IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

BRANDON BECKERMEYER, on behalf of himself and others similarly situated	:	August Term 2002
	:	No.: 0469
Plaintiffs,	:	
v.	:	Control No.: 113130
AT&T WIRELESS and PANASONIC TELECOMMUNICATIONS COMPANY, DIVISION OF MATSUSHITA ELECTRIC CORPORATION OF AMERICA	:	Commerce Program
	:	Class Action
Defendants	:	

O R D E R

AND NOW, this 9TH day of February 2005, upon consideration of Defendants' Application for Amendment of the Court's Order of October 22, 2004 and Plaintiff's Response thereto, it is hereby **ORDERED** and **DECREED** that the Application is **DENIED**.

BY THE COURT,

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C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

JONES, J.

Presently before the court is the Application for Amendment of the Court's Order of October 22, 2004 of Defendant AT&T Wireless Services, Inc. (misidentified as AT&T Wireless), which is joined by Defendant Panasonic Telecommunications Systems Company (misidentified as Panasonic Telecommunications Company, division of Matsushita Electric Corporation of America).

Defendants seek to have this Court amend its Order of October 22, 2004 (the "Order") in order to pursue immediate appellate review of those claims surviving the Defendants' preliminary objections. A court may enable a litigant to seek appeal of an interlocutory order if it is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter." 42 Pa. C.S. §702.

Essentially, Defendants contest the Order in two ways. They assert that the issues under state warranty law and the Magnuson-Moss Warranty Act, 15 U.S.C. §§2301 *et seq*. ("MMWA"), are ones of first impression in this Commonwealth, making them ideal for determination by an appellate tribunal. In addition, Defendants assert that this Court misapplied the law as it applies to federal preemption. Neither argument is convincing.

Despite the assertion that the legal issues under state warranty law and the MMWA are novel, the core of Defendants challenge to the Order is the "Court's conclusion that Plaintiff's phone … was truly a 'TDMA' phone because it uses TDMA transmission technology, and therefore should have worked on any TDMA wireless network." Def. Memorandum of Law, at 6. This statement focuses on factual elements of the Order, not legal ones. Therefore, this challenge fails to meet the requirements for allowing an interlocutory appeal.

On the topic of preemption, Defendants seek, as in their preliminary objections, to recast the claims against them as challenges to the technical aspects of the phone. Def. Memorandum of Law, at 10 ("a damages award [would affect] the technical aspects of [the] phones"). This Court finds nothing new in these arguments, leading to the conclusion there is no substantial difference of opinion on this issue.

BY THE COURT,

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C. DARNELL JONES, II, J.