UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

VINCENT J. BIFOLCK, AS EXECUTOR OF THE ESTATE OF JEANETTE D. BIFOLCK AND INDIVIDUALLY,	:	
v.	:	NO. 3:06cv1768 (SRU)
PHILIP MORRIS, INC.,	:	OCTOBER 4, 2013

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO CERTIFY

Introduction

This is a diversity action asserting Connecticut state law claims pursuant to the Connecticut Product Liability Act ("CPLA"), Conn. Gen. Stat. § 52-572m *et seq*. Plaintiff Vincent J. Bifolck, as Executor of the Estate of his deceased wife, Jeanette D. Bifolck, and individually, asserts product liability claims for wrongful death and loss of consortium alleged to have been caused by cigarettes designed and manufactured by defendant Philip Morris, Inc. ("Philip Morris").

Plaintiff has this day filed a Motion to Amend his Complaint to clarify his (existing) claims under the CPLA in strict liability and negligence. Plaintiff's proposed Amended Complaint further reiterates plaintiff's (existing) claim for statutory punitive damages pursuant to § 52-240b of the Act.

In conjunction with his Motion to Amend, plaintiff has filed a Motion to Certify three questions of unresolved Connecticut law to the Connecticut Supreme Court pursuant to Conn. Gen. Stat. § 51-199b(d). Plaintiff submits this Memorandum in support of his Motion to Certify.

Discussion

Plaintiff's Motion to Certify seeks certification of issues of unresolved Connecticut product liability law in two areas – (1) whether product liability claims under the CPLA based on *negligence* are subject to the *strict liability* requirements established by § 402A of the *Restatement (Second) of Torts* ("*Restatement*"); and (2) whether Connecticut's common law rule of punitive damages, which limits punitive damages to a plaintiff's costs of litigation, applies to an award of statutory punitive damages under the Act.

With respect to plaintiff's product liability claims based on negligence, plaintiff seeks certification of the following two questions:

1. Does Section 402A of the *Restatement (Second) of Torts* (including Comment i to § 402A) apply to a product liability claim for negligence under the Connecticut Product Liability Act ("CPLA"), Conn. Gen. Stat. § 52-572m *et seq.*?

2. If the answer to Question No. 1 is in the affirmative, does Comment i to § 402A preclude a product liability claim under the CPLA against a cigarette manufacturer for negligent design of a cigarette absent proof of adulteration or contamination of the tobacco in the cigarette?

With respect to plaintiff's claim for statutory punitive damages, plaintiff seeks certification of the following question:

3. Does Connecticut's common law rule of punitive damages, as articulated in *Waterbury Petroleum Products, Inc. v. Canaan Oil & Fuel Co.*, 193 Conn. 208, 235-38 (1984), apply to an award of statutory punitive damages pursuant to § 52-240b of the Act?

Section 51-199b(d) of the Connecticut General Statutes authorizes this Court to certify questions of law to the Connecticut Supreme Court "if the answer may be determinative of an

issue in pending litigation in [this Court] and if there is no controlling appellate decision, constitutional provision or statute in this state." *See* Conn. Gen. Stat. § 51-199b(d).

The Second Circuit has identified three relevant considerations applicable to a federal court's decision to certify questions to the Connecticut Supreme Court:

> (1) whether Connecticut appellate precedent provides insufficient guidance on the controlling question at issue and, if so, whether that authority is conclusive;
>
> (2) whether the interpretation of the statute or constitutional provision implicates important public policy considerations; and
>
> (3) whether the issues presented in the federal case are likely to recur and, consequently, their resolution will assist the administration of justice in both federal and state courts.

Parrot v. Guardian Life Insurance Co. of America, 338 F.3d 140, 144 (2d Cir. 2003); *accord Freedman v. America Online, Inc.*, 412 F. Supp. 2d 174, 190 (D. Conn. 2005). All three criteria are satisfied in this case.

A. Unresolved Issues Affecting the Sufficiency of Plaintiff's Product Liability Claims based on Negligence Warrant Certification.

1. Facts Relevant to Questions 1 and 2[1]

Plaintiff's (original) Complaint and proposed Amended Complaint assert product liability claims in strict liability and negligence against Philip Morris, a cigarette manufacturer, for design defects (strict liability) and negligent design and manufacture (negligence) of its Marlboro and Marlboro Light cigarettes, which plaintiff alleges caused the wrongful death of his wife from lung cancer.

