phone conversation with Ernie Pebbles.

4 B&W has recently joined CIAR", correct?

5 A: Yes.

6 Q: Brown & Williamson was not a founding member of CIAR, was it?

7 A: It was not.

8 Q: This document indicates that you were advocating for yourself to attend a meeting

9 in Hong Kong, does it not?

10 A: Yes it does.

11 Q: And in the document, it says "I realize that Bruce has too many other

12 responsibilities to be the same kind of ETS expert I am (she said modestly)", correct?

13 A: Yes.

14 Q: And Bruce was Bruce Ventura, a lawyer with R.J. Reynolds Tobacco International,

15 correct?

16 A: Yes.

17 Q: When you called yourself an ETS expert, what specifically were you referring to?

18 A: I was referring to knowing the law, policy, institutional knowledge and also knowing

19 who to ask about the science.

20 Q: On the first page of the e-mail you say "I believe Rupp will be there" and "You

21 may know, and I'm sure Chuck does, that RJRTI has been trying to rein John in, especially

22 in Asia. Some of the Rupp-planned studies have not turned out so well", correct?

23 A: Yes.

1    **Q:**     Is the Chuck you refer to here Chuck Blixt, general counsel for R.J. Reynolds?

2    A:     Yes.

3    **Q:**     The e-mail continues "RJRTI and PMI have come to realize that these projects—that  
4    the projects come out better when they are scientist-planned and when the scientists choose  
5    the investigators on meritorious grounds, not when John chooses his scientist friends with  
6    the aim of trying to teach them something", correct?

7    A:     Yes.

8    **Q:**     Did you mean to indicate that John Rupp had selected a topic and researcher  
9    himself?

10   A:     Yes.

11   **Q:**     Were these Rupp-planned studies CIAR-funded projects?

12   A:     Most of them were not.

13   *I'm pretty sure most of them were not.*

14   **Q:**     Some of them were though, correct?

15   A:     Yes.

16   *Yes, I believe so.*

17   **Q:**     These Rupp-planned studies were being proposed on behalf of Mr. Rupp's  
18   international clients, correct?

19   A:     Yes.

20   *I believe they were being proposed on behalf of Philip Morris International. Mr. Rupp may have*  
21   *had other international clients as well, but I am not sure.*

22   **Q:**     And these international clients were international tobacco companies, correct?

23   A:     Correct.

1 **Q: The studies that Rupp proposed which were not funded by CIAR were funded by**  
2 **Rupp's clients, correct?**

3 A: Correct.

4 *If they went forward, I believe they were funded by one or more of Mr. Rupp's clients, as well as*  
5 *other international tobacco companies that may not have been clients of Mr. Rupp.*

6 **Q: In this e-mail you also state: "John has shown an amazing insensitivity in the way he**  
7 **continually proposes using CIAR as a money conduit for things that are purely and simply**  
8 **Rupp projects that are not properly funded by the Center", correct?**

9 A: Yes.

10 **Q: This indicates that Mr. Rupp approached the CIAR for funding for his projects,**  
11 **does it not?**

12 A: It does.

13 **Q: Would the Rupp-planned studies take the form of requests for proposal or applied**  
14 **projects?**

15 A: They would be applied projects.

16 **Q: You testified that after the inception of CIAR you were not attending the CIAR**  
17 **board meetings with regularity, correct?**

18 A: Yes.

19 **Q: How did you learn about Mr. Rupp's activities in such detail?**

20 A: From Dr. Green.

21 **Q: And is it your testimony that the scientists believed that Mr. Rupp was invading the**  
22 **province of the board of directors who had been set up to evaluate projects as scientists?**

23 A: Yes.

1 *Dr. Green certainly expressed that belief.*

2 **Q: Is it your testimony that Dr. Green objected to Mr. Rupp's activities because they**  
3 **violated traditional scientific process?**

4 A: Yes.

5 *Not exactly. Dr. Green believed that scientists should propose scientific projects and for that*  
6 *reason he objected.*

7 **Q: And he also objected to these activities because money was being spent by the**  
8 **tobacco industry to fund studies that were being conducted in less competent fashion than**  
9 **was possible?**

