

2016 YEAR IN REVIEW

APPELLATE PRACTICE



The [Appellate Practice Group](#) of Murtha Cullina is regularly trusted to handle appeals by trial counsel within and outside the firm, as well as individuals and institutional clients. We are grateful for these opportunities and pleased to report on some of our appellate work from 2016:

FEBRUARY 2, 2016: [AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT](#)

Murtha Cullina filed an amicus brief on behalf of the Connecticut Housing Finance Authority in the Connecticut Supreme Court. The case, *Nutmeg Housing Development Corporation v. Town of Colchester*, SC 19551, is a tax appeal about whether federal low income housing tax credits can be considered by municipal tax assessors when assessing the value of affordable housing projects for purposes of property taxes. Murtha Cullina attorneys Robert A. White and Proloy K. Das filed the amicus brief, which argues that if low income housing tax credits are considered, their effect on the value of the real estate should be reflected in the capitalization rate. The brief is available here: <http://bit.ly/CHFAAmicus>

MARCH 8, 2016: [CONSTRUCTION AND LAND USE](#)

The Connecticut Appellate Court heard oral argument *Kobyluck Brothers v. Town of Waterford P & Z*, A.C. 37732, an appeal by a Murtha Cullina construction client who was denied a special permit by the Town of Waterford to build an aggregate manufacturing plant. Murtha Cullina attorney Michael A. Zizka presented the oral argument on behalf of Kobyluck Brothers, with assistance in the briefing and the oral argument preparation from attorney Kari L. Olson.

MARCH 15, 2016: [LABOR AND EMPLOYMENT](#)

The Connecticut Supreme Court released a 4-3 decision in *Standard Oil of Connecticut, Inc. v. Administrator, Unemployment Comp. Act*, 320 Conn. 611 (2016), holding that certain individuals were independent contractors rather than employees. Murtha Cullina attorneys Michael C. Harrington and Jennifer A. Corvo filed an amicus brief on behalf of the Connecticut Business & Industry Association, arguing that a ruling against the corporation could turn Connecticut households into “places of business” and limit an employer’s ability to subcontract work. The brief, which was cited by the majority opinion, is available here: <http://bit.ly/CBIStandardOil>

MARCH 17, 2016: [AUTOMOTIVE](#)

The Massachusetts Appeals Court released its decision in *Kilnapp Enterprises v. Massachusetts State Automobile Dealers Association*, 89 Mass.App. Ct. 212, in a defamation action brought against the defendant association. The Court held in favor of Murtha Cullina’s client, the Massachusetts State Automobile Dealers Association, which had been sued for libel by a car-detailing firm because the association had advised its members that the company was under a federal labor investigation. The Court rejected the defamation claim because there was no proof that the Association’s statements were false and because the Association’s statements were reasonably calculated to protect its members. Murtha Cullina attorneys Thomas S. Vangel and James F. Radke represented the MSADA in the appeal. The decision is available here: <http://bit.ly/Kilnapp>

MARCH 30, 2016: [INSURANCE RECOVERY](#)

The Connecticut Appellate Court held a special six-hour oral argument session in *R.T. Vanderbilt Co. v. Hartford Accident & Indemnity Co., et al.*, AC36749, AC37140, AC37141, AC37142, AC37143, AC37144, AC37145, AC37146, AC37147, AC37148, AC37149, AC37150, AC37151, in a case about insurance coverage for asbestos-related claims and allocation of defense and indemnity costs among the parties. Murtha Cullina attorney Elizabeth J. Stewart presented the oral argument on behalf of Vanderbilt Minerals, with assistance in the briefing and the oral argument preparation from attorneys Francis J. Brady, Marilyn B. Fagelson, Rachel Snow Kindseth, Taruna Garg, George Dagon, Proloy K. Das, and Sarah Gruber.

APRIL 1, 2016: ADMINISTRATIVE APPEALS

The Connecticut Supreme Court heard oral argument in *Harrington v. Freedom of Information Commission*, S.C. 19585, in a case about the test for attorney client privilege when a communication contains both legal and business advice. Murtha Cullina attorney Michael C. Harrington presented the oral argument, with assistance in the briefing and the oral argument preparation from attorneys Jennifer A. Corvo, Proloy K. Das, and Sarah Gruber. The televised oral argument is available here: <http://bit.ly/HarringtonvFOIC>

MAY 3, 2016: BUSINESS LITIGATION

The New York Supreme Court, Appellate Division, released its decision in *Freidman v. New York City Taxi & Limousine Commission*, 31 N.Y.S.3d 44 (N.Y. App. Div. 2016), holding in favor of Murtha Cullina's client, Transportation General. The Court rejected the plaintiff's attempt to challenge a contract between Transportation General and the New York City Taxi and Limousine Commission for the providing of wheelchair-accessible taxi cabs. Murtha Cullina attorneys David P. Friedman and Taruna Garg represented Transportation General in the appeal. The decision is available here: <http://bit.ly/FreidmanvNYC>

JUNE 8, 2016: PRODUCT LIABILITY

Murtha Cullina filed an amicus brief on behalf of the Connecticut Business & Industry Association in the Connecticut Supreme Court. The case, *Bifolck v. Phillip Morris, Inc.*, SC 19310, addresses the test to be used in Connecticut for product liability actions premised on design defects. Murtha Cullina attorneys Jennifer M. DelMonico, Proloy K. Das, Eric B. Miller, and Terence J. Brunau, filed the amicus brief, which argues on behalf of Connecticut manufacturers that the state should adopt the "reasonable alternative design" test for alleged design defects cases. The brief is available here: <http://bit.ly/CBIAAmicus>

