

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PHILIP MORRIS PRODCUTS S.A.,)
)
) Civil Action
Counterclaim Plaintiff,) No. 1:20-cv-00393-LMB/TCB
)
)
v.) June 9, 2022
) 2:05 p.m.
R.J. REYNOLDS VAPOR COMPANY,)
)
)
Counterclaim Defendant.)
)
)

VOLUME 2 - AFTERNOON SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: **Maximilian Antony Grant, Esq.**
Latham & Watkins LLP (DC)
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Max.grant@lw.com

Clement Joseph Naples, Esq.
Latham & Watkins, LLP
885 Third Avenue 25th Floor
New York, NY 10022
212-906-1200
Email: Dement.naples@lw.com

Gregory K. Sobolski, Esq.
Latham & Watkins, LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538
202-637-2267
Email: Max.grant@lw.com

Scott L. Wallace, RDR, CRR
Official Court Reporter

APPEARANCES: (Cont.)

For the Defendants: **Michael Shamus Quinlan, Esq.**
Jones Day (OH-NA)
901 Lakeside Avenue
Cleveland, OH 44114-1190
216-586-3939
Fax: 216-579-0212
Email: Msquinlan@jonesday.com

Jason Todd Burnette, Esq.
Jones Day (GA)
1420 Peachtree Street, NE
Suite 800
Atlanta, GA 30309
404-521-3939
Email: Jburnette@jonesday.com

David Michael Maiorana, Esq.
Jones Day (OH)
901 Lakeside Ave
Cleveland, OH 44114
216-586-3939
Email: Dmaiorana@jonesday.com

William Edward Devitt, Esq.
Jones Day (IL)
77 West Wacker
Suite 3500
Chicago, IL 60601
312-269-4240
Email: Wdevitt@jonesday.com

Court Reporter: **Scott L. Wallace, RDR, RMR, CRR**
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, VA 2231-5798
202-277-3739
scottwallace.edva@gmail.com

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

Scott L. Wallace, RDR, CRR, Official Court Reporter

APPEARANCES: (Cont.)

For the Plaintiffs: **Thomas W. Yeh, Esq.**
Latham & Watkins LLP (CA)
355 South Grand Avenue
Suite 100
Los Angeles, CA 90071-1560
213-891-8050
Email: Thomas.yeh@lw.com

Matthew John Moore, Esq.
Latham & Watkins LLP (DC)
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Matthew.moore@lw.com

Dale Chang, Esq.
Latham & Watkins LLP (CA)
355 South Grand Avenue
Suite 100
Los Angeles, CA 90071-1560
213-891-8050
Email: Dale.chang@lw.com

Lawrence Jay Gotts, Esq.
Latham & Watkins LLP (DC)
555 11th St NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Lawrence.gotts@lw.com

For the Defendants: **Charles Bennett Molster, III, Esq.**
The Law Offices of Charles B.
Molster III, PLLC
2141 Wisconsin Avenue NW, Suite M
Washington, DC 20007
703-346-1505
Email: Cmolster@molsterlaw.com

Stephanie Ethel Parker, Esq.
Jones Day (GA)
1420 Peachtree Street, NE
Suite 800

C O N T E N T S

EXAMINATIONS	Page
CONTINUED DIRECT EXAMINATION OF PAUL MEYER BY MR. SANDFORD	433
CROSS-EXAMINATION OF PAUL MEYER BY MR. MCCRUM	470
REDIRECT EXAMINATION OF PAUL MEYER BY MR. SANDFORD	497
DIRECT EXAMINATION OF JAMES FIGLAR BY MS. PARKER	529
CROSS-EXAMINATION OF JAMES FIGLAR BY MR. NAPLES	567
REDIRECT EXAMINATION OF JAMES FIGLAR BY MS. PARKER	578
RE-CROSS-EXAMINATION OF JAMES FIGLAR BY MR. NAPLES	581

EXHIBITS

DESCRIPTION	Page
--------------------	-------------

05:39PM **1 Q.** So not quite 50, you think it's more like 40 trials?

