Docket No: X08-CV03-0196141S	: CONNECTICUT SUPERIOR COURT
ARTIE'S AUTO BODY, INC., A&R BODY SPECIALTY, T & J AUTO BODY, SKRIP'S AUTO BODY, and THE AUTO BODY ASSOCIATION OF CONNECTICUT on behalf of Themselves and all Others Similarly Situated	: COMPLEX LITIGATION DOCKET : JUDICIAL DISTRICT OF : STAMFORD/NORWALK : AT STAMFORD
v.	:
THE HARTFORD FIRE INSURANCE COMPANY	: JUNE 5, 2013

Memorandum of Decision on Plaintiff's Motion for Punitive Damages (No. 450)

Procedural and Factual Background

This is a class action brought by the named plaintiffs on behalf of a class of more than 1,000 Connecticut auto body shops against The Hartford Fire Insurance Company ("The Hartford") . The approved designated plaintiff class is all "Connecticut Licensed Auto Body Repair Shops, or licensed individuals, that have performed physical auto body repairs paid for directly or indirectly, partially or in full, by [The] Hartford as the result of automobile insurance policies issued by [The] Hartford." *Artie's Auto Body, Inc., et al v. The Hartford Fire Insurance Company* [this case], 287 Conn. 208, 212 (2008). Plaintiffs, seeking money damages, injunctive relief, and other relief, allege in their complaint that The Hartford engaged in a pattern of unfair and deceptive acts and practices in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.* ("CUTPA"). In summary, the plaintiffs claimed that The Hartford has wrongfully steered its insureds and other insurance claimants to auto body repair shops favored by The Hartford (Direct Repair Providers or "DRPs") and part of The Hartford's Customer Repair Service Program ("CRSP"). It was also alleged that The Hartford through the

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use of positive and negative employee incentives has prevailed upon its own independent appraisers to establish an artificially low standard of hourly labor rates for auto body repair work in Connecticut to the damage and detriment of the plaintiffs. The first claim has been referred by the parties as the "steering claim" or the "shop selection claim"; the second as the "labor rate claim."

Class action status was granted by this court and affirmed on appeal. *Artie's supra.* The class representatives are the four named plaintiffs Artie's Auto Body, Inc. A&R Body Specialty, Skrip's Auto Body, T & J Auto Body, and The Auto Body Association of Connecticut ("ABAC")

Following seventeen days of trial and jury deliberations over all or part of six days, the jury rendered its verdict on November 17, 2009, finding that the plaintiffs had proven by a preponderance of the evidence that defendant's conduct or practices regarding hourly labor rates to be paid to the plaintiffs for auto body repairs was an unfair trade practice in violation of the Connecticut Unfair Trade Practice Act ("CUTPA"), Conn. Gen.Stat. § 42-110b, by offending the public policy of Connecticut Insurance Department Regulation § 38a-790-8 (the "Code of Ethics") (Jury Interrogatories, Court Ex. 10. Interrogatory 1). The jury found that the foregoing unfair trade practice caused the plaintiffs to sustain an ascertainable loss of money or property, (Interrogatory 3), and money damages (Interrogatory 4) which they awarded in the amount of $14,765,556.27, none of which were found to have been wrongfully withheld by the defendant (Interrogatory 5). The jury found that the labor rate practices were not unfair trade practices under the second prong (immoral, unethical, unscrupulous or oppressive conduct) or the third prong (substantial injury to plaintiffs not outweighed by countervailing benefits) of the cigarette

rule[1]; and that defendant's conduct or practices or communications regarding utilization of its direct repair shops or its CRSP program were not an unfair trade practice under CUTPA, as alleged by plaintiffs in their steering claim.

On December 17, 2009 defendant filed a Motion Pursuant to Practice Book Sections 16-35 and 16-37 (No. 444) (the "JNOV Motion") asking that the verdict for the plaintiffs be set aside or that the court enter judgment in its favor notwithstanding the verdict, for the reasons, *inter-alia,* that the plaintiffs did not meet their burden of proving a CUTPA violation with respect to labor rates, and that the plaintiffs did not prove that an offense to the public policy of the Appraiser's Code of Ethics caused an ascertainable loss to the class. Following extensive briefing and oral argument the court denied that motion by Memorandum of Decision on October 14, 2010. (No. 519).

