

Panel scratches lawsuit over itchy American Airlines uniforms

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Posted June 23, 2026 11:55 AM CDT



A panel of the 7th U.S. Circuit Court of Appeals affirmed the judgment of lower court granting summary judgment in favor of American Airlines and a uniform manufacturer over allegedly unsafe uniforms. PhotoSpirit/stock.adobe.com



Michael B. Brennan

A group of [American Airlines](#) employees lost a bid to revive a products liability lawsuit against a clothing manufacturer, alleging that some of its uniform contained chemicals that caused them to experience rashes, hives and other skin irritations.

On appeal, the employees raised two *res ipsa loquitur* arguments, a Latin phrase meaning “the thing speaks for itself.”

In tort law, those arguments allow plaintiffs to establish a rebuttable presumption or inference of negligence using circumstantial evidence.

The plaintiffs claimed that circumstantial evidence in the record supports an inference under this doctrine that clothing manufacturer Twin Hill Acquisition Co. Inc. is liable for their injuries in their products liability theories.

In a written opinion, a panel of the [7th U.S. Circuit Court of Appeals](#) affirmed the judgment of U.S. District Court Judge [John J. Tharp Jr.](#), granting summary judgment in favor of American Airlines and Twin Hill.

Chief Judge [Michael B. Brennan](#) wrote for the panel June 16.

“Seeing no jurisdictional problem, we adopt the district court’s well-reasoned opinion in full,” Brennan wrote.

In February 2015, American Airlines contracted with Twin Hill to manufacture new uniforms for its approximately 65,000 employees.

The line consisted of wool and non-wool garments, featuring anything from jackets and vests to cardigans and dresses.

After American Airlines released the new apparel, hundreds of employees complained of health problems ranging from itchy eyes to severe allergic reactions. Some claimed they suffered reactions just from being near the Twin Hill uniforms.

A group of 74 named plaintiffs sued Twin Hill, American Airlines and several other defendants in August 2017, bringing claims under both products liability and intentional tort theories of liability.

Against Twin Hill, they asserted strict and negligent products liability theories, arguing that the uniforms were defective and caused their injuries.

Against both Twin Hill and American Airlines, they brought battery and intentional infliction of emotional distress claims, alleging the companies forced employees to wear defective and harmful uniforms.

After a jurisdictional issue was resolved, the district court excluded the plaintiffs’ expert witnesses Dr. Arch Carson and Dr. Peter Hauser. The district court then granted summary judgment for the defendants.

The district court concluded that Carson and Hauser each had employed an unreliable methodology, meaning the plaintiffs’ liability theories faltered because they could not connect the alleged harms to the condition of the uniforms.

The plaintiffs appealed that decision.

The panel was not convinced by the plaintiffs’ arguments on appeal and adopted the district court’s “first-rate opinion.”

The panel agreed with the district court that the plaintiffs failed to identify any specific defect with the Twin Hill uniforms.

The panel also found the district court properly excluded the expert testimony of Carson and Hauser because of their unreliable methods.

“Without this expert testimony, there is no evidence from which a reasonable jury could conclude that the defendants caused plaintiffs harm — especially not that the uniforms caused proximity reactions harming plaintiffs from afar,” Brennan wrote.

The plaintiffs raised the doctrine of *res ipsa loquitur* in an effort to overcome the lack of direct evidence of any defect.

They argued that circumstantial evidence in the record supported an inference under this doctrine that Twin Hill is liable for their injuries on their products liability theories.

On appeal, the plaintiffs asked the panel to apply the Illinois law doctrine developed in *Tweedy v. Wright Ford Sales Inc.*, 357 N.E.2d 449 (Ill. 1976), which applies only to strict liability theories.

Ordinarily, plaintiffs must show “the injury resulted from a condition of the product,” “the condition was an unreasonably dangerous one,” and “the condition existed at the time it left the defendant’s control,” documents stated.

Under *Tweedy*, the plaintiff can bypass proof of a specific dangerous defect so long as “the product failed to perform as expected,” and there are no better explanations for its failure.

However, the panel found the *Tweedy* doctrine does not apply in this case.

The panel noted that after the district court excluded their experts, the plaintiffs had no evidence that the injuries were “the result of the condition of the product.”

“The plaintiffs stretch the doctrine’s logic by saying the uniforms ‘failed to perform as expected,’” Brennan wrote. “These uniforms did not ‘fail’ in the way Illinois courts normally understand the term — they did not break, collapse, or malfunction.”

The plaintiffs additionally cited the traditional variant of *res ipsa loquitur* to prove their negligent manufacturing arguments against Twin Hill.

Brennan wrote that this burden is even higher for a negligence claim than for a strict liability claim.

The panel therefore found the district court correctly concluded that no evidence in the record supported the plaintiffs’ arguments.

Brennan emphasized that the uniforms in this case were manufactured in many different factories and shipped across the world by multiple intermediaries, resulting in Twin Hill relinquishing control over them.

“By the time the uniforms were tested, moreover, many had been washed and worn, eroding Twin Hill’s control even further,” Brennan wrote. “No *res ipsa loquitur* inference could prove that the plaintiffs were injured as a result of negligent manufacturing by Twin Hill.”

The panel found that neither the *Tweedy* doctrine nor *res ipsa loquitur* helped the plaintiffs satisfy their evidentiary burden on their products liability theories.

The plaintiffs are represented by Warren T. Burns of Burns Charest LLP, and others from the firm, as well as [Stewart M. Weltman](#) of [Hart McLaughlin & Eldridge](#) and [Pasha Vaziri](#) of [Vaziri Law LLC](#). They could not be reached for comment.

Twin Hill is represented by lead attorney [Timothy J. Young](#) and [Lynn M. Geerdes](#) of [Lewis Brisbois Bisgaard & Smith LLP](#), as well as [Francis A. Citera](#) of [Greenberg Traurig LLP](#). Citera said they are pleased with the result.

The case is *Thor Zurbriggen, et al. v. Twin Hill Acquisition Inc., et al.*, No. 25-1963.

Practice Areas: [Products Liability Law](#), [Products Liability Litigation](#), [Tort Law](#)

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