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BLOG

Connecticut High Court Holds That "Unfair Trade Practices" Claims That Subsume Elements of a Product Liability Claim Are Barred

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In a question of first impression certified to it by the U.S. Court of Appeals for the Second Circuit, the Supreme Court of Connecticut recently delivered a partial win for defendants facing state products liability and unfair trade practices claims arising from the same conduct.

In *Glover v. Bausch & Lomb, Inc.*,[1] the Connecticut high court held that the Connecticut Product Liability Act's ("CPLA") exclusivity provision barred a plaintiff's Connecticut Unfair Trade Practices Act ("CUTPA") claim for unscrupulous marketing of an allegedly defective product that caused personal injury.[2]

Glover involved allegations that the defendants' Trulign lens—an artificial lens surgically implanted in patients' eyes to treat cataracts—led to vision problems known as "Z syndrome" when one part of the lens moved toward the surface of the eye and other parts stayed in place or moved backward, creating a "Z" shape.[3] The plaintiff alleged that she required several procedures to correct the damage to her vision and that fragments of the lenses could not be removed, permanently impairing both of her eyes.[4] She alleged that the defendant manufacturers and marketers violated the CPLA by failing to warn about the dangers of the lens and sought leave to amend her complaint to allege a violation of the CUTPA premised on the "unscrupulous marketing of the Trulign Lens" because the defendants knew or should have known that the lenses "would be likely to inflict serious injuries and harm."[5] The plaintiff averred that the defendants' marketing of the lenses "was a substantial factor resulting in [her] injuries, suffering, and damages."[6]

The district court held that the plaintiff's amendment would be futile because her CUTPA claim would be "indistinguishable from" her CPLA claim that was preempted by federal law, and therefore did not reach the question of whether the CPLA's exclusivity provision barred the plaintiff's CUTPA claim.[7] On appeal, however, the Second Circuit certified that question (along with another that is not the subject of this post) to the Connecticut high court.[8]

The state supreme court held that the plaintiff's CUTPA claim was barred by the CPLA's exclusivity provision, Conn. Gen. Stat. § 52-572n(a). That provision states that a CPLA claim "may be asserted and shall be in lieu of all other claims against product sellers, including actions of negligence, strict liability, and warranty, for harm caused by a product."[9] Although the court recognized that "'the [CPLA] was intended to serve as the exclusive remedy for a party who seeks recompense for [personal injury, death, or property damage] caused by a product defect,'" "including damages caused by the marketing of a defective product,"[10] it also acknowledged that the provision

"does not *expressly* bar CUTPA claims" and that the court had "never directly addressed the issue of whether a CUTPA claim seeking damages for personal injury caused by a defective product is barred by the exclusivity provision."[11]

In fact, the court explained, the exclusivity provision had not been interpreted to bar "all actions arising from the sale of products that cause injury."[12] The court read its prior decisions to "stand for the proposition that the CPLA's exclusivity provision permits a CUTPA claim based on the sale of product when (1) the plaintiff does not seek a remedy for *personal injury, death or property damage* that was caused by a defective product, or (2) the plaintiff seeks a remedy for personal injury, death or property damage that was caused by the unscrupulous advertising of a product *that was not defective*."[13]

The plaintiff's CUTPA claim fell into neither of those exceptions, however, "because it seeks damages for personal injury . . . caused by an allegedly defective product."[14] Nothing in the court's prior decisions, it explained, "suggests that a CUTPA claim can survive if it subsumes all of the elements of a claim pursuant to the CPLA."[15] The court rejected the plaintiff's argument that her claims "of aggressive marketing . . . are separate and distinct from those that go solely to a failure to warn of a product's defect" and should be permitted to proceed in parallel with her CPLA claim, noting that any difference between such theories "is a matter of degree rather than a matter of kind and does not warrant different treatment for purposes of the CPLA exclusivity provision."[16] The court thus held that the exclusivity provision barred the plaintiff's CUTPA claim.[17]

To be sure, the *Glover* decision is not all good for defendants. The court also held that "the defendants had a duty under the CPLA to comply with federal laws requiring them to report adverse events associated with the Trulign Lens to the FDA," seemingly at odds with the preemption doctrine long recognized by the Supreme Court in *Buckman Co. v. Plaintiffs' Legal Committee*.[18] Nevertheless, *Glover* provides some solace for defendants facing overlapping products liability and unfair trade practices claims under Connecticut law.

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[1] 275 A.3d 168 (Conn. 2022).

[2] *Id.* at 196–97.

[3] *Id.* at 172.

[4] *Id.*

[5] *Id.* at 173, 194.

[6] *Id.* at 194 (alteration in original) (internal quotation marks omitted).

[7] *Id.*

[8] *Id.* at 172–73.

[9] *Id.* at 195 (quoting Conn. Gen. Stat. § 52-572n(a)).

[10] *Id.* (alterations in original) (quoting *Gerrity v. R.J. Reynolds Tobacco Co.*, 818 A.2d 769 (Conn. 2003)).

[11] *Id.* at 197–98.

[12] *Id.* at 195.

[13] *Id.* at 196 (citing *Gerrity*, 818 A.2d 769; *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262 (Conn. 2019)).

[14] *Id.*

[15] *Id.* at 197.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 182–83; 531 U.S. 341 (2001).

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Patrick Hogan

Matthew Saxon

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