05:39PM **2 A. I think I've given live testimony in court 40 times.**

05:39PM **3 Q.** Okay. And this is actually the first time Ms. Parker

05:39PM **4 [sic] testified here in court; is that right?**

05:39PM **5 MS. PARKER:** Objection, Your Honor, as to relevance

05:39PM **6 and {indiscernible}.**

05:39PM **7 THE COURT:** Yeah, and you need to slow your questions

05:40PM **8 down.**

05:40PM **9 MR. NAPLES:** Sure, Your Honor.

05:40PM **10 THE COURT:** So everybody gets them. Repeat the question.

05:40PM **11 BY MR. NAPLES:**

05:40PM **12 Q.** This is not the first time that Ms. Parker has examined

05:40PM **13 you in court, correct, Dr. Figlar?**

05:40PM **14 THE COURT:** I don't know why that's relevant. I'll

05:40PM **15 sustain the objection.**

05:40PM **16 MR. NAPLES:** Okay.

05:40PM **17 BY MR. NAPLES:**

05:40PM **18 Q.** Now, I think you referred to the cases that you testified

05:40PM **19 in as smoking and health cases; is that right?**

05:40PM **20 A. That is correct, yes.**

05:40PM **21 Q.** Okay. Now --

05:40PM **22 A. I'm sorry, to be clear, product liability cases.**

05:40PM **23 Q.** They're product liability cases?

05:40PM **24 A. I think so, yes.**

05:40PM **25 Q.** Okay. Understood. Now, you, I think, said you testified

Scott L. Wallace, RDR, CRR, Official Court Reporter

05:40PM **1** for Reynolds over a period of about ten years in these product

05:40PM **2 liability cases?**

05:40PM **3 A. That is correct, yes.**

05:40PM **4 Q.** Okay. And if you've done about a hundred depositions, is

05:40PM **5 that like ten, on average, ten depositions per year; is that**

05:40PM **6 correct?**

05:40PM **7 MS. PARKER:** Objection; relevance {indiscernible}.

05:40PM **8 THE COURT:** I assume you're going someplace with this?

05:41PM **9 MR. NAPLES:** Yes, Your Honor.

05:41PM **10 THE COURT:** All right. I'll overrule the objection for

05:41PM **11 now. Let's see where we're going.**

05:41PM **12 BY MR. NAPLES:**

05:41PM **13 Q.** Is that correct, Dr. Figlar?

05:41PM **14 A. I mean, that would be probably fair, yeah, about maybe 10**

05:41PM **15 depositions a year, maybe four trials a year over the course of**

05:41PM **16 a year, yeah.**

05:41PM **17 Q.** Okay. Now, you talked during your direct examination

05:41PM **18 about two products, one called the Premier, one called the**

05:41PM **19 Eclipse, right?**

05:41PM **20 MS. PARKER:** Your Honor, I'm sorry, objection. I want to

05:41PM **21 move to strike that. We did not go forward as we told Your Honor**

05:41PM **22 we would. We didn't tie anything up that's relevant --**

05:41PM **23 THE COURT:** All right. I don't want an objection for

05:41PM **24 every single question either. We'll take forever. So right now**

05:41PM **1 MR. NAPLES:** Absolutely, Your Honor.

05:41PM **2 THE COURT:** All right. Go ahead.

05:41PM **3 BY MR. NAPLES:**

05:41PM **4 Q.** Now, Dr. Figlar, you talked about these two products, the

05:41PM **5 Premier and the Eclipse, correct?**

05:41PM **6 A. Sure, yeah.**

05:41PM **7 Q.** Okay. And those are not vapor products?

