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TRANSCRIPT—MIKE CIRESI

Interviewee: Mike Ciresi
Interviewer: Carson Backhus
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Carson Backhus: This is Carson Backhus interviewing Mike Ciresi on October 16, 2024, for the Minnesota Historical Society Tobacco Control Oral History Project. We are meeting today at the offices of Ciresi Conlin LLP in downtown Minneapolis. Thank you again, so much, for taking the time to speak with me.

Mike Ciresi: Thank you. It's nice to have you here.

CB: Wonderful. Start out with an easy question, could you please just state and spell your full name?

MC: Well, I can get that one right. Michael, middle initial V, as in Vincent, Ciresi, C-I-R-E-S-I.

CB: And then where were you born, Mr. Ciresi?

MC: I was born in St. Paul, Minnesota, at Bethesda Hospital.

CB: Can you just take a moment or two to explain your childhood, what it was like, family members, that kind of thing?

MC: Well, I was born here in St. Paul, obviously, educated here. I went to St. Andrews Grade School in Como Park, and I went to St. Thomas Academy, which was then on the campus of the College of St. Thomas, so it was called at that time. And then I went to the College of St.

Thomas, now the University of St. Thomas. I played football at both places; hockey. And I went on to the University of Minnesota law school, and graduated from there in 1971. My father had a seventh grade education, self-made man. My mother died when I was 12 from breast cancer. I had a brother who passed away a few years ago, and I have a sister. That's my family background.

CB: Could you talk a little bit about how smoking impacted your life while you were growing up? Did you have personal experiences with smoking, members of family who smoked, that kind of thing?

MC: Carson, you're much too young to remember, but in those days, everybody smoked, almost. And yes, my dad smoked. Believe it or not, when my mother had cancer, in those days, there wasn't much they could do for breast cancer. It's not like it is today, fortunately, and when she was in advanced stages of it, they told her she should start smoking to calm her nerves. That came from a doctor.

[00:02:20]

CB: That is something.

MC: So smoking was very prevalent in society at that time. They had doctors advertising for cigarettes. It was just ubiquitous, if you will. So I did not smoke because I was an athlete. I started smoking when I was in college, right when I ended college, actually. I tried cigarettes a couple times before that. I smoked for two years in law school, and when I was a lawyer, and I quit in 1986 when I was in India on the Bhopal case. We ran out of cigarettes, a partner of mine and myself, so we bought Indian cigarettes, and they tasted like you had rolled up some dung and put them in a piece of paper. And I got up the next morning and I said, "That's it. I'm never touching another cigarette," and I haven't since 1986.

CB: That is very impressive, oh my goodness.

MC: So cold turkey. But I did not smoke that much. I was not a pack of a cigarette smoker or anything like that. But I did smoke.

CB: And then how aware were you of general efforts to reduce the use of tobacco products while you were growing up? I know it wasn't nearly as prevalent as it was today.

MC: Not at all. I mean grade school, high school, not at all. College, not even in college. Law school. I sort of became aware of it at some point during my career, which I started practicing, as I said, in 1971, so it would have been, boy, into the '80s where I really became much more aware of the issue from an epidemiological standpoint; from a morbidity and mortality standpoint. That knowledge gradually grew into the early '90s. You probably still weren't born at that time.

[00:04:19]

CB: Not quite. Almost. [Laughter] Could you please describe your career pathway leading up to the lawsuit and the trial? You don't need to go into crazy detail, if you'd not like to.

MC: Well, how much time do you have?

CB: Right? [Laughs]

MC: As I said, I went to law school at the University of Minnesota. Started with the firm, which was then known as Robins, Davis, & Lyons. We had two offices, St. Paul, Minneapolis. We had about roughly 30 lawyers, maybe 31, 32 that were roughly split half and half between St. Paul and Minneapolis. I was in the St. Paul office. The firm was started by Solly Robins and Julie Davis, they were two Jewish lawyers who graduated at the top of their class. Historically, Minneapolis was a very antisemitic place. Even though they graduated top of their class, they couldn't get jobs at the, quote, best law firms, so they started their own law firm, which was then

Robins & Davis. And Lyons, Arnie Lyons, another Jewish lawyer, came on with them after a couple years.

The firm was in the St. Paul office, about 100 percent litigation. Minneapolis was some litigation and some corporate work that Julie Davis did. So I went to the St. Paul office and started practicing with Solly Robins, who was probably the singular best trial lawyer I've ever seen in my life, and probably one of the best this country has ever seen. And he became like a second father. We were very close. So we worked together in the early years. I learned a heck of a lot from him. I started trying cases right after I passed the bar, literally, the next week after I passed the bar.

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And in those days, the practice of law was a little bit different. You would do everything. You'd do family law, corporate law, real estate. You dabbled in everything to get a broader, more fulsome background, which serves you well as you advance. But I gradually gravitated towards only litigation and, as I said, started trying cases right after I passed the bar. So that would have been the fall of 1971. Primarily at the outset in the personal injury field, some corporate work, some corporate litigation, but primarily in the personal injury field, because that's where Solly had his predominant practice, although he tried everything.

After trying a number of cases, I started the mass tort department, which started with Dalkon Shield litigation, and that was an IUD that was defectively manufactured and misrepresented in sale. It caused a lot of deaths, a lot of ectopic pregnancies, a lot of pelvic inflammatory diseases. It was a terrible device. If they had made the device for men, the makers of the device would have been hanging from the yard arc, okay? But women were guinea pigs.

Seriously. They were. In birth control measures in those days. And they made these things in garages. It was just terrible.

[00:07:55]

And we went on from there to a bunch of other cases, the Bhopal litigation, which I represented the government of India in the Bhopal disaster, which is, I think, still to this day, is the largest industrial disaster that's taken place. Over 3,000 people were killed immediately. That was in Bhopal, India. I went from there to a number of other cases; intellectual property cases, represented Honeywell, and a lot of major corporations in major, major litigation, all the way through to Unocal, which was a clean air gasoline case in California. So there was a lot of intellectual property from '91 through today. I still do that type of work. But there were a number of large verdicts in the '90s. The Honeywell case resulted in a verdict of 96 million. We eventually recovered a half a billion on behalf of Honeywell. It dealt with the autofocus in cameras, 35-millimeter cameras. Norm Stauffer, who was a brilliant inventor, invented autofocus.

