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STATE OF CONNECTICUT v. LIBERTY MUTUAL HOLDING COMPANY, INC. ET AL.

NO. X 09 CV 06 4023087

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF HARTFORD, COMPLEX LITIGATION DOCKET AT HARTFORD

2009 Conn. Super. LEXIS 548

March 20, 2009, Decided
March 20, 2009, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: [*1] Joseph M. Shortall, J.

OPINION BY: Joseph M. Shortall

OPINION

MEMORANDUM OF DECISION ON MOTION TO STRIKE

[1]

1 The court wishes to thank Laurence Cohen, a third-year student at the Quinnipiac University School of Law, for his assistance in the research and writing of this decision.

Relying on the Connecticut Antitrust Act (act) and the Connecticut Unfair Trade Practices Act (CUTPA), the state of Connecticut seeks to enjoin a group of insurance companies held and operated by the Liberty Mutual Holding Company, Inc. (collectively, Liberty insurers or defendants) from engaging in certain acts and practices that are alleged to be anticompetitive, unfair and deceptive. [2] In addition, the state seeks damages [3] and civil penalties [4] under the act and civil penalties, [5] restitution [6] and disgorgement of profits, [7] as well as the state's reasonable attorneys fees [8] and costs, under CUTPA. The Liberty insurers have moved to strike the complaint [9] in its entirety.

2 "The Attorney General, in the name of the state and on behalf of the people of the state, ... shall ... institute proceedings, for any violation of the provisions of this chapter. Such proceedings may pray that such violation be temporarily or permanently enjoined, [*2] or otherwise prohibited." *Conn. General Statutes § 35-32 (a)*. "Whenever the commissioner [of consumer protection] has reason to believe that any person has been engaged or is engaged in an alleged violation of any provision of this chapter, said commissioner ... may request the Attorney General to apply in the name of the State of Connecticut to the Superior Court for an order temporarily or permanently restraining and enjoining the continuance of such act or acts ..." *Conn. General Statutes § 42-110m (a)*.

3 *Conn. General Statutes § 35-32 (c)(2)*.

4 *Conn. General Statutes § 35-38*.

5 *Conn. General Statutes § 42-110o*.

6 *Conn. General Statutes § 42-110m*.

7 Id.

8 Id.

9 The operative complaint, to which the motion to strike is directed, is the second amended complaint, dated March 6, 2007.

I

Well-known canons govern the court's treatment of a motion to strike. The court must:

> take the facts to be those alleged in the complaint ... and construe the complaint in the manner most favorable to sustaining its legal sufficiency ... Thus, if facts provable in the complaint would support a cause of action, the motion to strike must be denied ... Moreover, ... what is necessarily implied [in an allegation] need not be expressly [*3] alleged ... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted ... Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically. (Citations omitted; internal quotation marks omitted.)

Violano v. Fernandez, 280 Conn. 310, 317-18, 907 A.2d 1188 (2006).

Moreover, the court must apply settled law regarding the interpretation of pleadings:

> The modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically ... Although essential allegations may not be supplied by conjecture or remote implication ... the complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties ... As long as the pleadings provide sufficient notice of the facts claimed and the issues to be tried and do not surprise or prejudice the opposing party, we will not conclude that the complaint is insufficient to allow recovery. (Internal citations [*4] and quotations omitted.)

Emerick v. Kuhn, 52 Conn. App. 724, 738-39, 737 A.2d 456 (1999).

The Liberty insurers do not claim that the complaint does not "provide sufficient notice of the facts claimed and the issues to be tried"; rather, they complain that it does not conform to special pleading requirements for antitrust and CUTPA violations. The court will address their specific claims after summarizing the allegations of the complaint, which are taken as true for purposes of this motion.