The jury found that the Hartford had committed an unfair trade practice under the "offense to public policy" prong of the cigarette rule in that "the defendant's conduct or practices regarding hourly labor rates to be paid to the plaintiffs for auto body repair services." offended public policy. It identified the public policy offended as "Section 38a-790-8 of the conduct of motor

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[1] The "cigarette rule" is the well settled three-pronged test established by the Connecticut Supreme Court for determining if an "unfair trade practice" has been committed in violation of CUTPA. A plaintiff must establish that one or more of the defendant's alleged practices meet at least one of the three following criteria: 1) it offends public policy as it has been established by statutes, the common law or other established concept of unfairness; or 2) it is immoral unethical, oppressive, or unscrupulous; or 3) it causes substantial injury to consumers, competitors, or other business persons. All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or to a lesser extent it meets all three. See *Harris v. Memorial Hospital and Health Center,* 296 Conn.315, 350 (2010).

vehicle physical damage appraisers." (Court Ex 10) That regulation, the "Code of Ethics" promulgated by the State of Connecticut Insurance Department, provides:

> Every appraiser shall: (1) conduct himself in such as manner as to inspire public confidence by fair and honorable dealings; (2) approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals; (3) disregard any efforts on the part of others to influence his judgment in the interest of the parties involved; (4) prepare an independent appraisal of damages. No appraiser shall: (A) receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer, or, if self-employed, his customer; (B) traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him."

The plaintiffs presented evidence at trial - contested by The Hartford - that The Hartford had been interfering with the independence and impartiality of its employee-appraisers by putting direct or indirect influence or employment pressure on them to incorporate into their appraisals an artificially low labor rate which was less than what the plaintiffs believed to be the "prevailing rate". There was extensive testimony, including testimony by an appraiser formerly employed by the Hartford, and by expert witnesses. The unfair trade practice found by the jury was that the defendant's conduct or practices regarding hourly rates to be paid to the plaintiffs for auto body repairs was an unfair trade practice [a]s offending[2] the public policy of the Code of Ethics.

The plaintiffs are now moving post-trial for an award of punitive damages pursuant to CUPTA, Conn. Gen. Stat §.42 110g(a) which provides in relevant part that: "The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems

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[2] Consistent with the cigarette rule the jury was charged that " The law permits you to find a violation of CUTPA by violation of public policy if you determine that the defendant's acts or conduct is at least within the "penumbra" of some common law, regulatory, or statutory or other established concept of unfairness. "Penumbra" in this context is defined as ' a vague, indefinite, or borderline area.' Therefore a plaintiff need not show a literal violation of a statute or regulation or other established concept of unfairness, so long as a violation of the penumbra of such statute or regulation or or established concept is shown." (Charge to the Jury, Court Ex. 8, p. 23)

necessary or proper." Although a CUTPA plaintiff has the right to trial by jury generally as to liability and compensatory damages, a claim for punitive damages must be decided by the court. "In any action brought under this section there shall be a right to jury trial except with respect to the award of punitive damages under subsection (a) of this section. . . ." Conn Gen Stat. § 42-110g(g). There was a hearing before the court at which documentary exhibits as to the defendant's net worth were received in evidence. Otherwise the parties are relying on transcripts of testimony and the exhibits adduced at trial to support their respective factual positions. The parties have briefed the motion for punitive damages and have argued it to the court. This is the court's decision on the plaintiffs' claim for punitive damages.

Discussion

There are potentially two issues presented by the motion for punitive damages. The court must first determine whether the defendant's conduct was such that an award of punitive damages is appropriate, and then, if an award is called for, the court must determine the amount, if any, of punitive damages to be awarded.