And Honeywell did not commercialize cameras at that time, but they held the patents and Minolta was using the patents—stealing them, I would say. So we sued them in New Jersey, and got a large verdict for Honeywell at that time. That led to a series of other intellectual property cases and other large corporate litigation. We also had follow on product liability cases, cheap rollover cases, all kinds of product liability cases. In addition to the Dalkon Shield IUD, we took on the Copper-7, which was made by GD Serling Company eventually purchased by Monsanto. And in that case, my partner, Leo Feeney, started looking at the cases early, but then he asked me if I'd take him over, and I did, after Dalkon Shield. So we got involved significantly in that in the

late '80s, '86, maybe '87, and tried a number of cases and eventually settled all those cases on behalf of those women.

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And that led to Roberta Walburn and I, who was my partner, and I met her during the Dalkon Shield cases. She was the clerk for Judge Miles Lord. After she left her clerkship, she came and worked with us, and we've worked together ever since. So that would have been in, oh boy, January of 1985, and she worked from the outset on the Bhopal case; worked at Copper-7. After Paul Wellstone was elected to the Senate, she went to work for him in his office in Washington DC. So she was gone for about a year, during which time I was trying some other—well, I was trying some intellectual property cases. One was the Minolta case in New Jersey, Newark, Federal Court of New Jersey.

Birdie came back a year later, in 1992 probably. We worked on a number of cases, and eventually we said, "Who are we going to go after next?" And she and my then-paralegal, my now wife, and I were in California, actually, sort of on a mountain top, and we're looking at the ocean, and we said, "Where can we make a difference?" Because we've always tried to make a difference. I learned early on that you should live a life of purpose in communion with others to serve the common good, and that's what we try to do in our practice and live in our life. And so we looked at, where can we make a big difference?

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And the tobacco industry at that time had not lost a case in 40 years. They buried their opposition. In fact, in the documents that we brought out, one of them was an RJR Reynolds document which said, "The way we won all of these cases is not by spending all of RJR's money, but making the other poor son of a bitch spend all of its money." They were talking about the

plaintiff's lawyers. And most of the plaintiffs lawyers, courageous plaintiff lawyers, who took out these individual cases for smokers, went after them and they just got buried. The industry had so much power, so much money, that they were able to do that and nobody could go after them, go after the documents the way we were able to do it.

So we were sitting on this mountain top, and we said, "That's a good industry to go after." But we didn't want to do it as individual smoker cases, because you couldn't have the impact. You could do it, but you'd be one case at a time. I'd still be doing it today, okay? So we started sort of strategizing and thinking about what's the best way to do it. And we decided that the best way to do it is to get a payer, somebody who pays all the healthcare costs. So we thought of the State of Minnesota and an insurer. We eventually landed on Blue Cross Blue Shield, and I'll get into that story a little bit.

[00:14:18]

But so that was at the outset. This was in 1989. Yeah, around '89, '90. So Roberta started looking up, and then, of course, she took her year off with Wellstone, but she canvassed all of the laws across the entire country. Well, we were working on other cases at this time, too, but she was doing the research, because we wanted to find the best place to bring the case. That's how we landed on the State of Minnesota. Lo and behold, we found the best case to bring it because of the consumer protection laws that we had, et cetera, was in Minnesota.

And we decided that we would get the State of Minnesota and Blue Cross Blue Shield. So there was about a four-year lag, between thinking about the suit and actually filing the lawsuit. The lawsuit was filed in August of 1994, and we tried it from January of 1998 through May 8 of 1998. So basically five months. We stayed at the St. Paul Hotel, which we had stayed at

a lot of times when we tried a lot of large cases. And the tobacco industry also had their lawyers there.

CB: Wild.

MC: Yeah, it was wild. It really was. You'd go down at night to get a bowl of soup, and it's probably 11:00 at night, and you'd run into one of the defense lawyers. So yeah, it was a wild time. So that's how the case started. I don't know what your other questions are, but there's a lot to talk about in terms of how we prepared and everything else.

[00:16:04]

CB: Yes, that was essentially my next question. What factors led to your law office taking on the lawsuit?

MC: Yeah, and so during all this time I had been on our executive board since 1983. I was chairman of the board at the time of the lawsuit. I became chairman in '95. So I had responsibilities of running the law firm in addition to trying all the lawsuits I was trying and everything else. So once we started it, Roberta and I—I wish I had that, there was just a one-page outline of what we thought, which was going to be our themes. There were seven, and what their answers were. Let me see if I have a copy.

[Interruption]

[00:19:34]

MC: No, I don't. I'm sorry to have assumed. I thought of getting that out for you. It would have been great, but it's on one legal sheet. On one side are our themes, seven, because we believe in keeping it short, right? These are the themes and the basis upon which we're going to conduct all of our discovery, and the themes upon which we would try the case. On the other side, we would put in what we knew the defense would say about our themes. So we knew what

their themes would be, and we knew our themes. And so all of the discovery of the case evolved around those seven themes, and what we were going to prove and what we anticipated their defense would be.

[00:20:27]

That they targeted children, for example, and they would say they didn't, and all these issues. What it does is it makes you focus. The problem with a lot of lawyers is that they're all over the place, and they don't think through their case at the outset, which leads to a lot of wasted energy, a lot of expense, and a lot of effort that goes for naught. So we were very focused, highly focused, and we've always approached every case that way. Every case I do, I approach it the same way. And so from '94, after we filed, Roberta really was working on the case 120 percent of her time. I was working on that case, plus a bunch of others.