10 A: Yes.

11 **Q: When you said that John was choosing scientist friends with the aim of trying**  
12 **to teach them something, did you mean that he was trying to create ETS**  
13 **spokespersons?**

14 A: Yes.

15 **Q: And is it your testimony that the people Mr. Rupp was selecting to conduct**  
16 **these studies may have been qualified to do the work but were not the *best* qualified?**

17 A: Yes.

18 **Q: And this document, U.S. Exhibit 61,650 indicates, does it not, that you wished**  
19 **to speak to Mr. Rupp face-to-face about his plans for an Asian exposure study?**

20 A: Yes it does.

21 **Q: And your scientists didn't believe that the protocol for that study was sound, or**  
22 **that the researchers were as capable as they should be, correct?**

23 A: Yes.

1 *My recollection is that Dr. Green did not believe that the protocol was as good as it could be,*  
2 *although he did not say it was not sound, and, further, that he thought that the researchers,*  
3 *although qualified, were not as capable as other researchers.*

4 **Q: Turning your attention to U.S. Exhibit 52,922 (bates range 52413 2383 to 2386),**  
5 **this is a memo dated August 16, 1989, including an item titled "Asian ETS Program",**  
6 **correct?**

7 A: Yes.

8 **Q: And this memo is from Dr. Green to Dr. A.W. Hayes, and copies you, Guy**  
9 **Oldaker, David Eaker, Mike Ogden, Richard Marcotullio, Lutz Mueller, Herb Osmon,**  
10 **John Reynolds, Gary Burger, Bob Suber, and Sam Simmons, correct?**

11 A: Yes.

12 **Q: And the subject line is "ETS Division Weekly Highlights", correct?**

13 A: Yes.

14 **Q: This memo states that: "R.J. Reynolds, British American Tobacco (BAT), and**  
15 **Philip Morris have initiated a cooperative program in Asia to address ETS issues" and says**  
16 **that Mr. Rupp is coordinating the program, does it not?**

17 A: It does.

18 **Q: The objective stated is to "identify and train Asian scientists to articulate ETS issues**  
19 **in Asia", correct?**

20 A: Yes.

21 **Q: This memo indicates that Mr. Rupp was involved in cooperative Asian studies**  
22 **as early as 1989, correct?**

23 A: Yes.

1    **Q:**     Were these studies in Asia CIAR funded studies?

2    A:     I don't know.

3    **Q:**     In 1989 the industry was working with Mr. Rupp cooperatively, correct?

4    A:     Yes.

5    *I am not sure what this question means.*

6    **Q:**     But in 1995, the industry was seeking to rein him in, correct?

7    A:     Yes.

8    *I believe that at least some within the industry were seeking to do so.*

9    **Q:**     Turning your attention to U.S. Exhibit 61,907 (bates range 70072 0113 to 0114), did

10   you attend the Far East CIAR board meeting that is referenced in this e-mail?

11   A:     Yes.

12   **Q:**     This e-mail is from Charles Green to Don deBethizy, Betsy Annese, Timothy Harris,

13   and cc's you, Bruce Ventura, and Marion Krzemien, correct?

14   A:     Yes.

15   **Q:**     And this e-mail is dated November 13, 1995, which is about a month after the memo

16   where you discussed the Rupp-planned studies, correct?

17   A:     Yes.

18   **Q:**     This e-mail says "The Far East CIAR Board meeting was "potentially a huge

19   success. There were two major outcomes: a research plan for action and the demise of the

20   Rupp scientific program", correct?

21   A:     Yes.

22   **Q:**     Does this mention of the Rupp scientific program refer to the same Rupp- planned

23   studies you referenced in the e-mail marked as U.S. Exhibit 61,650?

