

Verdicts and Cases

David Slossberg and Brian Wheelin

obtained a **\$14.7 million** verdict in an unfair business practices class action against The Hartford Fire Insurance Company for artificially and improperly setting labor rates paid to auto body repairers for their skilled labor.

Andrew Skolnick obtained a **\$250,000** jury verdict in an underinsured motorist case tried in the Derby Superior Court.

David Slossberg obtained an injunction precluding a bank from removing a property manager based on default of the underlying \$12.6 million construction loan.

Land Use Results

John Knuff obtained a number of land use approvals throughout Connecticut. While the dollar value of these projects range from the tens of thousands to the tens of millions of dollars, these approvals represent a significant investment by our clients. We are proud that such a diverse range of clients have entrusted their investments with our firm.

- Brooklyn, CT – wetland and zoning approvals for a 162,000 square foot retail store;
- Wilton, CT – zoning approval and related real property matters for a gasoline and convenience store;
- Trumbull, CT – zoning regulation amendment and special permit approval for modifications to a regional shopping mall;
- Milford, CT – grand opening of Aldi's grocery store;
- Fairfield, CT – wetland and zoning approvals for mixed-use retail/residential development employing new urbanist design principles;
- New Haven, CT – Board of Zoning Appeals approval for national fast food restaurant.

Staying Connected



David A. Slossberg and John W. Knuff

Like a lot of you, we think of the resolutions we make every year as hopeful expressions of new possibilities - both personal and professional. Whether we resolve to get more organized, more involved (in anything), or simply stay the course, there is something about a new year that motivates us all to do better or be better than we were before.

With that in mind, and with one well-received newsletter behind us, one of our resolutions is to continue to bring you timely and, we hope, informative articles about the law and how it affects you, your families, and your businesses. This month we have included articles on topics as diverse as our practice areas, ranging from workplace privacy to uninsured and underinsured motorist insurance coverage. If there are topics you'd like to see us cover, please email or call us because "staying connected" with our clients is what our newsletter is all about.

We are delighted to announce that Danielle M. Bercury recently joined the firm. Danielle, a long-time Milford resident, practices in the areas of land use, real estate, and commercial litigation. She is also an active member of the Milford Conservation Commission and works to promote the Clean Energy Options program with CL&P and UI. Be sure to check out her article for tips on buying foreclosed properties.

From everyone at Hurwitz Sagarin Slossberg & Knuff, we would like to extend to you and yours our wishes for a healthy, happy and prosperous 2010.

WORKPLACE PRIVACY

Russell A. Green

The increasingly blurred lines between work life and personal life, as well as the constant evolution of technology in the workplace, create challenges for employers and employees. Add to that the increasing length of the average workday, and the availability of online services from banking to shopping, and even the most conscientious employee will likely use their work computer for some personal use. Indeed, employers expect such behavior and acknowledge that prohibiting conduct like personal e-mail communications would be not only difficult to enforce, but also highly unpopular. Employers do, however, have an obligation to restrict improper or unlawful internet use, and can take steps to block some sites from employee access.

Employers must clearly state in employment documents, such as employee handbooks, that computers, personal devices, and internet use are for business purposes. Employers must then actually enforce this policy but only for the purpose of preventing abuse, not for the purposes of snooping on an employee. Courts have held that failure to actually enforce such policies creates an expectation on the part of the employee that the policy does not apply and he or she has a reasonable expectation of privacy in such communications.

Even when the employer has a clearly enforced workplace monitoring policy in place, there are restrictions on an employer's conduct. Employers may monitor computer use and office emails, but this right does not generally apply to outside communications, particularly those via a third-party network, and unrelated to their work. For example, gaining unauthorized access to an employee's social networking site account or personal e-mail account is improper.

Both federal and state statutes limit the use of electronic surveillance devices by employers and prohibit recording negotiations between employers and employees.