And so she was managing our team of lawyers. We had roughly eight lawyers that were involved in the case constantly. The other side had 600, literally, just against us. When we filed in August, the State of Mississippi had filed a case. If we had known they were going to file, we would have filed before them. They filed in May, this guy sort of tried to take credit for it. Mike Moore was his name, an Attorney General. They didn't do anything. I called him the Pied Piper. He'd go around trying to enlist all the other attorneys general because he wanted to get a quick settlement, and I'll get to that as we go on. They didn't really want to do the discovery. They never tried their case. They never got that discovery.

[00:22:09]

So we, at the outset, and it's a credit to Skip Humphrey and Andy Czajkowski. Skip, obviously, was the Attorney General for the State of Minnesota, and Andy, the CEO of Blue Cross Blue Shield. Keep in mind, when we started the case, as we got toward 1994, we

approached the state, we went to see him and said, “Would you ever consider this?” They were very enthusiastic about the case. They had thought about the cigarette industry, but they didn’t know which way they wanted to go. Blue Cross Blue Shield had an attorney there, Tom Gilde, G-I-L-D-E, who was also very interested in doing something like this. And Andy Czajkowski was totally dedicated, which was pretty risky for a CEO in those days. And same for Skip, because he was going to try the case. It’s different from the others.

We told them that when we got into it, we said, look, because we had it on a contingent basis. I had partners who left the firm because they thought we were going to bankrupt the firm with this. You can go back and read it. It was in the paper when they left, they said, “This is why we’re leaving.” In any event, we weren’t going to bankrupt the firm. I was working on a lot of other stuff, but they were fearful. We got a commitment from both Skip and Andy that they would stay with us all the way through, and they stood like oak trees. They really did. And I’ll get into that as to how they did.

[00:24:02]

So that was at the outset, and that’s how we started it. Filed it in ’94, as I say, I believe it was August 8th, it was a big press conference, all this kind of stuff, editorials. I don’t know if I have them up around here, I don’t, but there were editorials on it. So people were behind it. They really were. It was time. So over the ensuing four years, we were involved in this extensive discovery. Have you interviewed Roberta?

CB: I have, yes.

MC: Okay, well, then sometimes we had eight, nine, ten appeals. They wouldn’t know what addictive meant. They didn’t know what smoking hazards were. They’d fight over everything. So particularly on the index, the 4A indexes which, Roberta, I’m sure, gave you the

whole history of, so it was a battle for everything. It never, ever stopped, a battle for everything. That took place over the ensuing four years, until we started trial in January of '98.

Now, significant development was in, I want to say early '97, but it probably started '96. I'm not remembering exactly when it was right now. But as I mentioned, this Attorney General Moore from Mississippi was going around the country trying to enlist a lot of people, a lot of attorneys general to file suits. A lot of them didn't for a long time. There were only about, I think, maybe seven or eight suits filed in the first few years, '94, '95, '96.

[00:26:04]

CB: Too risky? They didn't want to?

MC: They didn't want to. Yeah. But then, of course, he started getting more and more to come in, because he was working on a global settlement. And the global settlement, it was in '96, because the real events took place in '97 for us. But in any event, he started doing this in '96. We had a meeting in '97 in Tysons Corner, Virginia, called by the Attorney General. By the way, all these states came in now. They were all coming in because he had this proposed settlement of \$467 billion, and that was for all the states. The industry would get a release. They wouldn't have to disclose their documents.

Remember, we're still fighting to get—particularly the attorney client privilege documents. I'll tell you a story about that. But we're trying to get those documents. We're the only one doing discovery. Every other state, when they filed, they say, "We want the Minnesota select documents." They didn't even do any work. They asked for what we did. The focus was on Minnesota in terms of the action, in terms of discovery, and developing the case. So this global settlement was being proposed, and we went to Tysons Corners. I went, and Skip and Andy were not there. You had to get the attorneys general to agree on it. That was the thing.

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Blue Cross was the only private company that would sue them at this time. There was nobody else. A lot of them came after the fact. But so that's the courage that Andy Czajkowski had, because he was putting his company at risk. There was a lot of criticism, et cetera, et cetera. So we get this call, I go down to Virginia, or out to Virginia, I should say, and I'll tell you, Carson, it was a kick. Moore was there, and some attorneys general were there, four people that wanted to settle. It was Mississippi, Florida, Texas, and I forget the fourth right now. There was a fourth. I thought I'd never forget this, but a fourth, in any case. They were trying to push this settlement.

It was clear. I walked in there, we'd be talking, and then Moore would disappear. He'd leave. Skip wasn't there yet. So I walked down the hall in this place, and lo and behold, I get down the hall and the lawyers from the firm Wachtell Lipton were there, and they were the key defense negotiating team. They had never appeared in this other room where all the other AGs were. I said, "So what are you doing here, folks?" And they didn't want to see hide nor hair of me, obviously. So long story short, we told them Minnesota is not in on this. And they said, "Well, you better check with Skip." I said, "I have. In fact, I'm going to give him a call again, and I bet he'll come down here and tell you so himself." And he did. He flew to Virginia and told them that we're not going to do it.

[00:30:09]

Then we became like your criminal uncle. We were *persona non grata*. They didn't want us around or anything like that. So in any event, we fought the settlement, to make a long story short. This started in the spring of 1997. Governor Carlson, he was the governor at that time in Minnesota. Minnesota was going to get \$4 billion out of this settlement, presumably. But the

industry would get immunity. The documents wouldn't be produced, and our suit would be dismissed. So we fought it. By the way, they were going to go with this bill to Congress. They were somewhat naïve, quite frankly, for how sophisticated they were. I was sort of surprised, because the industry itself had the most sophisticated scientists. They did unbelievable scientific work, and medical studies. They thought they were going to go to Congress and just drop this bill there, and nobody was going to say, "Well, I want to amend this." I don't know what they were thinking, but that was their plan, to just drop the bill in, and everybody would approve it, and all these states would get all this money.

