Civil Trial Bootcamp: The Basics from Pre-Trial Preparations to Closing Arguments (EDU240125)

Thursday, January 25, 2024

8:15 a.m. to 4:15 p.m.

Courtyard by Marriott

Cromwell CT

CT Bar Institute, Inc.

CT: 6.0 CLE Credits (General)
NY: 7.0 CLE Credits (Skills)

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Approved by the House of Delegates October 19, 2020

LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer’s conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biographies

Liz Fitzsimmons

Attorney Liz Fitzsimmons brings over 25 years of experience in insurance defense to the Connecticut Trial Firm legal team. Her extensive background provides her with a realistic perspective in dealings with insurance companies, along with a deep understanding of the challenges her clients face in these situations.

Andrew Garza

Co-founder and Chief Litigation Officer of Connecticut Trial Firm, Andrew Garza has made significant legal strides, leading his team to a landmark $100 million verdict for a workplace injury. His accolades include "Top 40 under 40," multiple "Trial Lawyer of the Year" titles, a spot on the Inc. 5000 list for fastest growing companies in the nation, and membership in the Multi-Million Dollar Advocates Forum. A beacon of legal excellence, Garza's achievements speak volumes about his dedication and prowess.

Jonathan ‘Jak’ Kocienda

Attorney Jonathan 'Jak' Kocienda is a seasoned legal professional with 25 years of experience in litigating and trying cases, specializing in medical malpractice. During his extensive career, he has represented both the defense and plaintiff sides in medical malpractice cases. Recognized as one of the leading medical malpractice attorneys in the state, Jak brings a wealth of knowledge and experience to the Connecticut Trial Firm, where he leads the medical malpractice division

Alexa Mahony

Attorney Alexa Mahony is a seasoned trial lawyer known for her fierce advocacy for the injured. Her role on the Connecticut Trial Firm litigation team was crucial in obtaining not only a record-setting $100 Million jury verdict, but also several of the highest Loss of Consortium verdicts in Connecticut state history. Her other notable accomplishments include winning the first jury trial on a fall case in Hartford Superior Court in 2017, breaking a streak of 32 consecutive defense verdicts.

Ryan McKeen

Ryan McKeen is the co-founder and CEO of Connecticut Trial Firm. His leadership has not only led the firm to secure a record-setting $100 million jury verdict for a workplace injury, but has also earned it a spot on the prestigious Inc. 5000 list of fastest-growing companies in the nation. Recognized for its exceptional work environment and culture, Connecticut Trial Firm has been honored as one of the Best Workplaces in CT. Ryan's individual prowess as a lawyer is underscored by his membership in the Multi-Million Dollar Advocate Forum, an accolade reserved for attorneys who have won multi-million dollar verdicts and settlements. As an author, Ryan has contributed significantly to the legal literature with books like "Tiger Tactics" and "Tiger Tactics 2: CEO Edition." His commitment to justice, leadership, and excellence continues to inspire and set standards in the legal community.

Andrew Ranks

Attorney Andrew Ranks, a member of the Connecticut Trial Firm litigation team, brings over 15 years of legal experience as a successful trial attorney. Attorney Ranks transitioned to plaintiffs' work after spending many years in insurance defense and has used his vast knowledge of defense work to help the Connecticut Trial Firm litigation team in securing a $100 Million jury verdict for an injured client.

Civil Trial Bootcamp:
The Basics from Pre-Trial Preparations to Closing Arguments (EDU240125)

January 25, 2024
Courtyard by Marriott
4 Sebethe Drive, Cromwell
8:15 a.m. – 4:15 p.m.

Agenda

Presenters:
Liz Fitzsimmons, Connecticut Trial Firm LLC, Glastonbury
Andrew Garza, Connecticut Trial Firm LLC, Glastonbury
Jonathan Kocienda, Connecticut Trial Firm LLC, Glastonbury
Alexa Mahony, Connecticut Trial Firm LLC, Glastonbury
Ryan McKeen, Connecticut Trial Firm LLC, Glastonbury
Andrew Ranks, Connecticut Trial Firm LLC, Glastonbury
Moderator:
Ryan McKeen, Connecticut Trial Firm LLC, Glastonbury

8:15 a.m. – 9:00 a.m.: **Registration and breakfast**

9:00 a.m. – 10:30 a.m.: **Pre-Trial Preparations – Liz Fitzsimmons, Andrew Garza, Jak Kocienda**

In this session, experienced presenters delve into various crucial aspects of pre-trial preparations: Andrew Garza covers the elements of a case, pleadings, and written discovery, focusing on case analysis, strategy development, effective drafting, and discovery techniques. Jak Kocienda addresses witnesses, discusses depositions, preparing lay and expert witnesses, coordinating their appearances, and managing client expectations. The session also explores trial evidence, including redacting sensitive information, deciding between full or identified evidence, using exhibit lists, and uploading to judicial websites. Liz Fitzsimmons concludes with insights on creating and utilizing a trial notebook, offering strategies for maintaining organization and efficiency during trial. This seminar aims to equip legal professionals with comprehensive tools and knowledge for successful trial outcomes.

