

St. Louis Beacon

New ruling could affect Illinois judges

By William H. Freivogel, Special to the Beacon

Posted 3:39 p.m. Fri. June 12 - A lawyer for those suing Philip Morris in Illinois says that Justice Lloyd Karmeier would have to recuse himself if the \$10 billion case makes it back before the Illinois Supreme Court.

Stephen Swedlow of Chicago said in an interview on Friday that Karmeier's recusal would be required under this week's U.S. Supreme Court ruling that requires recusal where a party to a case has had a disproportionate impact on a judicial election through a big campaign contribution.

Smokers sued Philip Morris in Illinois for violating state consumer fraud statutes by implying that "light" cigarettes were safer than regular cigarettes. The smokers won a \$10.1 billion judgment in Madison County and the cigarette company appealed. During the appeal, Karmeier won the most expensive judicial election in state history.

Philip Morris' lawyers contributed \$16,800 to Karmeier's campaign and the Illinois Civil Justice League gave \$1.19 million to his election.

The league is a pro-business group that had filed a friend of the court brief on behalf of Philip Morris. The Illinois Chamber of Commerce, which also filed a brief on the tobacco company's behalf, gave \$269,338.

After taking office, Justice Karmeier listened to tapes of the argument in the Philip Morris case and became a decisive vote in overturning the judgment. The court found that federal regulation of cigarettes pre-empted state law and that, as a result, state consumer protection laws could not be used to sue the cigarette companies.

Late last year, the U.S. Supreme Court ruled in a similar case from another state that federal law did not pre-empt consumer fraud laws and that such suits could go forward. Stephen Tillery, the local lawyer who brought the case, asked a local judge to reopen the case last December. Cases can be reopened within two years of being final if there is new evidence. Swedlow said that the U.S. Supreme Court decision was new evidence.

A lower court judge in Madison County, Dennis R. Ruth, denied the attempt to reopen the case and an appeal of that denial is now before the 5th District Court of Appeals in Mount Vernon. Swedlow, who is working on the appeal, said Friday, "I think it is clear he (Karmeier) would not participate" if the case makes it back before the Illinois Supreme Court. "Previously there was no constitutional determination whether this was proper or improper. Now there is."

Swedlow said that the Karmeier case was even more egregious than the West Virginia case where the CEO of the state's biggest coal company gave \$3 million to elect the justice who became the deciding vote in tossing out a \$50 million judgment against the company. "Illinois was the most heavily funded judicial campaign in the country,"

Swedlow said. "It was even more transparent that there was an appearance of impropriety, though that's not saying that Karmeier was actually biased."

Karmeier has declined to comment on the U.S. Supreme Court decision from West Virginia. He may not have to decide whether to recuse himself because it is possible the attempt to reopen the case won't get a hearing before the state supreme court.

Swedlow said that smokers still have a "light" cigarettes case in lower court against other cigarette companies, but to pursue that in light of the more favorable rulings from the U.S. Supreme Court would require a big expense.