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[1] Pursuant to § 51-199b(f), a certification order must contain a statement of "the facts relevant to the question, showing fully the nature of the controversy out of which the question arose." Conn. Gen. Stat. § 51-199b(f)(2). (The order must also authorize the Connecticut Supreme Court to reformulate the certified questions if it so chooses. *Id.* at (f)(3))

With respect to strict liability, plaintiff contends that the Marlboros and Marlboro Lights smoked by Mrs. Bifolck were defective and unreasonably dangerous in that, as designed, the cigarettes (1) contained added ingredients (including carcinogenic additives) that altered the natural form of the tobacco in the cigarettes, and (2) utilized manufacturing processes affecting the composition of the tobacco in the cigarettes, the amount, form, and potency of the nicotine in the tobacco, and the manner in which cigarette smoke was transmitted to the smokers. Plaintiff contends that these design and manufacturing processes rendered the cigarettes unnecessarily addictive and unnecessarily carcinogenic. *See* plaintiff's proposed Amended Complaint at 4-8, ¶¶ 19-32.[2]

With respect to negligence, plaintiff contends that Philip Morris failed to comply with the standards of care applicable to the design and manufacture of cigarette products by a prudent cigarette manufacturer in that it negligently

– designed the Marlboros and Marlboro Lights smoked by Mrs. Bifolck knowing of the addictive and toxic, cancer-causing properties of its product;

– knowingly designed and manufactured the Marlboros and Marlboro Lights smoked by Mrs. Bifolck to enhance the addictive and cancer-causing nature of the products;

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[2] Plaintiff acknowledges that § 402A of the *Restatement* applies to his strict liability claims and that he is required to prove that defendant's cigarettes were not only defective, but also unreasonably dangerous. It is plaintiff's position that Comment i's statement that "good tobacco" is not unreasonably dangerous does not foreclose claims based upon the dangerousness of a manufactured cigarette product. Plaintiff further contends that any bar to suits against tobacco products that may have originally existed by virtue of Comment i has been eliminated by the Connecticut Supreme Court's adoption of the modified consumer expectation test in *Potter v. v. Chicago Pneumatic Tube, Inc.*, 241 Conn. 199, 219-20 (1997), which renders the consumer's understanding of a product's dangers only one consideration in the determination of whether a product is unreasonably dangerous.

– failed and refused to implement changes in the design of the cigarettes smoked by Mrs. Bifolck that would have reduced the addictive nature of the product; and

– failed and refused to implement changes in the design of the cigarettes smoked by Mrs. Bifolck that would have reduced the toxic and cancer-causing ingredients in the product. *See* plaintiff's proposed Amended Complaint at 8-11, ¶¶ 33-47.

It is plaintiff's position that § 402A – which sets forth an element of a claim for strict liability – is inapplicable to his product liability negligence claims, which – in plaintiff's view – are based on actionable fault on the part of Philip Morris.

Defendant previously sought summary judgment on plaintiff's strict liability and negligence claims in this action. [*See* Doc. 86.] In support of its motion, defendant asserted that § 402A of the *Restatement* applies to both claims and that Comment i to § 402A – which indicates that "good tobacco" is not unreasonably dangerous – bars both strict liability and negligence claims against a cigarette manufacturer absent proof of adulteration or contamination of the tobacco in the cigarettes.[3]

The Court denied defendant's motion for summary judgment in an oral ruling, holding that plaintiff's proffered proof raised disputed issues of fact which, if found for plaintiff, would support liability under Comment i under Connecticut law. Because the Court held that defendant was not entitled to summary judgment based on Comment i, it was not necessary for the Court to

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[3] *See* defendant's May 16, 2011 Memorandum in Support of Summary Judgment [Doc. 87] at 23 (arguing that § 402A applies to "each of Plaintiff's design defect theories, regardless whether they are labeled claims for 'strict liability,' 'improper design,' or 'breach of implied warranty of merchantability'"), & *id.*, n. 20 (arguing that, under Connecticut law, the same definition of "defectiveness" applies to both strict liability and negligence).

address whether § 402A (including, in particular, Comment i) applies to product liability claims based in negligence.