10:30 a.m. – 10:45 a.m.: **Break**

10:45 a.m. – 12:15 p.m.: **Trial Management Conference and Trial Motions – Alexa Mahony, Jak Kocienda**

In this informative session, Alexa Mahony will lead participants through the exploration of Trial Management Conferences and their intricacies and critical components. The session begins with an introduction to what TMC Conferences are and their importance in the legal process. Mahony will guide attendees through understanding the civil standing order, breaking down the nuances of the TMR (Trial Management Report) with

an emphasis on how narratives from this report might be read to a jury. The session also covers practical aspects like securing dates for evidence presentation, Motion in Limine (MIL) arguments, and marking exhibits, along with guidelines on preferred formats for these exhibits. Additionally, the session will delve into the strategies and timing for effective settlement discussions, emphasizing their role and impact in the context of TMC Conferences. This session continues with trial motions presented by Jak Kocienda, attendees will delve into the critical aspects of various trial motions, crucial for effective courtroom strategy. The session will take an in-depth look at Porter motions, discussing their purpose and application in trial proceedings. A significant focus will be on Motions in Limine (MIL), where Kocienda will explain what these motions are and their strategic importance in shaping the trial by seeking to admit or exclude certain evidence before it is presented to the jury. The session will also cover the practicalities and procedures for requesting the use of audiovisual (AV) equipment in the courtroom, a key element in modern trials for presenting evidence more effectively.

12:15 p.m. – 1:00 p.m.: Lunch

1:00 p.m. – 2:30 p.m.: Jury Selection – Andrew Garza

In this dynamic session on jury selection led by Andrew Garza, participants will gain an in-depth understanding of the nuanced process of forming a jury. The session begins by explaining what a jury panel is and the importance of individual voir dire to assess potential jurors. Garza will discuss how to present a neutral case description to the panel and conduct a conflict check by naming lawyers from one's office and potential witnesses. The session also addresses the unique scenario of no judge monitoring during the selection, the role of the court clerk in the process, and strategies for effectively utilizing a limited number of peremptory challenges. Attendees will learn how to handle various challenges, the protocol for excusing jurors by mutual agreement, and the importance of taking turns in questioning. The session emphasizes having a firm grasp of the relevant law, preparing and practicing questions in advance, and staying updated with new laws affecting jury selection.

2:30 p.m. – 2:45 p.m.: Break

2:45 p.m. – 4:15 p.m.: Mechanics of Trial – Liz Fitzsimmons, Jak Kocienda, Alexa Mahony, Andrew Ranks

In the comprehensive session on the mechanics of trial, attendees will be guided through the essential stages and practices of a trial, covered by experts Liz Fitzsimmons, Jak Kocienda, Andrew Ranks, and Alexa Mahony. Fitzsimmons will begin with courtroom decorum. The session will then walk through the trial phases. Kocienda will delve into directed verdicts, explaining how they intertwine with Motions for Summary Judgment. Fitzsimmons will discuss the art of delivering opening statements, followed by Ranks covering examinations, including the order of proof, using depositions, conducting direct and cross-examinations with a focus on impeachment techniques. Attendees will then be guided through crafting impactful closing arguments.

4:15 p.m.: End of Seminar

3.12-1 Intentional Infliction of Emotional Distress

Revised to January 1, 2008

There are four elements that must be established for a finding of intentional infliction of emotional distress: 1) that the defendant intended to inflict emotional distress, or that the defendant knew or should have known that emotional distress was the likely result of (his/her) conduct; 2) that the conduct was extreme and outrageous; 3) that the conduct was the cause of emotional distress experienced by the plaintiff; and 4) that the emotional distress sustained by the plaintiff was severe.

The defendant's liability for intentional infliction of emotional distress requires that you find that (his/her) conduct exceeded all bounds usually tolerated by decent society. Liability can be found only where the defendant's conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse (his/her) resentment against the actor, and lead (him/her) to exclaim, Outrageous! Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for liability based upon intentional infliction of emotional distress.

In order for the plaintiff to prevail on (his/her) claim of intentional infliction of emotional distress you must find that the plaintiff has proved all of the elements of intentional infliction of emotional distress.

If you find that the plaintiff has not proved all of the elements of intentional infliction of emotional distress, then you will return a defendant's verdict on this count.

Authority

Petyan v. Ellis, 200 Conn. 243, 253-54 (2003).

