

SUPREME COURT OF CONNECTICUT

Brown and Brown, Inc. v. Blumenthal, 297 Conn. 710

1 A.3d 21 (2010) · No. No. 18334 · Decided August 10, 2010

SUMMARY

The Supreme Court of Connecticut interpreted the confidentiality protections in General Statutes § 35-42, which governs the attorney general's preaction investigative authority under the Connecticut Antitrust Act. The court held that materials and information obtained through the investigation generally may not be disclosed to persons outside the attorney general's office, except to federal or state officials who agree to maintain equivalent confidentiality. The court reversed the trial court's summary judgment for the attorney general.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Rogers, C.J.; Norcott, J.; Katz, J.; Palmer, J.; Vertefeuille, J.; Zarella, J.; McLachlan, J.
JURISDICTION	Connecticut
DECIDED	August 10, 2010
DOCKET	No. 18334
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brown and Brown, Inc. appealed from a consolidated trial-court judgment granting the attorney general's motion for summary judgment, denying Brown and Brown's summary-judgment motion, and ordering compliance with an antitrust investigative subpoena and interrogatories.
STANDARD OF REVIEW	Summary judgment and statutory interpretation are reviewed de novo or plenary. The appellate court determines whether the trial court's legal conclusions are legally and logically correct and supported by the facts found.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Connecticut.
PARTIES	Brown and Brown, Inc. v. Richard Blumenthal, Attorney General, in his official capacity

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QUESTIONS PRESENTED

1. Whether General Statutes § 35-42 prohibits the attorney general from disclosing materials and information obtained during a prelitigation antitrust investigation to persons outside the attorney general's office, including third parties and potential competitors.
2. Whether the attorney general may share investigatory materials with officials of other states or the federal government without first obtaining their agreement to maintain the confidentiality required by § 35-42.
3. Whether investigatory materials may be filed or used in a court proceeding without following procedures that allow the producing party to seek sealing or limited disclosure.
4. Whether the trial court properly granted summary judgment to the attorney general and ordered compliance with the subpoena and interrogatories.

HOLDINGS

1. General Statutes § 35-42 bars disclosure of material and information gathered in a Connecticut antitrust investigation to all persons outside the attorney general's office, except officials of other states and the federal government.
2. Before sharing materials or information under § 35-42(g) with officials of other states or the federal government, the attorney general must obtain their agreement to abide by the same confidentiality restrictions applicable to the attorney general.
3. If the attorney general intends to file materials obtained under § 35-42 or include their substance in a pleading, the materials must be lodged under Practice Book §§ 7-4B and 7-4C so that the producing party may seek sealing or limited disclosure; the trial court must then apply Practice Book § 11-20A(c).

KEY QUOTATIONS

“Accordingly, we construe § 35-42 as barring disclosure of material and information gathered in an antitrust investigation pursuant to § 35-42 to all persons outside of the attorney general's office, with the exception of officials of other states and the federal government.” (35-36)

“We also agree that the defendant, if he chooses to share such materials and information with other government officials pursuant to § 35-42(g), first must obtain agreement from those officials that they will abide by the same confidentiality restrictions to which the defendant is subject.” (36)

“The judgment is reversed and the case is remanded to the trial court with direction to render summary judgment in favor of the plaintiff and to deny the defendant's application for an order of compliance.” (39)

FACTUAL BACKGROUND

Brown and Brown, an insurance intermediary, became the target of a Connecticut attorney general investigation into possible antitrust violations in the insurance industry. Pursuant to General Statutes § 35-42, the attorney general demanded documents and interrogatory responses, including sensitive financial, commercial, and business information. After Brown and Brown produced approximately 12,000 documents and the parties failed to agree on confidentiality terms for additional production, Brown and Brown sought a declaration defining the statutory limits on disclosure.

PROCEDURAL HISTORY

The attorney general issued a subpoena duces tecum and interrogatories to Brown and Brown during a prelitigation antitrust investigation. Brown and Brown filed a declaratory-relief action concerning the confidentiality of materials produced under General Statutes § 35-42, and the attorney general filed an application to compel compliance; the matters were consolidated. The trial court ultimately granted summary judgment to the attorney general and granted the compliance application. An earlier interlocutory appeal was dismissed for lack of a final judgment, after which the present appeal was transferred to the Supreme Court of Connecticut.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to render summary judgment in favor of Brown and Brown, Inc. and to deny the attorney general's application for an order of compliance.

CASES CITED

- Brown & Brown, Inc. v. Blumenthal, 288 Conn. 646, 650, 954 A.2d 816 (2008)
- Southwick at Milford Condominium Assn., Inc. v. 523 Wheelers Farm Road, Milford, LLC, 294 Conn. 311, 318, 984 A.2d 676 (2009)
- Wiseman v. Armstrong, 295 Conn. 94, 99, 989 A.2d 1027 (2010)
- Mobil Oil Corp. v. Killian, 30 Conn. Supp. 87, 301 A.2d 562 (1973)
- State v. Marsh & McLennan Cos., 286 Conn. 454, 470-71, 944 A.2d 315 (2008)
- Envirotech Systems Corp. v. Commissioner of Motor Vehicles, 293 Conn. 382, 398, 978 A.2d 49 (2009)
- Vacco v. Microsoft Corp., 260 Conn. 59, 72-73, 793 A.2d 1048 (2002)
- Westport Taxi Service, Inc. v. Westport Transit District, 235 Conn. 1, 15-16, 664 A.2d 719 (1995)
- Miller's Pond Co., LLC v. New London, 273 Conn. 786, 811-12, 873 A.2d 965 (2005)
- Mattox v. Federal Trade Commission, 752 F.2d 116, 120 (5th Cir. 1985)
- Lieberman v. Federal Trade Commission, 771 F.2d 32, 38 (2d Cir. 1985)
- West Haven v. Hartford Ins. Co., 221 Conn. 149, 157, 602 A.2d 988 (1992)
- Rosado v. Bridgeport Roman Catholic Diocesan Corp., 292 Conn. 1, 34-35, 46, 970 A.2d 656 (2009), cert. denied, 559 U.S. 925, 130 S. Ct. 500, 175 L. Ed. 2d 348 (2009)

- In re Application of Ajello v. Moffie, 179 Conn. 324, 326, 426 A.2d 295 (1979)
- Blumenthal v. Kimber Mfg., Inc., 265 Conn. 1, 3 n.2, 826 A.2d 1088 (2003)
- United States v. Morton Salt Co., 338 U.S. 632, 642, 70 S. Ct. 357, 94 L. Ed. 401 (1950)
- Sikorsky Aircraft Corp. v. Commissioner of Revenue Services, 297 Conn. 540, 546, A.3d (2010)
- United States v. Mendoza, 464 U.S. 154, 159-60, 104 S. Ct. 568, 78 L. Ed. 2d 379 (1984)
- Brunswick v. Statewide Grievance Committee, 103 Conn. App. 601, 617, 931 A.2d 319 (2007), cert. denied, 284 Conn. 929, 934 A.2d 244 (2007)
- Fort Trumbull Conservancy, LLC v. Alves, 286 Conn. 264, 277 n.13, 943 A.2d 420 (2008)

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