2. Basis for Certification

In its recent decision in *Izzarelli v. R.J. Reynolds Tobacco Co.*, ___ F.3d ____, 2013 U.S. App. LEXIS 18760 (2d Cir. Sep. 10, 2013), a panel of the Second Circuit indicated that Connecticut law is uncertain concerning the applicability of Comment i to product liability claims against a cigarette manufacturer. *See id.* at *10 ("it is unclear whether Comment i precludes all products liability claims in Connecticut against tobacco companies absent allegations of contamination or adulteration"); at *11 ("[w]hether Comment i precludes claims under the CPLA against cigarette manufacturers absent evidence of contamination or adulteration has not been decided in Connecticut").[4]

In *Izzarelli,* the panel certified to the Connecticut Supreme Court the question as to whether, under Connecticut law, Comment i bars a strict liability claim against a cigarette manufacturer absent proof of adulteration or contamination of the tobacco in the cigarettes:

> Does Comment i to section 402A of the Restatement (Second) of Torts preclude a suit premised on strict products liability against a cigarette manufacturer based on evidence that the defendant purposefully manufactured cigarettes to increase daily consumption without regard to the resultant increase in exposure to carcinogens, but in the absence of evidence of any adulteration or contamination?

Id. (emphasis added).

Although Ms. Izzarelli prevailed at trial on claims of both strict liability and negligence, and although the panel's decision in *Izzarelli* indicated the panel's uncertainty as to how Comment i applies to "all products liability claims in Connecticut against tobacco companies,"

[4] A copy of the *Izzarelli* slip opinion is attached as Exhibit A.

id. at *10 (emphasis added), the certified question, as framed by the Second Circuit, only addresses the applicability of Comment i to strict liability claims. It is not apparent why the panel limited its certified question to strict liability claims.[5]

The panel's decision in *Izzarelli* leaves the viability of plaintiff's product liability negligence claim here in limbo.[6] It is plaintiff's position that there is, at a minimum, substantial doubt as to whether, under Connecticut law, either § 402A or Comment i to § 402A applies to product liability claims based in negligence.

Section 402A was adopted by the American Law Institute to help define the elements of a claim of strict liability. Section 402A is included solely in the section of the *Restatement* entitled "Topic 5. Strict Liability." Comment a to § 402A explicitly states that the requirements of the section are not meant to be exclusive of other causes of action, such as actions in negligence:

> The rule stated here is not exclusive and does not preclude liability based upon the alternative ground of negligence of the seller, where such negligence can be proved.

Id. at Comment a; *contrast Restatement*, "Topic 3. Manufacturers of Chattels, § 398. Chattel Made Under Dangerous Plan or Design" (manufacturer liable for "physical harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design" of a product). Indeed,

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[5] Ms. Izzarelli has moved the panel to clarify and modify its certification order to include a question concerning the applicability of Comment i to product liability claims based on negligence. (A copy of Ms. Izzarelli's Motion to Clarify and Modify the Court's Order dated September 10, 2013 in *Izzarelli* is attached as Exhibit B.) Reynolds has opposed Ms. Izzarelli's motion. (A copy of Reynolds' Opposition to Ms. Izzarelli's Motion to Clarify and Modify Certified Question in *Izzarelli* is attached as Exhibit C.) It is not clear when the Second Circuit will rule on Ms. Izzarelli's motion.

[6] Presumably, if the Connecticut Supreme Court accepts the question certified by the Second Circuit in *Izzarelli*, the parties' disputes here as to the viability of plaintiff's strict liability claims in this action will be determined.

subsection (2) of § 402A expressly provides that the rule stated in § 402A(1) "applies although (a) the seller has exercised all possible care in the preparation and sale of his product."

In support of its motion for summary judgment, Philip Morris argued that products liability claims grounded in negligence and strict liability are the same, insofar as both require a showing of a product "defect." *See* n. 2.[7] That statement is true – and undisputed – as far as it goes; but it obscures the policy rationale underlying the imposition of strict liability, irrespective of manufacturer fault, where a product is not only defective but also "unreasonably dangerous." The policy rationale underlying imposing liability without proof of manufacturer fault is that strict liability is warranted and necessary to protect the public from the risks of a product that is not merely defective (as required to establish negligence), but "unreasonably dangerous" – that is, dangerous beyond the expectations of the consumer (as that test is defined by the applicable jurisdiction). *See* Comment c to § 402A, *quoted approvingly* in *Potter*, 241 Conn. at 235.

