



Potential Impact of *Soto v. Bushmaster* upon the Scope of CUTPA

April 16, 2019

12:00 p.m. – 1:30 p.m.

CT Bar Association

Webinar

CT Bar Institute, Inc.

CT: 1.5 CLE Credits (1.5 General)

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Faculty Biographies

DAVID L. BELT
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David L. Belt is a member of the Milford, Connecticut law firm of Hurwitz, Sagarin, Slossberg & Knuff LLC. He received his B.A. degree in economics, *magna cum laude*, from Yale University in 1965, where he was elected to Phi Beta Kappa, and Omicron Delta Epsilon, the international honor society for economics. He received his LL.B. from the Yale Law School in 1970. Mr. Belt has engaged in a wide variety of civil litigation matters including antitrust, unfair trade practices, contract, employment, intracorporate and intrapartnership disputes and other complex civil disputes. He is a member of the Executive Committee of the Antitrust and Trade Regulation Section of the Connecticut Bar Association, of which he has served as Chair, and of its Litigation and Federal Practice Sections and is the Senior Topical Editor for Antitrust and Trade Regulation of the Connecticut Bar Journal.

Mr. Belt has been presented with the Albert Nelson Marquis Lifetime Achievement Award by *Marquis Who's Who*. He has also been selected to be a Life Fellow of the Connecticut Bar Foundation and has been elected as a Fellow of the American Bar Foundation.

Since 2004, Mr. Belt has been an Adjunct Professor of Law at the Quinnipiac University School of Law where he teaches Antitrust Law and Unfair and Deceptive Trade Practices. He is the author of numerous books and articles concerning antitrust and trade regulation, including, among others: *Connecticut Unfair Trade Practices, Business Torts and Antitrust*, Vol. 12 of the Connecticut Practice Series (Thomas Reuters, 2018-2019) (co-author); *Should the FTC's Current Criteria for Determining "Unfair Acts or Practices" Be Applied to "State Little FTC Acts,"* The Antitrust Source (Feb. 2010); *Unresolved Issues Under the Unfair Trade Practices Act*, 82 Conn. B.J. 389 (2008); *The Standard for Determining "Unfair Acts or Practices" Under State Unfair Trade Practices*

Faculty Biographies

Acts,” 80 Conn. B.J. 247 (2006); *Unfair Trade Practices* in the Connecticut Lawyers Deskbook (Conn. Bar Ass’n, 3d ed. 2008). Mr. Belt was also a contributing author to *Consumer Protection Law Developments* (2009), published by the ABA Section of Antitrust Law.



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EDUCATION

J.D., University of Connecticut
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B.A., Franklin & Marshall College

ADMISSIONS

Connecticut

COURT ADMISSIONS

US Court of Appeals for the
Second Circuit

US Court of Appeals for the
Third Circuit

US District Court
(District of Connecticut)

US Supreme Court

Bob is recognized as one of the country's foremost authorities on antitrust, consumer protection, and trade regulation law. He possesses unparalleled experience in counseling, litigation, and regulatory investigations in the field, and he is co-author of the definitive treatise on unfair trade practices and antitrust legal practice.

A Partner in the firm's Litigation Department and Co-chair of the firm's Antitrust and Consumer Protection Practice Group, Bob's experience includes class actions and representing clients in both federal and state courts and before the Federal Trade Commission, the Antitrust Division of the U.S. Department of Justice (DOJ), and offices of state attorneys general and state consumer protection agencies throughout the U.S.

Bob leverages more than two decades of experience as the Assistant Attorney General in charge of antitrust and consumer protection in Connecticut, where he litigated numerous antitrust and consumer matters in federal and state trial and appellate courts. His four decades of accomplishments have earned him a host of prestigious accolades, including

- The Medal of Excellence from the University of Connecticut Law School Alumni Association, the 11th recipient in 40 years.
- A Distinguished Legal Writing Award from the Burton Awards, granted to 35 authors from more than 1,000 submitting firms.
- A Marvin Award from the National Association of Attorneys General (NAAG).
- An outstanding service award from the Connecticut Department of Consumer Protection.
- An award from the ABA Section of Antitrust Law for chairing the Janet D. Steiger Fellowship Project, recipient of the ABA's Meritorious Service Award.

