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SUPREME COURT DISALLOWS REMOVAL OF STATE CASES TO FEDERAL COURT (*Watson v. Philip Morris Companies, Inc.*)

The U.S. Supreme Court ruled earlier this week that companies subject to regulation by federal government agencies who are sued by plaintiffs' attorneys in state courts may not have their cases removed to federal courts where they are more likely to get a more favorable ruling. In a unanimous ruling, the Court rejected the argument by the Philip Morris that it can invoke the so-called Federal Officer Removal Statute, which permits certain state court cases to be removed or transferred to federal courts.

In *Watson v. Philip Morris Companies, Inc.*, a class action suit was filed in state court against Philip Morris regarding the marketing of its "light" cigarettes. The company's marketing practices are strictly regulated by the Federal Trade Commission, and therefore, the company sought to remove the state case to federal court because it was acting under the direction of a federal government agency. The U.S. Court of Appeals for the Eighth Circuit agreed, and the plaintiff sought review in the Supreme Court. In its brief, WLF argued that companies are "persons" legally entitled to invoke the removal statute, contrary to the argument made by Public Citizen in its brief. While the Supreme Court ruled against the company on the merits of the case, it did not accept the arguments by Public Citizen that the company was not a legal "person" that could invoke the statute.

Although tracing its roots to 1815, the modern version of the Federal Officer Removal Statute was enacted in 1948 and amended in 1996. That law provides that when a lawsuit is filed in state court against a federal officer or federal agency, or any person "acting under" that officer or agency, that person can remove the case from state court to federal court. The *Watson* Court ruled that the law's "acting under" language does not include the situation where companies are required to follow agency regulations, even if, as here, certain duties were delegated by the agency to be performed by the company. Rather, the Court gave the statute a narrower reading, limiting it to situations where the person is performing duties under the direct supervision of a federal officer or agency.

WLF's brief was filed with the *pro bono* assistance of Katharine R. Latimer, Rebecca A. Womeldorf, Michael L. Junk, and Stephanie J. Dawson, attorneys with the Washington, D.C. law firm of Spriggs & Hollingsworth.

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