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STATE OF CONNECTICUT

February 26, 2012

GENERAL LAW COMMITTEE

RAISED BILL 922

The written testimony is provided to determine if the proposed changes to Connecticut General Statute 42-110 (b) are required.

Specifically, CUTPA prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." *Conn. Gen. Stat. 42-110b (a)*. In determining whether an act or practice is unfair, the Supreme Court of Connecticut has adopted the "cigarette rule" of the Federal Trade Commission. The three factors of the cigarette rule are as follows: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise; (2) whether it is immoral, unethical, oppressive, or unscrupulous; and (3) whether it causes substantial injury to consumers, competitors, or other businessmen.

The third element of the "cigarette rule" is, itself, subject to a three-part test: (1) the injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and (3) it must be an injury that consumers themselves could not reasonably have avoided.

All three elements of the "cigarette rule" do not have to be met to establish a violation of CUTPA. "A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three."

There is a bias within law enforcement and the judiciary to provide a meaningful post depravation remedy when the CUTPA violation is State Marshal related. The question of CUTPA is not a statutory problem; rather it is an enforcement and judiciary problem. The statutory language is clear and sufficient under C.G.S. 1-2(z), Plain meaning rule. The failure of enforcement is based upon who violates CUTPA. Connecticut law or constitutional due process / equal protections are secondary to personal agenda's regarding prosecution by public officials. These personal agenda's are forbidden by existing general statutes, or provisions within the Connecticut Constitution. The misuse of authority was personal, and was not "primarily employer rooted" or "reasonably incidental to the performance of employment duties.

The State of Connecticut by a course of connivance, violated the Fourteenth Amendment not to "deny" equal protection of the laws, and that the "State" in effect denied such protection not only when its legislation on its face unequal, but whenever its judicial or executive authorities by a consistent course of practice, "permanently and as a rule " refused to enforce its laws for the protection of some class of persons, which is exactly what has occurred within CUTPA violations by State Marshals.

SPECIFIC FACTS

THE ATTORNEY GENERAL'S OFFICE WAS NOTIFIED IN 2009 AND 2011 OF CUTPA VIOLATIONS

Sec. 35-28. Acts unlawful when purpose or effect is restraint of trade or commerce. Without limiting section 35-26, every contract, combination, or conspiracy is unlawful when the same are for the purpose, or have the effect, of: **(a) Fixing**, controlling, or maintaining prices, rates, quotations, or **fees in any part of trade or commerce**; (b) fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale, or supply of any part of trade or commerce; (c) allocating or dividing customers or markets, either functional or geographical, in any part of trade or commerce; or (d) refusing to deal, or coercing, persuading, or inducing third parties to refuse to deal with another person.

Sec. 42-110b. Unfair trade practices prohibited. Legislative intent. (a) No person shall engage in unfair methods of competition and **unfair or deceptive acts or practices in the conduct of any trade or commerce.**

(b) It is the intent of the legislature that in construing subsection (a) of this section, the commissioner and the courts of this state shall be guided by interpretations given by the Federal Trade Commission and the federal courts to Section 5(a) (1) of the Federal Trade Commission Act (15 USC 45(a) (1)), as from time to time amended.

CONNECTICUT ATTORNEY GENERAL'S OFFICE REFUSED TO ENFORCE CUTPA

A direct quote from the office of Connecticut's Attorney General within a lawsuit claiming violations of CUTPA.

"Contrary to the Plaintiffs base assertions, neither the Commission, the office of the Chief's State Attorney, nor the office of the Attorney General (OAG) owe the Plaintiff any duty to take action against certain state marshals, including bringing civil or criminal actions against them".

Sec. 35-32. Attorney General to bring actions in the name of state or as parens patriae. (a) The Attorney General, in the name of the state and on behalf of the people of the state, **shall enforce the provisions of this chapter.** He shall investigate suspected violations and institute proceedings, for any violation of the provisions of this chapter. Such proceedings may pray that such violation be temporarily or permanently enjoined, or otherwise prohibited.

Attorney General under C.G.S. § 3-125, as within duties of Attorney General; deputy; assistants; associate attorneys general, "shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction

Attorney General under C.G.S. § 3-129b. Suppression of criminally operated businesses other than corporations. (a) The Attorney General is authorized to institute civil proceedings in the Superior Court to enjoin the operation of any business other than a corporation, including a partnership, limited partnership,

unincorporated association, joint venture or sole proprietorship, when: (1) Any person in control of any such business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any such business, or a person who, in fact, exercises control over the operations of any such business, has, in conducting its business affairs, purposely engaged in a persistent course of gambling, unlawful traffic in narcotics, extortion, embezzlement, intimidation, bribery, prostitution, or other such illegal conduct with the intent to compel or induce other persons, firms or corporations to deal with such business or engage in any such illegal conduct, and **(2) for the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.**

CONNECTICUT CONSTITUTION ARTICLE ELEVENTH GENERAL PROVISIONS.SEC. 1.