Now there were a lot of people that had a lot of sticky fingers who wanted to do that. So we hired a lobbyist on the Democratic side and on the Republican side. Our firm had to do that. We paid for it, et cetera. And we fought the bill. We defeated the bill, and it was blown up. Governor Carlson, well, he was upset, and you can look back in the articles from those days. And by the way, I think he was a good governor, I liked Arne Carlson. I'm not a Republican, but this is not political. We're all wrong at times. Well, he was dead wrong on this, and he went public on it. He said, "This guy's crazy," referring to me. "We have \$4 billion and he's going to risk trying a lawsuit against an industry that's never lost a case," basically, I'm paraphrasing, but you can look at what he said in the paper.

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So he asked to meet with me. This is a great story. This is new for you, Carson. So one of his aides called up and said, "The governor would like to meet with you." I said, "About what?" They said, "Well, about the tobacco case." I said, "All right." He's the governor of the state. So I called Skip, and I told Skip. I said, "The governor wants to meet. You're my client. If you don't

want me to meet Arne, I won't." He said, "No, no, go ahead. You should meet with him. Go ahead." So I go in there. Have you been in the governor's office?

CB: I have not, no.

MC: Okay. Well, if you go in the capitol and where the governor's office is, there's his office. You walk in this elaborate city, if you will, and on the right are his offices over there, as I'm recalling this. And on the left there's a conference room on each side of this big reception. So I go into this conference room off the reception room and all of these people are there. One of his aides, top aide, was a former lawyer who worked with me, and she was a great lawyer. I'm not going to name her name, because I don't think I should. In any event, she was there. So the governor comes in and we start talking. He wants to know why we're turning this down, blah, blah, blah. He finally gets to it, he says, "Well, I want to know what's your damage model? You're turning down \$4 billion. What's the damages that you're going to say the state has lost?"

[00:34:12]

And I said, "Well, Governor, that's privileged." He said, "I'm the governor of the State of Minnesota." I said, "I know that. I respect that, but you're not my client. The guy across the hall is. So if you want to ask him if I can tell you, I'll tell you." With that, he got up and he left the room. He didn't walk out, he just got up and left. That was the end of the conversation, basically. So I looked at this former attorney who worked with us, and I said, "I guess the meeting is over, huh?" [Laughter] And it was. So I left. Skip and I got a good laugh out of that.

I only say this because there was a lot of pressure being brought to bear to resolve the case. I'm trying the case, by the way, at this time. I go back and I'm trying a case in California, that was the clean air gasoline case, it was a patent case, which we got. I forget what the verdict

was, over \$100 million. In any event, I'm trying that case. I come back in the late fall, we have some follow up discovery. And did Roberta talk to you about the privilege documents?

CB: She did, yes. Could you give a brief overview?

MC: Well, [inaudible] because that was part of what we looked at. When I told you about this sheet of paper, we knew that they had been hiding documents. We just knew it. We knew they'd do it through attorney client privilege. So when we had a first meeting, it was in Naples, Florida, because we had a condo down there, my wife and I. This was in 1994 right after we filed. Roberta and Susan Richard Nelson, Judge Nelson, federal judge here, because she was a partner of ours, and myself were down there to meet with all their lawyers. Now they must have had 40 lawyers, somewhere between 30 and 40. Wasn't a woman in the room except the two women that I was privileged to work with.

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So we're sitting there, and I'll never forget as long as I live, you should ask Roberta about this and Judge Nelson, we're sitting there, and I said, "Well, the thing we're coming after, we need to figure out a way to do this, is your privileged documents. We're coming after them like bees to honey." They looked at us and they laughed. They literally laughed at us. So that's the prelude. So we're setting this all the way up and that was a whole distinct aspect of the discovery that was ongoing over these four years, going after the privileged documents.

It went on so long that it was subject to appeals to the Court of Appeals, Minnesota Supreme Court, and the United States Supreme Court. The United States Supreme Court finally ruled in April of '98 while we were trying the case, and we got the documents. So I'll get back to that. So all of this is going on, by the way, in '97. So in late '97, I get a call from Ken Feinberg. Do you know who Ken Feinberg is?

CB: This name doesn't ring a bell.

MC: Okay, well you look him up. He's a preeminent, internationally-known mediator, lawyer. He mediated the 9-11 cases. Kenny and I have settled a number of cases over the years, so we knew each other for a long time, and he's got this New York accent, he's just a great guy. He's just a character. He's a hell of a good lawyer. He called me, he said, "Mike," I said, "Kenny," "They want to meet." I said, "Meet?" By the way, we were being followed by all the press, because they thought we're going to settle and all this kind of stuff. So I said, "Well, I can't meet in town here, because everybody will figure out what the hell's going on. So let's meet at our Atlanta office."

[00:38:31]

So I get on a plane, I fly down to Atlanta, and this will be another revelation for you. This is new. We're down in our Atlanta office, and Kenny and I are talking, and they got six, seven lawyers, but Ken and I basically are doing the talking. So we go into a side room, he said, "Mike, how much money do you want?" I said, "Ken, we want the documents." Now we talk about the probation. He said, excuse my language, "Fuck the documents. How much money do you want?" I said, "Kenny, we want the documents." He said, "Mike, you're not going to get the documents. Just tell me how much money you want." They were willing to pay us more than they had offered on this deal, which was 400-some billion. We were going to get 4 billion. I said, "No, we're going to try the case until we get the documents, and then maybe we can talk." I said, "We'll talk about money after we talk about the documents."

Because in the documents was everything the industry knew for 40 years, the studies they had done. They knew it was addictive. They were manipulating the nicotine, all of this. I'm sure you've talked to Roberta about all that. Everything was there. And they couched it under

attorney client privilege. We had to fight that all the way, as I said, Judge Fitzpatrick was wonderful. He appointed a special master, Mark Gehan, God rest his soul. He was a former high school classmate of mine. Mark was the special master, a very fair-minded individual. He ordered the documents produced, and that's what started the appeals running up to the United States Supreme Court, and we finally got them on April 8th.