Notes

Whether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous and whether the plaintiff's distress is sufficient to satisfy the requirement of severe emotional distress are initially questions for the court to determine. Only where reasonable minds could differ do they become issues for the jury. *Bell v. Board of Education*, 55 Conn. App. 400, 409-10 (1999).

The jury must also find that the injuries claimed by the plaintiff were proximately caused by the defendant's conduct, so the court must also charge on causation.

Superior Court of Connecticut, Judicial District of New Haven.

Keyaira REDDICK
v.
Andrew GUIRGUIS et al.

No. CV166060645S
|
May 23, 2016.

Synopsis
Background: Motorist injured in car crash brought action against the other driver involved in the accident, alleging negligence and recklessness. Driver filed motion to strike recklessness count.

Holdings: The Superior Court, Judicial District of New Haven, Wilson, J., held that:

motorist failed to allege statutory claim of recklessness, and

motorist failed to allege common law claim of recklessness.

Motion granted.

Attorneys and Law Firms

Levy Leff & Defrank PC, New Haven, for Keyaira Reddick.

Meehan Roberts Turret & Rosenbaum L., Wallingford, Mills Law Firm LLC, New Haven, for Andrew Guirguis et al.

Opinion

WILSON, J.

***1** The plaintiff, Keyaira Reddick (plaintiff) commenced this action by way writ, summons and complaint against the defendants, Andrew Guirguis, Amal Guirguis and Michelle Boykin (defendants). The complaint is in three counts and alleges the following. On March 28, 2014, the plaintiff was a passenger in a motor vehicle being operated by the defendant Michelle Boykin in a southerly direction on Route 15, near the Exit 65 entrance ramp and the Exit 64 exit ramp, in Wallingford, Connecticut. At the same time and place, the defendant, Andrew Guirguis was operating a motor vehicle owned by the defendant Amal Guirguis on the Exit 65 entrance ramp to southbound Route 15. The defendant, Andrew Guirguis was operating the vehicle owned by Amal Guirguis with the express and/or implied permission of the defendant owner, and/or the vehicle was being operated as a family car with the defendant owner's permission or consent, pursuant to Connecticut General Statutes § 52–182 and/or the common law.

As the vehicle in which the plaintiff was a passenger proceeded in a southerly direction on Route 15, defendant Andrew Guirguis collided with the plaintiff's vehicle, causing the plaintiff to sustained injuries and losses. Count one alleges negligence against defendant Andrew Guirguis in the operation of the vehicle and alleges vicarious liability against defendant Amal Guirguis as owner of the vehicle. Count two alleges recklessness against defendant Andrew Guirguis under the common law and pursuant to General Statutes § 14–295, and count three alleges negligence against Michelle Boykin. The defendants have filed a motion to strike count two of the complaint on grounds that there are no facts pled to support the plaintiff's assertion of deliberate and/or reckless conduct under the common law. The defendants filed a memorandum of law in support of the motion. The plaintiff has filed a memorandum in opposition to the motion and argues that she has properly pled common law recklessness and statutory recklessness. Oral argument on the motion was heard on May 2, 2016.

DISCUSSION

I

Legal Standard of Review

"The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). A motion to strike therefore "requires no factual findings by the trial court." *American Progressive Life & Health Ins. Co. of New York v. Better Benefits, LLC,* 292 Conn. 111, 120, 971 A.2d 17 (2009). "It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) *Violano v. Fernandez,* 280 Conn. 310, 318, 907 A.2d 1188 (2006). "If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action ... the complaint is not vulnerable to a motion to strike." *Bouchard v. People's Bank,* 219 Conn. 465, 471, 594 A.2d 1 (1991). The court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *American Progressive Life & Health Ins. Co. of New York v. Better Benefits, LLC, supra,* 292 Conn. at 120, 971 A.2d 17.

II

COUNT TWO: STATUTORY RECKLESSNESS

***2** In the second count of the complaint, the plaintiff incorporates paragraphs 1–8 of the first count, and alleges in paragraph 9 that, the defendant, Andrew Guirguis "made a conscious choice to drive his vehicle onto the highway from a stopped position, when he knew, or should have known, that attempting to drive onto the highway, in such close proximity to vehicles already on the highway and traveling past him, posed a serious danger to others ... As a result thereof, defendant's conduct was reckless under the common law, and/or defendant's conduct showed a reckless disregard of the consequences and/or was so egregious so as to endanger the safety of others, in violation of the common law and Conn. Gen.Stat. § 14–222 ... By the above acts, plaintiff seeks exemplary or punitive damages, and/or double or treble damages, pursuant to the common law and/or Conn. Gen.Stat. § 14–295." The defendants argue that the court should strike the second count because the plaintiff has not alleged conduct that distinguishes their statutory recklessness claim from their negligence claim. The plaintiff argues in response, that she has alleged sufficient facts to support her statutory claim for recklessness.

