

2017 YEAR IN REVIEW

APPELLATE PRACTICE



2017 was a significant year for Murtha Cullina's appellate practice group. The firm was recognized by the Connecticut Law Tribune as its "Appellate Litigation Department of the Year." 2017 also marked two anniversary dates of U.S. Supreme Court cases involving Murtha Cullina attorneys – the 30-year anniversary of *Fort Halifax Packing v. Coyne*, 482 U.S. 1 (1987) and the 10-year anniversary of *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007).

Here are some of the group's appellate highlights from the past twelve months.

JANUARY 6, 2017: [BUSINESS LITIGATION AND BANKING](#)

The Connecticut Appellate Court heard oral argument in *Redding Life Care, LLC v. Town of Redding*, A.C. 37928, in which the appellate group utilized a writ-of-error to obtain appellate review of a trial court's decision ordering a bank appraiser to involuntarily submit to a deposition and provide his expert opinions. Murtha Cullina attorneys Proloy K. Das and Robert E. Kaelin presented the oral argument with Joseph B. Schwartz and Sarah Gruber on the brief.

JANUARY 10, 2017: [LABOR AND EMPLOYMENT](#)

The Connecticut Supreme Court published its decision in *Tomick v. United Parcel Service*, 324 Conn. 470 (2017), holding as a matter of first impression 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.

JANUARY 10, 2017: [TORT AND PRODUCT LIABILITY](#)

The Connecticut Supreme Court published its decision in *Bifolck v. Philip Morris, Inc.*, 324 Conn. 402 (2017), addressing the test to be used in Connecticut for product liability claims premised on alleged design defects. Murtha Cullina attorneys Jennifer M. DelMonico, Proloy K. Das, Eric B. Miller and Terence J. Brunau filed an amicus brief on behalf of the Connecticut Business and Industry Association.

JANUARY 19, 2017: [INSURANCE RECOVERY](#)

The Connecticut Appellate Court heard oral argument in *Riley v. Travelers Home & Marine Insurance Company*, A.C. 37307, where the appellate group was engaged by two trial law firms to defend a \$ 1.5 million verdict they had obtained in favor of a policyholder who had falsely been accused of arson by his insurance company. Murtha Cullina attorneys Proloy K. Das and Kristen L. Zaehring presented the oral argument with Sarah Gruber on the brief.

MARCH 7, 2017: [INSURANCE RECOVERY](#)

The Connecticut Appellate Court published its much anticipated decision in *R.T. Vanderbilt Co. v. Hartford Accident & Indemnity Co., et al.*, 171 Conn. App. 61 (2017), in favor of Murtha Cullina's client, a Connecticut business that had sued several insurance companies for coverage under its insurance policies. The Appellate Court had held a special six hour oral argument session in March 2016 in this case about insurance coverage for asbestos-related claims and allocation of defense and indemnity costs among the parties. The Court's decision, which at 250 pages is the longest ever issued by the Appellate Court, addressed several issues of first impression involving insurance coverage for asbestos litigation. Murtha Cullina attorneys Marilyn B. Fagelson and Rachel Snow Kindseth and alumni Francis J. Brady and Elizabeth J. Stewart represented the policyholder in the appeal.

MARCH 16, 2017: MUNICIPAL

Murtha Cullina filed an amicus brief on behalf of the Connecticut Conference of Municipalities (CCM) in the Connecticut Supreme Court. The case, *Walgreen Eastern Company, Inc. v. Town of West Hartford, S.C. 19750*, is about a municipal assessment of a commercial property that was leased to a drug store. The brief advocates for approval of the use by municipal assessors of contract rents as a tool in arriving at the fair market value of income-producing properties. Murtha Cullina attorneys Kari L. Olson and Proloy K. Das filed the amicus brief on behalf of CCM.

APRIL 17, 2017: BUSINESS LITIGATION AND CREDITORS' RIGHTS AND AUTOMOTIVE

The Connecticut Appellate Court heard oral argument in *A Better Way Wholesale Autos v. Rodriguez et al.*, A.C. 38839, where the appellate group was engaged by a national AmLaw 200 firm to represent an auto finance company and defend an appeal seeking to overturn a multi-party arbitration award. Murtha Cullina attorneys Proloy K. Das and Melissa A. Federico presented the oral argument.

MAY 23, 2017: INSURANCE RECOVERY

The Connecticut Appellate Court published its decision in *Riley v. Travelers Home & Marine Insurance Company*, 173 Conn. App. 422 (2017), affirming a \$ 1.5 million emotional distress verdict in favor of a policyholder who had been falsely accused of arson by his insurance company. The appellate group was engaged by two trial law firms to defend their jury verdict. Murtha Cullina attorneys Proloy K. Das, Kristen Zaehring and Sarah Gruber represented the policyholder.