05:41PM **8 A. They are not vapor products; they are heat-not-burn**

05:41PM **9 products.**

05:41PM **10 Q.** Okay. And you said those are alternatives to combustible

05:42PM **11 cigarettes, correct?**

05:42PM **12 A. They are.**

05:42PM **13 Q.** All right. Now, Reynolds does not sell the Premier

05:42PM **14 product any longer; is that right?**

05:42PM **15 A. No, they do not.**

05:42PM **16 Q.** Okay. And the Premier was removed from the market, I

05:42PM **17 think you said because people didn't really like the product; is**

05:42PM **18 that right?**

05:42PM **19 A. At that time, that's correct, yes.**

05:42PM **20 Q.** Okay. But it was also removed from the market because

05:42PM **21 there was considerable criticism from the public health**

05:42PM **22 community; isn't that right?**

05:42PM **23 A. The public health community panned the idea of a**

05:42PM **24 potentially safer product being out on the market, and so there**

05:42PM **25 was -- there was quite a heated debate at that time when Premier**

Scott L. Wallace, RDR, CRR, Official Court Reporter

05:42PM **1 came out. So, yeah, there were -- that was part of -- that was**

05:42PM **2 definitely part of the controversy, yes.**

05:42PM **3 Q.** Right. It wasn't just the taste of the Premier, it was

05:42PM **4 also because the public health community criticized Premier; is**

05:42PM **5 that right?**

05:42PM **6 A. I think there -- I think it's always -- in many of these**

05:43PM **7 situations, of course it's complicated, but that's one of the**

05:43PM **8 factors. The product did not taste that good, for sure, and**

05:43PM **9 that is a -- that is a problem with consumers. But then with**

05:43PM **10 the public health community coming out against it, or at least**

05:43PM **11 some in the public health community coming out against it,**

05:43PM **12 because there were others that were for it, doesn't help either.**

05:43PM **13 Q.** Right. And then Reynolds removed that product from the

05:43PM **14 market, correct?**

05:43PM **15 A. Right, and then started working on Eclipse.**

05:43PM **16 Q.** Right. And Eclipse, I think -- well, is it true that

05:43PM **17 Eclipse was initially launched in a small market in 1996?**

05:43PM **18 A. Yeah, I think it was launched in three small test markets**

05:43PM **19 in '96 and then went national in 2000.**

05:43PM **20 Q.** Okay. And then Reynolds starting -- started selling the

05:43PM **21 Eclipse nationwide in about 2000?**

05:43PM **22 A. Yes, in 2000, that's correct.**

05:43PM **23 Q.** Okay. But the Eclipse has actually never been a big

05:44PM **24 seller for Reynolds, has it?**

05:44PM **1 Q.** Okay. And I think the last time we spoke, you told me
 05:44PM **2** that sales of Eclipse products started declining in 2004 and
 05:44PM **3** they've basically been on that trajectory ever since; is that
 05:44PM **4** right?
 05:44PM **5 A.** **Heat-not-burn products have not done well in the U.S.,**
 05:44PM **6 that is for sure. And Eclipse, as one of them, has not**
 05:44PM **7 performed as well as we would hope or want.**
 05:44PM **8 Q.** Right. I mean, my question was specifically about the
 05:44PM **9** Eclipse, okay?
 05:44PM **10 A.** **Understood.**
 05:44PM **11 Q.** So the Eclipse's sales have been declining since about
 05:44PM **12** 2004, correct?
 05:44PM **13 A.** **That's fair.**
 05:44PM **14 Q.** Okay. And I think you said during your direct
 05:44PM **15** examination that Reynolds invested well over a billion dollars
 05:44PM **16** in the Eclipse and the Premier heat-not-burn products; is that
 05:44PM **17** right?
 05:44PM **18 A.** **That is correct.**
 05:44PM **19 Q.** Okay. And is it true that after spending that billion
 05:44PM **20** dollars, Reynolds learned that it was difficult to get consumers
 05:45PM **21** to convert to heat-not-burn products because they really just
 05:45PM **22** couldn't just compete with cigarettes; is that right?
 05:45PM **23 A.** **I think that's generally correct. I mean, Reynolds spent**
 05:45PM **24 about 30 years trying to attract consumers to heat-not-burn so I**
 05:45PM **25 think that's a fair statement.**

