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United States Supreme Court Denies Cert. in *Remington Arms Co. LLC v. Soto*

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The United States Supreme Court has denied certiorari in *Remington Arms Co. LLC v. Soto*, No. 19-168. While the focus of this case ought to remain on the families and the Newtown community, this decision has broad implications for the larger business community, and we write to you to alert you to that aspect of the decision.

The appeal concerned the Connecticut Supreme Court's 2019 decision interpreting the Protection of Lawful Commerce in Arms Act of 2005 ("PLCAA"), a federal law which is aimed at immunizing arms manufacturers from lawsuits brought by the victims of crimes committed by individuals using weapons built and sold by those manufacturers. In *Soto v. Bushmaster Firearms, LLC*, 331 Conn. 53, 202 A.3d 262 (2019), the Connecticut Supreme Court concluded that PLCAA did not preclude a claim brought by the families of the victims of the 2012 Sandy Hook Elementary School massacre under the Connecticut Unfair Trade Practices Act, Connecticut General Statutes §42-110a, *et seq.* ("CUTPA"). The families brought the claim against the manufacturers of the AR-15 assault rifle used in the tragedy, claiming that the manufacturers engaged in wrongful advertising (advertising that encourages dangerous or violent conduct). The Plaintiffs allege that Bushmaster and other gun manufacturers had advertised the AR-15 in a manner that was unscrupulous and encouraged dangerous conduct by, among other things, touting the weapon's usefulness for waging war and killing human beings, and claiming that the weapon would allow a single individual to outnumber his opponents and force them to "bow down."

In the trial court, the weapons manufacturers moved to dismiss based in part upon PLCAA and won. The plaintiffs appealed, claiming that the CUTPA claim actually fell within PLCAA's "predicate exception," which permits claims against weapons manufacturers when the claim is based upon a state statute "applicable to the sale or marketing of a firearm." In a 4-3 split decision, the Connecticut Supreme Court agreed, concluding that a wrongful advertising claim under

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CUTPA fell within the predicate exception of PLCAA, because CUTPA prohibits any “unfair methods of competition and unfair or deceptive acts or practices in the conduct of *any trade or commerce*.” (Emphasis added.) Accordingly, the Connecticut Supreme Court reasoned, CUTPA fell within the scope of PLCAA’s predicate exception, because CUTPA’s language renders it applicable to all trade or commerce, including the sale and marketing of firearms.

With the United States Supreme Court’s decision to deny cert., the case will now return to Connecticut and proceed with discovery. Moreover, the broad interpretation of CUTPA stands, which means that businesses in all industries should be aware that wrongful marketing activities could subject them to liability under CUTPA, which allows for the award of punitive damages and attorneys’ fees. Please feel free to contact us if you have questions about this far-reaching decision.

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