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**FOURTH CIRCUIT RULES THAT CLASS ACTION CLAIMS ALLEGING THAT NOKIA
HID FROM CONSUMERS THAT CELL PHONES EMIT UNSAFE
LEVELS OF RADIATION CAN BE BROUGHT IN STATE COURT**

Pinney, et al. v. Nokia, Inc. et al., 2005 WL 603078 (4th Cir. March 16, 2005).

The United States Fourth Circuit Court of Appeals held that class action claims alleging that Nokia hid from consumers that cell phones emit unsafe levels of radiation can be brought in state court. In so holding, the Fourth Circuit focused on two issues. First, whether the claims arise under federal law pursuant to the substantial federal question doctrine. Second, whether the claims arise under federal law pursuant to the doctrine of complete preemption.

As to the first issue, the Fourth Circuit focused on whether a disputed question of federal law was an essential element of one of the state law claims. It answered this question in the negative concluding that the elements of each claim depended only on state law. The plaintiffs' claims were based on state law causes of action for strict liability, violation of consumer protection laws, breach of warranty, negligence, fraud and civil conspiracy. The Fourth Circuit reasoned that the mere presence of a federal issue in a state cause of action does not alone confer federal jurisdiction. Although it acknowledged that Nokia may have a defense based on federal law, i.e., federal preemption, the Fourth Circuit concluded that the federal defense alone did not convert the claims into ones arising under federal law. Therefore, the claims belonged in state court.

As to the second issue, the Fourth Circuit focused on whether the state law claims were preempted by federal law. Complete preemption exists when Congress has so completely regulated an area of law that any claim raised in that area of law is regarded as a federal question. The Fourth Circuit concluded that there was no evidence that Congress intended that federal law provide the exclusive remedy for claims based on injuries caused by wireless phones or that Congress in any way intended to preempt state law in this regard. Therefore, it held that the state law claims were not preempted and remanded them to state court.

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For more information call Thomas A. Dye at (561) 659-7070 or Daniel C. Johnson at (407) 849-0300, Co-Chairs of Carlton Fields, P.A.'s Telecommunications and Technology Litigation Practice Group, or visit www.carltonfields.com.