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Richard Boeken vs. Philip Morris Incorporated, et al., Media Backgrounder

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RICHARD BOEKEN,
Plaintiff

vs.

PHILIP MORRIS INCORPORATED, et al.,
Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES
Case No. BC 226593
March 19, 2001

Boeken v Philip Morris
9457

MEDIA BACKGROUNDER

(This backgrounder is prepared for use by members of the news media. It is not a court document.)

PURPOSE

The purpose of this backgrounder is to provide the news media with a concise reference document concerning this litigation. It is not a court document.

THE PLAINTIFF

The plaintiff, Richard Boeken, sued Philip Morris Incorporated, International House of Pancakes Incorporated and an unspecified number of unnamed defendants. The plaintiff has dismissed all claims against all parties except Philip Morris.

The plaintiff is represented by Michael Piuze.

THE DEFENDANT

Philip Morris Incorporated

Philip Morris Incorporated is the nation's largest manufacturer of cigarettes. Headquartered in New York, N.Y., it is a subsidiary of Philip Morris Companies Inc. Philip Morris' major brands include Marlboro, Parliament, Benson & Hedges, Virginia Slims and Merit.

Philip Morris is represented by Maurice A. Leiter and John L. Carlton of Arnold & Porter in Los Angeles. Both Mr. Leiter and Mr. Carlton served as federal prosecutors in the U.S. Attorney's office in Los Angeles, and both were deputy general counsels to the Rampart Independent Review Panel.

TRIAL SITE

The trial is being held in the Central Civil West Division of Superior Court, near downtown Los Angeles.

JUDGE

The trial judge is the Hon. Charles W. McCoy. Judge McCoy is a member of the Superior Court's complex case panel.

JURY AND VERDICT

The jury consists of 12 jurors and six alternates. Nine of the 12 jurors must agree on the verdict.

EXPECTED DURATION

The companies anticipate that trial could last three weeks or more.

PLAINTIFF'S CASE

The plaintiff asserts five substantive causes of action: negligence, strict liability, deceit/fraudulent concealment, false representation and breach of express warranty. There is also a conspiracy claim.

Mr. Boeken has testified that he became a regular smoker in 1957, when he was about 13 years old. He was a two pack-per-day smoker for 40 years. He was diagnosed with lung cancer in 1999.

DEFENDANTS' CASE

The company denies all of the plaintiff's claims.

The company contends that the plaintiff's claims, in whole or part, are pre-empted by the Federal Cigarette Labeling and Advertising Act, which pre-empts all failure-to-warn and fraudulent-concealment claims after 1969.

With regard to the plaintiff's claims of deceit/fraudulent concealment, false representation and breach of express warranty, Philip Morris will argue that there is substantial evidence that Mr. Boeken had long been aware of the potential health risks of smoking, which were common knowledge throughout the community before he started smoking. In addition, evidence will show that he was exposed to smoking-related warnings in newspapers, television and other media, as well as the federally mandated health warnings on cigarette packs that first appeared soon after he started smoking. The company also contends that it had no duty to warn Mr. Boeken of risks that he already knew. And, being fully informed of such risks, Mr. Boeken assumed these risks.

Additionally, the plaintiff has not and cannot offer any evidence that at any time during Mr. Boeken's smoking history, there was any feasible, safer alternative cigarette design that would have been used by him and would have prevented his cancer.

PROCEDURAL HISTORY

Boeken was filed on March 16, 2000. Because of Mr. Boeken's illness, the case has been designated as a preference case, and the court has set aside many of the procedural rules to allow the case to move to trial on an expedited basis.

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