SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19832

DONNA SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.
PLAINTIFFS-APPELLANTS

v.

BUSHMASTER FIREARMS INTERNATIONAL, LLC, a/k/a ET AL.
DEFENDANTS-APPELLEES

BRIEF OF THE AMICI CURIAE, STATE OF CONNECTICUT AND DEPARTMENT OF CONSUMER PROTECTION

FOR THE AMICI CURIAE:

GEORGE JEPSEN
ATTORNEY GENERAL OF CONNECTICUT

PERRY ZINN ROWTHORN
DEPUTY ATTORNEY GENERAL

KIMBERLY MASSICOTTE
ASSOCIATE ATTORNEY GENERAL

JEREMY PEARLMAN
ASSISTANT ATTORNEY GENERAL
110 SHERMAN STREET
HARTFORD, CT 06105
TEL. (860) 808-5400
FAX (860) 808-5593
EMAIL: jeremy.pearlman@ct.gov
JURIS NO. 422390

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. STATEMENT OF THE ISSUE PRESENTED BY THE STATE OF CONNECTICUT AND DEPARTMENT OF CONSUMER PROTECTION AS AMICI CURIAE

1. Would application of the remoteness doctrine obviate the need for the Court to add a business relationship standing requirement for private causes of action brought under the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a *et seq.*?

Pages….3 – 9

II. INTEREST OF THE AMICI CURIAE[1]

The statutory scheme of the Connecticut Unfair Trade Practices Act ("CUTPA"), General Statutes § 42-110a *et seq.*, establishes a mandate for the Office of the Connecticut Attorney General ("OAG") and the Department of Consumer Protection ("DCP") to protect consumers from deceptive and unfair business practices. See General Statutes § 42-110a *et seq.* The OAG and the DCP satisfy that mandate by, among other things, educating consumers and by bringing administrative and judicial enforcement actions under CUTPA against businesses that commit unfair or deceptive business practices.[2]

CUTPA also establishes a public policy "…to encourage [private] litigants to act as private attorneys general and to engage in bringing actions that have as their basis unfair or deceptive trade practices." Thames River Recycling, Inc. v. Gallo, 50 Conn. App. 767, 794–95 (1998) ("In order to encourage attorneys to accept and litigate CUTPA cases, the legislature has provided for the award of attorney's fees and costs."). In private CUTPA actions, the OAG must be provided with a copy of the complaint after it is filed, thereby ensuring that the OAG and the DCP are aware of the conduct at issue. Gen-eral Statutes § 42-110g(c).

The amici's interest in this case thus concerns CUTPA's public policies that author-ize and encourage private litigants to join the fight with the DCP and the OAG against those who would harm Connecticut consumers by committing unfair and deceptive trade practic-

---

[1] Pursuant to Practice Book § 67-7, the amici represent that counsel for the named parties did not write any part of this brief, and neither the named parties nor their counsel contrib-uted to the cost of preparing or submitting the brief.

[2] See http://www.ct.gov/dcp/cwp/view.asp?a=4303&q=506440 and http://www.ct.gov/ag/cwp/view.asp?A=2175&Q=295628.

es. Specifically, the DCP and OAG are interested in obtaining a ruling that the remoteness doctrine, along with the ascertainable harm requirement in CUTPA's plain language, effectively limits the class of potential plaintiffs under CUTPA without contravening legislative intent regarding the reach or remedial nature of the statute by reading in standing requirements not there in CUTPA's text.

III. ARGUMENT

A. APPLICATION OF THE REMOTENESS DOCTRINE OBVIATES ANY NEED FOR THE COURT TO ADD A BUSINESS RELATIONSHIP STANDING LIMITATION TO CUTPA.

CUTPA contains an express standing limitation -- limiting potential claimants only to those who have suffered ascertainable harm caused by unfair or deceptive business practices. Beyond this statutory standing requirement, the remoteness doctrine further effectively limits the universe of potential CUTPA plaintiffs, and does so without contravening legislative intent regarding the reach or remedial nature of the statute. Therefore, the Court should reject the invitation to further limit private CUTPA causes of action by adding a business relationship standing requirement that is both inconsistent with the plain meaning of CUTPA and unnecessary.

