

Cellphone Radiation Litigation Returns to the Fast Track

Summary: Precursor advises investors it is **highly likely that at least one cellphone radiation trial will begin before the end of this year**, now that the U.S. Supreme Court has denied the appeal by Defendants Nokia, Cingular, Motorola, Qualcomm, and other wireless handset manufacturers and service providers. While Precursor remains positive overall on the drivers of wireless growth (Precursor 10/14/05) the Supreme Court's denial of Defendant cellphone companies' appeal puts radiation litigation on the fast track toward calendaring this year and jury decisions in ~6-10 months. The Supreme Court's recent ruling confirms Precursor's belief that the Pandora's Box of joint and severable liability for health effects of cellphone radiation **could plague cellphone manufacturers — especially Nokia (NOK), Ericsson (ERICY), Motorola (MOT), Samsung (SMSN) — and possibly less so service providers — especially Cingular (BLS-SBC), Sprint (S), T-Mobile (DT), and Verizon (VZ) — with repeated cycles of protracted tobacco- and asbestos-style litigation** that takes years to resolve (Precursor 3/28/05), generating headline risk, even though the financial impact of limited damage awards is unlikely to be severe.

Supreme Court Catalyst Toward Protracted Litigation

- The Supreme Court's decision to deny Defendants' appeal of the 4th Circuit's decision on the preemption issue, breaks up previous class action litigation and reinstates five cases in the state courts of Georgia, Maryland, New York, Pennsylvania, and the federal district of Maryland.
- Cellphone *manufacturers and service providers* therefore will be compelled to *simultaneously* defend against *inconsistent* allegations in *multiple* venues, significantly increasing complexity, time, and expense.
- Precursor continues to believe that defending against the resurrected cases is likely to be more time consuming and expensive than class action litigation because:
 - The five cases were remanded to multiple state and federal venues;
 - The allegations varied from product liability and negligence to consumer protection and include fraud and collusion;
 - The standard for judgment ranges from strict tort liability (merely putting the injurious device into stream of commerce) to preponderance of the evidence (more likely than not or 51%) to criminal culpability (beyond a doubt);

- Jury behavior is unpredictable and varies from jurisdiction to jurisdiction;
- Subsequent health effects studies confirm a lack of consensus in the scientific community, shifting the fulcrum issue from one of law (an evidentiary standard for the court to determine) to one of fact/liability (for the jury to decide);
- The likelihood of inconsistent judgments increases with the increased potential for multiple jury trials in various courts.
- In denying the Defendants' request, the Supreme Court implicitly affirmed the holding of the Fourth Circuit that neither the Telecommunications Act itself nor the FCC's radiation safety standards "preempted" (that is, fore-closed) litigation on the health effects of cellphone radiation.
- Although cellphone providers have been universally successful in defending against health effects lawsuits, as courts have not yet found sufficient scientific certitude, that defensive line is more likely to be crossed now that multiple suits are likely to come before juries in varying courts.
- Indeed, Precursor believes, upon review of likely litigation strategy, that the on-going dispute within the scientific community about the health effects of non-ionizing (cellphone) radiation only increases the likelihood that the conflicting studies will be found admissible because a sufficient body of scientific case studies has been produced to meet the relatively minimal Daubert standard (Precursor 3/28/05).

Accelerated Timing but Financially Limited Effects.

- Precursor believes that at least one of the judges in one of the five remanded cases is likely to find the proffered evidence sufficient to withstand summary judgment and therefore proceed to trial before the end of this year and render a verdict within the next six to eight months.
- Precursor continues to believe that cellphone radiation litigation is unlikely to have a burdensome, much less catastrophic, financial impact because large monetary damages are neither imminent nor likely; however, the tort law process is decidedly back on track and is likely to result in trials that will be relatively more expensive and time consuming to defend. * *

Relevant Precursor Research

- *Cellphone Radiation Litigation Risk Resurfaces (3/28/05)*