[00:40:22]

So going back again, we're not there quite, back to 1997 and this had to be in October, November of '97, so Kenny said to me, "Mike, I'm going to make you a bet." I said, "What's the bet?" He said, "I'm going to bet you \$1,000 this case will settle before you try it." I said, "All right, Kenny. I'll make you that bet. You want to write the check now?" He said, "I'll write you the check and you can keep it and then give it back to me." I said, "Okay." So I have that check hanging in my home from Ken Feinberg. Whenever I talk to him, I say, "Kenny, I've got your check. Do you think I could cash it now?" But it is fun. He was just a wonderfully colorful, engaging, smart individual and a guy with real compassion, too.

So in any event, he told me that, and I said, "Ken, you're going to end up paying." And he did end up paying. So that's in December. We now start trial on January 8th, and I don't have the exact date, Carson, but you can look it up. It's in so many articles, newspaper articles and everything, the Supreme Court refuses to take the case. They were up there on a petition for a search. So they didn't have a right of appeal, as a matter of fact, you have to go to the court and say, "Will you take this, because it's an issue of great import, because our attorney client privilege is sacred," and attorney client privilege is sacred. But you can't commit an ongoing fraud by hiding things under the doctrine of attorney client privilege. You can't do that. That's an exception to the privilege.

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So we got the documents. There was, I forget how many, 200 some thousand, something like that. We get them on a—you'd have to check with Roberts on this. I think it's a Wednesday, and we got our team together, we went through those documents. They were explosive. It was funny, because over that weekend, I'll never forget, we're screaming at each other. She says, "You've got to use this." I said, "Roberta, keep in mind, we're going to get a verdict here. They're going to appeal. And this one, I'm not sure we should have gotten." Because there's a fine line. Maybe we would have got them all. But if there's a couple that we shouldn't have gotten, and some judges think we shouldn't have gotten those, then they could reverse any verdict that we got. So we're arguing like crazy on this.

But the documents were explosive. In any event, we go through all those documents from that Wednesday or Thursday through the following Sunday. We were getting two, three hours of sleep a night. I started using them with witnesses. They were just dynamic. That's what led to the settlement. The case settles May 8th.

CB: That's incredible.

MC: That's how that happened.

CB: No, there are no words.

MC: So I gave you a couple of scoops.

CB: Thank you so much.

MC: I think. I don't think I told anyone. I told some friends.

CB: Sure, probably weren't recording you.

MC: Well, I see the check. I have told some people, but I don't think any press about bees to honey. I don't think I have.

[00:44:01]

CB: Could you just describe briefly the first moment you walked to the podium during the trial? What was going through your mind? Were you nervous? Were you excited?

MC: Every time I go into the courtroom, representing an individual or company or government or anybody, I'm nervous. It's always a little anticipation. If you don't have that, you shouldn't be in the courtroom. I do remember hearing the opening statement. It was a great pause, and you looked out over that great jury. The toughest thing, by the way, I had to do in that trial was to tell them that we settled. But that's a whole other story in and of itself. In any event, so I do remember very well looking at them. You pause, and you look each one in the eye, and the weight of the responsibility on behalf of the state, and Blue Cross and Blue Shield, and all the people, because that's who we were representing.

The fact, keep in mind, that we had turned down four and a half billion dollars. And there's no guarantee that you're going to win. Our firm had spent upwards of \$33 million out of pocket, time and cost. But you've got to be willing to do the right thing, and that's what we saw as the right thing. I was so privileged to work with people like Roberta all my career, not all my career, but most of my career with Roberta. Jan Conlin, they all happen to be women. I don't know why that is. They're good lawyers. They're great lawyers. And I was very privileged, sort of, that they took me along with them on the ride.

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You've got all these folks who have given four years of their life, and now it's all going to be decided on how well you do in the courtroom. But you can't make it about yourself. It's not about you, but it's that responsibility. That's why I think you get that anxiety—not anxiety. Yeah, it's anxiety, anxious. Stomach is churning a little bit. There's no greater privilege in my mind

than you can have than have someone come to you and say, “I’ve got a problem,” either I’ve been injured, or my business has been this, or whatever it is, and they say, “I’ve got a problem, and I want you to take care of it.” So when you have that responsibility, it should make you a little bit anxious.

But that’s good. And my experience, I think my background in athletics, particularly football, helped a great deal in that regard. Yeah, the challenges. Because I was a 5’8”, 200-pound linebacker. It’s not like I was a giant, okay? And I was fairly small to play in college, but I loved the sport and it teaches you a lot of things. It teaches you, what was so important in this case was teamwork, because in football, contrary to most other sports, in fact, any other sport, everybody has to be doing their job—with few exceptions, somebody could do something really spectacular—in every play for the team to be successful. In litigation, all the team has to be doing its job for you to be successful.

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It’s not the person who gets up and does the cross examination. Everybody says, oh God, you’re a great cross examiner, you’re one of the best trial lawyers that ever lived, all that kind of stuff. You can’t do any of that without everybody else. It’s that simple. The one thing you learn, at least you should learn early on in your career, is that the fact that you’re the one standing up doing it doesn’t make you any better than the person who’s been in the background, doing all the hard work, too. So all of that comes to play when you stand up at the beginning of a case and you’re making your case. Once you get into it, then it’s just [inaudible]. Have at it, you know?

CB: Could you go in briefly about the kind of strategies that you used during the trial? I’ve heard you were amazing.

MC: Well, I love cross examination. I think if I had to pick a witness that was sort of Exhibit A, it would be Geoffrey Bible, who was the CEO of Philip Morris. I liked him, by the way, as a person. He was an Australian, engaging Aussie. He really was and he tried to charm the jury. I had him on cross examination for two or three days. On the first day, he's very sure of himself as he should be. He's a CEO of a major, major corporation, and he was smart. He was forensically attractive. Personally, you'd like to have a beer with him.

So we sparred that first day, but I was setting him up. So I'd love to set people up. And, "Certainly you would agree with this." "Oh yes, absolutely." We'd go through all these things. And then the second day, I started hitting him with the documents, and it was brutal. It was absolutely brutal. I think unless somebody's lying, I believe I've always been respectful of witnesses, and polite, because I think the jury expects that of you. If they're not, you can really go after them. But I go after them in a different way. I just show that what they're saying is incongruous, that they are lying. And finally, the Bible got to the point where I kept showing him documents. We had this great document, and he'd finally look and say, "Well, that didn't happen on my watch."