AUGUST 2, 2016: CONSTRUCTION AND LAND USE

The Connecticut Appellate Court released its decision in *Kobyluck Brothers v. Planning and Zoning Commission*, 167 Conn. App. 383 (2016), in which it held in favor of Murtha Cullina's client, Kobyluck Brothers. The Court reversed a trial court decision, holding instead that the client's proposed use of a property to crush excavated bedrock and transform it into construction aggregate for use in the construction industry, would, contrary to the trial court's determination, constitute permitted "manufacturing." Murtha Cullina attorneys Kari L. Olson and Michael A. Zizka represented Kobyluck Brothers in the appeal. The decision is available here: <http://bit.ly/Kobyluck>

SEPTEMBER 6, 2016: ADMINISTRATIVE APPEALS

The Connecticut Supreme Court released its decision in *Harrington v. Freedom of Information Commission*, 323 Conn. 1 (2016), holding that the Freedom of Information Commission had applied an overbroad attorney-client privilege standard in response to a request for documents containing both legal and business advice. Murtha Cullina attorneys Michael C. Harrington and Jennifer A. Corvo successfully overturned the trial court's decision and argued for the adoption of a "primary purpose" when applying the attorney-client privilege to communications between a government or corporate entity and its attorney. The decision is available here: <http://bit.ly/HarrvFOI>

SEPTEMBER 7, 2016: TRUSTS

The Massachusetts Supreme Judicial Court heard oral argument in *DeGiacomo v. City of Quincy*, SJC-11940, in a case brought by the trustee of a fund created by former president John Adams in 1822 about whether the current trustee of the fund could collect millions of dollars from the City of Quincy (the former trustee) and the Quincy Historical Society because of a below market lease of property by the City to the Historical Society. Murtha Cullina attorney James R. DeGiacomo presented the oral argument with assistance in the briefing and the oral argument from attorneys Susan J. Baronoff and Judith K. Wyman. The televised oral argument is available here: <http://bit.ly/DeGiacomovQuincy>

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OCTOBER 5, 2016: [MUNICIPAL AND LAND USE](#)

The Connecticut Appellate Court heard oral argument in Parillo Food Group v. New Haven Zoning Board of Appeals, A.C. 38023, an appeal by the City of New Haven about whether state law prohibits municipal zoning boards from regulating the hours that a bar or restaurant serving alcohol can stay open. Murtha Cullina attorney Proloy K. Das presented the oral argument on behalf of New Haven, with assistance in the briefing and the oral argument preparation from attorneys Michael A. Zizka, Kari L. Olson, Joseph B. Schwartz, Sarah Gruber, and Donald Griffith.

OCTOBER 13, 2016: [LABOR AND EMPLOYMENT](#)

The Connecticut Supreme Court heard oral argument in Tomick v. United Parcel Service, S.C. 19505, an appeal about whether punitive damages can be awarded in an employment discrimination action under the Connecticut Fair Employment Practices Act. Murtha Cullina attorney Michael C. Harrington presented the oral argument on behalf of UPS, with assistance in the briefing and the oral argument preparation from Jennifer A. Corvo, Proloy K. Das, and Sarah Gruber. The televised oral argument is available here: <http://bit.ly/TomickArg>

OCTOBER 19, 2016: [MUNICIPAL](#)

The Connecticut Supreme Court heard oral argument in Maio v. City of New Haven, S.C. 19401, an appeal by the City of New Haven about whether it must pay for the criminal defense fees of a police officer who was charged with sexual assault while working on an extra duty assignment for a nightclub. The appeal was heard at Quinnipiac University School of Law as part of the Judicial Branch's "On Circuit" education program. Murtha Cullina attorney Proloy K. Das presented the oral argument, with assistance in the briefing and the oral argument preparation from attorneys Michael C. Harrington and Sarah Gruber. The televised oral argument is available here: <http://bit.ly/MaioArg>

NOVEMBER 26, 2016: [MUNICIPAL AND LAND USE](#)

The Connecticut Appellate Court released its decision in Parillo Food Group v. New Haven Zoning Board of Appeals, 169 Conn. App. 598 (2016), reversing the trial court's decision and holding that the liquor control act does not divest cities and towns of the power to protect the public welfare by limiting the hours of local businesses that serve alcohol. Murtha Cullina attorneys Proloy K. Das and Sarah Gruber represented the Zoning Board of Appeals in the appeal. The decision is available here: <http://bit.ly/ParillovZBA>

DECEMBER 30, 2016: [LABOR AND EMPLOYMENT](#)

The Connecticut Supreme Court released its decision in Tomick v. United Parcel Service, 324 Conn. 470 (2016), holding that the Connecticut Fair Employment Practices Act does not authorize an award of punitive damages in employment discrimination cases against employers. Murtha Cullina attorneys Michael C. Harrington, Jennifer A. Corvo, Proloy K. Das, and Sarah M. Gruber represented UPS in the appeal. The decision is available here: <http://bit.ly/TomickvUPSDec>

The [Appellate Practice Group](#) of Murtha Cullina extends our sincere thanks and appreciation to the clients and trial lawyers who have entrusted us with the opportunity to provide our appellate services. We look forward to working with you to achieve more appellate successes in 2017.

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With more than 100 attorneys in six offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.

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