"This court has previously addressed the standard for a statutory recklessness claim in the context of a motion to strike in *Ferraiuolo v. Nicholson,* Superior Court, judicial district of New Haven, Docket No. CV 09 5031138 (December 7, 2009, Wilson, J.). This court wrote: "[Section] 14–295 states explicitly that 'the trier of fact may award double or treble damages

if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of [*inter alia*] Section ... 14–222 ... and that such violation was a substantial factor in causing such injury, death or damage to property ...' Neither the Connecticut Supreme Court nor the Appellate Court has yet to address the pleading requirements for recklessness under § 14–295. There has been a split of authority in Superior Court decisions as to what degree of specificity is required in pleading recklessness. See *Alibrandi v. Romero,* Superior Court, judicial district of Fairfield, Docket No. CV 08 5017380 (November 7, 2008, Bellis, J.). A slight majority of Superior Court decisions have required that a plaintiff need only plead the general allegations enumerated in § 14–295, namely, that the defendant has deliberately or with reckless disregard violated one of the enumerated statutes, and the violation was a substantial factor in causing the plaintiff's injuries. *Id.*" *Ferraiuolo v. Nicholson,* Superior Court, judicial district of New Haven, Docket No. CV 09 5031138 (December 7, 2009, Wilson, J.). "The majority view is based both on an analysis of the legislative history as well as a review of the statutory language of § 14–295 itself. These cases conclude that as long as the general requirements of the statute are met, such pleading is enough to survive a motion to strike and to state a cause of action under § 14–295." *Aguirre v. Cammisa,* Superior Court, judicial district of New Haven, Docket No. CV–14–6046086 (July 28, 2014, Wilson, J.).

***3** "Courts taking the majority view have emphasized the plain meaning of § 14–295: 'There does not appear to be any ambiguity in the language of [§] 14–295 or how it should be applied or construed. The statute says that in a civil action seeking damages for personal injuries, the trier of fact may award double or treble damages if the plaintiff has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of ... [one or more motor vehicle statutes delineated in the statute]. If a further delineation of facts forming the basis of the recklessness claim were necessary, then such an explicit requirement could have been set out in the statute by the legislature.' *Lombard v. Booth,* Superior Court, judicial district of Fairfield, Docket No. CV 01 0383637 (July 12, 2001, Stevens, J.) (30 Conn. L. Rptr. 78). 'Where the language used by the legislature is plain and unambiguous, there is no room for construction by the courts and the statute will be applied as its words direct.' *Warkentin v. Burns,* 223 Conn. 14, 22, 610 A.2d 1287 (1992).

"In contrast, a minority of courts have required that plaintiffs plead the specific conduct that is reckless, above and beyond what must be pleaded for mere negligence. *Alibrandi v. Romero, supra,* Superior Court, Docket No. CV 08 5017380. Courts following the minority view have highlighted the substantive difference between negligence and recklessness. 'Our Superior [C]ourts have held that the reiteration of facts previously asserted to support a cause of action in negligence, without more, cannot be transformed into a claim of reckless misconduct [by mere] nomenclature.' (Internal quotation marks omitted.) *Leigh v. Cook,* Superior Court, judicial district of New Haven, Docket No. CV 06 6000492, 2007 WL 1676743 (May 24, 2007, Holden, J.). 'To allow a plaintiff to simply allege reckless disregard of a statutory provision would enable any negligence claim to be brought as a recklessness claim and thereby make it subject to double and treble damages. The plaintiff would only have to plead that in addition to the defendant's conduct being careless it was also deliberate. This court does not believe it was the legislature's intent when enacting § 14–295, to effectively dissolve any distinction between claims in negligence and recklessness.' *Victor v. Williamson,* Superior Court, judicial district of Fairfield, Docket No. CV 05 4008786, 2002 WL 1904387 (July 7, 2006, Owens, J.T.R.).

"Courts taking the minority position have also emphasized the importance of fact pleading. '[T]he majority view—to plead only the bare bones of the statute—would lead to anemic pleading ... Connecticut remains a fact pleading jurisdiction ... The majority view would judicially take us to a notice pleading posture.' *Kurensky v. Church Hill Enterprises,* Superior Court, judicial district of Fairfield, Docket No. CV 02 0390806, 2002 WL 1904387 (July 16, 2002, Brennan, J.). 'Practice Book § 10–1, titled Fact Pleading, provides in relevant part: 'Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies ...' 'There is a wide difference between negligence and a reckless disregard of the rights or safety of others, and a complaint should employ language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on.' (Citation omitted.) *Leigh v. Cook, supra,* Superior Court, Docket No. CV 066000492. '[T]he plaintiff must plead particularized facts that when taken as true would show that the defendant acted with reckless disregard. The facts alleged must show that the defendant consciously chose a course of action despite the fact that the defendant did know, or reasonably should have known, that the action posed serious danger to others.' *Victor v. Williamson, supra,* Superior

Court, at Docket No. CV 05 40008786." *Harkless v. Lynwood,* Superior Court, judicial district of New Haven, Docket No. CV–11–6019548–S (August 13, 2012, Wilson, J.).