II

Insurance consumers are individuals and businesses who must purchase insurance to protect their assets and operate their enterprises. Insurers provide an array of products and services to meet this need, in a range of premiums and other costs. Insurance brokers stand between insurers and consumers, advising the latter about which insurance products best meet their needs at a cost-effective price. To do so brokers acquire and apply a specialized expertise upon which consumers rely in choosing among what are often complex legal agreements. Insurers, like the Liberty insurers here, are aware of their consumers' necessary reliance on the technical expertise and advice of brokers and of the position of trust and confidence [*5] occupied by brokers vis à vis their clients.

The complaint here charges that the Liberty insurers engaged in two schemes to take unfair and anticompetitive advantage of their customers' reliance on brokers in purchasing insurance. First, it alleges that, from 2001 to 2004, Liberty Mutual Insurance Company (Liberty Mutual), one of the Liberty insurers, violated the act and CUTPA by conspiring with other insurers and with Marsh & McLennan Companies, Inc. (Marsh), alleged to be the world's largest insurance broker, to rig bids and raise premium prices for excess casualty insurance. This conspiracy had the intent and effect of increasing premium prices for excess casualty insurance in Connecticut and throughout the United States.

Liberty Mutual participated in the bid rigging conspiracy in two ways. Where an insurance contract was to be renewed in which it was the incumbent carrier, it

was protected by Marsh's obtaining inflated bids from other conspiring insurers so that Liberty Mutual could retain the business, at an increased premium. Where another conspiring insurer was the incumbent carrier, Liberty Mutual would protect its co-conspirator by providing an inflated bid, thereby allowing [*6] the other insurer to retain the coverage, again at an increased premium. Thus, rather than compete for the consumer's insurance business, Liberty Mutual, its conspiring insurers and Marsh cooperated with each other to direct business to one of the conspirators whether or not the terms of coverage and its cost were best for the consumer. [10]

10 Five examples of how the bid rigging conspiracy worked are described in detail in the complaint, one of them involving the Hexcel Corporation, located in Stamford.

The second scheme the complaint alleges is one in which the Liberty insurers intentionally took advantage of consumers' trust in insurance brokers by offering brokers like Marsh hidden commissions to be paid in return for the brokers' recommending Liberty insurance products to consumers regardless of whether those products provided the best coverage at the lowest price for the brokers' customers. [11] This "steering" scheme is alleged to be a violation of CUTPA. The Liberty insurers paid insurance brokers tens of millions of dollars annually in contingent commissions, it is charged, and, as they intended, brokers responded by recommending to consumers not the insurance that best met the [*7] consumers' needs but insurance products and services available from the Liberty insurers.

11 These payments seem to be known generically as "contingent commissions," reflecting the fact that their payment is contingent upon a broker's steering its customers' business to one of the Liberty insurers. Other labels have been attached. "This case is one of many stemming from the so-called 'contingent commission' arrangements between insurers and brokers that were prevalent prior to October 2004. 'Contingent commissions' is a euphemism for kickbacks--insurance brokers would receive payments from insurers for steering business their way." *Staehr v. The Hartford Financial Services Group, Inc., 547 F.3d 406, 408 (2d Cir. 2008)*.

III

The alleged bid rigging conspiracy among Liberty Mutual, other insurers and Marsh is the subject of count one of the complaint. *Conn. General Statutes § 35-26* makes unlawful "(e)very contract, combination, or conspiracy in restraint of any part of trade of commerce," and *35-28 (a)* makes every such "contract, combination, or conspiracy" to fix, control or maintain prices unlawful *per se*.

The major part of the attack by the Liberty insurers on count one is its supposed [*8] failure to comport with antitrust pleading standards set out by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*. [12] In *Twombly*, subscribers to local telephone and internet services brought a federal antitrust action against local telephone exchange carriers, alleging that they had engaged in parallel billing and contracting conduct designed to discourage new competitors from entering their markets and competing for local telephone and high-speed internet service. They further alleged, upon information and belief, that the local exchange carriers had engaged in this conduct as part of a "contract, combination or conspiracy to prevent competitive entry in their respective ... markets ..." "Because § 1 of the Sherman Act does not prohibit [all] unreasonable restraints of trade ... but only restraints effected by a contract, combination, or conspiracy, ... the crucial question is whether the challenged anticompetitive conduct stems from independent decision or from an agreement, tacit or express." (Internal quotation marks and citations omitted.) Id., 6. The complaint in *Twombly* was found to be flawed because it nowhere alleged any facts which either [*9] directly or by implication evidenced an agreement to restrain competition, a necessary element of an antitrust claim under both the federal Sherman Act and the Connecticut act. Compare § 1 of the Sherman Act, *15 U.S.C. § 1*, and *Conn. General Statutes § 35-26*.