A. Determination of Whether Punitive Damages Should be Awarded

Both parties cite *Gargano v Heyman,* 203 Conn. 616, 622 (1987) as the seminal Connecticut authority for the determination whether or not punitive damages are appropriate. The *Gargano* court harkened to the traditional common law standards for awarding punitive damages:

> Awarding punitive damages and attorney's fees under CUTPA is discretionary. General Statutes 42-110g(a)and (d). . .; and the exercise of such discretion will not ordinarily be interfered with on appeal unless the abuse is manifest or injustice appears to have been done. . . In order to award punitive or exemplary damages , evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights. In fact, the flavor of the basic

> requirement to justify an award of punitive damages is described in terms of wanton and malicious injury, evil motive, and violence." *Id.* at 622

It is significant that the *Gargano* court expressed the standards in the alternative: reckless indifference *or* intentional and wanton conduct having the flavor of evil motive.

> However, even if the evidence does not indisputably carry "the flavor of evil" as defense counsel urged at oral argument, this pithy phraseology neglects to include the full standard, which allows a punitive damage award based on a finding of "reckless indifference to the rights of others" *United Technologies v. American Home Assurance Company,* 118 F. Supp 2d, 174 (D. Conn. 2000), citing *Gargano* at 621 [622].

In fact, the Connecticut Supreme Court, speaking post-*Gargano*, after reviewing the definitions or attributes connected with the terms "recklessness" "wanton misconduct" and "wilful misconduct" declared them all to have the same meaning: "While we have attempted to draw definitional distinctions between the terms wilful, wanton, or reckless, in practice the three terms have been treated as meaning the same thing." *Dubay v. Irish,* 207 Conn. 518, 533 (1988), citing *Menzie v. Kalmonowitz* , 107 Conn. 197, 199 (1928) ("Wilful misconduct is intentional misconduct, and wanton misconduct is reckless misconduct, which is the equivalent of wilful misconduct."); *Bordonaro v. Senk,* 109 Conn. 428, 431 (1929) (same); and *State v. Alterio,* 154 Conn. 23, 25-26 (1966) (same).

After reviewing all the trial evidence cited by the parties, and the arguments and briefs of counsel, the court finds by a preponderance of the evidence[3] that the defendant The Hartford knowingly and purposefully for the enhancement of its own profits engaged in conduct in wilful or reckless disregard of the rights of its employed licensed motor vehicle damage appraisers

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[3] Recovery of punitive damages under CUTPA required proof by only a preponderance of the evidence, and not by clear and convincing evidence. *Nielsen v. Winiewski,* 32 Conn.App. 133, 137-38 (1993).

under their Code of Ethics to conduct their independent appraisals of damage to vehicles on an impartial basis without prejudice against or favoritism toward any party involved, free from any efforts on the part of others to influence their judgment as to the hourly labor rates to be applied for auto body repair services, which had the known effect of suppressing hourly labor rates in disregard of the rights of the plaintiff class of independent auto body shops to negotiate the price of performing repairs to those vehicles on the basis of independent impartial appraisals made in accordance with applicable law. As the jury found, and the court has upheld, that conduct caused damage in the form of lost revenues to the plaintiff shops.

The court has discussed the evidence of defendant's misconduct offending the public policy of Department of Insurance Regulations Section 38a-790-8 (The appraiser's Code of Ethics) in previous decisions denying Defendant's Motion Pursuant to Practice Book Sections 16-35 and 16-37 (Memorandum dated October 14, 2010 , file position 519); denying Defendant's Motion for Reconsideration and for Sanctions (Memorandum dated May 3, 2013, file position 534.88); and granting in part Plaintiff's Motion for Permanent Injunction (Memorandum dated May 24, 2013, file position 568.86) . Additional evidence supportive of this finding of influence and control over labor rates written by The Hartford's appraisers can be found in Plaintiff's Exhibit 315 which is an email of April 17, 2000 from Louis J. Chasse of the Claims Department of The Hartford to its appraisers which includes notification that:

> The "Prevailing Rate" for Auto Body Repair and Painting in the State of Connecticut has been at $38.00 for at least 5-7 years.
> Beginning early in the Fourth Quarter of 1999, we began experiencing a movement by body shop to raise labor rates to $40, $42 and higher. Pressure for the increased rate varied in different areas of the state.
> Beginning earlier this year, we have been able to mitigate this increase by authorizing the CT ASRs to, when necessary, include a manual entry noting a

> "concession in order to obtain an agreed price" in instances where the labor rate issue was a problem."
>
> We have reached a point where this "concession" is necessary on the majority of appraisals written. Numerous other carriers are presently writing at the higher rates . . . .