Members of the general assembly, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation, to wit:
You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of.....to the best of your abilities. So help you God.

C.G.S. § 1-25 states will not knowingly allow anything dishonest to be done in court, and that you will inform the court of any dishonesty of which you have knowledge; that you will not knowingly maintain or assist in maintaining any cause of action that is false or unlawful; that you will not obstruct any cause of action for personal gain or malice;

CHEIF STATE'S ATTORNEY OFFICE REFUSED TO ENFORCE STATUTORY LAW WHEN NOTIFIED IN 2010

State's Attorney, C.G.S. § 51-277. Powers and duties of division. Representation of the state by Chief State's Attorney. (a) The division shall exercise all powers and duties with respect to the investigation and prosecution of criminal matters conferred upon or required of it by this chapter, or conferred upon or required of state's attorneys, assistant state's attorneys and deputy assistant state's attorneys of the Superior Court by the common and statutory law of this state.

(b) The division shall take all steps necessary and proper to prosecute all crimes and offenses against the laws of the state and ordinances, regulations and bylaws of any town, city, borough, district or other municipal corporation or authority.

State's Attorney, C.G.S. § 51-279(b) (a) The Chief State's Attorney shall establish a racketeering and continuing criminal activities unit within the Division of Criminal Justice. Such unit shall be available for the investigation and prosecution of criminal matters including, but not limited to, the illegal purchase and sale of controlled substances, criminal activity by gangs, fraud, corruption, illegal gambling and the recruitment of persons to carry out such illegal activities.

AN ACTION FOR DAMAGES TO THE SUPERIOR COURT OF CONNECTICUT

I was granted permission for suit in official capacity June 8, 2011, by waiver under the provisions of **Connecticut General Statute § 4-160** **The state waives its immunity from liability and from suit in each such action and waives all defenses** which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances.

The Attorney General's Office has claimed the waiver was in violation of the Connecticut Constitution Article 1, Sec. 1, as a special privileged or emoluments. He also lambasted the legislature in a Motion to Dismiss as incompetent in how it waived immunity. A reasonable person could determine the incompetencies occurs within enforcement given the facts, with the Attorney General's Office seeking to divert attention from its professional non-feasance and personal misuse of authority.

The legislature required the claim be filed under Sec. 35-33. Superior Court jurisdiction. The Superior Court of this state is hereby vested with jurisdiction to prevent and enjoin violations of this chapter. Any action or proceeding brought by the state, or any private party, for violation of the provisions of this chapter shall be brought in the superior court of the judicial district where the offense, or any part thereof, is committed, or in any judicial district where any of the alleged offenders reside or are found, or any agent resides or is found, or where any proprietor, association, firm, partnership, or corporate defendant does business.

As a Plaintiff I sought under Sec. 35-34. Injunctive relief. The state or any person, including, but not limited to, a consumer, may sue for injunctive relief, both temporary or permanent, against threatened loss or damage to its property or business by any violation of this chapter. In such actions the court shall follow the rules and principles governing the granting of injunctive relief. If the court issues an injunction, the plaintiff shall recover a reasonable attorney's fee together with costs, as determined by the court.

The dual purpose of the suit was to ensure those responsible for the collection of illegal service of process fees were held accountable, and to save the State of Connecticut tens of millions of dollars presently flowing to individual's who violated CUTPA. The State Marshal Commission was given a report and oral testimony containing CUTPA violations by Connecticut State Marshal's July 27, 2011. As Judge Blue commented at his Judiciary Committee confirmation hearing about a report he made, my report also is probably at the bottom of Long Island Sound, along with that of the Auditors of Public Accounts issued September 15, 2010, in which 50% of State Marshal's were found not in compliance with 52-261 requirements for allowable billing.

Marshal Bennett's second return of service August 24, 2007 contained not only the improper service of process fees for a lis pendens upon a homeowner in foreclosure, but related double mileage. He additionally increased the fees from \$100.00 to \$120.00 for service of process within a nine month period without any statutory authorization for an identical service upon the same parties. State Marshal Timothy Bennett's Interrogatories filed February 16, 2010 claiming "IRS regulations" allowed the statutory changes to increase fees from November 21, 2006 to August 25, 2007, were to conceal falsified fees, by a falsely attested submission to the Plaintiff's Interrogatories.

The Court skipped over ruling on this admission request. The court determined "calls for a legal conclusion" for other answers to admissions such as, "The defendant State Marshal Timothy Bennett has

certified false statements of fees, for the service foreclosure actions on November 21, 2006 and August 25, 2007, against the Plaintiff Ricky A. Morneau, which clearly could be answered by a person with counsel.