12 "... [T]he courts of this state [in interpreting the act] shall be guided by interpretations given by the federal courts to federal antitrust statutes." *§ 35-44b*. See also *Westport Taxi Service, Inc. v. Westport Transit District, 235 Conn. 1, 15-16, 664 A.2d 719 (1995)*.

In contrast, the complaint here expressly alleges not only that Liberty Mutual was part of a conspiracy to fix insurance prices by rigging bids but also identifies the

other members of that alleged combination in restraint of trade, when the conspiracy was in operation, what was its purpose and effect, how and by whom it was implemented and gives five detailed examples of the conspiracy in operation. Complaint, PP 17, 19-35. "... (W)e hold that stating ... a claim [of a conspiracy in restraint of trade] requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made." *Id*., 9. The state's allegations setting out the bid rigging conspiracy pass this [*10] test.

The Liberty insurers also attack count one "because the State does not allege facts plausibly supporting its *parens patriae* claims." Motion of Defendants to Strike Second Amended Complaint, 2. The only *parens patriae* claim asserted by the state is one based on its claim of damage to the state's general economy from the defendants' conduct; see *§ 35-32 (c) (2)*; and the defendants explicitly eschew any intent to address that claim in this motion. Memorandum of Law in Support of Defendants' Motion to Strike the Second Amended Complaint (defendants' memorandum), 5 n.2 (Nov. 30, 2007).

Nor does the defendants' invocation of the "direct purchaser" rule of *Illinois Brick Co. v. Illinois, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977)*, and *Vacco v. Microsoft Corp., 260 Conn. 59, 793 A.2d 1048 (2002)*, avail them any relief from the state's complaint. The state of Illinois was suing in *Illinois Brick* to recover damages for its use in state buildings of concrete block, the price of which was allegedly inflated because of the defendants' price-fixing conspiracy; the Supreme Court held that the only purchasers with standing to bring such a claim for damages were those who were "direct purchasers" of the allegedly overpriced concrete. [*11] The only connection with Microsoft which the plaintiff in *Vacco* had was as a purchaser of a personal computer in a retail store, yet, because that purchase made him the holder of an end-user license agreement, he claimed to have been damaged by Microsoft's alleged anticompetitive practices in connection with licensing of its operating system. There, too, applying *Illinois Brick*, the Connecticut Supreme Court held that, as an indirect purchaser of the operating system, he was ineligible to recover under the act. The state here does not seek to recover as a purchaser of insurance; rather, it brings this action on behalf of the Connecticut citizenry in general to enjoin anticompetitive practices which it claims have adversely impacted the state's general economy. Thus, cases like *Illinois Brick* and *Vacco* are inapposite. [13]

13 The Liberty insurers seem also to suggest that the state's complaint here does not satisfy the standard set by the U.S. Supreme Court in *Alfred L. Snapp & Sons, Inc. v. Puerto Rico, 458 U.S. 592, 102 S. Ct. 3260, 73 L. Ed. 2d 995 (1982)*, for complaints by states as *parens patriae*. To the contrary, the complaint seems the very model of a *parens patriae* complaint, in that it seeks to remedy injury to [*12] the general populace of Connecticut from the allegedly anticompetitive conduct of the Liberty insurers. See Complaint, PP 53-58.

