

**Please add this attachment to the record with others submitted for Item 28 wed for Kevin Mottus**

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From: **Kevin M** <[kmottus@gmail.com](mailto:kmottus@gmail.com)>

Date: Tue, Feb 16, 2016 at 7:39 PM

Subject: Please add this attachment to the record with others submitted for Item 28 wed for Kevin Mottus

To: Patrice Lattimore <[patrice.lattimore@lacity.org](mailto:patrice.lattimore@lacity.org)>

Please add this attachment to the record with others submitted earlier for me for Item 28 for Wed 2-17-16.

Kevin Mottus  
CA Brain Tumor Association

**5 attachments**



**Wall Street Journal-Cases Cell Phones & Brain Tumors.docx**

13K



**Trial Attorney's Assoc-Lower RF Radiation Exposure.pdf**

348K



**Insurance Swiss Re Wireless High Risk.pdf**

872K



**Insurance Companies Not Cover Wireless Health Effects.docx**

46K



**Insurance-Lessees Liable Wireless Injury From Radiation.docx**

51K

## **Case on Health Risk From Cellphones Is Back in Court**

Ryan Knutson, Wall Street Journal, Nov 22, 2015

### **Excerpts**

Murray v. Motorola faces another test Tuesday when the two sides argue over what legal standard to use

In the years since the lawsuit was filed, other plaintiffs have brought more than two dozen similar cases, the most recent one in October. Defendants include almost all the major cellphone and wireless companies, including AT&T Inc., Verizon Communications Inc., Apple Inc. and Samsung Electronics Co.

Representatives for Motorola and the other defendants referred questions to the CTIA, the wireless industry trade group, which said in a statement that “peer-reviewed scientific evidence has overwhelmingly indicated that wireless devices do not pose a public health risk for adults or children.”

So far, the cases have mostly been a battle over legal procedure, not science ...

... A total of 13 cases have been consolidated into the Murray case, and the plaintiffs are seeking more than \$1.9 billion in damages combined.

In filings with the Securities and Exchange Commission, cellphone manufacturers and wireless carriers specifically acknowledge the risk posed by health-related lawsuits. “We may incur significant expenses in defending these lawsuits,” Verizon wrote in its 2015 annual filing. “In addition, we may be required to pay significant awards or settlements.”

... Eight of the plaintiffs in other cases have died while the lawsuits have been pending, he said. A decision in favor of Motorola and the other defendants, which are pushing for the Daubert standard, would send ripples beyond the Murray lawsuit. Seventeen of the other cellphone-health cases are stayed pending a ruling in this case.

If the plaintiffs prevail, discovery will begin on the broad issue of whether cellphones can cause brain tumors, specifically, glioma and acoustic neuroma. In addition, the plaintiffs would need to prove cellphones caused the cancer in their specific cases.

<http://on.wsj.com/1Lu12cW>



03-1357  
1384

September 3, 2013

Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**RE: Reassessment of Exposure to Radiofrequency Electromagnetic Fields Limits and Policies (Docket No. FCC-2013-0204)**

To Whom It May Concern:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits the organization's response to the Federal Communications Commission's (FCC) Notice of Inquiry on the subject of the biological effects of radiofrequency radiation and the reconsideration of current exposure limits. *See* 77 FR 33654.

AAJ, with members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, and protect access to the courts. In the nearly twenty years since the 1996 release of the FCC's Report and Order outlining the Commission's radiofrequency radiation exposure limits, the number of mobile phone calls per day, the length of each call, and the amount of time people spend using mobile phones have all increased.<sup>1</sup> Moreover, given the increasingly compact size of most cell phone models and standard mobile usage where personal devices are typically held directly against one's ear, the FCC standard is clearly outdated. AAJ urges the Commission to reevaluate its reliance on decades-old data in setting its radiofrequency radiation (RF) exposure limits. The Commission must also review recent scientific studies which demonstrate a connection between radiation exposure and the incidence of cancer. Finally, the recent FCC reclassification of the ear ("pinna") as an extremity, allowing exposure to higher levels of radiofrequency radiation, must be reversed, either through rescission of the Order or lowering overall exposure limits for extremities.

