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===== EXPERT OPINIONS =====

'Soto v. Bushmaster' Ruling Has Deeper Implications on CT Trade Law

By Bob Langer

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The Connecticut Supreme Court ruled last week in *Soto v. Bushmaster Firearms International* that the estates of the victims of the Sandy Hook school shooting can pursue claims against the manufacturer of the weapon used in the massacre. The decision has garnered nationwide attention, understandably focused on the tragic context and the holding that gun makers can be sued. But another part of the decision may have a deeper and longer-lasting impact on Connecticut law.

The ruling in *Soto* may greatly expand the reach of Connecticut's principal consumer protection and business litigation statute, the Connecticut Unfair Trade Practices Act, to include business conduct not



Jonathan Freiman, left, and Bob Langer of Wiggin and Dana. Courtesy photos.

previously generally understood to be subject to CUTPA. CUTPA is Connecticut's version of the Federal Trade Commission Act. But unlike that act, CUTPA provides for private litigation, in addition to government enforcement. The implications of the *Soto* decision for companies

that do business in Connecticut are profound and far-reaching.

The plaintiffs in *Soto* were administrators of the estates of several victims of the mass shooting at the Sandy Hook Elementary School in December 2012. They alleged that certain advertising and marketing

by the firearms manufacturers was “unethical, oppressive, immoral and unscrupulous” within the meaning of CUTPA, and that the advertising and marketing promoted the illegal, offensive use of the rifle used in the killings.

Importantly, the court held the following: (1) plaintiffs in a CUTPA action need not have a “commercial relationship,” i.e., a business relationship with the defendants; (2) personal injuries are a type of harm cognizable under CUTPA; (3) the Connecticut Product Liability Act does not preclude a CUTPA claim based on the allegedly wrongful marketing of a firearm; and (4) that continuous advertising by defendants to the time of filing permits claims to survive despite CUTPA’s three-year statute of limitations.

Each one of these separate CUTPA holdings expands the scope of CUTPA beyond its current contours. Moreover, the evisceration by



The evisceration by the Connecticut Supreme Court of the commercial relationship test will broaden the reach of CUTPA so dramatically that we expect to see an explosion of new types of CUTPA claims against businesses.



the court of the commercial relationship test will, in our view, broaden the reach of CUTPA so dramatically that we expect to see an explosion of new types of CUTPA claims against businesses.

CUTPA gives private litigants significant incentives. It provides not only for compensatory damages, but also, in the discretion of the court, for punitive damages and attorney fees. This is in addition to CUTPA investigations and suits

undertaken by Connecticut’s government enforcers: the Connecticut Department of Consumer Protection and the Connecticut Office of the Attorney General.

The firearms company will almost certainly petition the U.S. Supreme Court to review the decision, arguing that a federal statute pre-empts the claims. But whether or not the U.S. Supreme Court takes the case and reverses, it can’t overrule the Connecticut Supreme Court on a question of state law. The CUTPA decision will stand even if the ultimate ruling is reversed on federal statutory pre-emption grounds unique to the gun context. ■

Bob Langer co-chairs Wiggin and Dana’s Antitrust and Consumer Protection practice group and is co-author of the leading CUTPA treatise. Jonathan Freiman is Chair of the firm’s Appellate practice group.