The Hartford's response to those developments evidences a heavy dose of control over labor rates to be written by its licensed appraisers who are supposedly to conduct independent appraisal judgments on an impartial basis free from outside influence or the need for "authorization" to write labor rates above a certain amount:

> THEREFORE, EFFECTIVE IMMEDIATELY:
> ALL ASRS [Appraisers] IN CONNECTICUT ARE AUTHORIZED TO WRITE THEIR APPRAISALS AT THE PREVAILING RATE IN THEIR ASSIGNED AREA. If you are able to reach Agreed Prices @ the present rate of $38, you should continue to do so. You are, however, authorized to write appraisals @ $40 or $42 if necessary. . . .
>
> Based on the foregoing feedback I've received from the ASRs, we should not exceed $42 unless we are dealing with heavy equipment or a specialty vehicle. . .

That The Hartford's actions to control the judgment of its appraisers was a knowing and purposeful disregard of the policy of independence inherent in the Code of Ethics is evidenced by its efforts to hide or cover up its conduct, including instructions to its employees not to write anything down about labor rates, in favor of off-the-record conversations. "We have to be VERY careful about publishing anything about Labor Rates. But I may have a solution. Call me tomorrow," (Email of August 25, 2004 from Bob Cornelius of Claims Dept. Plaintiff's Ex. 400).

In light of the evidence presented at trial, the court concludes that an award of punitive damages is appropriate under the guiding CUTPA criteria.

B. Amount of Punitive Damages to be Awarded

Although the decision whether or not to award punitive damages under CUTPA is to be determined using criteria developed with respect to common law punitive damages, the measure of punitive damages to be awarded in a CUTPA case is not limited to the common law standard of attorney's fees and other costs of litigation.

> The plaintiff who establishes CUTPA liability has access to a remedy far more comprehensive than the simple damages recoverable under common law. The ability to recover both attorneys' fees; General Statutes §42-110g(d); and punitive damages; General Statutes §42 -110g(a) ; enhances the private CUTPA remedy and serves to encourage private CUTPA litigation. *Hinchcliffe v. American Motors Corporation,* 184 Conn. 607, 617 (1981)

See. also, *Freeman v. Alamo Management Co.,*221 Conn. 674, 680, n.6, citing CUTPA as an example of a statutory exception to the general rule that "The Connecticut courts have . . . consistently . . . limited punitive or exemplary damage awards in Connecticut to costs in excess of taxable costs."

There is no precise formula for the calculation of punitive damages under CUTPA. The statute itself simply authorizes the court to award punitive damages "in its discretion". In *State Farm Mutual Automobile Insurance Company v. Campbell,* 538 U.S. 408 (2003) the United States Supreme Court struck down an award of $145 million in punitive damages awarded by a jury in an Iowa case in which the jury had awarded $1 million in compensatory damages. The court reaffirmed the guideposts previously set forth in *BMW of North America Inc., v. Gore,* 517 U.S. 559 (1996) to be considered by a court reviewing an award of punitive damages, as (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference

between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. The *Campbell* Court put particular emphasis on the degree of reprehensibility of the defendant's conduct.

