



LORRAINE SWATY

Plaintiff,

v.

**PHILIP MORRIS INCORPORATED, (PHILIP MORRIS U.S.A.), R.J.
REYNOLDS TOBACCO COMPANY, LORILLARD TOBACCO COMPANY,
and BROWN & WILLIAMSON TOBACCO CORPORATION,
INDIVIDUALLY AND AS SUCCESSORS TO THE AMERICAN TOBACCO
COMPANY**

Defendants.

**CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLA.**

Case No.: 00-22691 CA 09

APRIL 25, 2005

PURPOSE

This backgrounder has been prepared by R.J. Reynolds Tobacco Company to provide a concise reference document on this Broin II litigation. It is not a court document.

HISTORY

In 1997, in a separately filed class-action lawsuit, the defendants in this case entered into a settlement agreement with a class of non-smoking flight attendants known as the *Broin* class. Pursuant to the *Broin* Settlement Agreement, the class was disbanded. Individual class members, however, retained the right to file any claims that they had against the tobacco company defendants related to the plaintiff's environmental tobacco smoke (ETS) exposures in airline cabins. This settlement agreement was approved by the courts in September 1999, and approximately 3,000 individual claims have been filed since early 2000. Under the *Broin* Settlement Agreement, plaintiffs may seek compensatory damages, but they may not seek any punitive damages.

The plaintiff in this case, Lorraine Swaty, filed her lawsuit pursuant to the *Broin* Settlement Agreement.

THE PLAINTIFF

Ms. Swaty filed this lawsuit on September 6, 2000, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Fla. Ms. Swaty is a flight attendant who claims to have suffered injuries as a result of her exposure to ETS in aircraft cabins while she worked as a flight attendant for PSA and US Air from 1965 to the present.

Ms. Swaty was born in Uniontown, Pa., on March 18, 1947. She began working as a flight attendant with Pacific Southwest Airlines (PSA), a west coast regional airline, in 1965. PSA merged with US Air in 1988 and Ms. Swaty continues to work as a flight attendant today. Ms. Swaty has only flown as a working flight attendant on domestic flights. In April 1988, the U. S. government banned smoking on domestic flights that were two hours or less in duration. In February 1990, the U.S. government banned smoking on all domestic flights.

Ms. Swaty claims that she developed asthma and chronic sinusitis with nasal polyps during the course of her career as a flight attendant and that her asthma and chronic sinusitis with nasal polyps were caused and/or aggravated by her exposure to ETS as a flight attendant.

The Plaintiff is represented by Philip Gerson of Gerson & Davis in Miami and Steven Hunter of Hunter, William and Lynch also in Miami.

THE DEFENDANTS

Philip Morris Incorporated (Philip Morris U.S.A.)

Philip Morris is the nation's largest manufacturer of cigarettes. Headquartered in Richmond, Va., it is a subsidiary of Altria Group, Inc., and its major brands include Marlboro, Basic, Benson and Hedges, Virginia Slims and Merit.

Philip Morris is represented by David Ross of the Miami office of Greenberg Traurig and William Geraghty of the Miami office of Shook, Hardy & Bacon, LLP.

R.J. Reynolds Tobacco Company

R.J. Reynolds is a wholly-owned subsidiary of Reynolds American Inc., and is headquartered in Winston-Salem, North Carolina. It is the nation's second-largest manufacturer of cigarettes. Its brands include Camel, Kool, Winston, Salem, Doral and Pall Mall.

R.J. Reynolds Tobacco is represented by Anthony Upshaw of the Miami office of Adorno & Yoss LLP.

Brown & Williamson Tobacco Corporation, now known as Brown & Williamson Holdings, Inc.

Brown & Williamson Holdings, Inc. (B&W), based in Louisville, Ky., formerly manufactured the Kool, Pall Mall, GPC, Carlton, Lucky Strike and Misty cigarette brands.

As of July 31, 2004, B&W's domestic tobacco business merged with R.J. Reynolds Tobacco Company, a New Jersey corporation, to form R.J. Reynolds Tobacco Company, a North Carolina corporation.

Brown & Williamson is represented by Anthony Upshaw of the Miami office

of Adorno & Yoss LLP.

Lorillard Tobacco Company

Lorillard Tobacco Co. is the third-largest manufacturer of cigarettes in the United States. Headquartered in Greensboro, North Carolina, it is an indirect subsidiary of the Loews Corp. The company's major brands include Newport, Kent, True, Old Gold and Maverick.

Lorillard is represented by David Ross of the Miami office of Greenberg Traurig.

TRIAL SITE

The case will be tried in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Fla.

JUDGE

This case will be tried by Judge Mark Schumacher.

EXPECTED DURATION

The trial is scheduled to begin with jury selection on April 25, 2005. The parties have estimated that the trial will last five to seven days.

JURY AND VERDICT

Six jurors and at least one alternate will be chosen. For the plaintiff to prevail, six jurors must reach a unanimous decision.

PLAINTIFF'S CASE

Ms. Swaty claims that she developed asthma and chronic sinusitis with

nasal polyps which were caused and/or aggravated by her exposure to ETS as a flight attendant. Based on the appellate court's recent interpretation of the *Broin* settlement agreement, the plaintiff's case will proceed under the theories of specific causation and damages. Therefore, the plaintiff must prove that she has asthma and chronic sinusitis with nasal polyps and that her exposure to ETS as a flight attendant caused these and/or aggravated these conditions. Ms. Swaty seeks an unspecified amount in actual damages. Under the *Broin* Settlement Agreement, Ms. Swaty may not seek punitive damages.

DEFENDANTS' CASE

The defendants contend that exposure to ETS did not cause Ms. Swaty's asthma or chronic sinusitis with polyps, or make either of these conditions worse. Furthermore, the defendants contend that credible evidence does not exist to show that ETS causes these conditions in nonsmoking adults, even at the highest levels likely to be encountered in real-world environments.

Defendants acknowledge that Ms. Swaty currently has asthma. However, the defendants will present evidence to show that exposure to ETS on aircrafts did not cause Ms. Swaty's asthma nor make her condition worse. There will be no evidence that Ms. Swaty suffered even temporary irritation by ETS or that she had any asthmatic episodes contemporaneous with her flights.

Defendants also acknowledge that Ms. Swaty has chronic sinusitis with nasal polyps. Defendants will present evidence that, even at the highest levels likely to be encountered in real-world environments, chronic sinusitis is not caused by exposure to ETS. Evidence will be presented by the defendants that the most likely causes for the plaintiff's chronic sinusitis with nasal polyps were the host of other environmental factors found aboard passenger airplanes and the Southern California climate.

The defendants also may present evidence that the plaintiff's exposures to ETS as a flight attendant were very low compared with the ETS exposures that other people might typically encounter at work or in the home. To support this contention, the defendants will present evidence from several

ETS exposure studies conducted aboard airline cabins when smoking was permitted, including studies conducted by the Surgeon General of the United States, the National Research Council and the Environmental Protection Agency. Also, in this area, defendants may present evidence that the ventilation system aboard the airplanes Ms. Swaty worked on were capable of dispersing any ETS which may accumulate in the passenger cabin in two to six minutes.