**I. The FCC Must Performed Appropriate Due Diligence in Setting Standards for Exposure to Radiofrequency Radiation**

In a 2005 DC Circuit case where the U.S. Chamber of Commerce petitioned for review of Securities and Exchange Commission (SEC) rulemaking, the court conducted a "consideration of costs" analysis in determining whether the agency's actions was consistent with the public

<sup>1</sup> Letter from the American Academy of Pediatrics to the FCC Commissioner, available at [http://citizensforsafetechnology.org/uploads/scribd/AAP\\_07-12-12%20FCC%20cell%20phone%20radiation%20ltr.pdf](http://citizensforsafetechnology.org/uploads/scribd/AAP_07-12-12%20FCC%20cell%20phone%20radiation%20ltr.pdf).

interest.<sup>2</sup> The court considered two factors: (1) the ability of the SEC to develop new data or to consider existing empirical data in undertaking the rulemaking and (2) whether the SEC considered the costs of the conditions it was imposing.<sup>3</sup> While the Court in *Chamber of Commerce v. Securities and Exchange Commission* ultimately held that the SEC did not exceed its statutory authority, in the current case, the ready availability of scientific studies and the potentially devastating public health risks associated with prolonged human exposure to radiofrequency radiation both point to a different conclusion. Here, a cost-benefit analysis clearly indicates that the overall costs of regulation and potential burdens on industry pale in comparison to the Commission's duty to protect the members of the public, particularly in light of recent scientific studies.

#### A. Consideration of Empirical Data

In re-evaluating radiofrequency radiation exposure limits, the most urgent area in which current standards should be modified is the standard for extremities, particularly in light of the March 27, 2013 Order by the FCC reclassifying the ear as an extremity, subjecting it to nearly three times the level of radiation previously allowed.<sup>4</sup> The rationale of the FCC in adopting the extremity classification of the pinna is based on the determination of the IEEE which makes the argument that because the tissue composition of the pinna is similar to the other extremities, the ear should be classified accordingly and subject to the higher SAR threshold of 4W/kg.<sup>5</sup> Notably, the IEEE report itself admits calculations showing that the absorption of RF energy has a minimal impact on pinna temperature was subject to "limited experimental measurements" and that the "temperature effect on human pinna would *vary significantly* [emphasis added] from model to model of mobile phones because of differences in the heat generated by various devices."<sup>6</sup>

There are several problems with FCC's reliance on the determinations of the IEEE. First, the IEEE study was released in 2006 and the speed with which cell phone manufacturers innovate means that both mobile phone and wireless technology have undergone substantial changes. Data based on devices used nearly a decade ago should not be relied upon to determine current RF energy standards and in the past few years, a number of American and international health and scientific bodies have contributed to the debate over cell phone radiation and its possible link to cancer. The International Agency for Research on Cancer (IARC), part of the United Nations' World Health Organization, said in June 2011 that a family of frequencies that

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<sup>2</sup> *Chamber of Commerce v. Securities and Exchange Commission*, 412 F.3d 133 (D.C. Cir. 2005).

<sup>3</sup> *Id.*

<sup>4</sup> "Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields," Changing the Specific Absorption Rate (SAR) of 1.6 W/kg averaged over 1 gram of tissue to a SAR limit of 4 W/kg averaged over any 10 grams of tissue for extremities such as hands, wrists, feet, ankles, and pinnae. Federal Communications Commission ET Docket No.03-137, available at <http://www.fcc.gov/document/fcc-review-rf-exposure-policies>.

<sup>5</sup> IEEE Stud C95.1-2005, *IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 Ghz*, Rationale for applying the peak special-average SAR values for the extremities to the pinna: "The pinna consist of skin, cartilage, fat, nerves, blood vessels and muscle tissue, a composition similar to that of the extremities... Temperature increased in the pinna from heat generated in the device and from RF absorption are not harmful even if imposed on an initial pinna temperature that is close to body core temperature."

<sup>6</sup> *Id.*

includes mobile phone emissions is “possibly carcinogenic to humans.”<sup>7</sup> The National Cancer Institute has stated that although studies have not demonstrated that RF energy from cell phone definitely causes cancer, more research is needed because cell phone technology and cell phone use are changing rapidly. These studies and others clearly demonstrate the need for further research into this area and highlight the importance of reassessing the FCC’s order to determine if it is protective of human health.

