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Suit Accuses Tobacco Firms of Targeting Black Consumers, Seeks \$1 Billion in Damages

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Accusing tobacco companies of preying on black people, a Miami attorney is seeking \$1 billion in damages on behalf of a Coral Springs, Fla., woman whose mother and grandmother both died of smoking-related health problems.

The Miami-Dade Circuit Court suit, which flows out of the massive Engle class action litigation filed in the 1990s, alleges that cigarette makers engaged in cynical and exploitative marketing targeting black communities.

The suit cites marketing documents from the tobacco companies from the 1950s through the 1990s that made disparaging generalizations about African-Americans and suggested working through black churches and youth events to recruit smokers.

"If I could, I'd try to have them charged with genocide," said solo practitioner J.B. Harris, who filed the suit. "There clearly was a racist bent in the tobacco companies' marketing. It was scientific, methodical and deliberate, and it was worse for African-Americans than for any other group."

Representatives of the defendant companies -- Philip Morris USA, Lorillard Tobacco, RJ Reynolds, and Liggett Group -- did not return calls or e-mails for comment by deadline.

Harris is representing Gloria Tucker, who is the representative of the estates of Dorothy Oliver, her mother, and Annie Mae Swain, her grandmother. Swain died in 1994 and Oliver died in 2000.

Tucker is bringing the individual suit in the wake of the Florida Supreme Court ruling last year decertifying the class of Florida smokers who won a \$145 billion punitive damages verdict against the major cigarette makers in 2000.

Even though the Supreme Court overturned that record-setting verdict as excessive, it allowed individuals to sue without having to relitigate key factual issues in the original class action case. Many plaintiffs now are pursuing individual cases.

Tucker's suit is based on the theories of strict liability, negligent design, fraud by concealment and civil conspiracy.

Harris said he spent months digging through internal documents released by tobacco companies in the course of class action litigation. His suit provides a chronological account of what he calls "marketing by racial profiling."

"Marketing to a specific segment of the population is a normal practice," Harris acknowledged in an interview. "But the big difference is that these people were knowingly marketing poison."

Harris cites government studies and internal tobacco company documents showing a higher number of billboards in black neighborhoods, and efforts to target the black community through ads in black-oriented magazines such as *Ebony*, *Jet* and *Essence*.

At the same time that Dorothy Oliver and Annie Mae Swain were taking up smoking, "defendants were pouring millions of dollars into designing, refining, planning and executing highly sophisticated ad wars -- while simultaneously boosting tar and nicotine levels in cigarettes -- they did so for the sole purpose of addicting as many African-Americans as possible, in a manner that far exceeded any other attempts to reach any other market segment in the United States," Harris wrote in the complaint.

Harris cites one 1982 market report commissioned by R.J. Reynolds that contained the following statements:

"Blacks tend to buy less things to improve themselves, they appear less concerned about health-related issues (i.e., blacks don't necessarily identify with the motivations of the "Concerned" and "Moderation" segments) and are more prone to buy on impulse."

"Blacks have less concern for the future and live from one day to the next. They buy products for instant gratification."

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Walter Olson, a senior fellow at the Manhattan Institute, a conservative research group, and author of several books about the U.S. legal system, said filing a suit based on tobacco companies' ethnic marketing strategies is a questionable approach.

"It's kind of surprising that this is being filed in Florida, where there is a paper trail of courts disapproving of this kind of argumentation in the past," said Olson, who's not involved in the litigation.

"That being said," he added, "the attorney may well be thinking that the suit is much more likely to receive media attention if it contains material of that nature, and that coverage can sometimes be a tactical advantage in a lawsuit."

Harris disputed the notion that he's playing up inflammatory findings about racial marketing regardless of legal merit.

"Let me tell you something," Harris said. "I have every intention of getting all of these facts before a jury. Not only is it relevant, but it's so outrageous, it goes directly to the issue of punitive damages. The door to punitive damages is wide open in this case, and I'm going to drive through it like a Mack truck."