

FAMRI

How did we get here?

R A Daynard

It is rare that science owes a debt to law. To lawmakers, surely, such as those who regularly make generous appropriations to the National Science Foundation and the National Institutes of Health. But law, in the sense of the process and products of litigation? It's hard to imagine.

But this special supplement is deeply in debt to law in just that sense. The funding that supports the research reported on in this special issue owes everything to an unlikely lawsuit. *Broin v. Philip Morris, Inc.*¹ was filed in 1991, when everybody knew that it was impossible to sue tobacco companies successfully. It was a class action, brought under a Florida court rule modelled on a federal rule that had generally been understood to bar class actions for "mass torts". This particular class action, against all the major cigarette companies, sought damages for illnesses suffered by flight attendants as a result of their exposure to secondhand smoke. This, at a time when the tobacco industry was still getting traction in its defence of smokers' cases with "expert" witnesses who testified that the causal relation between active smoking and lung cancer had not yet been proven!

Yet, to almost everyone's surprise, the Broin case resisted all industry efforts to prevent it from going to trial. The trial itself, in the summer and fall of 1997, lasted five months and featured pro bono testimony on the effects of secondhand smoke and the misconduct of the

tobacco industry from experts, several of whom are represented among the contributors to this supplement. We will never know what the jury thought of the case, since the parties settled while the defence was still presenting its side of the case.

EXTRAORDINARY SETTLEMENT

For a case that was predicted to have had no chance, the settlement was extraordinary. First, the second phase of the case, in which individual flight attendants had to prove their claim that their particular ailment was caused by exposure to secondhand smoke, was greatly simplified. Statutes of limitations, which would have barred many if not most of the flight attendants' claims, were waived for one year. The defendants agreed that if a flight attendant could prove she had lung cancer, chronic bronchitis, emphysema, chronic obstructive pulmonary disease, or chronic sinusitis, the causal connection between that and her exposure to secondhand smoke would be presumed. Plaintiffs could make use of videotapes of the expert testimony in the first phase, without having to recall the witnesses. Finally, and crucially here, the defendants agreed to pay \$300 million to establish what became the Flight Attendant Medical Research Institute (FAMRI), whose mission is "to sponsor scientific and medical research for the early detection, prevention, treatment and cure of diseases and medical conditions caused from exposure to

tobacco smoke".² It is of course FAMRI that has funded the present research.

HISTORY OF FAMRI

But to understand the history of FAMRI and of the extraordinary litigation that established it requires knowing something about Stanley and Susan Rosenblatt, the lawyers who brought the case. Though abandoning a diverse and successful plaintiffs' litigation practice to devote themselves to the Broin litigation (and somewhat later to the Engle case, a class action on behalf of Florida smokers and their survivors against the tobacco industry, as well) may seem in retrospect a smart financial move, it was universally viewed at the time by their fellow lawyers as financial suicide. The only possible motive for bringing a class action on behalf of non-smokers against the tobacco industry in 1992 was to do justice! And justice they did, mostly by themselves, Stanley's superb, largely intuitive, courtroom skills combining with Susan's brilliant appellate legal research and writing to outmanoeuvre and overpower the industry's army of lawyers. Like David's successful assault on Goliath, the Rosenblatts' success in Broin required fearlessness, faith in themselves and in the rightness of their cause, single minded devotion, genuine ability, and perhaps a little luck. A rare combination, these may nonetheless be the ingredients for most great achievements, whether in battle, in law, or even in science.

Tobacco Control 2004;13(Suppl 1):i3.
doi: 10.1136/tc.2003.007351

Correspondence to: Professor Richard Daynard, Northeastern University School of Law, Boston, MA 02115, USA; Chair, FAMRI Lay Advisory Board; rdaynard@lynx.neu.edu

REFERENCES

- 1 *Broin v. Philip Morris Companies, Inc., et al.* Case No. 91-49738, Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida.
- 2 *Flight Attendant Medical Research Institute (FAMRI)*. http://www.famri.org/mission_statement/index.asp.