1 A: Yes.

2 *I believe that it does.*

3 **Q: Who was paying for the Rupp-planned studies before they were disbanded?**

4 A: A combination of several international companies.

5 **Q: Does this e-mail indicate that Philip Morris was paying for them?**

6 A: Yes.

7 *Yes, it indicates that some Philip Morris entity was paying for them at least in part.*

8 **Q: Does this e-mail also indicate that Japan Tobacco withdrew from the Rupp**  
9 **program?**

10 A: Yes.

11 **Q: Does this e-mail state that "Betsy, Bruce, and I are in agreement that RJR should do**  
12 **likewise"?**

13 A: Yes.

14 **Q: Does this e-mail suggest that R.J. Reynolds had been paying for the Rupp-planned**  
15 **studies?**

16 A: Yes.

17 *It suggests that R.J. Reynolds Tobacco International had been sharing in the costs of at least*  
18 *some of them.*

19 **Q: Did R.J. Reynolds know that its international counterpart, Tobacco International**  
20 **was paying for these Rupp-planned studies?**

21 A: Yes.

22 **Q: This e-mail also discusses a research plan for action, correct?**

23 A: Yes.

1    **Q:**     It states, does it not, that: "In an unprecedented move, Dr. Ikeda of JT formerly  
2    **announced that JT wanted to participate financially in the program?**

3    **A:**     Yes.

4    **Q:**     And JT is Japan Tobacco, correct?

5    **A:**     Yes.

6    **Q:**     The e-mail says "it's unclear how much they will contribute or whether JT will  
7    **formally join CIAR", right?**

8    **A:**     Yes.

9    **Q:**     Does this indicate that CIAR was going to fund and operate some Asian exposure  
10   **studies?**

11   **A:**     Yes.

12   **Q:**     Does this e-mail also state that "I am extremely pleased over the reception CIAR  
13   **received in Asia. We are at a stage where we can make a large impact on the second-hand**  
14   **smoke issue in that area. I hope that both our scientists and PR folks have the commitment**  
15   **to get something done"?**

16   **A:**     Yes.

17   **Q:**     And Charles Green, who sent this e-mail is a scientist, correct?

18   **A:**     Yes.

19   **Q:**     Did R.J. Reynolds ever participate in CIAR-funded studies?

20   **A:**     Yes.

21   **Q:**     Was one of those studies an applied study known as the Sixteen Cities Study?

22   **A:**     Yes.

23   **Q:**     Did the International Agency for Research on Cancer (IARC) release a report



1 regarding its study of lung cancer and ETS in 1998?

2 A: Yes.

3 *The IARC-funded investigators published the results of their ETS epidemiologic study in Journal*  
4 *of the National Cancer Institute* in October, 1998.

5 Q: Turning your attention to JD Exhibit 022086, is this the IARC report?

6 A: Yes.

7 Q: Have you ever heard of the International ETS Management Committee (IEMC)?

8 A: Yes.

9 Q: Turning your attention to U.S. Exhibit 45,192 (bates range 207874 2962 to 2963),  
10 does this document indicate that you served on a work group on the IEMC?

11 A: Yes.

12 Q: This was a joint effort between R.J. Reynolds and Philip Morris to prepare a  
13 preemptive response to the IARC Report, correct?

14 A: Yes.

15 *I did not think of it as "preemptive". We were preparing so that we could respond quickly. My*  
16 *recollection is that this was primarily a joint effort between R.J. Reynolds and Philip Morris,*  
17 *although this document and others refer to it as an effort fostered by the IEMC, which included*  
18 *representatives from other companies.*

19 Q: Who from R.J. Reynolds was involved in this working group?

20 A: Mr. Moskowitz and Mr. Steichen.

21 *Mr. Moskowitz, Mr. Steichen, and perhaps others.*

22 Q: And this working group was established to respond to the IARC Report with a  
23 variety of activities?

1 A: Yes.

2 *IEMC was planning a variety of activities.*

3 **Q: Mr. Winokur of Philip Morris led the efforts of the IEMC with respect to the IARC**  
4 **Report, correct?**

5 A: Yes.

6 *I never viewed this as being an IEMC activity. I recall that representatives from Philip Morris*  
7 *and R.J Reynolds were working on activities relating to the IARC report prior to its issuance in*  
8 *connection with a potential response in the United States. I believe that Mr. Winokur acted as*  
9 *chair of that effort.*

10 **Q: The IEMC did not have its own funding or budget, correct?**

11 A: Correct.

12 *I don't know.*

13 **Q: The members paid their own expenses in conjunction with the activities of the**  
14 **IEMC, correct?**