In addition, despite sharing tissue composition similar to that of extremities, the IEEE study fails to address a significant difference between the pinna and the extremities of the human body such as the hand, feet, wrists, and ankles: the former’s proximity to the brain. While the pinna may function as a barrier between RF radiation and the brain, it is composed of permeable cartilage and RF radiation, like sound waves, are guided from the projecting part of the ear which lies outside the head, to the inner ear canal before ultimately reaching the brain. To compare the pinna and the body’s extremities is an over simplification and an inaccurate analogy in regards to the effect of exposure to RF radiation. In considering changes to its current RF exposure limit rules, the FCC should move towards a safer standard, one that takes into account the mounting evidence of adverse health effects caused by cell phone radiation exposure. AAJ proposes that one immediate change the Commission must make is to reverse the recent pinna reclassification which has the potential to create long-term public health consequences.

## **B. The Costs of Rule Implementation**

The second prong of the *U.S. Chamber v. SEC* ruling considers the potential costs of the agency rulemaking.<sup>8</sup> There, the court considered efficiency, competition, and capital formation as negative outcomes from the proposed rule’s redefinition of a company’s board composition.<sup>9</sup> Here, a much greater urgency is warranted as potential costs must take into account the latency period between cell phone usage and the presentation of symptoms attributable to radiation as well as the disparate impact of radiation on children.

### **1. Latency**

Diseases like brain cancer are known to exhibit a long latency period.<sup>10</sup> For example, the survivors of the atomic bombs that fell at the end of World War II did not demonstrate any increased rate of malignant cancers of the brain until four decades later.<sup>11</sup> Moreover, carcinogens such as tobacco were not firmly identified as increasing the risk of cancer until more than ten years after first usage.<sup>12</sup> The effects of long-term cell phone radiation exposure will likely follow this pattern as a Swiss personal monitoring study found that mobile phone use

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<sup>7</sup> D.L. Davis, et al., *Swedish Review Strengthens Grounds for Concluding that Radiation From Cellular and Cordless Phones is a Probable Human Carcinogen*, *Pathophysiology* (2013), available at <http://dx.doi.org/10/1016/j.pathophys.2013.001>

<sup>8</sup> See *Chamber of Commerce* at 143.

<sup>9</sup> *Id.*

<sup>10</sup> See *The Cell Phone Problem*, Environmental and Human Health, Inc, Concerning the latency period of brain tumors: “Data from ionizing radiation studies indicate a brain tumor latency time of between 20 and 55 years.” available at [http://www.ehhi.org/reports/cellphones/cell\\_phone\\_report\\_EHHI\\_Feb2012.pdf](http://www.ehhi.org/reports/cellphones/cell_phone_report_EHHI_Feb2012.pdf).

<sup>11</sup> See Davis at 2.

<sup>12</sup> *Id.*

currently accounts for one-third of total exposures to wireless and microwave radiation.<sup>13</sup> With more than 5.9 billion reported mobile phone users worldwide, the impact of cell phone radiation taken in the aggregate, constitutes an environmental carcinogen whose risk still remains in the discovery process. At a time when cell phone use has become an ubiquitous part of everyday life yet manufacturers have little impetus to reduce RF emissions due to stagnant FCC exposure limits, AAJ urges the Commission to undertake a thorough and impartial review of its standards.

## 2. Disparate Effects of Radiation on Children and Long-Term Users

A second cause for concern is the impact of cell phone radiation on children and long-term mobile phone users. Today, cell phone usage begins at a much younger age than in past decades as mobile devices are relied upon for communication, entertainment, and even use as navigational tools. However, studies indicate that radiation may have a disparate impact on the youngest cell phone users as “[h]igh resolution computerized models based on real human imaging data suggest that the higher conductivity and higher permittivity in children’s brain tissues, together with their thinner skulls and small heads, will lead to higher SARs in their brains from microwave frequencies when compared to adults.”<sup>14</sup> Indeed, a recent study conducted by researchers from Tel Aviv University has established a clear connection between long-term cell phone users and molecular changes that can lead to cancer.<sup>15</sup> Comparing the salivary glands of 20 long-term cell phone users who averaged 30 hours of use per week over a span of 12 years with 20 deaf subjects who did not use cell phones, scientists found that the cell phone users’ saliva indicated higher levels of oxidative stress, a process that is a “major risk factor for cancer.”<sup>16</sup>

