

CLIENT SUCCESS

Winston Guts Plaintiffs' Product-Liability Cases against Motorola Mobility Claiming RF Emissions Can Cause Cancer with Two Industry-Favorable Decisions Eviscerating Plaintiffs' Cases

APRIL 25, 2023

Winston represents **Motorola Mobility LLC** and leads the joint defense of wireless manufacturers and service providers in Washington, D.C. and Lake Charles, Louisiana, against claims that radiofrequency (RF) emissions from cell phones cause brain cancer, seeking billions in compensatory and punitive damages. In April 2022, courts in those cases issued two significant, industry-favorable decisions, for which Am Law recognized Winston's lead attorney as "**Litigator of the Week**."

In the **D.C. Superior Court**, plaintiffs initially named nine general-causation experts to support their claim that RF emissions from cell phones can cause brain cancer. After the group was reduced to six, the court held a three-week evidentiary hearing on the admissibility of plaintiffs' remaining experts. Winston led the joint defense group at the hearing and in the subsequent briefing. On April 25, 2023, the court granted defendants' motion to exclude, holding that none of plaintiffs' six experts satisfied Rule 702's criteria for reliable expert opinions. The decision *is significant because **the court rejected plaintiffs' claims that, as a matter of medical science, there is any causal connection between cell phone use and brain cancer.*** The court subsequently entered judgment for all defendants on all claims in the cases.

In the **Western District of Louisiana**, plaintiffs also alleged that RF exposure from cell phone use causes brain cancer and that defendants' cell phones exceeded the FCC's RF exposure standard. Defendants, led by Winston, filed a motion to dismiss based on federal preemption, arguing that the FCC's regulatory regime for RF emissions from cell phones preempted plaintiffs' claims. The FCC sets the RF emissions standard and the testing protocols and certification criteria for compliance. Plaintiffs' claims that FCC-certified phones are non-compliant and unreasonably dangerous conflict with the FCC's regulatory regime. We argued the motion for all defendants, which, on April 21, 2023, the court granted in large part. The court held that the FCC's regulations preempted plaintiffs' claims to the extent their claims are "premised on general attacks on the inadequacy of the FCC's certifications and cell phone manufacturer's alleged manipulations of testing results." Thus, "claims that attack the adequacy of the FCC's certification procedures and testing protocols are preempted."

IMPACT

The cases have enormous significance for the 15B-customer cell phone industry worldwide. Together, these two decisions are a severe blow to plaintiffs' efforts to challenge the safety of products that drive the US\$400+B global

cellular telephone market.

(***Murray v. Motorola*** (Case No. 2001 CA 008479 B, D.C. Superior Court) and ***Walker v. Motorola*** (Case No. 2:21-cv-00923, U.S. District Court for the Western District of Louisiana))

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