15 A: Yes.

16 *The members paid their own expenses in connection with the Philip Morris-R.J. Reynolds*  
17 *working group.*

18 **Q: The working group met at the Tobacco Documentation Centre (TDC), correct?**

19 A: Correct.

20 *I don't remember a meeting at the TDC in London. I remember these meetings taking place in*  
21 *the United States.*

22 **Q: The TDC is the successor organization to INFOTAB, correct?**

23 A: Correct.

1 *I think that may be true, but I do not know for certain.*

2 **Q: R.J. Reynolds was a founding member of INFOTAB and its predecessor, ICOSI,**  
3 **correct?**

4 A: Correct.

5 *I don't know.*

6 **Q: One of the activities of the IEMC, according to U.S. Exhibit 45,192 is to develop a**  
7 **message on ETS-related issues for use industry-wide, correct?**

8 A: Yes.

9 *Yes, with respect to the IARC report.*

10 **Q: This document states, does it not: "Identify opportunities and strategies for**  
11 **proactive communications in advance of IARC publication and develop the basis of an**  
12 **industry-coordinated crisis communication plan for the release of the study"?**

13 A: Yes.

14 **Q: Was the working group that was established related to the ETS message a**  
15 **subcategory of the group undertaking the response to the IARC study?**

16 A: Yes.

17 *I am not sure that it was all that precisely organized.*

18 **Q: The IARC study was published in the late 1990s, correct?**

19 A: Correct.

20 **Q: And the IARC study was a large study in terms of numbers and controls?**

21 A: Yes.

22 **Q: And the industry was aware that the results were likely to be newsworthy, correct?**

23 A: Yes.

1 **Q: Does this document indicate that the IARC report was anticipated to create a crisis**  
2 **for the tobacco industry?**

3 A: Yes.

4 *Not to me.*

5 **Q: Looking at U.S. Exhibit 88,480 (bates number 90000 6185), is this a document**  
6 **setting out the minutes of the IEMC Sub-group Meeting on July 25, 1995?**

7 A: Yes.

8 **Q: And according to this document, you attended this meeting, correct?**

9 A: Yes.

10 **Q: Number 1 on this document states: "The Subgroup prepared key messages on ETS**  
11 **for use by companies and NMAs in advance of and during IARC multicentre release",**  
12 **correct?**

13 A: Yes.

14 **Q: Are NMAs National Manufacturing Associations?**

15 A: Yes.

16 **Q: And is TI considered an NMA?**

17 A: Yes.

18 *TI was considered a NMA.*

19 **Q: Turning your attention to U.S. Exhibit 61,931, this is an e-mail chain including an e-**  
20 **mail dated December 17, 1996 from Seth Moskowitz to Tom Griscom and cc's you and**  
21 **David Fishel, correct?**

22 A: Yes.

23 **Q: And U.S. Exhibit 61,931 also includes Tom Griscom's e-mail response, correct?**

1 A: Yes.

2 **Q: And the e-mail from Mr. Moskowitz states "We are planning to develop a response**  
3 **plan so the domestic companies can all speak off the same script once IARC releases**  
4 **its study in Europe", correct?**

5 A: Yes.

6 **Q: Does this "response plan" refer to the group preparation you testified about earlier?**

7 A: Yes.

8 **Q: The Tobacco Institute was involved with this effort, correct?**

9 A: Yes.

10 *Up to this point, I am not sure The Tobacco Institute had been involved.*

11 **Q: Does this e-mail indicate that there was a goal to have the industry give a**  
12 **singular response to the IARC Report?**

13 A: Yes.

14 *I would not describe it this way, but we were discussing the coordination of a potential response.*

15 **Q: And this e-mail referring to the established goal of speaking from the same**  
16 **script was written before you got the results of the Report, correct?**

17 A: Yes.

18 *Yes, although we may have had some preliminary information at this time.*

19 **Q: If R.J. Reynolds did not have the results of the Report, how could it determine**  
20 **that it wanted to agree with the other domestic companies about what the Report said?**

21 A: We hoped that the other companies would agree with us.

22 **Q: It was discussed in U.S. Exhibit 61,931 that TI would be the responder for the**  
23 **media, working "off" common materials prepared jointly by Philip Morris, R.J. Reynolds,**