In a December 2012 letter to then Representative Dennis Kucinich supporting H.R. 6358, the *Cell Phone Right to Know Act*, the American Academy of Pediatrics argued that “[t]he differences in bone density and the amount of fluid in a child’s brain compared to an adult’s brain could allow children to absorb greater quantities of RF energy deeper into their brains than adults. It is essential that any new standards for cell phone or other wireless devices be based on protecting the youngest and most vulnerable populations to ensure they are safeguarded through their lifetimes.”<sup>17</sup> Yet, not only does the FCC make no distinction between the levels of cell phone radiation advisable for children and for adults, the agency takes the opposite approach in its Order, reclassifying the pinna and effectively making cell phones less safe for the segment of the population most at risk for future harm. Before developing new limits on RF exposure, the FCC must conduct a thorough analysis into the long-term effects of radiofrequency emissions, particularly on children whose physiological make-up and overall lifetime exposure may warrant a separate and more conservative standard.

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<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> “Put Away That Cell Phone: Israeli Study Highlights Cancer Risk,” Times of Israel, July 20, 2013, available at <http://www.timesofisrael.com/put-away-that-cellphone-israeli-study-highlights-cancer-risk/>.

<sup>16</sup> *Id.*

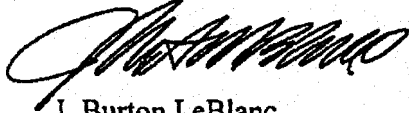
<sup>17</sup> Letter from the American Academy of Pediatrics to Dennis Kucinich, available at [http://ehtrust.org/wp-content/uploads/2012/12/aap\\_support\\_letter\\_cell\\_phone\\_right\\_to\\_know\\_act.pdf](http://ehtrust.org/wp-content/uploads/2012/12/aap_support_letter_cell_phone_right_to_know_act.pdf).

## II. Conclusion

Nearly half of the world's mobile phone users are under the age of 30 and live in developing countries.<sup>18</sup> Moreover, even as the Davis study cautions that brain cancer is the "tip of the iceberg," the rest of the body is also showing effects other than cancers.<sup>19</sup> In the United States alone, the Central Brain Tumor Registry of the United States estimates that about 10,000 people will develop glioma, or tumor of the brain this year. Given the growing evidence of harm arising from human exposure to radiofrequency emissions, the FCC must lower its current exposure limits beginning with rescinding its Order reclassifying the pinna as an extremity, a rash decision which will put future generations at risk of an invisible but menacing carcinogen. AAJ urges the FCC to ensure public safety by committing to more robust exploration in this area.

AAJ appreciates this opportunity to submit comments in response to the Federal Communications Commission's Notice of Inquiry seeking input on whether its exposure limits should be more restrictive, less restrictive, or remain the same. If you have any questions or comments, please contact Ivanna Yang, AAJ's Assistant Regulatory Counsel at (202) 944-2806.

Sincerely,



J. Burton LeBlanc  
President  
American Association for Justice

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<sup>18</sup>See Davis at 4.

<sup>19</sup> *Id.* at 1.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement, effective at 12:01 A.M. Standard time, forms a part of Policy Number

issued to:

by Maxum Indemnity Company.

This endorsement modifies insurance provided for under the following:

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**EXCLUSION - ELECTROMAGNETIC RADIATION**

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This insurance does not apply to:

- (1) "Bodily Injury," "property damage," or "personal and advertising injury" arising out of, resulting from, caused by or contributed to by electromagnetic radiation, provided that such injury or damage results from or is contributed to by the pathological properties of electromagnetic radiation; or
- (2) The costs of abatement or mitigation of electromagnetic radiation or exposure to electromagnetic radiation.

This exclusion also includes:

- (a) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; and
- (b) Any obligation to share damages with or repay someone else who must pay "damages" because of such injury or damage.

"Damages" means compensation, only in the form of money, for a person or entity who claims to have suffered a "bodily injury" or "personal and advertising injury," or who claims to have sustained "property damage."



# Hidden Insurance Risk Lurks in Property Leases

By Gloria Vogel, CFA | August 21, 2013

## The RF Radiation Risk Factor

In February 2013, AM Best classified RF (radio frequency) radiation from wireless antennas as an “Emerging Technology-Based Risk.” This was based, in part, on an estimated 250,000 workers per year who may be over-exposed to RF radiation from the 600,000 governmental and commercial RF radiating antenna systems across the nation.