Bob is a Charter Fellow and former Chair of the James W. Cooper Fellows Program and a Fellow of the American Bar Foundation. He was named *Best Lawyers'* antitrust lawyer of the year for Hartford on several occasions.

Prior to joining Wiggin and Dana in 1994, Bob participated in more than 20 cases in the Connecticut Supreme Court and the Connecticut Appellate Court, including the first decisions under both the Connecticut Antitrust Act (in a 1975 case) and the Connecticut Unfair Trade Practices Act (CUTPA) in a 1981 case. He has also assisted in drafting important amendments for both statutes.

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PARTNER

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Additionally, Bob has participated in numerous cases in the U.S. Supreme Court, including *Leegin v. PSKS* (2007), which, with the aid of an amicus brief on behalf of PING, co-authored by Bob, overturned century-old precedent related to vertical price fixing, *Hartford Fire v. California* (1993), one of the most significant McCarran-Ferguson decisions in our nation's history, in which Bob represented The State of Connecticut, and, most recently, *Ohio v. AMEX*, in which Bob co-authored an amicus brief on behalf of two highly regarded antitrust economists in perhaps the most important antitrust decision rendered by the Court in a decade involving how courts should evaluate two-sided markets under the antitrust laws.

In September 2005, at the behest of the Congressional Antitrust Modernization Commission, Bob was one of three participants to testify on the subject of the state action immunity doctrine.

From 1990 to 1992, Bob served as Chair of the NAAG Multistate Antitrust Task Force. NAAG established the now commonplace model of multistate attorney general cooperation in consumer protection. That model was born with Bob's and others' work in the 1970s to forge a landmark agreement with General Motors for secretly installing Chevrolet engines in Oldsmobiles.

Bob has participated in numerous pro bono initiatives, including the Fair Factories Clearinghouse (FFC), which, after Bob helped FFC obtain a successful Business Review Letter from the Antitrust Division of the DOJ, now shares documented data about wages and working conditions in foreign manufacturing settings. He also successfully obtained Advisory Opinions from the Federal Trade Commission to enable healthcare nonprofits to pass savings on to their employees and others. As Chair of the Cooper Fellows, he helped launch a program to capture the oral histories of pioneering women in the law in Connecticut.

Bob lectures and writes regularly on antitrust, consumer protection, and healthcare topics. Bob is the co-author of the highly regarded treatise, *Unfair Trade Practices, Business Torts and Antitrust*, which is an important resource for Connecticut judges, lawyers, and academicians. His op-ed articles have appeared in *The New York Times* and *The Hartford Courant*.

Since 1979, Bob has taught at the University of Connecticut School of Business Administration's MBA Program and the University of Connecticut School of Law. Bob obtained his J.D. from the University of Connecticut School of Law and his A.B. from Franklin & Marshall College. Bob was admitted to practice in 1973.

**CONNECTICUT BAR ASSOCIATION
ANTITRUST & TRADE REGULATION SECTION**

**POTENTIAL IMPACT OF *SOTO V. BUSHMASTER*
UPON THE SCOPE OF CUTPA**

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and

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WEBINAR

The following sections of the 2018-19 edition of LANGER, MORGAN, BELT, CONNECTICUT UNFAIR TRADE PRACTICES, BUSINESS TORTS AND ANTITRUST (Vol. 12, Conn. Practice Series, Thomson Reuters) will be impacted by the Connecticut Supreme Court's decision in *Soto v. Bushmaster Firearms International, LLC*, 331 Conn. 53, 2019 WL 1187339 (2019):

Sections 2.2, 3.6, 3.10, 5.2, 5.3, 5.14, 6.2 and 6.7.