Count one sufficiently alleges facts which, if proven, would establish the existence of a conspiracy to fix prices for excess casualty insurance of which Liberty Mutual, one of the Liberty insurers, was a party. It adequately alleges a *parens patriae* claim based on alleged damage to the state's general economy and harm to the Connecticut citizenry from the alleged conspiracy.

IV

Count two of the complaint, alleging a CUTPA violation, is based on both the bid rigging conspiracy [14] and on allegations that the Liberty insurers paid brokers "hidden fees" in return for the brokers' steering customers to one or the other of the Liberty insurers for their insurance coverage. See Complaint, PP 50 & 51. These "acts and practices" of the Liberty insurers, it is claimed, violate Connecticut statutes prohibiting unfair insurance practices; *Conn. General Statutes § 38a-815 et seq.*; and commercial bribery; *§ 53a-160*; and are otherwise oppressive and unscrupulous and in violation of the state's public policy against (1) conspiring to violate the fiduciary duties of insurance [*13] brokers, (2) rigging bids in the placement of insurance business, (3) transmitting fraudulent rather than genuine insurance quotes, (4) making secret payments in return for steering customers, (5) inflating insurance premiums by folding their secret payments into their premiums, (6) conspiring to set premiums higher than a truly competitive market would have set them and (7) conspiring to interfere tortiously with another's business expectancy. *Id*., PP 52 & 53. In all, the state alleges, these acts and practices constitute unfair or deceptive acts in violation of *Conn. General Statutes § 42-110b*.

14 Since the court has held that the bid rigging

> conspiracy is properly pled in count one as a violation of the act, the Liberty insurers' arguments against count two, insofar as those arguments invoke the same authorities, are unavailing.

The Liberty insurers move to strike the second count in its entirety, pursuant to *Practice Book § 10-39*, i.e., they challenge the "legal sufficiency of the allegations ... to state a claim upon which relief can be granted."

The grounds advanced by the Liberty insurers are of three types: (1) an attack on count two's overall failure to plead facts that support its [*14] legal claims, (2) a challenge to the count as an attempt to apply CUTPA to events occurring outside Connecticut, and (3) a claim that particular allegations within it; e.g., allegations of unfair insurance practices, commercial bribery, breach of fiduciary duty and tortious interference, are insufficiently pled. These latter allegations, however, are not attempts to state a cause of action but are given as examples of the public policies allegedly violated by the Liberty insurers' conduct or of the ways in which they allegedly engaged in oppressive and unscrupulous acts and practices. Therefore, they are not the proper objects of a motion to strike. See *Moss Ledge Associates v. Firestone Building Products Co., Superior Court, judicial district of Stamford-Norwalk, Docket No. 170167, 1999 Conn. Super. LEXIS 2906 (Oct. 27, 1999)*; *Duraflex, Inc. v. Laticrete Int'l, Inc*., Superior Court, judicial district of Hartford, Docket No. X 09 CV 06 5006996 (Nov. 20, 2007). [15]

> 15 "Although there is a split of authority, most trial courts follow the rule that a single paragraph of a pleading is subject to a motion to strike only when it attempts to set forth all of the essential allegations of a cause of action ..." (Citations and [*15] internal quotation marks omitted.) *Trimachi v. Workers Compensation Comm'n, Superior Court, judicial district of New Haven, Docket No. CV 97 0403037, 2000 Conn. Super. LEXIS 1548 (June 14, 2000)*

So, in deciding the motion to strike, there are two questions the court must answer. Does count two state facts which, if proven, would permit a jury to find a CUTPA violation? And, does it allege facts that establish a sufficient connection between the Liberty insurers' conduct and the state of Connecticut?