It is plaintiff's position that the theories of strict liability and negligence address different policy concerns. Strict liability holds the manufacturer liable for putting a dangerous product in the stream of commerce, irrespective of fault in manufacture or design, where the product is more dangerous than the ordinary consumer would expect (as now defined by the modified consumer expectation test established by *Potter*). Strict liability is based solely upon the

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[7] Philip Morris cited *Faux v. Thomas Indus., Inc.*, 1992 Conn. Super. LEXIS 2917 (Oct. 8, 1992), for this contention. While plaintiff agrees that *Faux* requires proof of a defect in a negligence action, plaintiff disputes that *Faux* supports reading § 402A into the requirements of a negligence action. In *Faux*, the court set aside a jury verdict on plaintiff's negligence claim as inconsistent with the jury's finding in special interrogatories on plaintiff's strict liability claim that there was no defect. *Faux* simply stands for the proposition that negligence claims require proof of a defect – a proposition with which plaintiff concurs. *Faux* says nothing about a need, in a negligence claim, to show that the defect was "unreasonably dangerousness" as required by § 402A.

characteristics of the product, and relieves the plaintiff of the burden of proving negligence. *Potter*, 241 Conn. at 210-11. Since liability is predicated on the attributes of the product, the safety expectations of the product's ordinary users are relevant (although, after *Potter*, not necessarily determinative) to prevent "strict" liability from becoming "absolute" liability. *Id.* ("manufacturers are not insurers for all injuries caused by products").

A negligence theory of recovery, by contrast, is based on culpable conduct by the manufacturer in designing or constructing a defective product, and requires proof that the manufacturer breached the applicable duty of care. *Coburn v. Lenox Homes, Inc.*, 186 Conn. 370, 377-82 (1982). A manufacturer is under "a duty to exercise that degree of care which a skilled [manufacturer] of ordinary prudence would have exercised under the same or similar conditions." *Id.* at 381. When negligent design or construction is alleged, the plaintiff must prove that the defendant knew or should have known of the circumstances that would foreseeably result in the harm suffered. *Id.* at 375. Since proof of fault by the manufacturer giving rise to a dangerous condition in the resulting product is a necessary element of a negligence claim – and limits the scope of liability under that theory – there is no further requirement that the dangerousness of the product exceed the expectations of the product's users.

As one leading authority has explained:

> In strict liability, the plaintiff is not required to impugn the conduct of the maker or other seller but he is required to impugn the product. Under Section 402A, it is said that the product must be in a "dangerous condition unreasonably dangerous." This simply means that the product must be defective in the kind of way that subjects persons or tangible property to an unreasonable risk of harm. The difference between this liability and negligence liability can only be ascertained by further elaboration of when a product is unreasonably dangerous.

Prosser and Keeton on Torts ["*Prosser*"], § 99 at 695 (5th ed. 1984) (emphasis added); *see also id.* at 698-702 (discussing "consumer contemplation" and "danger-utility" tests for determining whether a product is unreasonably dangerous).

Consistent with plaintiff's understanding of the distinction between strict liability (defect producing an unreasonably dangerous product) and negligence (defect and manufacturer fault), the text of both § 402A and Comment i makes clear that there is a distinction between the existence of a defect in a product – which is required in both negligence and strict liability causes of action – and the requirement of proof that the defective condition is also "unreasonably dangerous," which is limited to strict liability. Section 402A, on its face, applies to:

> (1) One who sells any product in a defective condition unreasonably dangerous to the user...

that is,

> "(1) One who sells a product in a defective condition [that renders the product] unreasonably dangerous to the user ... "

As Comment i states:

> The rule stated in this Section only applies where the defective condition of the product makes it unreasonably dangerous to the user or consumer. [*Id.*]

It is because a product is not only defective, but unreasonably dangerous, that strict liability is deemed appropriate and an injured plaintiff is relieved of the obligation to prove fault. It is plaintiff's understanding of Connecticut law that where a product is defective, but not unreasonably dangerous, a plaintiff may establish product liability in *negligence* in accordance with traditional fault requirements. *Coburn*, 186 Conn. at 371; *see also Prosser*, § 96 at 685, § 99 at 695. Indeed, if defendant is correct that § 402A and Comment i are now incorporated

into product liability negligence actions, there would be no need for a negligence action, since it would amount to nothing more than a strict liability claim with the added requirement of foreseeable fault.