Under CUTPA, "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, may bring an action…. " See General Statutes § 42-110g(a). As the Court held in Ganim v. Smith & Wesson Corp., however, "CUTPA, like other statutory and common-law claims, is [also] subject to the remoteness doctrine as a limitation on standing." 258 Conn. 313, 373 (2001).

In Ganim, the plaintiff city and its mayor asserted private CUTPA claims against the defendant gun manufacturers, trade associations, and retail gun sellers. See 258 Conn. at 313-33. The plaintiffs argued that the defendants deceptively advertised that the guns the defendants manufactured and sold would make the city's residents safer when, in truth, the guns caused more injuries and deaths, adding to the city's emergency services expenses and driving down economic development. See id.

The defendants argued that the plaintiffs lacked standing to assert the CUTPA

claims because the putative harm was "…too remote, indirect and derivative with respect to the defendants' alleged conduct." Id. at 344. In guiding its analysis of the plaintiffs' standing the Court conducted a proximate cause analysis appropriate under General Statutes § 42-110g(a), and applied the following general principles established by the remoteness doctrine:

> First, the more indirect an injury is, the more difficult it becomes to determine the amount of plaintiff's damages attributable to the wrongdoing as opposed to other, independent factors. Second, recognizing claims by the indirectly injured would require courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, in order to avoid the risk of multiple recoveries. Third, struggling with the first two problems is unnecessary where there are directly injured parties who can remedy the harm without these attendant problems.

Id. at 353. The Court concluded that the plaintiffs' harm was indirect, remote and derivative with respect to the defendants' conduct, and that the plaintiffs therefore lacked standing to assert their CUTPA claims. See id. at 372.

Because the Court's application of the remoteness doctrine and proximate cause analysis effectively restricted the class of potential private litigants under CUTPA, the Court specifically declined to add a business relationship standing requirement to CUTPA. See id. at 372. (The conclusion to apply the remoteness doctrine "renders it unnecessary to consider whether CUTPA standing is confined to consumers, competitors and those in some business or commercial relationship with the defendants.").

Similarly, in Vacco v. Microsoft Corp., the Court applied the remoteness doctrine and proximate cause analysis in finding that the plaintiff lacked standing to assert a CUTPA cause of action. See 260 Conn. 59, 90-92 (2002). There, the Court held that the plaintiff, an indirect purchaser of the defendant's computer software, lacked standing to assert a CUTPA claim because the allegedly inflated price he paid for the software was too remote

from the defendant's putative anti-competitive marketplace conduct. See id.

As it did in Ganim and Vacco, the Court here should hold that the proper test for determining legal sufficiently is not whether the allegations support some business relationship; rather, the proper test for determining legal sufficiency and standing is the application of the remoteness doctrine and proximate cause analysis. The doctrines of remoteness and proximate cause are adequate to provide some limit on the class of potential plaintiffs under CUTPA while not contravening legislative intent regarding the reach or remedial nature of the statute by reading in standing requirements not present in the text.[3]

B. THE TRIAL COURT ERRED BY DISREGARDING THE REMOTENESS DOCTRINE AND ADDING A BUSINESS RELATIONSHIP STANDING REQUIREMENT TO CUTPA.

In adding a business relationship standing requirement to CUTPA, the trial court disregarded the Court's holdings in Ganim and Vacco which, as discussed above, established the remoteness doctrine as the proper standing limitation beyond CUTPA's own required showing of ascertainable harm caused by unfair or deceptive business practices. The trial court relied in part on the Court's decision in Ventres v. Goodspeed Airport, LLC, 275 Conn. 105, 157 (2005), and the Appellate Court's decision in Pinette v. McLaughlin, 96 Conn. App. 769, cert. denied 280 Conn. 929 (2006).[4] The trial court's reliance on those decisions, however, was misplaced. The Court should therefore reaffirm that Ganim and Vacco establish the proper standing review for private CUTPA causes of action, and decline to add a

[3] The trial court in the instant case did not address the remoteness doctrine and its application to the allegations. The amici do not suggest that the application of the remoteness doctrine would prevent the plaintiffs in the present matter from pursuing this case. Rather, the court erred in striking the plaintiffs' case because of the lack of an allegation of a direct business relationship.

