NEWSSTAND

The Cigarette Rule: Still Smokin'

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In a June 2010 Insurance & Reinsurance Review article entitled "The Cigarette Rule – Up in Smoke?", we reported on a then-recent jury verdict in *Artie's Auto Body v. The Hartford Fire Insurance Company*,[1] in which a Connecticut jury awarded nearly $15 million to a class of automotive body shop plaintiffs based on the jury's finding that the insurance company defendant violated the Connecticut Unfair Trade Practices Act (CUTPA).[2]

The authors also opined that the *Artie's* lawsuit could potentially result in a seismic shift in the law, ultimately restricting potential plaintiffs' ability to bring similar actions in the future, if this became the case that finally forced the issue of whether the so-called "cigarette rule" -- used to determine whether an act or practice is "unfair" within the meaning of CUTPA -- has been superseded by a newer, narrower federal standard. Although the Superior Court presiding over the *Artie's* matter denied, on October 14, 2010, the defendant's post-trial motions on this issue, our prediction may still be correct -- the Superior Court served up the issue nicely for appeal, noting the Supreme Court's prior position that it will take up the issue in a proper case when "presented to us,"[3] and further opining that "[i]t may be that this case will prove to be the appropriate case to frame the issue for review, but that review must occur at the Supreme Court."

As a brief refresher, the insurance company defendant in *Artie's* challenged the Superior Court's charging of the jury on all three prongs of the now FTC-abandoned cigarette rule, which provided that a plaintiff alleging unfairness within the meaning of CUTPA must prove that: (1) the act or practice offends public policy as it has been established by statutes, the common law or other established concept of unfairness; (2) the act or practice is immoral, unethical, oppressive or unscrupulous; or (3) the act or practice causes substantial injury to consumers, competitors or other business persons. In 1984, the FTC narrowed the rule to concentrate on the third "substantial injury" prong, although Connecticut has not yet abandoned the three-prong rule.

We will continue to monitor this case and report on pertinent developments, particularly at the appellate level.

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1. *Artie's Auto Body et al. v. Hartford Fire Ins. Co.*, FST-CV03-0196141-S, 2009 WL 3737931 (Conn. Super., Sept. 22, 2009).
2. Conn. Gen. Stat. §42-110a et seq.
3. *Votto v. American Car Rental, Inc.*, 273 Conn. 478, 484, n. 3 (2005).