A

CUTPA proscribes both "unfair" and "deceptive" acts or practices in the conduct of trade or commerce in Connecticut. *Conn. General Statutes § 42-110b (a)*; *42-110a (4)*. An act or practice is "unfair" if it "offends public policy as it has been established by statutes, the common law or otherwise" or if it is "immoral, unethical, oppressive, or unscrupulous" or if it "causes substantial injury to consumers." (Internal quotation marks and citations omitted.) *Cheshire Mortgage Service, Inc. v. Montes, 223 Conn. 80, 105-06, 612 A.2d 1130 (1992)*. An act or practice is deceptive if it is likely to mislead consumers, if the consumers interpret the message reasonably under the circumstances and if it is material, i.e., likely to affect consumer [*16] decisions or conduct. *Caldor, Inc. v. Heslin, 215 Conn. 590, 597, 577 A.2d 1009 (1990)*.

The bid rigging allegations detailed above fit within these definitions. Rather than provide consumers with honest, competitive bids for their excess casualty coverage, it is claimed, the Liberty insurers conspired with brokers and other insurers to submit phony, inflated bids which were intended not to provide the consumer with adequate coverage for a legitimate price but to allow the Liberty insurers and their fellow conspirators to obtain the business for a price in excess of what the consumer would pay in a genuinely competitive market. The steering allegations include misrepresenting the genuineness of premium quotes, conspiring to violate the fiduciary duty of brokers to their clients and inflating premiums by the amount of extra commissions paid to brokers in return for steering consumers to a Liberty insurer. These acts and practices are "unfair" and "deceptive" by any standard; if proven at trial, they would support a verdict in the state's favor.

The Liberty insurers argue that the steering scheme *is* not sufficiently pled as a violation of the act. See Defendants' Memorandum, 19-27. But, this argument [*17] is for naught because the state nowhere claims that the steering scheme was an antitrust violation. Likewise, the *Vacco* case is invoked as authority for striking count two when it has no relevance whatever to the claims actually made by the state. The state does not seek "damages [for] all insurance consumers across all lines of insurance nation wide"; *Id*., 28; it does not seek damages for consumers at all. See Complaint, Prayer for Relief as to Count Two. Thus, neither *Vacco* nor *Ganim v. Smith &*

Wesson Corp., 258 Conn. 313, 780 A.2d 98 (2001), are helpful in resolving the issue whether count two states a claim. [16]

16 The Liberty insurers claim that the complaint must be stricken because it fails to allege that their practices proximately caused injury to consumers. Such a requirement is a creature of *§ 42-110g*, which requires a person bringing a private action to plead and prove that the loss he suffered was "as a result of" an unfair trade practice. Since the state is not proceeding under *§ 42-110g*, but under *§ 42-110m*, it need not make the same allegation or prove the same loss.

The complaint does not allege that the Liberty insurers violated any duty of trust that they had to insurance consumers. [*18] Rather, it claims that they induced and conspired with insurance brokers to breach the latters' duty to recommend to their clients the best coverage for the lowest cost; instead, the Liberty insurers offered to and paid brokers financial incentives to recommend "not the insurance that was best for their clients, but the insurance that paid the [broker] the highest hidden commission." Complaint, P 36.

Whether or not consumers and brokers have a fiduciary relationship is a question of fact and will ultimately be for a jury to decide. *Albuquerque v. Albuquerque, 42 Conn. App. 284, 287, 679 A.2d 962 (1996)*. The state has sufficiently pled such a duty. Complaint, PP 14-15. That CUTPA liability can be based on conspiratorial or accessorial conduct was thoroughly and carefully established in *Feen v. Benefit Plan Administrators, Superior Court, judicial district of New Haven, Docket No. 406726 (Sept. 7, 2000) [28 Conn. L. Rptr. 137, 2000 Conn. Super. LEXIS 2415]*, and this court adopts the reasoning and conclusions therein. This is not a case in which the Liberty insurers entered into transactions with brokers only to find out later, to their chagrin, that the brokers were not adhering to their obligations to consumers. This is a case, it is alleged, in which [*19] the Liberty insurers initiated and encouraged the brokers in the breach of their duty to consumers. If proven, these allegations would permit a finding that the Liberty insurers aided and abetted brokers in the breach of their fiduciary duty to consumers, in violation of CUTPA. [17]

17 The allegations in PP 36-39 of the complaint, read together with those in PP 13-16, also satisfy the requirements for pleading aiding and abetting set out in cases such as *Halo Tech Holdings, Inc. v. Cooper, Docket No. 3:07-CV-489, 2008 U.S. Dist. LEXIS 24831, 2008 WL 877156 (D. Conn. 2008)*; viz., that "(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation;" *2008 U.S. Dist. LEXIS 24831, 2008 WL # 20*, citing *Efthimiou v. Smith, 268 Conn. 499, 505, 846 A.2d 222 (2004)*.