[4] See Memorandum of Decision, pp. 40-43.

business relationship standing requirement to CUTPA.

In Ventres, the parties were merely neighbors, and the harm did not result from the conduct of any trade or commerce. See 275 Conn. at 155-58. The Court held that the plaintiff landowners lacked standing to assert a CUTPA claim against the alleged trespassing defendants for clear-cutting the plaintiffs' land in the process of expanding the defendants' airport runway. See id. The plaintiffs lacked standing, the Court held, because "...before the clear-cutting, the relationship [between the parties] was merely one of neighboring landowners. After the clear-cutting, the relationship was one of landowner and trespasser." Id. The Court rejected the plaintiffs' argument that a CUTPA plaintiff is not required to allege any business relationship because plaintiffs failed to provide any authority supporting the argument. Id. at 157.

The Court made a comparison reference to Macomber v. Travelers Prop. & Cas. Corp., 261 Conn. 620, 643 (2002). See id. In Macomber, the Court held that plaintiff automobile accident victims *had* standing under CUTPA to assert claims against the defendant liability insurer, its brokers, annuity issuer, and their parent corporation. See 261 Conn. at 643. The plaintiffs claimed that they suffered ascertainable harm arising out of unfair and deceptive business practices committed by the defendants relating to structured accident settlements. See id. The plaintiffs had standing, the Court reasoned, because as "we previously have stated in no uncertain terms…CUTPA imposes no requirement of a consumer relationship." Id. (emphasis added.)

The Court in Ventres thus references Macomber only for a very limited proposition: although CUTPA imposes no requirement of a consumer relationship, it may impose other types of relationship requirements (including a business relationship requirement). See id.

at 157, 881 A.2d at 970. That the plaintiffs in Ventres failed to provide authority to the contrary undermined their argument that they did not need to show a business relationship between the landowners and alleged trespassers. See id.; but see, e.g., Larsen Chelsey Realty Co. v. Larsen, 232 Conn. 480, 492-97 (1995) (Noting that the language of General Statutes § 42-110g(a) does not single out any particular relationship as conferring CUTPA standing).

Under Ganim and Vacco, however, the Court held that a decision on the issue was obviated by simply applying the remoteness doctrine and proximate cause analysis to CUTPA standing. See 260 Conn. at 90-92; 258 Conn. at 372 ("This conclusion renders it unnecessary to consider whether CUTPA standing is confined to consumers, competitors and those in some business or commercial relationship with the defendants."). The trial court's reliance on Ventres is therefore misplaced.

Similarly, the trial court's reliance on the Appellate Court's decision in Pinette is misplaced. See 96 Conn. App. 769. In Pinette, the Appellate Court held that a tenant who slipped and fell outside another tenant's apartment had no standing to bring a CUTPA claim against the defendant property owners. See id. at 771. Citing Ventres and (in error) Vacco, the Appellate Court held that the plaintiff's lacked standing because she lacked a business relationship with the defendant. See id. at 778.

Again, however, under Ganim and Vacco, the Court held that applying the remoteness doctrine and conducting the proximate cause analysis to CUTPA standing under General Statutes § 42-110g(a) renders it unnecessary to even consider adding a business relationship standing requirement to CUTPA. See 260 Conn. at 90-92; 258 Conn. at 372. The trial court's reliance on Pinette is thus misplaced. The Court should therefore reaffirm

that Ganim and Vacco establish the proper standing review for private CUTPA causes of action, and decline to add a business relationship standing requirement to CUTPA.

C. ADDING A BUSINESS RELATIONSHIP STANDING REQUIREMENT TO CUTPA WOULD CONTRAVENE CONNECTICUT'S PLAIN MEANING RULE AND THE PRINCIPLE THAT CUTPA SHOULD BE CONSTRUED LIBERALLY TO EFFECTUATE ITS PUBLIC POLICY GOALS.

The Court should not add a business relationship standing requirement to CUTPA because to do so would contravene Connecticut's Plain Meaning Rule and the principle that CUTPA should be construed liberally to effectuate its public policy goals.

