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Do Cellular Phones Cause Cancer?

In January 1993, a Florida man named David Reynard claimed on the Larry King Live television show that his wife's frequent use of a cellular phone caused her fatal brain cancer. Although he admitted that his wife's doctors were not convinced the phone caused her cancer, Reynard filed suit against the companies that made the phone and provided the cellular service.

A frenzy of media attention, focusing on whether cellular phones can cause brain tumors, soon followed. Despite all the attention, so far there is no clear cut answer. In fact, most scientists say that they just do not know what effect cellular phones have on the brain.

The storm of publicity "is more intense than I have ever seen," said epidemiologist Richard Stevens of Battelle Pacific Northwest Laboratory, a research institute in Washington state. "Lawyers are circling like buzzards. But we are at such a crude level scientifically. This is a new human exposure and we must study it," he said.

Cellular phones pick up and receive signals through their own antennas, which are either located on the handset or mounted on the outside of a car. When the antenna is near a caller's head, radio frequencies can be transferred into the brain. What happens to the molecules of brain tissue exposed to these radio frequencies is unclear. But for even the most avid user, phone radiation makes up only a small fraction of the brain's exposure to radio waves.

Most of the concern is over handheld cellular telephones with an attached antenna because these antennas are usually within an inch of the skull. Scientists are less concerned about phones with antennas further away, such as those mounted on the outside of a car, because radiation decreases rapidly as distance increases. There is no concern with cordless phones.

In the wake of the controversy, cellular phone companies -- which have sold ten million cellular phones since 1982 -- maintain that their products are safe.

"We do not believe in any way, shape, or form that cellular phones pose a health risk," said Robert Ratliffe of McCaw Cellular Communications Inc. "The body of scientific evidence is on our side."

While some scientists agree with Ratliffe, others are skeptical.

"There is no basis to say that there is a health hazard [associated with cellular phones]," said Mays Swicord, chief of the radiation biology branch at the Food and Drug Administration. "But there is some data to indicate that there may be a potential for hazard."

Several organizations have announced they are launching studies to find out more about the effect of the phones, including the Food and Drug Administration, National Cancer Institute, National Institute of Occupational Safety and Health, and National Institute for Environmental Health Sciences. But since most of these studies will take years to reveal useful data, cellular phone companies also asked the government to convene a panel of disinterested experts to review the documents already available in hopes that the existing data will prove their phones safe.

Despite the outbreak of concern over exposure to cellular phones, most researchers think the cumulative effect of all electrical exposures is probably less toxic than a host of other risks Americans are exposed to daily: from exhaust fumes to cigarette smoke.

"When it comes to cancer, people ascribe it to the first thing that pops into their mind," said Victor Levin, professor of neuro-oncology at the University of Texas. "But if this society can't control smoking, how can it worry about something like cellular phones?" ❖

Consumer News is prepared by the News Editor, Julia C. McLaughlin. A limited list of materials used in preparing the stories appearing here is available for a $5 compilation charge. Please be specific (include volume number, issue number, and story title) when ordering. Send requests to: News Editor, *Loyola Consumer Law Reporter*, One East Pearson Street, Chicago, Illinois 60611.

Federal Rules Leave Passengers in the Dark About Airline Fares

Consumers may find it trickier to find good deals on airline tickets now that the U.S. Justice Department has dictated new rules on how and when airlines can increase prices.

The new rules are the result of a consent decree agreed upon by the major domestic airlines and the Justice Department. In a lawsuit filed at the end of 1992, the government alleged that eight airlines fixed prices through a jointly-owned computer system, which tracks airline fares nationwide.

According to the Justice Department, airlines fixed prices in the past by floating fare increases before they were to take effect in the computers at the Airline Tariff Publishing Co., which is owned by thirty foreign and domestic airlines. The announcement acted as a signal to other airlines. If the other airlines followed suit, then the price increase went into effect. If other airlines failed to follow the lead, the proposed price hike was abandoned.

"It's the same as if airline executives met in a hotel room or picked up the phone and said 'let's raise prices,'" said J. Mark Gidley, a Justice Department spokesman.

Under the new rules, if an airline wants to raise prices, it must do so immediately instead of just announcing the price increase. Airlines are not allowed to notify travel agents, passen-

gers -- or other airlines -- of any pending price increases. Since no airline wants to be undersold by its lower-priced competitors, the new policy may make it harder for airlines to raise prices.