Count two alleges sufficient facts for CUTPA liability to be found by the jury.

B

CUTPA prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce"; *Conn. General Statutes § 42-110b*; and "trade" [*20] and "commerce" are defined to mean the conduct of some of the types of business described "in this state." *§42-110a(4)*. The answer to the question whether count two states facts which, if proven, would establish a connection between the Liberty insurers' conduct and the state of Connecticut sufficient to fasten CUTPA liability on the insurers is mixed.

Count two alleges that the Liberty insurers engaged in their bid rigging conspiracy while "providing insurance and insurance related services in Connecticut and to Connecticut businesses and individuals"; Complaint, PP 4 & 5; and that the conspiracy had the intent and effect of raising premium prices for Connecticut consumers. *Id.*, P 17. Further, it alleges that the Liberty insurers engaged in their steering scheme, i.e., paid extra commissions to brokers specifically for sending business their way, while the insurers were "providing insurance and insurance related services in Connecticut and to Connecticut businesses and individuals;" *Id.*, PP 4 & 5; but, unlike the bid rigging allegations, there is no claim that the scheme was intended to and did injure Connecticut insurance consumers. Nor are there any allegations that any of the unfair [*21] or deceptive acts took place in Connecticut.

"A CUTPA violation ... need not necessarily occur in Connecticut, but instead, the violation must be tied to a form of trade or commerce *intimately associated* with

Connecticut." (Emphasis original; internal quotation marks and citation omitted.) *Titan Sports v. Turner Broadcasting System, 981 F. Supp. 65, 71 (D. Conn. 1997)*. Such an "intimate association" has been found where the defendants had their principal places of business in Connecticut; *Diesel Injection Service v. Jacobs Vehicle Equipment, Superior Court, judicial district of Hartford, Docket No. CV 98 0582400 (Dec. 4, 1998) [23 Conn. L. Rptr. 621, 1998 Conn. Super. LEXIS 3710]*; *Richmond, Fredericksburg & Potomac R.R. Co. v. Aetna Casualty & Surety Co*., No. 3:96CV1054, 1997 WL 205783 at 2 (D. Conn. Apr. 11, 1997); and where, although the defendant had its principal place of business in Georgia, its television programs were aired in Connecticut, Connecticut residents called its "900" number, and the plaintiff's principal place of business was in Connecticut; *Titan Sports v. Turner Broadcasting System, supra*; and where the trust agreement at issue in the litigation was under the supervision of the New Haven probate court; *Carter v. Suntrust Bank, Superior Court, judicial district of New Haven, Docket No. CV 02 0469357, 2003 Conn. Super. LEXIS 271 (Feb. 4, 2003)*; [*22] and where all the plaintiffs were based in or resided in Connecticut and their only contacts with New Mexico were limited to use of the telephone and mails and did not involve solicitation of business or signing of contracts there. *H&D Wireless Ltd. Partnership v. Sunspot*, CV No. H-86-1026 (D. Conn. Feb. 24, 1987).