1 **Brown & Williamson and Lorillard, correct?**

2 A: Yes.

3 *That is what was proposed in this memo.*

4 **Q: It also was discussed, wasn't it, to "Beat IARC" to the punch with press conference**  
5 **or press release a day or two before IARC issued its own press release, correct?**

6 A: Yes.

7 **Q: One of the questions raised by in this e-mail Seth Moskowitz to Tom Griscom was as**  
8 **follows: "Conduct a half-day 'ETS Update' seminar for selected science journalists and**  
9 **other selected media representative (print and broadcast) talking mainly about the science,**  
10 **but also touching on OSHA, IARC, etc., during 1Q97 (with PM footing all, or most of the**  
11 **bill)?"**, correct?

12 A: Yes.

13 **Q: This was thought of as a way to get the tobacco company position out front, correct?**

14 A: Yes.

15 *No, this was thought of as a way to educate journalists so they could ask intelligent questions*  
16 *when the study was released.*

17 **Q: You have testified that R.J. Reynolds "conceived itself as being the leader in ability**  
18 **to analyze both ETS epidemiology as well as other studies", have you not?**

19 A: I have.

20 **Q: And prior to the release of the IARC Report, R.J. Reynolds, Philip Morris,**  
21 **Brown and Williamson, and Lorillard decided to put together a plan to respond to**  
22 **the Report, correct?**

23 A: Yes.

1    *Yes, we certainly discussed such a plan.*

2    **Q:     Turning your attention to U.S. Exhibit 39,737 (bates range 206334 3188 to 3189), are**  
3    **these minutes of an "IARC US Committee Team" conference call dated January 10, 1997?**

4    A:     Yes.

5    **Q:     This document states that "J. McCauley suggested everyone send ideas to him on**  
6    **the concept of doing proactive briefings", correct?**

7    A:     Yes.

8    **Q:     The next paragraph says "Group discussion on responsive strategy after report is**  
9    **released. S. Moskowitz suggests teams comprised of a communications person and a**  
10   **scientist. J. Helewicz proposes that the teams draw from two different companies to**  
11   **reinforce message that the team represents the industry as opposed to just one of the**  
12   **companies", correct?**

13   A:     Correct.

14   **Q:     This document indicates that the industry contemplated a coordinated response to**  
15   **the IARC Report, does it not?**

16   A:     It does.

17   **Q:     This document also states, does it not, that there was "discussion on TI's**  
18   **involvement. Suggestion that TI be used in a coordinating capacity for the reactive**  
19   **portion"?**

20   A:     It does.

21   **Q:     Turning your attention to U.S. Exhibit 30,252, is this a fax from Jack Macauley to**  
22   **you dated February 3, 1997?**

23   A:     Yes.

1 **Q: Does the fax attach a "Proposal for U.S. Response" which "incorporates everyone's**  
2 **ideas for an action plan"?**

3 A: Yes.

4 **Q: The proposal contemplates, does it not, briefings in anticipation of the release of the**  
5 **IARC Report, but that "the IARC Report would not be given as the primary reason for**  
6 **doing this"?**

7 A: It does.

8 **Q: And the proposal also indicates that "At a minimum, we should ensure (either**  
9 **through TI or on an individual company basis) that TI and company lobbyists around the**  
10 **country are aware of the IARC activities and are equipped with information and our**  
11 **holding statement on the report well in advance of its anticipated release, so that they can**  
12 **respond to any queries from legislators", correct?**

13 A: Yes.

14 **Q: Did the IARC concluded that ETS is a cause of lung cancer?**

15 A: Yes.

16 *I believe that IARC has reached such a conclusion. The IARC-funded study that is Joint Exhibit*  
17 *22,086 does not make such a conclusion.*

18 **Q: And the tobacco industry knew the report would so conclude before it was**  
19 **published, correct?**

20 A: Yes.

21 *Not that I recall.*

22 **Q: But the industry focused on statistics and pointed out that a statistically significant**  
23 **result was not demonstrated, correct?**



1 A: Yes.

2 *I am not sure what you are referring to, but I do not recall that there was a response to the*  
3 *publication of this study in the United States. The results were, however, largely statistically*  
4 *insignificant, notwithstanding the study's substantial size.*