An exception to the rule is if an airline advertises discount fares in the newspaper before it posts the beginning and ending dates of the decrease on the computer. But airlines can only afford to advertise a small portion of the thousands of airline fares they offer, so consumers will usually be in the dark about when a price will be changing. A traveler could book a flight one day, and when paying for it the next day, find the price had gone up.

"Consumers are really going to have to be on their toes," says Ed Perkins, editor of Consumer Reports Travel Letter. "There's going to be more confusion over fares."

Two airlines, United and USAir, have signed consent decrees with the Justice Department. American, America West, Continental, and Northwest airlines are fighting the suit but complying with the consent decree to prevent more lawsuits.

The airlines, which combined have lost $8 billion since 1989, contend that the new regulations are unfair governmental intrusion into an already heavily burdened industry. Three carriers, America West, Continental, and TWA, are in bankruptcy protection.

"Surely our government has better uses for the taxpayer's hard-earned dollar than to attack an industry which has given new meaning to price competition, one in which about 20 percent of capacity is currently in bankruptcy," said Anne McNamara, a senior vice president and general counsel to American Airlines. "If we are monopolistic price fixers, then we are laughably inept."

Travel agents and the National Consumers League oppose the new rules as well, saying that the previous warnings of price changes helped consumers avoid higher fares. In the past, a travel agent could warn a client if the price was going to go up. But now, that information will not be available to the agent — or anyone but the individual airlines.

"The choices will be costly to the industry and will frustrate consumers," said a spokesman for the American Society of Travel Agents. ❖

Banks and Customers Disagree About Who Should Solve Their Disagreements

In an effort to cut costs and prevent large jury awards, two major California banks are forcing their customers to turn to arbitration instead of the court system to settle disputes. And just as California sets fashion trends, it may also set a banking trend: analysts expect that other banks across the country will soon follow suit.

While banks hail arbitration as faster, less costly, and more reliable than traditional litigation, consumer groups and plaintiff attorneys are not as happy to stay out of court.

Bank of America and Wells Fargo, both based in San Francisco, instituted forced arbitration last summer for their new and existing customers holding credit cards and checking and savings accounts. Arbitration, a form of alternative dispute resolution already favored by stockbrokers, construction contractors, and health-maintenance organizations, settles conflicts privately with the use of a neutral third-party, such as a retired judge.

Under the plan adopted by Wells Fargo, a customer with a complaint against the bank worth more than $25,000 goes through a four-step procedure: informal negotiations, mediation before a Judicial Arbitration and Mediation Services ("JAMS") judge, trial before a JAMS judge, and non-binding arbitration before a JAMS judge. After finishing all four steps, a customer may then file a civil suit against the bank. JAMS is the largest for-profit arbitration firm in the country.

The Bank of America plan protects the bank even more stringently from civil suits because in individual cases against the bank, the decision of the arbiter is binding and not appealable. The non-profit American Arbitration Association picks an arbiter from a list that both parties have approved. Only class action suits can be appealed to the court system.

Consumer advocates and trial attorneys criticize forced arbitration because plaintiffs must sacrifice traditional due process guarantees, such as the right to a jury trial. A group of customers, a non-profit consumer organization, and the California Trial Lawyers Association have sued Bank of America, claiming a violation of their constitutional due process rights.

"The essence of arbitration is the willingness of both parties to enter into it and abide by the ruling," said Patricia Sturdevant, a San Francisco attorney representing the plaintiffs. "It's like sex. It may be great between consenting adults, but it's not OK if one party is forced."

Many customers may not even know about the new policies. Bank of America and Wells Fargo customers were sent notices set in small type along with their account statements. The customers did not have to sign an approval form; refusing to continue to do business with the banks was the customers' only method of withholding consent. New customers would not find out about the policy unless they paged through the bank's rulebook.

Proponents of arbitration say that in comparison to the clogged court system, the arbitration process saves time and money -- months and years of time and millions of dollars in legal fees. "Litigation is very expensive. It's very cumbersome, and it doesn't respect a businessperson's time," said Charles Cooper of the American Arbitration Association. "ADR [alternative dispute resolution] takes less time. It's more efficient, less disruptive to business and much less expensive." ❖