Under Connecticut's Plain Meaning Rule, the Court must look to the plain and unambiguous text of a statute in order to ascertain the meaning of the statute. See General Statutes § 1-2z; Chestnut Point Realty, LLC v. Town of E. Windsor, 324 Conn. 528, 533 (2017); State of Connecticut v. Brown, 310 Conn. 693 (2013) ("When construing a statute, our fundamental objective is to ascertain and give effect to the apparent intent of the legislature.").

Here, the clear intent of the legislature, manifest in CUTPA's plain and unambiguous text, is to authorize "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, [to] bring an action…." General Statutes § 42-110g(a). The legislature did not intend to limit any further those who may bring a CUTPA claim, as evidenced by the lack of any other restrictive requirements. See e.g., Larsen, 232 Conn. at 497; McLaughlin Ford, Inc. v. Ford Motor Co., 192 Conn. 558, 566 (1984) ("The statute's coverage is broad and its purpose remedial.").

In fact, by CUTPA's own terms "[i]t is the intention of the legislature that this chapter be remedial and be so construed." General Statutes § 42-110b(d). As such CUTPA must

"be liberally construed in favor of those whom the legislature intended to benefit." Larsen, 232 Conn. at 492.

Here, to add a business relationship standing requirement would contravene Connecticut's the Plain Meaning Rule by setting aside the clear intent of the legislature manifest in the unambiguous text of CUTPA conferring standing to assert a claim to any person who has suffered an ascertainable harm as a result of unfair or deceptive business practice. It would also require an illiberal interpretation of CUTPA, also contrary to the intent of the legislature. The Court should not therefore add a business relationship standing requirement to CUTPA, and instead reaffirm that Ganim and Vacco establish the proper standing review for private CUTPA causes of action.

IV. CONCLUSION

For the reasons stated herein, the Court should answer the certified question "yes."

RESPECTFULLY SUBMITTED,

STATE OF CONNECTICUT,

DEPARTMENT OF CONSUMER PROTECTION,

GEORGE JEPSEN
ATTORNEY GENERAL,

BY: _____

Jeremy Pearlman
Assistant Attorney General
Juris No. 422390
Office of the Attorney General
110 Sherman Street
Hartford, CT 06105
Tel: (860) 808-5400
Fax: (860) 808-5593
jeremy.pearlman@ct.gov

CERTIFICATE PURSUANT TO PRACTICE BOOK § 67-2

Pursuant to Connecticut Practice Book § 67-2, undersigned counsel certifies that the foregoing brief is in compliance with all the provisions of §§ 67-1, 67-2, and that on April 28, 2017, an electronic version of the brief in accordance with guidelines established by the court and published on the Judicial Branch website was submitted prior to the filing of this paper brief. I hereby certify that the electronically submitted brief: (1) has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and (2) the filed paper brief does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; (3) a copy of the brief has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; (4) the brief being filed with the clerk is a true copy of the brief submitted electronically, and (5) the brief complies with all provisions of this rule.

Jeremy Pearlman
Assistant Attorney General

CERTIFICATION

I hereby certify that the foregoing brief complies with the requirements of Practice Book § 67-2 and that a copy of the foregoing was mailed, first class postage prepaid, this 28th day of April, 2017, in accordance with Conn. Practice Book § 62-7, to:

Alinor C. Sterling, Esq.
Joshua D. Koskoff, Esq.
Katherine Mesner-Hage, Esq.
Koskoff, Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, CT 06604
ASterling@koskoff.com
JKostoff@koskoff.com
KHage@koskoff.com
(203) 336-4421
(203) 368-3244 (Fax)
For Plaintiffs-Appellants

Scott Charles Allan, Esq.
Christopher Renzulli, Esq.
Renzulli Law Firm, LLP
81 Main Street, #508
White Plains, NY 10601
crenzulli@renzullilaw.com
sallan@renzullilaw.com
(914) 285-0700
(914) 285-1213 (Fax)
For Defendants-Appellees
Camfour, Inc.;Camfour Holding, LLP, a/k/a

Jonathan P. Whitcomb, Esq.
Scott M. Harrington, Esq.
Diserio Martin O'Connor & Castiglioni, LLP
One Atlantic Street
Stamford, CT 06901
jwhitcomb@dmoc.com
(203) 358-0800
(203) 348-2321 (Fax)

Peter Matthew Berry, Esq.
Berry Law LLC
107 Old Windsor Road, 2nd Floor
Bloomfield, CT 06002
firm@berrylawllc.com
(860) 242-0800
(860) 242-0804 (Fax)
For Defendants-Appellees
David LaGuercia & Riverview Sales, Inc.