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He threw the company basically under the bus. It was unbelievable. I caught him in, they didn't do this, they didn't do this. They didn't target children. I showed him, "This is a board meeting, isn't it, Mr. Bible?" "Yes." "And this is so and so was there, all these people. This is Philip Morris' board." "Yes, it is." "They are the top leaders of this company, isn't that right?" "Yes, they are." "And they're talking about children, marketing to children, 10 years old, aren't they?" "Well." "Well? Read it." So it was brutal. So that was fun. But there were a lot of them

like that. There were a lot of them like that. We went for, as I said, from January whatever it was to May 8th.

And over the years, I've been blessed with stamina, so I can get by on four or five hours' sleep a night, and that's a great attribute if you're a trial lawyer. But I was tired at the end of that case. Last week, we were going through those documents, and trying to get things settled all at the same time. I don't think I slept 10 hours the entire last week, 10 or 11 hours. So then I had to stand up in front of the jury and tell them that the case was settled. Hardest thing I did.

[00:52:15]

CB: Can you go into that moment a little bit?

MC: Oh, I'll never forget it. It almost brings tears to my eyes, because I can still see them sitting there. They were bitterly disappointed, and mad. I don't blame them in the least. Because they had given their life. You ask folks to come in for 10 bucks a day, whatever the heck we were paying them in those days—not we, the court system was paying them—and they were so attentive. They undertook this job with the greatest responsibility and dedication, and they wanted to make a decision, and I had to tell them that the decision was taken out of their hands.

Now, we got over \$6 billion for the State of Minnesota. It may be more than that, because it goes on forever. That was what was expected to be paid over 25 years, which we're beyond right now, based on profitability and the amount sold. But because of our case, because all of the advertising came out, all the non-monetary relief that we got that they had to do, dissolution of the Tobacco Research Institute, which was just a front anyway for a bunch of nonsense. The prevalence of smoking has gone down dramatically. So who knows how many lives have been saved as a result of it.

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More importantly, I think, well, all the documents came out. I'll tell you some stories about them, but the whole world has used those documents. Philip Morris went through a lot of corporate changes. So it's Altria now in the United States, and now there's Philip Morris International. If you look back to the very first editorial, it was in August 1994 and I think it was on, I think it was the 8th. I think it's the exact date we filed, the day after we filed there's an editorial saying, "This is a really great deal for the state. They're not going to pay anything if we lose," and it says, "And one of the purposes of this suit was to bring out the fact that they had been suppressing a safer product." Now there is no safe cigarette. Day one. There's no safe cigarette. But there were ways to make them "safer," and I use that in quotes.

After our case was done, Philip Morris went through this reorganization, and it became Philip Morris International, and now Altria. Well, Philip Morris International, developed IQOS, I-Q-O-S. It is a non-burning cigarette. They had the ability to do this sooner, but they didn't over the ensuing whatever years it was after the case. Nobody would ever think that I would praise the tobacco company, but I do praise them, because their CEO, the then CEO, not Bible, but one of the successor CEOs, dedicated that company to getting out of the conventional cigarette business. That's where they're moving right now. They're going to have IQOS. People say, "Well, they've got IQOS, it's tobacco." But they don't burn it, they heat it.

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The vast majority of harmful and potentially harmful constituents of cigarette smoke come from burning. So what this does is it heats the tobacco. It does not burn it. So it has upwards of 90 to 95 percent less harmful constituents, or potentially harmful constituents. You can't conduct epidemiological studies to show the difference, because to do that, here's what you'd have to do. You'd have to take a cohort of people and start them on conventional

cigarettes, nonsmokers, say, “You have to smoke these,” and then you have to start other people on the IQOS. Then, after 20 years, you’d have to compare the two to see what their level of disease is. You can’t do that. It’s medically unethical, because you’d be intentionally subjecting people to harmful constituents. But it stands to reason that if you have 95 percent less harmful constituents, you’re going to have a lot less disease.

So one of our purposes was to bring out the documents, another was to get the, and I’m using this in quotes—instead of saying safer, maybe I should say less harmful, a lot less harmful product on the market. Because the case, and this is very important, was never about abolishing cigarettes totally. We couldn’t do that. That’s up to the legislature, Congress. They don’t want to do that, because everybody makes a lot of money off cigarettes, right? So our role was, and this was one of our themes, to sell a lawful product legally. They were selling a lawful product illegally. They were targeting children. They were manipulating the nicotine. They were denying the harmful effects of smoking.

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Another purpose was to make them, and this was part of our antitrust claim, develop a less harmful product when they knew they could. All those things happened and we got the advertising gone. They used to go on the street corners by kids, that’s some of the stuff I showed in the Bible and you’re too young to remember, but you’d get on an airplane, and you’d get free cigarettes, little four packs, and you’d smoke in the plane. In the plane, in first class, for example, and in coach, smoking and non-smoking. So let’s say first class, I like that because it’s a smaller cabin, so it’s a better example. So you have six rows. So the first three rows smoke and the second three rows don’t smoke. You’re in a plane. You’re in a goddamn contained cube.

In any event, all of that stopped. All of it stopped, and that was another great result. The other thing, to show you what these documents meant, after the case was over, I went to Switzerland to speak to the World Health Organization, and appeared in front of them. I've never been so proud of being Minnesotan as I was that day, seriously, because I got up and they all had their little earphones on because they don't all speak English, obviously. I gave a speech about the tobacco case in Minnesota. Of course, they all knew about it, but I was there to give him the background. Then there was a question-answer, period. I'll never forget the first question. It was not a question; it was a comment. And this woman, I forget where she was from, which country. But she said, "Mr. MC, will you do me a favor?" I said, "Of course, if I can, I will. What is it?" She said, "Will you go back and thank the people of Minnesota for the tobacco litigation? Because what Minnesota did has helped our nation and every other nation, with all the documents and everything else that you got out." There it was. One woman telling me that. It was an incredible moment, and that was at WHO.

