

# The Burger Court Opinion Writing Database

## *Air France v. Saks*

470 U.S. 392 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

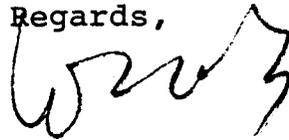
February 28, 1985

Re: No. 83-1785 - Air France v. Saks

Dear Sandra,

I join.

Regards,



Justice O'Connor

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 25, 1985

No. 83-1785

Air France v. Saks

Dear Sandra,  
I agree.

Sincerely,



Justice O'Connor

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V  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 25, 1985

83-1785 - Air France v. Saks

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Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

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5  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 28, 1985

Re: No. 83-1785-Air France v. Valerie Hermien Saks

Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 28, 1985

Re: No. 83-1785, Air France v. Saks

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 28, 1985

83-1785 Air France v. Saks

Dear Sandra:

Please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 26, 1985

Re: No. 83-1785 Air France v. Saks

Dear Sandra,

Please join me.

Sincerely,

*WR*

Justice O'Connor

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 25, 1985

Re: 83-1785 - Air France v. Saks

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

pp. 9

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: FEB 21 1985

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Feb 21, 1985

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1785

**AIR FRANCE, PETITIONER v. VALERIE  
HERMIEN SAKS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[February —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

Article 17 of the "Warsaw Convention,"<sup>1</sup> makes air carriers liable for injuries sustained by a passenger "if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." We granted certiorari, 469 U. S. — (1984), to resolve a conflict among the courts of appeals as to the proper definition of the word "accident" as used in this international air carriage treaty.

I

On November 16, 1980, respondent Valerie Saks boarded an Air France jetliner in Paris for a 12 hour flight to Los Angeles. The flight went smoothly in all respects until, as the aircraft descended to Los Angeles, Saks felt severe pressure and pain in her left ear. The pain continued after the plane landed, but Saks disembarked without informing any Air France crew member or employee of her ailment. Five days later, Saks consulted a doctor who concluded that she had become permanently deaf in her left ear.

Saks filed suit against Air France in California State Court, alleging that her hearing loss was caused by negligent

<sup>1</sup>Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), reprinted at 49 U. S. C. § 1502 note.

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**Stylistic Changes Throughout**

pp. 15

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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Mar 1 1985

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1785

**AIR FRANCE, PETITIONER v. VALERIE  
HERMIEN SAKS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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<sup>1</sup> Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), note following 49 U. S. C. App. § 1502.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 11, 1985

Re: 84-939, Japan Air Lines Co. v. Abramson

MEMORANDUM TO THE CONFERENCE:

This case was held for Air France v. Saks, No. 83-1785 (slip op. March 4, 1985). In Air France the Court noted that, under Article 17 of the Warsaw Convention, a carrier may be liable to a passenger under the terms of the Convention if an "accident" causes the passenger's injuries. The Court held that "accident" as used in Article 17 means an unusual or unexpected event that is external to the passenger. We expressed no opinion on the question whether, assuming a passenger's injury were caused by something other than an accident, the Warsaw Convention would preclude state causes of action for negligence. Slip op. at 15.

The Court of Appeals for the Third Circuit reached this issue in Abramson v. Japan Air Lines Co., 739 F.2d 130 (1984). Mr. Abramson, a passenger on a New York to Tokyo flight, suffered an attack from a pre-existing hiatal hernia while on board. He sought to employ a "self-help remedy" of massage while in a prone position, but airline personnel told him that there were no empty seats available for him to lie down in. Abramson's condition worsened, and he required hospitalization in Tokyo. His suit in New Jersey federal district court stated causes of action under both the Warsaw Convention and the state law of negligence and willful misconduct. Discovery revealed that there were in fact empty seats in the first class section of the plane. The district court entered summary judgment on all counts for the airline, reasoning that because Abramson's injury was not caused by an "accident," the Warsaw Convention absolved the airline entirely of liability.

The Court of Appeals applied the definition of "accident" which we subsequently endorsed in Air France and concluded that Abramson's injury was not

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