***4** "The language of § 14–295 however, also requires that the plaintiff plead that the reckless conduct at issue was a "substantial factor" in causing death, injury or property damage. There is another split of authority in Superior Court decisions on whether the words "substantial factor" must be used by a plaintiff pleading a statutory recklessness claim. One view is that a plaintiff pleading a statutory recklessness claim does not need to use the words "substantial factor" as long as he or she sufficiently alleges causation. This view was articulated in *Chacon v. Fuseini,* Superior Court, judicial district of New Haven, Docket No. CV 07 5009785, 2008 WE 726380 (February 28, 2008, Bellis, J.): 'While the defendant is correct in that the plaintiff did not use the exact phrase "substantial factor," this court rejects the proposition that formulaic words must be employed in this case where the plaintiff has specifically pled that the defendant recklessly operated his motor vehicle in violation of the triggering statute and that such violation caused the plaintiff's injuries and losses.' See also, e.g., *Lindor v. Green,* Superior Court, judicial district of New London, Docket No. CV 5000420 (August 4, 2006, Hurley, J.T.R.) (41 Conn. L. Rptr. 775); *Myers v. Ocean Trace Development,* Superior Court, judicial district of Fairfield, Docket No. CV 00 0375476, 2002 WE 1150777 (May 2, 2002, Gallagher, J.).

"The other view is that the words "substantial factor" must be used by a plaintiff in order for his or her statutory recklessness claim to survive a motion to strike. See, e.g., *Decyk v. Lanquette,* Superior Court, judicial district of New Haven, Docket No. CV 05 5000180, 2006 WE 2349152 (July 28, 2006, Taylor, J.); *Carangelo v. Remis,* Superior Court, judicial district of New Haven, Docket No. CV 044000641 (May 5, 2006, Wiese, J.) (41 Conn. L. Rptr. 318); *Comparone v. Cooper,* Superior Court, judicial district of Fairfield, Docket, No. CV 92 293125 (August 27, 1992, Lewis, J.) (7 C.S.C.R. 1108) [7 Conn. L. Rptr. 262]." *Harkless v. Lynwood, supra,* Docket No. CV–11–6019548–S.

While this court is persuaded by the view set forth in *Chacon* and this court's decision in *Harkless,* it concludes that the plaintiff's statutory recklessness claim fails to meet either standard. The plaintiff, in the second count of the complaint, neither uses the words "substantial factor" nor alleges that the defendant, Andrew Guirguis' recklessness caused her injuries. The plaintiff alleges the defendant's purported reckless conduct in paragraph 9 of count two, and then alleges in paragraph 10 that, "[a]s a result thereof, defendant's conduct was reckless under the common law, and/or defendant's conduct showed a reckless disregard of the consequences and/or was so egregious so as to endanger the safety of others, in violation of the common law and Conn. Gen.Stat. § 14–295." This is nonetheless legally insufficient under the pleading standard established by § 14–295, which requires that a plaintiff allege a causal relationship between the recklessness claimed and the injury suffered. Because the plaintiff has not fulfilled the "substantial factor" requirement of the statutory recklessness pleading standard, the second count to the extent that it alleges a statutory claim of recklessness pursuant to § 14–295 is legally insufficient, and the court grants the defendants' motion to strike count two.

II

COMMON LAW RECKLESSNESS

***5** The defendant argues that the allegations contained in count two of the plaintiff's complaint also fail to allege sufficient facts to establish a claim for common law recklessness. The defendant contends that the language contained in the allegations set forth in count two do not set forth a claim for reckless behavior. The defendant argues that the plaintiff is simply seeking to transform a simple negligence action into a recklessness action. The defendant claims that his actions do not rise to the level of consciousness that surpasses negligence or even gross negligence. The plaintiff argues that the facts alleged do support a common law claim for recklessness.

"[A] count based on reckless and wanton misconduct must, like an action in negligence, allege some duty running from the defendant to the plaintiff ... In order to establish that the conduct of a defendant, who was under such a duty, was deliberate,

wanton and reckless, the plaintiff must prove ... the existence of a state of consciousness with reference to the consequences of one's acts ... [Such conduct] is more than negligence, more than gross negligence ... [I]n order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them ... It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of the action." (Citation omitted; internal quotation marks omitted.) *Vitale v. Kowal,* 101 Conn.App. 691, 698–99, 923 A.2d 778, cert. denied 284 Conn. 904, 931 A.2d 268 (2007).