Scott L. Wallace, RDR, CRR, Official Court Reporter

05:45PM **1 Q.** Okay. So let's move ahead. So we've got the Premier off
 05:45PM **2** the market, Eclipse isn't selling well, we're going to be in the
 05:45PM **3** 2010 time frame, and I think that's when you said that Reynolds
 05:45PM **4** started to get into the e-vapor or e-cigarette space; is that
 05:45PM **5** right?
 05:45PM **6 A.** **When we started to seriously start thinking about**
 05:45PM **7 developing products, yes.**
 05:45PM **8 Q.** Okay. And you also were here for Ms. Parker's opening
 05:45PM **9** statements?
 05:45PM **10 A.** **I was, yes.**
 05:45PM **11 Q.** And she talked about how Reynolds is actually an
 05:45PM **12** innovator in that space, right?
 05:45PM **13 A.** **Yeah, I believe, absolutely.**
 05:45PM **14 Q.** She actually said that you were going to talk about how
 05:45PM **15** they were an innovator in that space; is that right?
 05:46PM **16 A.** **I thought I did when I talked about some of the**
 05:46PM **17 innovative features on Solo, which is part of that development.**
 05:46PM **18 Q.** Sure. Let's discuss that a little bit.
 05:46PM **19** MR. NAPLES: Could I have your Slide 3 up?
 05:46PM **20** BY MR. NAPLES:
 05:46PM **21 Q.** You showed this slide to the jury I believe; is that
 05:46PM **22** right --
 05:46PM **23 A.** **I did.**
 05:46PM **24 Q.** -- Dr. Figlar?

05:46PM **1 Q.** I think this is the same slide that Ms. Parker used in
 05:46PM **2** her opening, correct?
 05:46PM **3 A.** **Maybe so. I don't have an eidetic memory in terms of**
 05:46PM **4 what was shown, but, yeah, probably that's fair.**
 05:46PM **5 Q.** Okay. And you testified in your direct examination that
 05:46PM **6** the Alto, which is the last product here, that is the
 05:46PM **7** best-selling product or best-selling Vuse product, right?
 05:46PM **8 A.** **Today, yes.**
 05:46PM **9 Q.** Today, today, correct. Now, it is true, Dr. Figlar, that
 05:46PM **10** Reynolds didn't even design the Alto product, right?
 05:46PM **11 A.** **Alto, no. We were not part of the design. We -- we**
 05:47PM **12 evaluated the product and liked it with one of our suppliers and**
 05:47PM **13 licensed it.**
 05:47PM **14 Q.** Right. A Chinese company called Smoore actually designed
 05:47PM **15** the Alto product, right?
 05:47PM **16 A.** **Yes, they were one of our suppliers and they offered that**
 05:47PM **17 up.**
 05:47PM **18 Q.** And then a different company in China called Feelm, they
 05:47PM **19** designed the heater in the Alto product, correct?
 05:47PM **20 A.** **I believe that is correct, yes.**
 05:47PM **21 Q.** Okay. Now, the Vibe product, Reynolds didn't design that
 05:47PM **22** product either, did it?
 05:47PM **23 A.** **Nope, and I don't believe I testified that we did.**
 05:47PM **24 Q.** Well, Reynolds didn't design the Ciro product either; is
 05:47PM **25** that right?

Scott L. Wallace, RDR, CRR, Official Court Reporter

05:47PM **1 A.** **That's correct. I'm pretty sure that's what I told the**
 05:47PM **2 jury.**
 05:47PM **3 Q.** Right, Reynolds, in fact, acquired the Ciro, the Vibe,
 05:47PM **4** and the Alto products from Chinese manufacturers; is that
 05:47PM **5** correct?
 05:47PM **6** MS. PARKER: Objection, Your Honor, 403, irrelevant.
 05:47PM **7** THE COURT: Excuse me?
 05:47PM **8** MS. PARKER: 403 irrelevance on the location --
 05:48PM **9** THE COURT: I'm going to overrule the objection.
 05:48PM **10** MR. NAPLES: Thank you, Your Honor.
 05:48PM **11** MS. PARKER: Your Honor, I'm so sorry. The pretrial
 05:48PM **12** ruling on that --
 05:48PM **13** THE COURT: It's getting late in the day. You've got your
 05:48PM **14** mask on, you're not at the lectern, and I've overruled the
 05:48PM **15** objection. Just have a seat, please.
 05:48PM **16** BY MR. NAPLES:
 05:48PM **17 Q.** So, Dr. Figlar, it's true that of the four vapor
 05:48PM **18** platforms that Reynolds sells today, it didn't design three of
 05:48PM **19** them, correct?
 05:48PM **20 A.** **That is correct, but what we certainly did do is support**
 05:48PM **21 them in the marketplace and then collected the science that**
 05:48PM **22 would be necessary to keep them in the U.S. market through FDA,**
 05:48PM **23 because that is one of the requirements, right? I mean if**
 05:48PM **24 you -- whoever designed the product, it's -- wanted to go ahead**