The FCC recognizes RF radiation from transmitting antennas as a human health hazard, as a single RF transmitting antenna can emit hundreds of times more RF radiation than a cell phone. RF radiation hazards from transmitting antennas can cause thermal and non-thermal or cognitive/psychological injuries. Non-thermal or cognitive/psychological injuries do not necessarily have a physical manifestation. Cognitive/psychological RF injuries include memory loss, mood disorders, sleep disorders, and impaired or diminished cognitive function.

RF radiation injuries should be of concern to insurers, especially since their exposure to the risk is hidden within the lease contracts between the commercial wireless service providers (CWSPs) and landlords who lease space to those CWSPs for antenna systems.

### The Property Leases:

Landlords who lease space to the CWSPs are completely unaware of the potential for injury from RF transmitting antennas and that they will be held liable for such injuries. Typical site leases include a mutual indemnification clause, which would appear to protect the landlords from personal injuries that may be caused by the CWSPs' antennas. However to enforce the indemnity provision, the landlords must demonstrate that the primary cause of injury was the fault of the CWSPs.

CWSPs will take the position that it was the landlords who permitted access to the RF hazard area near the antennas, which was the proximate cause of the injury; or, that injury could have been prevented by the landlords controlling access to the RF hazard areas. So, in reality, the lease language indemnity provision merely buys the landlords and their insurers a lawsuit against well-financed CWSPs with a litany of possible legal defenses.

### **Who Has Liability for RF injuries?**

The CWSPs employ hundreds of RF engineers and are the technical experts on anything involving RF radiation and its ability to cause injury to humans. Accordingly, prior to the lease being signed, the CWSPs have a “Duty to Warn” the unsuspecting landlords, and their insurers, of the RF radiation hazards associated with the lessee’s equipment.

By not divulging pertinent [RF hazard](#) information in the leases, the CWSPs may be attempting to use the 1996 Telecom Act as a shield in not warning the landlords. The Act precludes any discussion of RF radiation at municipal siting hearings. However, there is nothing contained in the language that enjoins the CWSPs from not informing the landlords of the hazards associated with RF radiation in the lease agreements they unilaterally create. Their actions are based solely on a business decision that has been used by other industries in the past... never mention the physical harm to humans that the product produces.

A landlord with full knowledge of their financial exposure to the liability assumed with the lease would likely either demand a greater monthly fee, or would decline permission to site on their property. It stands to reason that no business person would trade hundreds of thousands or more in attorney and legal fees associated with an RF injury, for a few thousand dollars of rental income per month.

### **Legal Recourse**

Once a lease has been executed without proper disclosure, “Fraud in the Inducement” can be alleged by the landlord asserting that the CWSP concealed material facts associated with the hazards of their operations/equipment. The CWSP will have known at the time of negotiating the contract that by not disclosing those material facts, the landlord might be more inclined to sign the lease. Additionally, theories of “Intentional and Negligent Misrepresentation of Material Facts” may be brought against the CWSP.

Finally, there will be insistence that the CWSP has a “Non-Delegable Duty” to ensure full compliance with the FCC RF human exposure standard. Federal law, 47 CFR 1.130, establishes the FCC licensee’s (CWSP) duty regarding RF safety, which cannot be transferred to the landlord.

### **Lack of Claims Doesn’t Mean Lack of Claimants**

The insurers should not rely on the lack of RF injury claims to proclaim there isn’t a significant RF injury problem with workers being exposed to RF radiation on a daily basis. The lack of claims is the result of injured parties being unaware that they were over-exposed to RF radiation. Just one plaintiff’s attorney with an aggressive media campaign can quickly alter this

lack of knowledge. As the population of workers becomes aware of the hidden RF hazards and their potential for exposure, claims will likely be filed by the thousands, and long term litigation will result, in similar manner to the way asbestos evolved.



*Gloria Vogel is senior vice president at N.Y.-based Drexel Hamilton, a service disabled veteran broker-dealer. She also teaches finance and metrics to graduate students as an adjunct professor at NYU-SCPS. Previously, Vogel was a contributing author on [www.seekingalpha.com](http://www.seekingalpha.com). She worked at Swiss Re and was an All-Star equity research insurance analyst at several major investment banks, including Lehman Brothers and Bear Stearns.*

*Source: <http://www.claimsjournal.com/news/national/2013/08/21/235352.htm>*