THE CIGARETTE RULE – SECTION 2.2

The Connecticut Supreme Court held that the plaintiffs, the families of victims of the Sandy Hook Elementary School massacre, had properly pleaded that defendants' advertising and marketing of the XM15-E2S assault rifle violated CUTPA by alleging that such advertising and marketing was unethical, oppressive, immoral and unscrupulous within the meaning of the second prong of the cigarette rule. *Soto v. Bushmaster Firearms International, LLC*, 331 Conn. 53, 105-06, 156-58, 2019 WL 1187339, *24, *48 (2019).

THE COMMERCIAL RELATIONSHIP TEST AND STANDING – SECTIONS 3.6 AND 6.2

“We need not decide today whether there are other contexts or situations in which parties who do not share a consumer, commercial or competitor relationship with an alleged wrongdoer may be barred, for prudential or policy reasons, from bringing a CUTPA action. What is clear is that none of the rationales that underlie the standing doctrine, either generally or in specific context of unfair trade practice litigation, supports the denial of standing to plaintiffs in this case.” *Soto*, 331 Conn. at 96, 2019 WL 1187339, *20.

THE CONNECTICUT PRODUCT LIABILITY ACT – SECTION 3.10

“[T]he defendants’ fail to offer any explanation as to why the allegation that they wrongfully marketed the XM15-E2S by promoting the gun’s use for illegal purposes – offensive, military style assault missions – amounts to a product defect claim. There is no allegation in the present case, for example, that the marketing of the X15-E2S contained inadequate warnings that made the weapon unreasonably dangerous.” *Soto*, 331 Conn. at 107, 2019 WL 1187339, *25.

PREEMPTION – SECTION 5.2

The Connecticut Supreme Court held that CUTPA was not preempted by provisions of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901 through 7903. *Soto*, 331 Conn. at 157, 2019 WL 1187339, *48; (“Once we accept the premise that Congress did not intend to immunize firearms suppliers who engage in truly unethical and irresponsible marketing practices promoting criminal conduct, and given that statutes such as CUTPA are the only means available to address those types of wrongs, it falls to a jury to decide whether the promotional schemes alleged in the present case rise to the level of illegal trade practices and whether fault for the tragedy can be laid at their feet.”).

STATUTE OF LIMITATIONS – SECTION 5.3

The Connecticut Supreme Court held that the alleged unethical, oppressive, immoral and unscrupulous advertising and marketing of defendant’s XM15-E2s, as pled in the complaint, is not barred by CUTPA’s three year statute of limitations because “most of plaintiffs’ wrongful marketing claims are phrased in the present tense and, therefore, may be understood to allege that those activities continued through the time the complaint was filed.” *Soto*, 331 Conn. at 106, 2019 WL 1187339, *24.

FIRST AMENDMENT/COMMERCIAL SPEECH – SECTION 5.14

The Connecticut Supreme Court held that the “plaintiffs’ complaint in the present case alleges that the marketing in question promoted unlawful activity, namely, the civilian use of the XM15-E2S ‘as a combat weapon . . . for the purpose of waging war and killing human beings’ [and thus] the first amendment is not implicated by the claims as set forth by the plaintiffs in their complaint.” *Soto*, 331 Conn. at 133 n. 56, 2019 WL 1187339, *37 n. 56; (“We recognize that the advertisement and marketing of goods is a quintessential form of commercial speech under established first amendment jurisprudence . . . [a]t the same time, it is equally well settled that commercial speech that proposes an illegal transaction or that promotes or encourages an unlawful activity does not enjoy the protection of the first amendment.”).

PERSONAL INJURIES – SEC. 6.7

“[W]e conclude that, at least with respect to wrongful advertising claims, personal injuries alleged to have resulted directly from such advertisements are cognizable under CUTPA.” *Soto*, 331 Conn. at 116, 2019 WL 1187339, *29.