Another admission asked, State Marshal Albenie Gagnon in service upon William W. Cote within his return, served federal complaint 307-CV-00819 JBA at 30 Vesta Drive, East Haven, Connecticut, Attorney Cote's usual place of abode, allowed for by Connecticut General Statute 52-54, he has requested and received mileage fees of \$75.66 for two trips. Gagnon is authorized to leave his civil service of process, upon the first attempt, at the usual place of abode of defendant Cote, constituting legal service by a Connecticut State Marshal.

Part of Gagnon's response was, Gagnon also objects to the request to the extent it seeks a legal conclusion by the defendant, who is not a lawyer. Notwithstanding this objection, the defendant, in his capacity as a non-lawyer, **admits that the service of process at the usual place of abode of the named individual would normally constitute legal service and does not recall the reason that a second trip was necessary.**

Marshal Gagnon also claimed 3 trips were needed to serve the Attorney General of the State of Connecticut.

The question is: (1) Are CUTPA laws applicable or enforceable given the judicial propensity to afford legal protections in violation of CUTPA law by State Marshal's, and will the new proposed legislation solve the problem of equal protection under the laws of CUTPA? (2) Was the failure by the Attorney General's Office, Chief State's Attorney, or State Marshal Commission, misuse of authority personal, and was not "primarily employer rooted" or "reasonably incidental to the performance of employment duties.

The Attorney General's Office, State's Attorney, and State Marshal Commission could still act on illegal fees. The statute of limitations under CUPTA, or Civil Rico has not expired, allowing recovery by the State of Connecticut. The statute of limitations tolls back to the last predicate act for an increased service of lis pendens / associated mileage, for a homeowner in foreclosure seeking under **Sec. 35-35. Treble damages for injury to business or property.**

The State Marshal Commission failed to remove State Marshal's when presented multiple sources of information regarding illegal fees.

Sec. 35-39, allows for the liability of legal or commercial entity for acts of agents. A corporation, association, firm, partnership, proprietorship, or any other legal or commercial entity is liable under this chapter for the acts of its officers, directors, representatives or agents, **acting within the scope of their actual or apparent authority**, whether they are acting on their own behalf or for their own benefit.... Proof of the acts of any such officer, director, representative, or agent shall be received as prima facie proof as the acts of the corporation, association, firm, partnership or proprietorship, itself.

But the State of Connecticut, in an arbitrary enforcement, is allowing the statute of limitations to expire under Sec. 35-40. Limitation of actions. Accrual of cause of action for continuing violation. Any action under sections 35-34 and 35-35, shall be forever barred unless commenced within four years after the cause of action shall have accrued. For the purpose of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.

CONCLUSION

The proposed legislation within Bill 922 before the General Law Committee, is less important than actual enforcement failures. The finest laws, that are promptly disregarded, serve no meaningful public purpose.

While confronting the CUTPA or other legal violations by State Marshal's, slander or disparage of reputation was common a tactic. I was subjected to deleted judicial proceeding transcripts, additional court documents altered, rulings which skipped critical questions or rulings which actually altered or changed prior rulings by other judges, without the benefit of argument or appellate review, to protect individual's associated within the Court system who violated CUTPA and affect the claim. The Attorney General's Office had a named defendant, file an appearance as counsel, to defend against the lawsuit. When seeking legislative approval for the suit I was additionally subjected to false arrest, but was not able to present that testimony at the time, as the case was still pending. I was forced to attend 18 docket dates for a charge of Breach of Peace, for which the State of Connecticut ultimately was forced to admit it had failed to preserve exculpatory evidence. Their never was any evidence of a crime, just a malicious prosecution, it was purely intimidation tactics used by the State of Connecticut to silence a whistleblower.

Nothing will destroy the creditableness of a legal system faster than when individual's misuse their authority against a whistleblower. I thought the people who failed to enforce law, or adjudicate a clear legal violation, were biased towards me. When I examined public records, I realized they have been biased all along to countless Connecticut citizen's who attempted to seek redress. **The bias is against anyone who interferes with illegal acts, committed by some within the legal system, when in pursuit of pecunary gain.**

When the Connecticut Legislature contemplates changes to CUTPA, proposed under Bill 922, this testimony is intended to examine the failure of enforcement of violations of existing CUTPA law, the difficulty when confronting "state actors" in violation of CUTPA, and the violations of the constitutional requirements under **Connecticut Constitution, Article First, 10**, "shall have remedy by due course of law, and right and justice administered without sale, denial or delay" and **Connecticut Constitution Article 1, Sec. 7**, which state's, "The people shall be secure in their persons, houses, papers and possessions from **unreasonable** searches or **seizures**;"

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