> To determine a defendant's reprehensibility — the most important indicium of a punitive damages award's reasonableness — a court must consider whether: the harm was physical rather than economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the conduct involved repeated actions or was an isolated incident; and the harm resulted from intentional malice, trickery, or deceit, or mere accident. Gore, 517 U.S., at 576-577. It should be presumed that a plaintiff has been made whole by compensatory damages, so punitive damages should be awarded only if the defendant's culpability is so reprehensible to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id. 538 U.S. at 409*

The harm caused by the Hartford was purely economic. There was no physical harm caused to any member of the plaintiff class or anyone else. Although the court has found that The Hartford engaged in a reckless disregard of the rights of its appraisers under their Code of Ethics which knowingly caused damage to the plaintiff class, there is no indication that The Hartford's conduct evinced "an indifference to or reckless disregard of the health and safety of others". The Hartford's misconduct was not an isolated incident; it was repeated over a period of years, and it was intentional and not "mere accident". On the *BMW/ Campbell* reprehensibility scale, then, the Hartford's misconduct is a mixed bag. There are some reprehensible indications, but the misconduct was not totally reprehensible. The Second *Campbell* factor (disparity between actual and punitive damages) will be discussed below. With regard to the third factor (disparity between punitive damages and authorized civil penalties[4]), CUTPA does have provisions for public investigation and enforcement by the Commissioner of Consumer Protection (Conn. Gen.

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[4] In context, the reference to "civil penalties" seems clearly to refer to governmental regulatory fines or penalties, and not to private enforcement civil jury verdicts, such as in this case.

Stat. § 42-110d) but those provisions contain no numerical range of penalties or civil fines. The Commissioner is empowered, after notice and hearing, to issue a cease and desist order from using unfair methods of competition or from engaging in an unfair trade practice. ". . . or, if the amount involved is less than five thousand dollars, an order directing restitution, or both." (Conn. Gen Stat. § 42-110d(d)). The Commissioner may also seek an order of enforcement from the Superior Court, which may, "[i]n addition to any injunction issued . . . make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal , which may have been acquired by means of any practices prohibited by this chapter." (§ 42-110d(e)) . The Connecticut civil remedies, other than injunctive, are directed solely at restoration and compensation, but not punishment or deterrence, so there is not a valid comparison to any particular level of punitive damages in this case.

In the forty years since CUTPA was enacted in 1973 it has been the subject of well more than 5,000 judicial decisions.[5] Many of those decisions, likely hundreds, have addressed the issue of the determination of punitive damages. Several guiding principles and some parameters have emerged. "This statutory provision [CUTPA. §42-110g(a), authorizing an award of punitive damages] allows for punitive damages based on a theory of *deterrence,* whereas the common law premise of such an award is *compensation." (Emphasis in original). Lenz v. CNA Assurance Company,* 42 Conn. Sup 514 , 515 (Conn. Super, 1993, Flynn, J.). "Some purposes [of punitive damages] are clearly not intended to be for compensation to the plaintiff, i.e. to vindicate the public interest. . . not merely to deter a particular defendant from future misconduct, but to deter

[5] David L. Belt, Unresolved Issues under the Unfair Trade Practices Act, 82 Conn. Bar Journal, No. 4, 38 (2008.) (The author estimated 5,000 cases as he wrote five years ago. The present number is undoubtedly much higher.)

others from committing similar wrongs." (Internal quotation marks and citation omitted.) *Lord v. Mansfield,* 50 Conn. App. 21, 27 (1998). "Inasmuch as the statutory provision for punitive damages is based on a theory of deterrence, the financial status of the defendant becomes relevant and material and will be a factor considered by the court." *Lenge v. Beizer,* Superior Court, Docket No. CV00-802145S, (December 30, 2002, Freed, J.) 33 CLR 628, 2002 WL 31967553, *6 (Conn. Super.) These concepts are in accord with The *Restatement Second of Torts* (1979) § 908(2): "In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause, and the wealth of the defendant." But, although the wealth or the net worth of the defendant may be considered, "punitive damages should not constitute such a large percentage of a defendant's net worth so as to result in the financial ruin of the defendants." *Ulbrich v.Groth,* Superior Court, Complex Litigation Docket at Waterbury, Docket No. X06 CV08-4016022S (March 22, 2011, Stevens, J.), 2011 WL 1468135S *15 (Conn.Super.) "Moreover, because neither compensation nor enrichment is a valid purpose of punitive damages, an award should not be so large as to constitute a windfall to the individual litigant."(Internal quotation marks and citation omitted.) *Id.*