Andrew A. Lothson, Esq.
James B. Vogts, Esq.
Swanson Martin & Bell, LLP
330 North Wabash, #3300
Chicago, IL 60611
alothson@smbtrials.com
jvogts@smbtrials.com
(312) 321-9100
(312) 321-0990 (Fax)
For Defendants-Appellees
Bushmaster Firearms International LLC, a/k/a;Freedom Group, Inc., a/k/a; Bushmaster Firearms, a/k/a; Bushmaster Firearms, Inc., a/k/a; Bushmaster Holdings, Inc., a/k/a Remington Arms Company, LLC, a/k/a; Remington Outdoor Company, Inc.

The Honorable Barbara N. Bellis
Connecticut Superior Court
1061 Main Street
Bridgeport, CT 06606

James J. Healy, Esq.
Cowdery & Murphy, LLC
280 Trumbull Street
Hartford, CT 06103
(860) 278-5555
(860) 249-0012 (Fax)
jhealy@cowderymurphy.com
For Amicus Curiae Professors
Nora Freeman Engstrom, et. al

Evan A. Davis, Esq.
Elizabeth Vicens, Esq.
Howard Zelbo, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2850
(212) 225-3999 (Fax)
edavis@cgsh.com
evicens@cgsh.com
hzelbo@cgsh.com
For Amicus Curiae
Trinity Church Wall Street

Brendan K. Nelligan, Esq.
Kennedy Johnson Schwab & Roberge LLC
555 Long Wharf Drive, 13th Floor
New Haven, CT 06511
(203) 865-8430
(203) 865-5345 (Fax)
bnelligan@kennedyjohnson.com
For Amicus Curiae
Law Center to Prevent Gun Violence

Brad S. Karp, Esq.
H. Christopher Boehning, Esq.
Amy J. Beaux, Esq.
Paul Weiss Rifkin Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
(212) 757-3990 (Fax)
bkarp@paulweiss.com
cboehning@paulweiss.com
abeaux@paulweiss.com
For Amicus Curiae
Law Center to Prevent Gun Violence

Matthew H. Geelan, Esq.
Donahue, Durham & Noonan, P.C.
741 Boston Post Road
Guilford, CT 06437
(203) 458-9168
(203) 458-4424 (Fax)
mgeelan@ddnctlaw.com
For Amicus Curiae Physicians

Michael J. Dell, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100
(212) 757-8000 (Fax)
mdell@kramerlevin.com
For Amicus Curiae Physicians

Rebecca T. Dell, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
(212) 757-3990 (Fax)
rdell@paulweiss.com
For Amicus Curiae Physicians

Daniel J. Klau, Esq.
McElroy, Deutsch, Mulvaney & Carpenter LLP
One State Street, 14th Floor
Hartford, CT 06103
(860) 525-5175
(860) 728-0401 (Fax)
dklau@mdmc-law.com
For Amicus Curiae Connecticut Against Gun Violence and Tom Diaz

David N. Rosen, Esq.
Alexander T. Taubes, Esq.
David Rosen & Associates, PC
400 Orange Street
New Haven, CT 06511
(203) 787-3515
(203) 789-1605 (Fax)
drosen@davidrosenlaw.com
ataubes@davidrosenlaw.com
For Amicus Curiae Newton Action Alliance and CAPSS

Vaughan Finn, Esq.
Shipman & Goodman LLP
One Constitution Plaza
Hartford, CT 06103
Tel: (860) 251-5505
Fax: (860) 251-5219
vfinn@goodwin.com
For Amicus Curiae The Brady Center to Prevent Gun Violence

Thomas H. Zellerbach
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
Tel: (650) 614-7446
Fax: (650) 614-7401
tzellerbach@orrick.com
For Amicus Curiae The Brady Center to Prevent Gun Violence

BY: _____
Jeremy Pearlman
Assistant Attorney General