

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREGORY HUNT, individually and on	:	CIVIL ACTION
behalf of himself and all others similarly	:	
situated,	:	
Plaintiff,	:	
	:	NO. 06-1099
v.	:	
	:	
UNITED STATES TOBACCO COMPANY,	:	
et al.,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S. J.

November 2, 2006

Defendants have filed a motion to certify for appeal an order entered by this court on September 12, 2006, which would ordinarily not be appealable unless this court in the first instance finds that it meets the criteria set forth in 28 § 1292(b).

That criteria is that if this court is “of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.”

The controlling question of law is: Does plaintiff need to show reliance to state a claim under the Pennsylvania Uniform Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (UTPCPL). It is controlling because a reversal of this court’s decision holding that plaintiff does not need to establish reliance under the catch-all provision of UTPCPL would

likely result in reversal of a judgment. In addition, the resolution of the question is of serious importance to the conduct of this litigation. Although plaintiff does not agree, the question is the single most important issue in his litigation. Without the present ruling in his favor, plaintiff would then have to show reliance which is not presumed in this type of litigation. It is indeed the overriding issue in this case.

There is substantial ground for difference of opinion as has been correctly outlined beginning at p. 5 in defendants' memorandum of law in support of motion to certify.

Finally, the litigation would be materially advanced with the resolution of the controlling question of law, since guidance at this stage where no discovery has been commenced would put into sharp focus the nature of plaintiff's claim, and perhaps thereby facilitate settlement.

An order follows.

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UNITED STATES TOBACCO COMPANY,	:	
et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 2nd day of November, 2006, upon consideration of Defendants' Motion to Certify Order for Interlocutory Appeal and for a Stay (Docket No. 12), and Plaintiff's response in opposition thereto, it is hereby **ORDERED**

1. that the Motion is **GRANTED**;
2. that the Order entered on September 12, 2006, is hereby **AMENDED**

pursuant to Fed. R. Civ. P. 59(e) to state that

(a) the Court is of the opinion that the issues present in the Motion to Dismiss pertaining to the need to show reliance to state a claim under the Pennsylvania Uniform Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, involve a controlling question of law as to which there is a substantial ground for difference of opinion given conflicting rulings in Pennsylvania and federal courts,

(b) the Court is of the opinion that given the centrality of the issue in the Motion to Dismiss to the case an immediate appeal from the order may materially advance the ultimate termination of the litigation, and

(c) the Court's Order entered on September 12, 2006 denying Defendants' Motion to Dismiss is hereby certified to provide the basis for an interlocutory appeal by Defendants to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1292(b), and Defendants allowed 10 days from the date of entry of this Order to petition the Court of Appeals to permit an interlocutory appeal;

3. that all proceedings in this matter are STAYED pending the application to the Court of Appeals to permit this appeal and during the pendency of proceedings in the Court of Appeals as a result of an interlocutory appeal being permitted, with such stay being dissolved 10 days from the date of entry of this Order if no petition for interlocutory appeal is filed with the Court of Appeals, or 10 days after any such petition for interlocutory appeal to the Court of Appeals is denied; and

4. that application may be made to the Court as to any required discovery needed to preserve possible evidence in the proceeding.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.
RONALD L. BUCKWALTER, S. J.