"In addition, at least under Connecticut's choice of law principles, a tort is deemed to have occurred where the injury was sustained, and in misrepresentation cases, the injury occurs where the 'economic impact' is felt." *Uniroyal Chemical v. Drexel Chemical, 931 F. Supp. 132, 140(D. Conn. 1996).*

The Liberty insurers seem to argue that the Supreme Court's decision in *State v. Cardwell, 246 Conn. 721, 718 A.2d 954 (1998)*, displaces these decisions and suggests that any extraterritorial application of CUTPA is at best suspect, if not downright wrong. But, *Cardwell* indicates quite the opposite: The only statute construed there was a *criminal* statute, *§ 53-289*, prohibiting ticket scalping. Applying established principles construing *criminal* statutes; *Id., 738-41*; the Court decided that there was [*23] no evidence that the legislature meant to allow prosecutions in this state for crimes committed elsewhere. "Because the general rule is that we punish only offenses committed within the territory of the state ..., we will not apply a criminal statute extraterritorially without a significant indication that the legislature intended it to have that effect." *Id., 741*. Because the trial court in *Cardwell* had based its finding of a CUTPA violation, in part, on a violation of *§ 53-289* committed in Massachusetts, the Supreme Court set aside an injunction of the defendant's activities based on that finding. *Id*.

More to the point, however, the Court let stand the trial court's imposition of civil penalties and orders of restitution for deceptive conduct occurring outside Connecticut, which orders were entered under the authority of the same CUTPA provisions upon which the state relies in this case. "The [trial] court further found that Ticketworld, on a few occasions, had misrepresented information regarding tickets sold to Connecticut customers from its Springfield [Massachusetts] office." *Id., 727*. Although the court did not discuss the point, it was apparently enough of a basis for a CUTPA violation [*24] that the tickets were sold to Connecticut residents, because two of the three events for which they were sold were outside Connecticut. *Id., 727-28*. Thus, it is clear from *Cardwell* that there is no barrier to extraterritorial application of CUTPA. The question remains as to what constitutes a sufficiently "intimate" association with Connecticut for the court to find a CUTPA violation "in this state."

This court concludes that an allegation that the Liberty insurers were soliciting and transacting business in Connecticut is insufficient, by itself, to fasten CUTPA liability on them for unfair and deceptive acts not alleged to have been committed in Connecticut or to have had any adverse effect here. Otherwise, every corporation doing business here would be susceptible to the powerful weapons of *Conn. General Statutes § 42-110m* and *42-110o*, which allow the court to enjoin their commercial activities and, for wilful conduct, to levy fines of $ 5000 for each CUTPA violation. This would allow CUTPA to reach far beyond Connecticut's border. The court doubts that the legislature meant to protect the residents of other states from unfair and deceptive acts in the conduct of trade or commerce [*25] when it enacted CUTPA. Cf. *Larsen Chelsey Realty Co. v. Larsen, 232 Conn. 480, 492, 656 A.2d 1009 (1995)*.

Thus, the court finds that the steering allegations in count two do not state a CUTPA violation. The bid rigging allegation, however, has an additional tie to Connecticut in that it is alleged that the conspiracy had the intent and effect of raising premium prices for

Connecticut consumers; *Id.*, P 17; i.e., that the economic impact of the defendants' alleged unfair and deceptive practices was in Connecticut. The court finds this to be a tie to Connecticut sufficient to permit a jury to find a CUTPA violation in this state.

Count two commingles two theories of how CUTPA was violated. Since the motion to strike is directed at the entire count, it must fail if any of the Liberty insurers' claims in that count are legally sufficient to state a CUTPA cause of action. *Wachtel v. Rosol, 159 Conn. 496, 499, 271 A.2d 84 (1970)*; *Whelan v. Whelan, 41 Conn. Sup. 519, 520, 588 A.2d 251 (1991)* [3 Conn. L. Rptr. 135]. Because the bid rigging theory is viable, the count survives. [18]

18 While the steering allegations remain in count two, whether a finding of a CUTPA violation could stand, if based only on that claim, is a different question.

In its allegations regarding [*26] the alleged bid rigging conspiracy count two sufficiently alleges deceptive and unfair conduct in violation of CUTPA which has a sufficient connection with Connecticut to permit a jury verdict.

V

For the reasons stated above, the motion to strike the complaint is DENIED.

BY THE COURT

/s/ Joseph M. Shortall

Joseph M. Shortall, J.

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