Employers are required to post a notice concerning any electronic monitoring of employees, unless the employer has reasonable grounds to believe that an employee is engaged in unlawful conduct. ❖

Tips for Buying a Foreclosed Home

Danielle M. Bercury

Even as the real estate market reaches bottom with interest rates at historic lows, individuals on the hunt for an even better bargain might be lured into purchasing a foreclosed home. That "too good to be true" price probably is and, as with any real estate transaction, buyers should be cautious not to act with haste. Before committing to purchasing a foreclosed property, follow some simple steps to ensure you are getting the bargain you bargained for.

The more time you have to make a decision to sign that contract, the better. Most foreclosed properties are bank owned and there is little room for negotiating the terms of the contract, but an experienced lawyer can help you understand the risks. For example, banks can add hefty per diem fees if the closing does not occur by the date in the contract. Your lender will need adequate time to approve your loan and to gather all the documents needed to close on the property. Even though you are pre-approved or have a mortgage commitment, it does not mean you are ready to close.

Additionally, bank-owned properties are often purchased "as is," which dramatically impacts a buyer's ability to bring legal action if an unknown defect is discovered after the closing takes place. Allow adequate time to conduct a complete inspection of the premises and make sure the contract allows you to walk away with your deposit if the results of that inspection are not acceptable.

Foreclosed homes can have significant issues with the chain of title, so have your attorney order a title search before you sign the contract. Remember to consult with an experienced real estate attorney before deciding if that foreclosure really will be home, sweet home. ❖

At Hurwitz Sagarin Slossberg & Knuff, we take great pride in our support of small businesses - whether that means pushing back against large companies for their predatory practices or making sure that businesses are not victimized by a variety of unfair business practices, we have empowered our clients to pursue their remedies and to protect their business interests. The principal tool for ensuring fair and reasonable business practices is Connecticut's Unfair Trade Practices Act, commonly referred to as CUTPA. This act prevents one business from engaging in competition with another that violates Connecticut public policy, is otherwise unscrupulous, immoral, unethical or oppressive, or causes significant injury.

Our business clients readily accept and embrace the challenge of conducting business in a highly competitive marketplace, but they have also come to expect that competitors will follow the law. If that is not happening, and your business is damaged as a result, utilizing the remedies under CUTPA may provide the right answer for you.

Electronic Preservation of Documents

Brian J. Wheelin

Companies often overlook the importance of preserving electronically generated or stored data, which could have grave consequences if those documents become relevant in litigation. We were recently able to obtain significant sanctions against a corporate defendant for its failure to timely produce documents sought in a class action case.

In late 2003, plaintiffs commenced an unfair trade practices case against The Hartford Fire Insurance Company (“The Hartford”). In October-November of 2008, approximately seven months before the scheduled trial date, The Hartford suddenly located and produced one million pages of documents.

We sought sanctions from The Hartford based on the manner in which it responded to the discovery demands. On May 7, 2009, the Court issued its decision finding The Hartford had committed “sanctionable conduct” based on its disregard of its “continuing duty to disclose [that] can be traced to its failure to establish an effective and comprehensive method of identifying, finding and disclosing within a reasonable time the documents requested by the plaintiffs, especially e-mails and electronic documents, while at the same time giving plaintiffs reason to believe, to its prejudice, that the sporadic piecemeal compliance that was provided represented all the responsive documents that could be found.”

To ensure your business does not face similar problems, you should, with assistance from your lawyer:

- ✓ Establish document retention policies, backup procedures and recycling policies – then store them in a safe place;
- ✓ If litigation is reasonably expected, issue a “litigation hold” directing all employees to preserve documents and data that might be relevant to the litigation (Note that litigation may be “reasonably expected” long before a formal complaint is filed in Court);
- ✓ Once a “litigation hold” is in place, communicate with any IT personnel and key employees to ensure compliance with document retention policies;
- ✓ Create electronic copies of all relevant active files; and
- ✓ Periodically monitor compliance and re-issue the “litigation hold” so new employees are aware of it, and to keep it fresh in the minds of all employees.

If your company does not have a policy in place, speak to one of our attorneys who can help you to draft policies to address this important issue.