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That's what we did. Great stuff. Skip got more crap from the other attorney generals because he didn't go along with that settlement. If he had gone along with that settlement, they would have had immunity, the documents wouldn't have come out. None of this stuff would have happened that we got done. Same with Andy Czajkowski. He gets crap from people saying, "You shouldn't be spending the corporation's money this way." So there it was.

CB: Oh my gosh. It gives me chills.

MC: So it's a lot of people living a life of purpose in communion with others to serve the common good. That's what it is. If you live by that motto, you'll do some good things.

CB: That's wonderful. I feel like that wraps up the trial really beautifully. I'm sure you have no idea, but if you hadn't settled, do you think that Minnesota would have won the case, lost the case with the jury?

[01:02:00]

MC: Oh yeah, I'll tell you a story about that. I do. How much we would have gotten, I don't know. I do think we would have gotten punitive damages in addition to the compensatory. By the way, our model was only, I forget exactly, was around \$2 billion. So that's what Governor Carlson wanted to get, because he wanted to put pressure on us to settle. He'd say, "They're only going to ask for 2 billion and they're turning down 4 billion." But, of course, we're going to ask for punitive damages. It was a lot more.

After the case settled, the jury contacted Judge Fitzpatrick, and they asked him because, keep in mind, the defense had already made their closing argument. All that was left was for my closing argument and the judge to instruct on the instructions. That was all that was left in the trial when it settled. So they wanted to hear my closing argument. So we gave it at our law firm. I got to talk to some of the jurors afterwards. We would have won.

I'll tell you another reason why I know. I ran for the Senate, and we had a booth at the fair and I'm talking to people in the street, and all of a sudden, I looked over. I had a big crowd around me, in the back of the crowd was this one lady. I looked at her, she looked at me, and she's been listening. She was one of the jurors. I was just about ready to start talking about the tobacco case, so I talked about it, and I said, "And one of our jurors is standing right back there. I just noticed her." And she and I, after we were done there, went over, and I'll never forget, we sat on a picnic table, which was right across the sidewalk and on a grassy place, and we sat there. We would have won. We would have gotten more than compensatory damages.

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We kicked the heck out of them. We really did. There's so many great stories. They would try to go out every night and spin what happened during the day. That's like tampering with the jury. In fact, if you go back, they started it the day before they picked the jury. They had a press conference at the St. Paul Hilton, which was in the Radisson. If you look, I got calls from across the country because the picture in the papers across the country was me with another guy outside this room talking. I had a bomber jacket on and stuff. So what happened was, it was the night before we're going to pick a jury, and so I got three or four hours of sleep, I said, "You want to go for a walk?" We were at the St. Paul Hotel. I said, "Let's go for a walk." I didn't know they were going to do this.

So we're walking down the street, and I saw Pat, what the hell is his name, from CCO, a great reporter. You'll have to look it up, you'll know him. He's coming across the street with his camera crew with him. And I said, "Hi, Pat, how are you doing?" He says, "Fine, Mike. I thought you'd be in there," he tells me. I said, "What's in there?" He said, "The tobacco industry is talking to the people, the press and everything." I said, "They are? Well, that's not appropriate." So I said, "Come on, let's go, guys." Kessler, Pat Kessler. So Pat says, "Let's go. This is going to be good." So I turned around, came back in. So I went in, and I sat down. I went into their little room they had. I sat right in the back. Or no, I stood up in the back. All of a sudden, the lawyer sees me, he says, "Well, just a minute, I have to stop. The lawyer for the state is here. And Mr. Ciresi, we're having a talk here with the press, and I think you should leave."

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I said, "I'm not leaving. This is inappropriate. What are you telling them? We're picking a jury tomorrow. You go ahead, and if you say something that's false, I'm going to tell the press

it's false." So with that, they shut up. He said, "Well, we're not going to say anything." So I said, "If you're not going to, then I'm leaving." So I got up to walk out and the whole press followed me. They followed me out to the lobby at what was then the Radisson. That was the picture the next day of me talking to—I got calls from people I knew across the country on that. The stuff that happened was fascinating stuff. You just can't make any of this up.

But they'd go out every day, they'd go out and try to spin the press. That was the day before we picked a jury. So we'd go out and we'd say, "We're not saying anything because it's inappropriate." But I can respond if they're doing stuff. So I'd go out there and say, "I'm here. If you're going to say something and you say it wrong." "Well, we've got a right to talk to them." "Yeah, sure you do. And I've got a right to be right here." They'd shut up. So it was pretty funny. You got to have a little, as they used to say, hutzpah, other people may say something else, to sometimes call them on these things.

CB: Were there any moments where you thought you were going to lose the case?

MC: Lose it? No. I've had some cases where I thought I might lose where I won. There was never a point where I thought we would lose that case. I thought they had great lawyers, don't get me wrong, some of the best that I've ever been against. But I never thought we'd lose. I thought that they did a good job at some things, that we had to meet it, rebut it, and show why that wasn't true, and we did. But no, I never thought we were going to lose. But when you get offered six and a half billion dollars, you've got an obligation to your client. Skip had an obligation. I would make the recommendations. It was Skip and Andy's call. They would say whether they wanted to settle or not. There's no way Andy would ever settle that case, unless we made a recommendation.

[01:08:47]

CB: I don't want to take up too much more of your time. Is there anything else from the trial that you would like to mention? Otherwise, I have a few post-trial questions as well.

MC: No. I could tell you something, but I'm not going to, but one of the things I could tell you was, we were on one floor, and we hired the St. Paul Police Department to be our guards. We had the K9 force. We hired people to come in and sweep our rooms, because I didn't know. This is the most powerful industry you could imagine and they're a floor or two apart from us. They could be listening. I didn't know. So during the four-month trial, we hired these surveillance people who would come in, unannounced. They would not even tell me when they were coming, and they'd sweep our rooms. Never found anything. They came in four or five times, during the trial.