Recognizing the teaching of the United States Supreme Court in *Exxon Shipping Company v. Baker,* 554 U.S. 471 (2008) (the Exxon Valdes Alsaka oil spill case) of "the need for some reasonable predictability in the severity of punitive awards; and the need that punitive awards will treat defendants with a fair probability of suffering in like degree for like damage" the court in *Bridgeport Harbor Place I, LLC v. Ganim,* Superior Court, Complex Litigation Docket at Waterbury, Docket No. X06 CV04-0184523S (October 31, 2008, Stevens, J.) 2008 WL

4926925, affirmed, 131 Conn. App. 99 (2011), Certification granted, 303 Conn. 94 (2011), certification granted 303 Conn. 95 (2011)[6] the trial court, Judge Stevens, citing Connecticut Practice Series, Connecticut Unfair Trade Practices, Vol 12, §6.11 pp. 490-491 nn. 92 and 93, fashioned a "normative range" for punitive damages under CUTPA :

> Thus the court may properly consider the need for at least a modicum of predictability and consistency in the amount of CUTPA punitive awards. In light of these considerations, and in order to provide some degree of rational consistency in punitive damage awards and to avoid high awards that appear randomly erratic or eccentric, this court concludes that in determining the amount of punitive damages, the court may consider that a frequent or consistent range of punitive damages awarded under CUTPA is a ratio that is equal[7] or twice the amount of the compensatory damages, and that particularly when it is claimed that the award should exceed this range, the award ordinarily should be premised on aggravating factors that are identifiable and articulable. Stated differently, particularly when "high" punitive damages are being claimed, a consideration of the normative range of punitive awards and an identification of articulable, aggravating factors supporting an award outside this range are wholly consistent with a reasonable exercise of the court's discretion, predictable, and consistent. *Id.* at *12

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The Supreme Court at 303 Conn 905 granted certification which included the question " Did the trial court properly award punitive damages in this case?" But the appeal was withdrawn on January 17, 2012 before any ruling had issued.

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Judge Stevens noted by footnote (*8, n. 13) that in the *Exxon Shipping* case, which concerned federal maritime law and was not binding authority in a Connecticut CUTPA case, but nevertheless instructive, the U.S. Supreme Court had reached its holding by analyzing and relying on punitive awards in state court civil trials, and found (128 S. Ct. at 2631-32) that studies considering the "median ratio of punitive to compensatory verdicts, reflecting what juries and judges have considered reasonable across may [many] hundreds of punitive awards [covering] cases of the most as well as the least blameworthy conduct . . . put the median ratio for the entire gamut of circumstances at less than 1:1, meaning the compensation award exceeds the punitive award in most cases." This observation is reflected in Connecticut. See, 12 Connecticut Practice Series, Unfair Trade Practices §6.10, fn 105 where the authors, Langer, Morgan, and Belt, list the Connecticut cases where punitive damages have been awarded as a multiple of compensatory damages. Of approximately forty cases reviewed, punitive damages were equal to or less than compensatory damages in about twenty cases.

The plaintiff in *Bridgeport Harbor Place* was seeking $10 million in punitive damages. The court awarded $60,000 against each of two defendants against whom the jury had awarded $10,000 each in actual damages. The upward departure from the normative range was justified by identifiable and articulable aggravating factors, including notably the general policy inimical to the bribery of public officials.

In affirming the punitive damages awarded, the Appellate Court quoted with approval Judge Stevens' methodology of starting within a normative range equal to or twice the compensatory damages, 131 Conn. App at 136, and affirmed the award. "For the foregoing reasons, we cannot conclude that court abused its discretion in carefully crafting the punitive damages award. . . ."*Id.* at 150.

The "normative range" concept of *Bridgeport Harbor Place* was used again by Judge Stevens in awarding punitive damages of $1,251,00 in *Ulbrich, supra,* which represented an upward modification to three times compensatory damages because of aggravating factors. The New York Appellate Division has also recognized the "ratio of one to two commonly used under Connecticut law."*Sawtelle v. Waddell & Reed,* 304 A.D. 2d 103 (1st Dept. 2003).