"Allegations of recklessness differ from allegations of negligence because reckless conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent ... [S]uch aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention. (Internal quotation marks omitted.) *Pecan v. Madigan,* 97 Conn.App. 617, 622 n. 5, 905 A.2d 710 (2006), cert. denied 281 Conn. 919, 918 A.2d 271 (2007)." (Internal quotation marks omitted.) *Hancock v. Cavallaro, supra,* Docket No. CV–13–6039029–S.

In the present case, the plaintiff incorporates the negligence allegations of count one into the recklessness count and simply adds that "the defendant made a conscious choice to drive his vehicle onto the highway from a stopped position, when he knew, or should have known, that attempting to drive onto the highway, in such close proximity to vehicles already on the highway, and traveling past him, posed a serious danger to others." This claimed allegation of reckless conduct mirrors paragraph 8(h) of the negligence count which states that the defendants "failed to stop the vehicle for the stop sign at the end of the entrance ramp and/or they failed to yield the right-of-way to vehicles on the highway, when they either knew or should have known that such vehicles were so close so as to constitute an immediate hazard, in violation of § 14–301(c) and the common law."

***6** "The factual threshold for reckless conduct is high. For example, in *Bealey v. Kohl & Madden Printing Ink Co.,* 157 Conn. 445, 450–51, 254 A.2d 907 (1969), the following facts were found insufficient to submit the issue of recklessness to the jury: The defendant father allowed his 12–year old son to hang onto his car and be pulled along on his bicycle as he travelled slowly up a hill on a street where the terrain was very rough and bumpy. The father, who had limited ability to turn his head due to a neck fusion, did not know what part of the car his son was holding onto and could not see the child. Nonetheless, the father turned the car and accelerated without warning the child, who fell to the ground and was apparently dragged some distance up the road where he was found bleeding and unconscious. The level of risk involved in pulling a young child on a bicycle in this manner, which was found to be insufficient for recklessness, is surely greater than the level of risk [in the defendant driving his vehicle from a stopped position onto the highway in close proximity to vehicles on the highway and driving past him]. In order to state a claim for recklessness, the conduct must be far more 'egregious' than that alleged here." *Ayala v. Meehan,* Superior Court, No. LPL CV940049450S, (January, 28, 1998, Lager, J.) [21 Conn. L. Rptr. 291].

In contrasting negligent conduct from reckless conduct the Restatement, 2 Torts, § 500, comment g states that, "[r]eckless misconduct differs from negligence in several important particulars. It differs from that form of negligence which consists in mere inadvertence, incompetence, unskillfulness, or a failure to take precautions to enable the actor adequately to cope with a possible or probable future emergency, in that reckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man. It differs not only from the above-mentioned form of negligence, but also from that negligence which consists in intentionally doing an act with knowledge that it contains a risk of harm to others, in that the actor to be reckless must recognize that his conduct involves a risk substantially greater in amount than that which is necessary to make his conduct negligent. The difference between reckless misconduct and conduct involving only such a quantum of risk as is necessary to make it negligent is a difference in the degree of the risk, but this difference of degree is so marked as to amount substantially to a difference in kind."

"Recklessness ... requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk *substantially greater* ... than that which is necessary to make his conduct negligent ... It is more

than negligence, more than gross negligence." (Citations omitted; emphasis added; internal quotation marks omitted.) *Sheiman v. Lafayette Bank and Trust Co.,* 4 Conn.App. 39, 45, 492 A.2d 219 (1985). "[W]illful, wanton, or reckless conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." (Citation omitted; internal quotation marks omitted.) *Matthiesson v. Vanech,* 266 Conn. 822, 833, 836 A.2d 394 (2003). The defendant's conduct alleged in count two does not rise to level of an extreme departure from ordinary care to support a common law claim for recklessness. In as much as the plaintiff has attempted to allege common law negligence in count two of the complaint, said count is stricken.

CONCLUSION

***7** For the foregoing reasons, the defendants' motion to strike count two in its entirety is granted.

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Civil Forms					
JD-CV-001	Summons, Civil	Rev. 02/22	CV001.pdf		
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SUMMONS - CIVIL
JD-CV-1 Rev. 2-22
C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a, 52-48, 52-259;
P.B. §§ 3-1 through 3-21, 8-1, 10-13

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☐ Select if amount, legal interest, or property in demand, not including interest and costs, is LESS than $2,500.

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☐ Select if claiming other relief in addition to, or in place of, money or damages.

TO: Any proper officer

By authority of the State of Connecticut, you are hereby commanded to make due and legal service of this summons and attached complaint.