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I'll tell you another thing, I just ran into a lady in White Bear Lake. I was just walking down the street, and she used to work at the St. Paul Hotel. She was a bartender, and she walked up and said, "Mike, do you remember me?" And I did, of course. I said, "My God, how have you been, Michelle?" She said, "Fine." She said, "God, I'll never forget, you used to come down, you looked dead tired, 11:00 at night, you'd sit at the bar and have a bowl of soup and a cup of coffee." And I said, "Yeah, I remember those nights." The restaurant was closed and everything, you know? You get to know these folks. She and Al, the bartender, and Al was a great guy.

CB: I just can't imagine being so complete in something for that period of time.

MC: It is what it is. A lawyer should know that privilege that I talked to you about earlier, about people coming. You should go by a motto that is when your client puts her head down on her pillow at night to go to sleep, she should know that her lawyer is still up thinking about her case. Now that's a tough thing to say today, with life-work balance and all this stuff.

There is no life-work balance when you're representing somebody else. You have somebody else's future in your hands. If there is, you shouldn't do it. That's not to say you don't take time for your family. I'm not saying that. But there's a responsibility and obligation that you really have to understand. If you don't, I don't think you'd ever have the opportunity to, let alone get the results that happened like this tobacco case. I was privileged to be with, to work with people who fully understood that concept, or that obligation.

[01:12:09]

CB: Maybe going off that, then, where would you put the trial in your life? What impact did it have on you, personally, physically, mentally?

MC: Well, obviously, it had a big financial impact. My family, my dad had, as I said, a seventh-grade education. He was born here. They went back to Sisley to meet his grandparents, World War I broke out, he got stuck there. Came back. They put him in third grade. He was 10, 11, 12 years old, whatever he was, so he quit in seventh grade, started selling fruits and vegetables to, he called them the big shots on Summit Avenue out of a horse and wagon with his dad. I was fortunate. Even though my mother died young, she suffered for five years, I had family surrounding me. The good nuns of St. Andrews were around you, and you learned certain basics. So I learned that you give back. Today, they say you pay it forward. But you're better if you do those things. You feel better about yourself, and you do something for the world. So this case financially, obviously made a difference, but I didn't get in the practice of law to make a lot of money. I got in to do good things. I knew I'd make a decent living. Well, I ended up doing better than that. My dad would be shocked today. He really would be. But he'd be very proud.

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So in that sense, the tobacco case rates are very high. I think the impact on people is probably broader than a lot of cases. But there's other cases, Richard Wilkinson who was blinded in an industrial accident in Duluth, Vern Ruberg. I can name you cases, some people who lost their lives, and their families. So it's hard to say where it fits in that pantheon of cases. If you've been fortunate enough, like I have been, to have a long career over a long period of time, then you have a wealth of experiences that you can look back on and say, "We did something there." And it's always we, it's not I. Except that you can say I benefited from we, if you know what I mean.

CB: And then you've mentioned several aspects of this, but I guess, anything else to say about the legacy overall with the trial?

MC: The legacy of it?

CB: Yes. That's probably a big question.

MC: Well, yeah. I think I've told you, the documents that have come out, the lives that have been saved. Practices have been changed. The heat not burn product that came out on the market now. Just the raw money, up to \$200 million a year comes into the State of Minnesota every single year. It's still coming in, 26 years later. We did more, we brought more money into this state than any other individuals, I think, ever did in terms of citizens, other than companies. But a little group of citizens who did something. All these politicians talking about all things they do, I just look at them and say, "Okay, when's the last time you brought 200 million bucks into the state, 175 million?" And that money has been used. It goes into the general fund. Think of all the good that does.

[01:16:15]

Now, it shouldn't go to the general fund. It should go toward youth, because that's what it was intended for. This case was about youth. It wasn't about the adults, because of what the adults were doing to the kids. Every politician of both stripes, Democrats and Republicans, have raided the tobacco money when they wanted to pay off deficits and stuff. They've all done it and they know who they are. I don't need to name them. It's pretty easy to go back and figure it out, though. The only one who didn't, Jesse, "The Body" Ventura. The only one that didn't. Now, he had a surplus during his years, but he's the only one that didn't.

CB: What did the trial outcome then signify for the tobacco industry? How did they change their practices? Is it different now than it was?

MC: It's totally different. They're selling a product that kills when used as intended, okay? But PMI has done a different thing. They've said they want to get out of conventional cigarettes. Will some people still die from smoking a heat not burning cigarette? I suppose they will. But if people want to outlaw something, then every legislature do it. There are the evangelicals, and I don't mean that in a religious sense, that want to abolish. And I understand that, I'm not going to argue with it. But that wasn't our role. We never intended that. But we had a tremendous legacy, not just in Minnesota, nationwide, worldwide.

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I don't think there's another lawsuit that's had that type of worldwide effect. Bhopal had a worldwide effect because a lot of industries changed the way they dealt with hazardous substances as a result of the Bhopal case. So we're very, very proud of that also. But this case, I think, has had a more direct impact on people across the entire globe.

CB: And what about the future of the tobacco control movement?

MC: What do I think of it?

CB: Yeah, the outcome, is it rosy?

MC: You know, Carson, we're legalizing marijuana. Come on, give me a break. People don't want it. Tobacco control. Is a heat not burn cigarette any worse than smoking marijuana? Is marijuana a gateway drug? Some people say no. Some people say yes. I would imagine for some people it is. Human beings are going to engage in conduct that other human beings don't think it's very healthy. And they're right, it's not. But that's why we have free choice. If we want to outlaw it, then do it. We tried that with Prohibition. That didn't work very well, did it?

[Redacted] I don't believe we should just abolish it because I don't think it works.

The only thing we should abolish is things like slavery, discrimination. That's the stuff we should abolish. But I think it's very difficult to abolish sin products, if you want to call that. Gambling. Look at the government, how much money they make off gambling.

[01:20:06]

CB: Well, I think that was all of my questions. Is there anything else that I missed? Any other?

MC: No, I think you've got it all. If you've talked to Roberta you've got it all.

CB: Well, thank you so, so very much.

MC: Thank you, Carson, for coming in. I enjoyed it. I really did.

[End of interview]