

Contact: Kerry Efigenio, 415-268-7210, [kefigenio@mofo.com](mailto:kefigenio@mofo.com)

## Morrison & Foerster Secures Federal Court Judgment Striking Down a California Statutory Scheme as Unconstitutional

*Plaintiffs challenged statutes regulating how national optical chains can sell eyewear in California; defendants include CA Attorney General Lockyer and Director of CA Department of Consumer Affairs – Decision levels playing field for eyewear retailers*

---

SAN FRANCISCO (December 12, 2006) – **Morrison & Foerster LLP** has won an important constitutional case which challenges various California statutes that regulate the manner in which national optical companies can sell eyewear in California.

Morrison & Foerster filed the federal court case on behalf the National Association of Optometrists and Opticians, a trade association involved in the retail sale of eyewear, and on behalf of two national optical retailers, LensCrafters, Inc. and Eye Care Centers of America, Inc. The suit challenged a long-standing statutory scheme that restricted the ability of interstate optical companies to compete on equal footing with California optometrists in the sale of eyewear. The court found in favor of the plaintiffs and held that the statutes substantially discriminate against interstate commerce in violation of the U.S. Constitution.

The 50-page decision was written by Judge Lawrence K. Karlton, senior judge of the U.S. District Court.

In bringing their suit, first filed in 2002, the national optical chains challenged three statutes in California's Business and Professions Code, along with several companion regulations. They argued that taken together, the statutes placed out-of-state retailers at an unfair competitive advantage by prohibiting them from offering prescription eyewear for sale in the same locations where eye examinations were provided by licensed optometrists, a bar that does not apply to California optometrists.

Although the State argued that the statutes served to protect the health of consumers, Judge Karlton found no evidence that the quality of eye care varies between independent optometrists and optometrists affiliated with optical chains. Judge Karlton also found no evidence of significant health risks that the discriminatory statutes protect against. He agreed with plaintiffs that the statutes served no benefit to consumers and their discriminatory effect on national optical chains violated the Commerce Clause of the U.S. Constitution.

"This is a gratifying win for the entire optical industry" said **Lori Schechter**, firm wide chair of Morrison & Foerster's litigation department and lead counsel for the plaintiffs. "It increases the choices for consumers seeking high quality eye care and eyewear at the same location, and

enables all optical companies the ability to compete on a level playing field in one of the most important retail markets in the country.”

The current statutory scheme, which has been in place for more than 70 years, prohibits out-of-state companies from offering prescription eyewear in the same location where eye examinations are provided. By contrast, in-state optometrists and ophthalmologists are permitted to sell eyewear in the same location where they offer eye care services, providing them with the competitive advantage of being able to offer customers “one-stop shopping.”

In addition to Ms. Schechter, Morrison & Foerster litigation partners **Eugene Illovsky** and **Roger Collanton** worked on the case.

Please let us know if you'd like a copy of Judge Karlton's decision or would like to speak with one of the attorneys involved.

###

#### About Morrison & Foerster

With more than 1,000 lawyers in 18 offices around the world, Morrison & Foerster offers clients comprehensive, global legal services in business and litigation. The firm is distinguished by its unsurpassed expertise in finance, life sciences, and technology, its legendary litigation skills, and an unrivaled reach across the Pacific Rim, particularly in Japan and China. For more information, visit [www.mofo.com](http://www.mofo.com).