The court will adopt the "normative range" methodology of *Bridgeport Harbor Place* in setting punitive damages in this case. In addition to the *Exxon Shipping* factors of proportionality and predictability, the court finds that methodology to be appropriate to this case because the normative range of total damages would be in approximate parity with the Connecticut Antitrust Act. The root factor of the liability in this case goes back to the DRP shop arrangement. The market for motor vehicle damage repair services is skewed because certain sellers of those services - DRP shops - have, in return for referrals, limited themselves by contract to a fixed

rate, non-negotiable during the contract term, which is less than the posted rate that independent non-DRP shops seek. If there were no DRP contracts, this case probably would not have been brought. For purposes only of comparative damage analysis it is not invalid, then, to envision a hypothetical litigation scenario where the DRP contracts were successfully challenged as contracts in restraint of trade. Under the Antitrust Act, Conn. Gen. Stat.§ 35-35, the "person . . . injured in its business or property . . . shall recover treble damages, together with a reasonable attorney's fee and costs." Since antitrust damages are not broken down between compensatory and punitive, and are, in practice, total recovery of thee times compensatory[8], the antitrust damages would equate to the high end of *Bridgeport Harbor Place's* normative range: single compensatory plus double compensatory as punitive. Under CUTPA, the compensatory and punitive damages are determined by separate fact finders, and the punitive component is not fixed by legislative fiat, but the approximate parity in the circumstances of this case fits well with court's goal in *Bridgeport Harbor Place* to meet "[t]he need that punitive awards will treat defendants with a fair probability of suffering in like degree for like damage."[9]

The plaintiffs are requesting punitive damages of approximately $ 59 million, calculated as four times the compensatory damages of $14,765,556 awarded by the jury. Four times compensatory in this case is clearly excessive, and comes close to being unconstitutionally high. The court in *Bridgeport Harbor Place, supra,* at *13-14 quoted from *State Farm Mutual Automobile Insurance Co., Campbell, supra,* 538 U.S.at 418:

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See *Westport Taxi Service v. Westport Transit District*, 235 Conn.1, 13, n.15 (1995)

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Bridgeport Harbor Place, supra, 2008 WL 4926925 (Conn. Super.) at * 12, quoting from *Exxon Shipping v. Baker, supra* 128 S.Ct. at 2627.

> In [*Pacific Mutual Life Insurance Co. v. Haslip,* 499 U.S. 1, 23-24, 111 S.Ct. 1032, 113 L.Ed. 2d 1 (1991)], in upholding a punitive damages award, we concluded that an award more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. . . We cited that 4-to-1 ratio again in [*BMW of North America , Inc v. Gore,* 517 U.S. 559, 581, 116 S.Ct. 1589, 113 L.Ed 2d 1 (1991)].

In applying the "normative range" methodology of *Bridgeport Harbor Place* in determining the punitive damages in this case, the court will analyze the claimed aggravating factors balanced against the claimed mitigating factors to determine if the award should be enhanced upward above the "double compensatory" upper limit of the range, and, if not, then where within that range the award should fall.

A. Aggravating Factors.

The large net worth of the Hartford, approximately $12 - 13 billion in 2008 and 2009, is an aggravating factor that tends toward a larger award. But the net worth is so high that in order to achieve any meaningful additional deterrent motivation, the award would have to reach into impermissible territory in terms of the punitive to compensatory ratio. "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award," *State Farm Mutual Automobile Insurance Company v. Campbell, supra,* 123 S.Ct. at 1522-23. The high net worth, nonetheless, is a factor to be considered .

The plaintiff's claim of a special or fiduciary relationship between the parties because the defendant is a "quasi public" insurance company is not an aggravating factor. That special relationship applies to an insurance company "with respect to the customer to whom it sells protection from harm." *Barry v. Posi-Seal International, Inc.* 40 Conn. App. 577, 586 (1996). See also, *Farricielli v. Nationwide Mutual Fire Insurance Company,* Superior Court, Judicial