DOC. NO. X07-HHD-CV16-6072110-S	:	SUPERIOR COURT
ALAN TAYLOR	:	COMPLEX LITIGATION
	:	J.D. OF HARTFORD
V.	:	
THE HARTFORD FINANCIAL SERVICES GROUP, INC.	:	SEPTEMBER 26, 2017

Memorandum of Decision

Lately some courts have used the legal doctrine of standing as a means of editing putative class action complaints. For example, in 2011 the Eastern District of Michigan used this method to snip considerable bits off of a complaint in *In re Packaged Ice Antitrust Litigation.*[1]

Doubtless, unharmed people can't sue for harm to others. That is why we say a person has to have standing to sue. But that doesn't mean the search for standing should extend to searching the claim of someone with standing to see whether that person might properly represent others as well. That is prejudging the question of class certification. This is judging how broad the claim might become when standing is supposed to be about whether the person who brought the claim can bring any claim at all.

HARTFORD J.D.
SUPERIOR COURT
OFFICE OF THE CLERK
2017 SEP 26 PM 4 23

[1] 779 F. Supp. 2d 642.

Decision mailed on 9/26/17 to:
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This trend seems fueled in part by the now established practice of the federal courts to judge the "plausibility" of complaints. *Packaged Ice*, for instance, relied on the current federal pleading standard from *Bell Atlantic Corp. v. Twombly*[2] that requires complaints to "contain sufficient factual matter accepted as true to state a claim to relief that is plausible on its face."[3] "Plausibility" has led some federal courts toward scrutinizing the facts alleged in the complaint to make some sort of judgment on the credibility of the claim based on the quantity and quality of the facts alleged.

But *Twombly* doesn't require this and—in any case—Connecticut has its own pleading standards. Yes, as the briefs in this case point out Connecticut does use federal class action case law as a guide. But it's only a guide. And this isn't a class action question. It's a pleading question and our Supreme Court hasn't even adopted *Twombly* not to mention its more punishing penumbra.

As the 2002 Supreme Court said in *Blumenthal v. Barnes*, standing in this context is about whether the person suing has some real interest in the cause of action arising from "a specific personal and legal interest" and whether the person suing has been "specially and injuriously affected" by

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[2] 550 U.S. 544 (2007).
[3] 779 F. Supp. 2d at 652, quoting *Twombly* at 556.

the alleged wrong.[4] In 2008 in *Andross v. West Hartford*, the court went on to say that standing is not meant to be technical or substantive but to be a flexible notion about ensuring that a person suing has "a personal stake in the outcome" to ensure a claim will be pursued vigorously.[5]

To plead these things Practice Book § 10–1 says that pleadings must contain a "plain and concise statement of the material facts." Anyone who has seen a federal complaint post-*Twombly* knows the difference between state and federal pleading practice. Most federal complaints these days are too long and even include recitations of the evidence to give them "plausibility." But in Connecticut this is expressly against the rules, which demand a concise statement and prohibit recitals of the evidence.

The Hartford seeks to undercut the complaint by pointing out that it uses the tell-tale language "upon information and belief." It suggests that if the court doesn't stop this case in its tracks now it will become nothing but a fishing expedition to find some wrong where the plaintiff doesn't even know there is one. But as our Appellate Court held in 2003 in *ABB Automation, Inc. v. Zaharna* allegations based upon "information and belief" are sufficient in this state and our courts are supposed to read complaints "broadly and realistically," avoiding "conjecture" but

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[4] 261 Conn. 434, 442.
[5] 285 Conn. 309, 322.

sustaining as sufficient claims that allow a party to understand "the general theory" of the facts claimed—all to do substantial justice between the parties.[6] Some would see this as a far cry from *Twombly*, but whatever its comparison, it controls.

It's a good control too. Warping the notion of standing into a technicality that destroys cases and class actions is dangerous. It is far better for the long term interests of justice to give a party a swift fair hearing than a swift unfair hearing. Some of the trends in the federal courts have probably been caused by the crushing burden of discovery and The Hartford rightly fears that here. But properly handled, that fear need not be realized. Class certification with targeted discovery and expedited dispute resolution can keep the cost down and the confidence in the system up. It can do what a class action is supposed to do: serve judicial economy by resolving common claims together.

Here, the complaint alleges that an auto insurance policy holder was charged without his consent for coverage he neither wanted nor needed. He alleges this was the product of a practice followed by The Hartford, a company that sells this insurance all over the United States.

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[6] 77 Conn. App. 260, 265.

Not surprisingly he alleges —on information and belief—that this practice is followed across the nation and not just here in Connecticut, particularly he says with a product marketed nationally to AARP members. He wants to represent all the purchasers in all the places. Regardless whether he is a fit representative for all of them, some of them, or none of them, he has alleged enough that if his claims are true that he at least is a fit person to sue for his individual claim—he alleges a personal, legal interest he claims was injured.

Taylor has standing to sue for himself and this should be enough for now. But he has also alleged that he shares a common concern about this practice with others, some within this state and some without. Against the backdrop of the practice Taylor describes, this is enough to say he has "the same set of concerns" as others—those who got billed for optional coverage they didn't want— even if hypothetically he has to satisfy at this early stage some form of "class action standing"—the kind that was considered for instance by the Second Circuit in 2012 in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*[7] Maybe deliberations about whether to certify a class and the character of any class certified will reveal he doesn't actually share this common concern. The Hartford may be right that the

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[7] 693 F.3d 145, 161.

laws are so highly variable that the claims can't be tried together. But this isn't the place for the court to decide any of that. The only thing that should be decided now is if Taylor can invoke the jurisdiction of this court.

He can. Thus, the motion to dismiss is denied.

BY THE COURT

Moukawsher, J.