Address of court clerk *(Number, street, town and zip code)*	Telephone number of clerk ( ) –	**Return Date** *(Must be a Tuesday)*

☐ Judicial District ☐ Housing Session ☐ G.A. Number: ___	At *(City/Town)*	Case type code *(See list on page 2)* Major: Minor:

For the plaintiff(s) enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented *(Number, street, town and zip code)*	Juris number *(if attorney or law firm)*

Telephone number ( ) –	Signature of plaintiff *(if self-represented)*

The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book. ☐ Yes ☐ No	E-mail address for delivery of papers under Section 10-13 of the Connecticut Practice Book *(if agreed)*

Parties	Name *(Last, First, Middle Initial)* and address of each party *(Number; street; P.O. Box; town; state; zip; country, if not USA)*	
First plaintiff	**Name:** **Address:**	**P-01**
Additional plaintiff	**Name:** **Address:**	**P-02**
First defendant	**Name:** **Address:**	**D-01**
Additional defendant	**Name:** **Address:**	**D-02**
Additional defendant	**Name:** **Address:**	**D-03**
Additional defendant	**Name:** **Address:**	**D-04**

Total number of plaintiffs:	**Total number of defendants:**	☐ Form JD-CV-2 attached for additional parties

Notice to each defendant

1. **You are being sued**. This is a summons in a lawsuit. The complaint attached states the claims the plaintiff is making against you.
2. To receive further notices, you or your attorney must file an *Appearance* (form JD-CL-12) with the clerk at the address above. Generally, it must be filed on or before the second day after the Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to appear.
3. If you or your attorney do not file an *Appearance* on time, a default judgment may be entered against you. You can get an *Appearance* form at the court address above, or on-line at https://jud.ct.gov/webforms/.
4. If you believe that you have insurance that may cover the claim being made against you in this lawsuit, you should immediately contact your insurance representative. Other actions you may take are described in the Connecticut Practice Book, which may be found in a superior court law library or on-line at https://www.jud.ct.gov/pb.htm.
5. If you have questions about the summons and complaint, you should talk to an attorney.

The court staff is not allowed to give advice on legal matters.

Date	Signed *(Sign and select proper box)*	☐ Commissioner of Superior Court ☐ _____ Clerk	Name of person signing

If this summons is signed by a Clerk:

a. The signing has been done so that the plaintiff(s) will not be denied access to the courts.
b. It is the responsibility of the plaintiff(s) to ensure that service is made in the manner provided by law.
c. The court staff is not permitted to give any legal advice in connection with any lawsuit.
d. The Clerk signing this summons at the request of the plaintiff(s) is not responsible in any way for any errors or omissions in the summons, any allegations contained in the complaint, or the service of the summons or complaint.

For Court Use Only
File Date

I certify I have read and understand the above:	Signed *(Self-represented plaintiff)*	Date	Docket Number

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Instructions

1. *Type or print legibly. If you are a self-represented party, this summons must be signed by a clerk of the court.*
2. *If there is more than one defendant, make a copy of the summons for each additional defendant. Each defendant must receive a copy of this summons. Each copy of the summons must show who signed the summons and when it was signed. If there are more than two plaintiffs or more than four defendants, complete the Civil Summons Continuation of Parties (form JD-CV-2) and attach it to the original and all copies of the summons.*
3. *Attach the summons to the complaint, and attach a copy of the summons to each copy of the complaint. Include a copy of the Civil Summons Continuation of Parties form, if applicable.*
4. *After service has been made by a proper officer, file the original papers and the officer's return of service with the clerk of the court.*
5. *Use this summons for the case type codes shown below.*

   Do <u>not</u> use this summons for the following actions:

   (a) Family matters (for example divorce, child support, custody, parentage, and visitation matters)
   (b) Any actions or proceedings in which an attachment, garnishment or replevy is sought
   (c) Applications for change of name
   (d) Probate appeals
   (e) Administrative appeals
   (f) Proceedings pertaining to arbitration
   (g) Summary Process (Eviction) actions
   (h) Entry and Detainer proceedings
   (i) Housing Code Enforcement actions