UNINSURED AND UNDERINSURED MOTORIST COVERAGE

Andrew W. Skolnick

Connecticut statutes and regulations require all automobile insurance liability policies to include coverage for injuries caused by the negligence of uninsured and underinsured motorists. While individuals shopping for motor vehicle insurance are typically concerned with obtaining sufficient bodily injury (liability) coverage to protect their personal assets in the event that someone is injured as a result of an accident caused by their negligent operation of a motor vehicle, many are unaware of the importance of maximizing the uninsured and underinsured coverage. This type of coverage provides compensation for injuries caused by the negligent operation of another motor vehicle that either has no coverage (uninsured) or has insufficient coverage to adequately compensate for injuries resulting from the accident (underinsured). In those instances, the uninsured/underinsured motorist coverage on your vehicle comes into play.

All automobile insurance policies in Connecticut must provide uninsured/underinsured limits at least equal to the bodily injury coverage on the policy, and an insured may elect to purchase uninsured/underinsured motorist coverage with limits twice that of the bodily injury coverage. Everyone should take advantage of this option as the increased premium cost associated with doubling the amount of protection for you, members of your family who live in your home and anyone who is driving your car with your permission, is relatively insignificant. For example, if you have determined that you need \$300,000 of bodily injury coverage, you should take advantage of the opportunity to double the protection for you and your own family and secure \$600,000 of uninsured/underinsured coverage.

While you can't control whether the operator or owner of another vehicle has bodily injury coverage (or more than the mandatory minimum of \$20,000 per person and \$40,000 per accident), you can take affirmative action to protect yourself and your family by maximizing the uninsured/underinsured protection.

Aggressive Lenders (How to Fight Back)

David A. Slossberg

Are you being pressured to pay back your line of credit? Has your bank changed the conditions of your business loan? Has your financial institution moved to foreclose on an existing mortgage debt? Has your bank made a promise to you that it did not keep? Do you just feel that your lender is not dealing with you fairly and in good faith? Some of our clients are experiencing these very issues and we have been able to help.

We are living through the most difficult economic crisis in generations. That fact alone does not justify Draconian steps by your lending institution that could jeopardize your very ability to do business. There is a simple proposition in the law that your bank or mortgage lender owes to you and your business an obligation of good faith and fair dealing. That means that a bank should not be permitted to call a loan, or otherwise change its terms, simply because the business climate has changed and it wants to clean up its balance sheet.

As an example of the protection provided by the law, recently we successfully staved off foreclosure and obtained an order enjoining a national lender from removing our client as the property manager of a large apartment complex where the lender had moved to foreclose a \$12.6 million mortgage on the property. As we showed during the course of a two-day hearing, the lender, which had applied for TARP funds, sought to obtain management control of the property despite its promise, made six months before the maturity date of the loan, to work out an extension on more favorable terms. In reliance on that promise, our client committed another

\$500,000 to the project. The Court issued an injunction prohibiting the bank from removing the client as property manager, citing the equitable defenses of estoppel and breach of covenant of good faith and fair dealing. This permitted the client to continue receiving the income from its role as property manager. In the meantime, this foreclosure, which was filed in January 2009, has been thwarted while the parties engage in discovery and explore business solutions to the current situation. Often, just this kind of forceful pushback against a bank's actions can lead to a satisfactory resolution of the underlying issues and save a business from financial ruin.❖

NEWS...NEWS...NEWS

On January 27, 2010, **David Slossberg** was sworn in as the Chairman of the Board of the Milford Chamber of Commerce. David will be leading the Milford Chamber this coming year, with its membership of more than 700 businesses in the greater Milford area.

Lewis Hurwitz was recently appointed to serve on the State Contracting Standards Board, which is a newly formed state board charged with creating fair contracting standards for the state of Connecticut and reviewing current state contracts to make sure they meet applicable ethics standards. Lew's willingness to serve in this important position will help to eliminate corruption in state contracting.

John Knuff obtained check-cashing licenses from the Connecticut Department of Banking for a client's thirty-two locations across the state.

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