

## **Defense Verdict Clarifies “Ascertainable Loss” Under the Connecticut Unfair Trade Practices Act (CUTPA)**

### **Neubert, Pepe & Monteith, P.C. Obtains a Defense Verdict in Favor of Hospital Client**

New Haven, Connecticut (May 13, 2014) -- Neubert, Pepe & Monteith, P.C. Attorney Eric Stockman, assisted by Attorney Corey Fitzgerald, recently prevailed at the Connecticut Appellate court in the appeal of the DiTeresi v. Stamford Health System, Inc. case, obtaining complete affirmation of a summary judgment victory obtained on behalf of Neubert, Pepe & Monteith’s client, Stamford Health System, Inc. (“Hospital”), at the trial court level. First filed in 2006, the case involved allegations that an employee of Stamford Hospital sexually assaulted a 92 year old dementia patient in the middle of a busy workday at the hospital. Plaintiff Santina DiTeresi, the patient, claimed that the Hospital negligently failed to prevent the assault; failed to remove the perpetrator immediately upon discovering the assault in progress; left the patient without care and treatment for the assault for six hours while the Hospital investigated the claims; and failed to tell the patient’s primary care physician and the police for seven hours after the assault. Plaintiff Virginia DiTeresi, Santina’s daughter, claimed that she suffered emotional distress as a result of these actions, including a re-activation of the trauma from an assault she personally suffered some thirty years prior.

The Hospital denied these allegations and defended the case vigorously. After plaintiff’s counsel took more than thirty depositions and disclosed six expert witnesses, Attorney Stockman moved for summary judgment as to the claims made by Virginia DiTeresi on the grounds that the Hospital owed no duty of care to the patient’s daughter and therefore the claims were bystander emotion distress, which is impermissible in Connecticut. The motion was granted in its entirety by Judge Tierney. Plaintiffs appealed, and Attorney Stockman prevailed at the Appellate Court, winning affirmation of the summary judgment decision in its entirety.

Attorney Stockman filed for summary judgment as to eight of eleven counts asserted by Santina DiTeresi, on various grounds. That motion was granted in its entirety. After a three week trial on the merits of the remaining claims the jury returned a verdict in favor of the Hospital in less than two hours.

Plaintiff did not appeal the trial verdict, but rather one of the eight claims that had been dismissed on summary judgment. Plaintiff claimed that the trial court mistakenly decided that emotional distress could not provide the sole basis for a claim under the Connecticut Unfair Trade Practices Act (“CUTPA”). CUTPA is a remedial statute designed to protect consumers who are harmed by an unfair, immoral or unscrupulous business practice. One of the threshold requirements of such a claim is that the plaintiff must have incurred an “ascertainable loss” of money or property. Plaintiff claimed that, despite the lack of actual loss, emotional distress was sufficient enough to constitute ascertainable loss, relying on a smattering of antiquated Superior Court decisions so holding. The Appellate Court disagreed, affirming Attorney Stockman’s position that emotional distress alone is not enough to bring a CUTPA claim. The decision established binding appellate authority in this regard, thereby eliminating the notion that an unfair business practice claim can be levelled by someone who suffered no financial loss as a result.

### **About Neubert, Pepe & Monteith**

Neubert, Pepe & Monteith, P.C. is a general practice law firm with offices in New Haven and Fairfield Connecticut and White Plains New York ([www.npmlaw.com](http://www.npmlaw.com)). The firm, founded in 1993, presently has twenty-five attorneys, many of whom are leaders in their respective fields and have been listed in Best Lawyers in America and the Connecticut, New England and New York Tri-State Super Lawyer's lists. Neubert, Pepe & Monteith's core practice areas are Professional Malpractice & Liability Defense, Litigation & Appeals, Healthcare Law, Bankruptcy, Commercial Finance & Banking, Real Estate, Construction Law, Employment & Pension Law, Taxation, and Trusts & Estates.



Eric J. Stockman

Eric J. Stockman, a partner with Neubert, Pepe & Monteith, P.C., practices in the areas of Medical Malpractice and Hospital Liability Defense, Professional Liability Defense, and Commercial and General Litigation. Attorney Stockman represents hospitals, doctors and local practice groups, as well as individual and corporate defendants, in all aspects of litigation, including medical malpractice, commercial liability, premises liability, trade secrets, and products liability. He has tried more than three dozen trials to successful conclusion, including some of the largest and most publicized cases in Connecticut history.



Corey S. Fitzgerald

Corey S. Fitzgerald, an associate with Neubert, Pepe & Monteith, P.C., is experienced in representing a broad range of clients in complex commercial litigation matters in both state and federal court at the trial level and on appeal. He has also represented clients in arbitrations, and before various administrative agencies including the Connecticut Commission on Human Rights and Opportunities and the National Labor Relations Board. Specific subject matter experience includes contract, employment, labor, corporate law, bankruptcy, state appellate procedure, ERISA and insurance coverage.

- END -

#### Contact:

Adrian O. Sterling, Director of Marketing  
Neubert, Pepe & Monteith, P.C.  
195 Church Street, 13th fl.  
New Haven, CT 06510  
(203) 821-2000  
[asterling@npmlaw.com](mailto:asterling@npmlaw.com)  
[www.npmlaw.com](http://www.npmlaw.com)