Prior to the adoption of the CPLA, no Connecticut court had ever held that § 402A applied, in any respect, to product liability negligence claims. The Connecticut Supreme Court has explicitly held that the CPLA was adopted to simplify product liability pleading rules by consolidating all existing causes of action in one count, but (absent an affirmative statement in the Act to the contrary) the CPLA was not intended to alter common-law substantive rights. *Lynn v. Haybuster Manufacturing, Inc.*, 226 Conn. 282, 292 (1993) (CPLA intended "to eliminate the complex pleading provided at common law: breach of warranty, strict liability and negligence," but not to alter existing substantive law); *accord LaMontagne v. E.I. Dupont de NeMours & Co., Inc.*, 834 F. Supp. 576, 587-587-89 (D. Conn. 1993) (CPLA did not alter the pre-existing common law elements of a products liability claim grounded in negligence), *aff'd*, 41 F.3d 846, 855-56 (2d Cir. 1994) (same).

Connecticut has long-recognized a cause of action for negligent product design, manufacture or sale independent of any claim of strict liability. *See* e.g., *McGuire v. Hartford Buick Company*, 131 Conn. 417 (1944); *see Prosser*, § 96, pp. 681-92 (discussing development of products liability actions based on negligence). Indeed, a cause of action for strict liability not first recognized by the Connecticut Supreme Court until the mid-1960's. *See Garthwaite v. Burgio*, 153 Conn. 284, 289-90 (1965) (adopting § 402A); *Rossignol v. Danbury School of Aeronautics, Inc.*, 154 Conn. 549, 557-60 (1967) (setting forth the elements of a cause of action for strict liability under § 402A). Significantly, in formulating a cause of action for strict liability

in *Rossignol*, the Connecticut Supreme Court expressly referenced subsection (2) of § 402A, which (as noted above) holds that fault is not an element of a strict liability cause of action. *Rossignol*, 154 Conn. at 559; *accord Garthwaite*, 153 Conn. at 289.

Prior to the adoption of the CPLA, the elements of a cause of action for negligent product design in Connecticut were: (1) existence of a duty of care; (2) breach of that duty giving rise to a defect in the product; and (3) harm to the plaintiff resulting from the defect. *See Coburn v. Lenox Homes, Inc.*, 173 Conn. 567, 574-75 (1977). In light of *Lynn*, there is unquestionably a significant issue as to whether the requirements of § 402A were intended to be added to the pre-existing elements of a cause of action in Connecticut for negligent product design or manufacture.

With respect to the three criteria for certification articulated by the Second Circuit in *Parrot*, all three criteria are strongly met as to plaintiff's proposed questions concerning the applicability of § 402A and Comment i to product liability negligence actions:

– Neither the Connecticut Supreme Court or the Appellate Court has never addressed this issue with respect to products liability cases grounded in negligence, and thus there is no Connecticut appellate precedent to guide this Court.

– The question implicates important issues of Connecticut product liability law – indeed, although arising in the context of cigarette litigation, the question of whether § 402A applies to product liability negligence actions is one of general application to any product liability negligence action brought under the CPLA.

– Given the frequent invocation of the federal court's diversity jurisdiction by out-of-state product sellers, the issue is likely to recur, without imminent resolution by the

Connecticut Supreme Court – not only in tobacco litigation, *see e.g., Ertman v. R.J. Reynolds Tobacco Co.*, 3:01cv1090 (WWE), but other significant product liability litigation in federal courts in this District.

And, finally, in light of the postponement of the trial of this action to await the Connecticut Supreme Court's decision in *Izzarelli,* granting plaintiff's Motion to Certify will not delay and may well facilitate the ultimate resolution of this action.

For the foregoing reasons, plaintiff respectfully submits that questions 1 and 2 of his Motion to Certify should be certified to the Connecticut Supreme Court pursuant to § 51-199b(d).

B. Unresolved Issues Affecting the Standard for Awarding Statutory Punitive Damages Under the CPLA Warrant Certification.

1. Facts Relevant to the Questions

Plaintiff's (original) Complaint and proposed Amended Complaint also assert claims for punitive damages under the CPLA pursuant to Conn. Gen. Stat § 52-240b. That statute provides:

> Punitive damages may be awarded if the claimant proves that the harm suffered was the result of the product seller's reckless disregard for the safety of product users, consumers or others who were injured by the product. If the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of such damages not to exceed an amount equal to twice the damages awarded to the plaintiff.