5 **Q: When did the CIAR terminate?**

6 A: The MSA required CIAR to dissolve in 1998.

7 *The CIAR was dissolved after the MSA was signed, which was in late 1998.*

8 **Q: Do you understand that the existence of the CIAR is now banned under the terms of**  
9 **the MSA?**

10 A: Yes.

11 *I believe the MSA required the signatories to dissolve CIAR and that they did so.*

12 **Q: Turning your attention to U.S. Exhibit 22,164 (bates number 8620504), is this**  
13 **a letter from Mr. Stevens to Denise Keane of Philip Morris, cc'ing Chuck Blixt of R.J.**  
14 **Reynolds?**

15 A: Yes.

16 **Q: Does this letter say "Please call me later in the morning on Monday November 30,**  
17 **1998, so that we can discuss the status of the plan to reinstate CIAR?**

18 A: Yes.

19 **Q: Was Arthur Stevens at this time senior advisor to Lorillard?**

20 A: Yes.

21 **Q: And is Mr. Blixt the general counsel of R.J. Reynolds at this time?**

22 A: Yes.

23 **Q: Does this letter also indicate that R.J. Reynolds would be reaching conclusions on its**

1 position regarding this plan on November 30?

2 A: Yes.

3 Q: Turning your attention to U.S. Exhibit 61,863 (bates range 700320 6916 to  
4 6921), this is an e-mail dated June 14, 2000 from Dr. Ogden to Dr. deBethizy and Dr.  
5 Dolittle correct?

6 A: Yes.

7 *Yes, it is an e-mail chain that contains such an e-mail.*

8 Q: The email says, does it not "Frank Lester has made some cogent remarks prior to  
9 Seth's that didn't get forwarded to many folks. Don, you may want to digest prior to a  
10 possible addendum to Gary. We've been begging for guidance for some time now on  
11 what RJR's position is on researching ETS. I (personally) have taken whatever  
12 responses have been garnered along with the 'no responses' as THE--"in all caps--  
13 "answer; i.e., we are not committed to furthering ETS research on any front other than  
14 direct relation to product development (e.g., Eclipse claims)- "and sporadic input into  
15 fortifying our legal defense. In my opinion, R and D cannot effectively do any more than  
16 this with the number and organizational alignment of 'ETS' personnel as they currently  
17 exist. Dave D. and I have discussed this on several occasions"?

18 A: It does.

19 Q: This e-mail indicates, does it not, that Dr. Ogden, a scientist at R.J. Reynolds  
20 was unclear about the public position he should be taking regarding why he and  
21 R.J. Reynolds were not conducting direct ETS research?

22 A: Yes.

23 *No I do not believe it refers to public positions at all.*

1 **Q: This e-mail, dated June of 2000 also contemplates partnering with Philip Morris on**  
2 **programs to safeguard smokers rights and prevent smoking bans, doesn't it?**

3 **A: It does.**

4 *The part of the email chain written by Frank Lester and further discussed by Seth Moskowitz*  
5 *discusses joining with Philip Morris in a program for improving ventilation in hospitality*  
6 *venues. The assessment appears to be that such a partnership with Philip Morris would be*  
7 *unlikely. I do not see a discussion of joining with Philip Morris to prevent smoking bans.*

8 **Q: As of today, R.J. Reynolds is not conducting direct research regarding ETS, is it?**

9 **A: It is not.**

10 *No, I believe that R.J. Reynolds is conducting some biomarker research.*

11 **Q: And you have testified, have you not, that R.J. Reynolds has some of the best ETS**  
12 **scientists in the world?**

13 **A: I have.**

14 **Q: But these scientists are not trying to learn what it is that causes children who**  
15 **live in smoking households to get sick?**

16 **A: No.**

17 *I do not believe they are conducting such research.*

18 **Q: The activities of R.J. Reynolds with regard to learning what causes illness in**  
19 **children who live in smoking households is limited to reviewing literature that is published**  
20 **on the topic, correct?**

21 **A: Yes.**

22 *Yes, I believe they are.*

23 **\* \* \* END \* \* \***