JUNE 8, 2017: PROBATE

The New York Supreme Court, Appellate Division, First Department published its decision in *In re Hartofilis*, 53 N.Y.S.3d 541 (2017), affirming a grant of probate to the decedent's will and a turnover order for property in Athens, Greece and Laconia. Murtha Cullina attorneys David P. Friedman, Lisa Newfield, and Proloy K. Das represented the estate's executor.

JUNE 27, 2017: BUSINESS LITIGATION AND BANKING

The Connecticut Appellate Court published its decision in *Redding Life Care, LLC v. Town of Redding*, 174 Conn. App. 193 (2017), granting a writ-of-error that sought appellate review of a trial court's decision ordering a bank appraiser to involuntarily submit to a deposition and provide his expert opinions about property valuations. The Appellate Court, as a matter of first impression, recognized that Murtha Cullina's client was protected by an involuntary expert privilege based on common law. Murtha Cullina attorneys Robert E. Kaelin, Proloy K. Das, Joseph B. Schwartz, and Sarah Gruber represented the bank appraiser on the writ-of-error.

AUGUST 7, 2017: LAND USE

The Massachusetts Appeals Court published its decision in *Johanning v. Town of Milton*, 92 Mass. App. Ct. 1102 (2017), rejecting a spot zoning challenge to a special permit approval in favor of Murtha Cullina's client, a nursery and landscaping business. Murtha Cullina attorneys Proloy K. Das and Taruna Garg represented the nursery in the appeal.

SEPTEMBER 5, 2017: MUNICIPAL

The Connecticut Supreme Court published its decision in *Maio v. City of New Haven*, 326 Conn. 708 (2017), reversing a jury verdict that had been issued against Murtha Cullina's client, the City of New Haven. The Court's decision refined the state's evidentiary hearsay rules with respect to the former testimony exception and was incorporated into the recent revisions to the evidence code. Murtha Cullina attorneys Proloy K. Das and Sarah Gruber represented the City in the appeal.

SEPTEMBER 12, 2017: BUSINESS LITIGATION AND CREDITORS' RIGHTS AND AUTOMOTIVE

The Connecticut Appellate Court published its decision in *A Better Way Wholesale Autos, Inc. v. Rodriguez, et al.*, 176 Conn. App. 392 (2017), affirming an award issued in a multi-party arbitration in favor of Murtha Cullina's client, an auto finance company. Murtha Cullina attorneys Robert E. Kaelin, Proloy K. Das, and Melissa A. Federico represented the finance company in the appeal.

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SEPTEMBER 14, 2017: [MUNICIPAL](#)

The Connecticut Appellate Court heard oral argument in *O'Brien v. City of New Haven*, A.C. 39102, A.C. 39103, an appeal about the statutory requirements of a municipal employee protect and save harmless statute. Murtha Cullina attorneys Proloy K. Das and Joseph B. Schwartz presented the oral argument on behalf of the City.

NOVEMBER 9, 2017: [MUNICIPAL](#)

The Connecticut Supreme Court heard oral argument in *Town of Glastonbury v. Metropolitan District Commission*, S.C. 19843, an appeal about the authority of the MDC unilaterally to increase the Town's water rates. Murtha Cullina attorneys Proloy K. Das and Joseph B. Schwartz presented the oral argument on behalf of the Town.

DECEMBER 4, 2017: [CONSTRUCTION](#)

The Connecticut Appellate Court heard oral argument in *Town of Windsor v. Loureiro Engineering Associates*, A.C. 39398, an appeal about the statute of repose for bringing claims against engineers and architects for alleged construction defects. Murtha Cullina attorney Leslie King presented the oral argument on behalf of the architect.

DECEMBER 8, 2017: [BANKRUPTCY AND CREDITORS' RIGHTS](#)

The Massachusetts Appeals Court heard oral argument in *Desmond v. Green*, 16-P-1561, an appeal about whether a bankruptcy trustee had rebutted the presumption of gifts between spouses regarding a \$1.3 million condominium purchased by the debtor's wife. Murtha Cullina attorney Thomas S. Vangel presented the oral argument on behalf of the trustee with Anthony R. Leone on the brief.

DECEMBER 28, 2017: [BANKRUPTCY AND CREDITORS' RIGHTS](#)

The Massachusetts Appeals Court released its decision in *Desmond v. Green*, 16-P-1561, ruling in favor of Murtha Cullina's client, a Chapter 7 trustee, affirming a judgment imposing a trust over a \$1.3 million condominium that had been purchased solely in the name of the debtor's wife using proceeds from the sale of a marital home. The Court concluded that the trial court properly considered post-purchase conduct, including the debtor's continued control of the new home. Murtha Cullina attorneys Thomas S. Vangel and Anthony R. Leone represented the bankruptcy trustee in the appeal.

Murtha Cullina's Appellate Practice Group 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 on more appellate successes in 2018.

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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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