In the event of an eventual finding at trial that an award of punitive damages is warranted, the Court will be presented with the question of the proper measure of damages under the statute. Plaintiff contends that the statute authorizes an award of punitive damages in an amount up to twice the damages awarded to the plaintiff in compensatory damages without regard to plaintiff's litigation expenses.

2. Basis for Certification

The proper measure of punitive damages under § 52-240b – whether *statutory* punitive damages awarded in a CPLA action are subject to Connecticut's *common law* rule limiting punitive damages to plaintiff's litigation expenses – is an unsettled question of Connecticut law. As this Court noted in *Izzarelli*, in the more than thirty years since the passage of the CPLA, there has been no Connecticut appellate authority determining the measure of punitive damages under the Act, and Superior Court decisions have reached conflicting results. *Izzarelli*, 767 F. Supp.2d 324, 327 (D.Conn. 2010); *see also Fraser v. Wyeth, Inc.*, No. 3:04cv1373 (JBA), 2013 U.S. Dist. LEXIS 109293 at * 9 (Aug. 5, 2013) (following *Izzarelli*) ("To date, no Connecticut appellate court has addressed this issue, and several Connecticut Superior Court decisions have reached opposite conclusions on the matter").

This Court is familiar with the unsettled issues that plaintiff's question #3 seeks to resolve. *See Izzarelli*, 767 F. Supp.2d at 326-33. This Court recognized in *Izzarelli* that, in the usual course, when "faced with an undecided issue of state law of this importance," certification to the Connecticut Supreme Court would be appropriate. *Id.* at 333 & n.10.

This Court in *Izzarelli* elected, in view of the age of that case (and the possibility that other issues of Connecticut law would be certified in the subsequent appeal to the Second Circuit), not to certify the issue there. *Id.* The procedural posture of this case favors certification here. Trial of this matter has now been postponed to permit a decision by the Connecticut Supreme Court on the certified question in *Izzarelli* – a decision which the Court and the parties have recognized will have a significant effect on the scope of the claims in this action. That

postponement, in turn, provides an opportunity to seek clarification of other relevant issues of Connecticut law without occasioning further delay in this case.

And certification is plainly appropriate. The proper measure of punitive damages under the CPLA has broad implications beyond tobacco litigation. *See, e.g.*, *Fraser*, 2013 U.S. Dist. LEXIS 109293 (confronting proper measure of CPLA punitive damages in pharmaceutical product liability case). The question is also uniquely a matter of Connecticut state law and public policy, and uniquely affects Connecticut's citizens, and Connecticut has "an obvious interest in having its courts sort out the public policy issues ... that bear upon the question." *Vitanza v. The Upjohn Company*, 214 F.3d 73, 79 (2d Cir. 2000).

Moreover, because most major product manufacturers are not located in Connecticut, there is a real likelihood that in most Connecticut product liability cases there will be diversity of citizenship between a consumer and manufacturer. There is, thus, a substantial risk that Connecticut's courts will not have the opportunity to resolve this important issue of state law absent certification from a federal court. As the Second Circuit has noted in certifying another Connecticut product liability case to the Connecticut Supreme Court:

> ... we are reluctant to freeze the state of Connecticut law .... Were we to do so, one party would have a strong incentive, if there is diversity jurisdiction, to remove these types of cases to federal court, thereby consistently depriving the Connecticut Supreme Court of any opportunity to resolve this issue. ... *Cf. Abrahams v. Young & Rubicam Inc.*, 79 F.3d 234, 239 (2d Cir. 1996) (expressing concern that failure to certify "might also lead to forum shopping to achieve or avoid federal disposition" of the state law claim).

Vitanza, 214 F.3d at 78.

Indeed, as the Second Circuit noted:

> We are particularly reluctant to confine judicial interpretation of [the state law issue] to the federal courts, as Connecticut "has a strong interest in deciding the issue certified rather than having the only precedent on point be that of the federal court, which may be mistaken."

Id., at 78-79.

Conclusion

For the foregoing reasons, plaintiff respectfully submits that his Motion to Certify should be granted.

PLAINTIFF VINCENT J. BIFOLCK, AS EXECUTOR OF THE ESTATE OF JEANETTE D. BIFOLCK, AND INDIVIDUALLY,

BY: /s/ David S. Golub

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CERTIFICATION

I hereby certify that on October 4, 2013 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

BY: /s/ David S. Golub

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