Case Type Codes

MAJOR DESCRIPTION	CODE Major/ Minor	MINOR DESCRIPTION
Contracts	C 00	Construction - All other
	C 10	Construction - State and Local
	C 20	Insurance Policy
	C 30	Specific Performance
	C 40	Collections
	C 50	Uninsured/Underinsured Motorist Coverage
	C 60	Uniform Limited Liability Company Act – C.G.S. 34-243
	C 90	All other
Eminent Domain	E 00	State Highway Condemnation
	E 10	Redevelopment Condemnation
	E 20	Other State or Municipal Agencies
	E 30	Public Utilities & Gas Transmission Companies
	E 90	All other
Housing	H 10	Housing - Return of Security Deposit
	H 12	Housing - Rent and/or Damages
	H 40	Housing - Housing - Audita Querela/Injunction
	H 50	Housing - Administrative Appeal
	H 60	Housing - Municipal Enforcement
	H 90	Housing - All Other
Miscellaneous	M 00	Injunction
	M 10	Receivership
	M 15	Receivership for Abandoned/Blighted Property
	M 20	Mandamus
	M 30	Habeas Corpus (extradition, release from Penal Institution)
	M 40	Arbitration
	M 50	Declaratory Judgment
	M 63	Bar Discipline
	M 66	Department of Labor Unemployment Compensation Enforcement
	M 68	Bar Discipline - Inactive Status
	M 70	Municipal Ordinance and Regulation Enforcement
	M 80	Foreign Civil Judgments - C.G.S. 52-604 & C.G.S. 50a-30
	M 83	Small Claims Transfer to Regular Docket
	M 84	Foreign Protective Order
	M 89	CHRO Action in the Public Interest - P.A. 19-93
	M 90	All other

MAJOR DESCRIPTION	CODE Major/ Minor	MINOR DESCRIPTION
Property	P 00	Foreclosure
	P 10	Partition
	P 20	Quiet Title/Discharge of Mortgage or Lien
	P 30	Asset Forfeiture
	P 90	All other
Torts (Other than Vehicular)	T 02	Defective Premises - Private - Snow or Ice
	T 03	Defective Premises - Private - Other
	T 11	Defective Premises - Public - Snow or Ice
	T 12	Defective Premises - Public - Other
	T 20	Products Liability - Other than Vehicular
	T 28	Malpractice - Medical
	T 29	Malpractice - Legal
	T 30	Malpractice - All other
	T 40	Assault and Battery
	T 50	Defamation
	T 61	Animals - Dog
	T 69	Animals - Other
	T 70	False Arrest
	T 71	Fire Damage
	T 90	All other
Vehicular Torts	V 01	Motor Vehicles* - Driver and/or Passenger(s) vs. Driver(s)
	V 04	Motor Vehicles* - Pedestrian vs. Driver
	V 05	Motor Vehicles* - Property Damage only
	V 06	Motor Vehicle* - Products Liability Including Warranty
	V 09	Motor Vehicle* - All other
	V 10	Boats
	V 20	Airplanes
	V 30	Railroads
	V 40	Snowmobiles
	V 90	All other
		*Motor Vehicles include cars, trucks, motorcycles, and motor scooters.
Wills, Estates and Trusts	W 10	Construction of Wills and Trusts
	W 90	All other

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Instructions

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	C 60	Uniform Limited Liability Company Act – C.G.S. 34-243
	C 90	All other
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	M 30	Habeas Corpus (extradition, release from Penal Institution)
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	M 50	Declaratory Judgment
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	M 68	Bar Discipline - Inactive Status
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MAJOR DESCRIPTION	CODE Major/ Minor	MINOR DESCRIPTION
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Torts (Other than Vehicular)	T 02	Defective Premises - Private - Snow or Ice
	T 03	Defective Premises - Private - Other
	T 11	Defective Premises - Public - Snow or Ice
	T 12	Defective Premises - Public - Other
	T 20	Products Liability - Other than Vehicular
	T 28	Malpractice - Medical
	T 29	Malpractice - Legal
	T 30	Malpractice - All other
	T 40	Assault and Battery
	T 50	Defamation
	T 61	Animals - Dog
	T 69	Animals - Other
	T 70	False Arrest
	T 71	Fire Damage
	T 90	All other
Vehicular Torts	V 01	Motor Vehicles* - Driver and/or Passenger(s) vs. Driver(s)
	V 04	Motor Vehicles* - Pedestrian vs. Driver
	V 05	Motor Vehicles* - Property Damage only
	V 06	Motor Vehicle* - Products Liability Including Warranty
	V 09	Motor Vehicle* - All other
	V 10	Boats
	V 20	Airplanes
	V 30	Railroads
	V 40	Snowmobiles
	V 90	All other
		*Motor Vehicles include cars, trucks, motorcycles, and motor scooters.
Wills, Estates and Trusts	W 10	Construction of Wills and Trusts
	W 90	All other

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This search displays information about firms and information about attorneys admitted to practice law in Connecticut. It also tells the attorney's licensing and disciplinary history. When you check an attorney's license you can see if the license has ever been inactive, and why, and if the attorney has ever been disciplined for misconduct. If an attorney's license is not active, the attorney cannot practice law until he or she is reinstated.

An attorney can have an inactive license for reasons other than discipline. A license is deactivated if the attorney is inactive due to disability (under section 2-56 of the Connecticut Practice Book), voluntarily retires, does not pay the Client Security Fund fee or is deceased. These are not discipline.

If the attorney is currently suspended, disbarred, or resigned, then the attorney's license was taken

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Registered Juris Information For: **CONNECTICUT TRIAL FIRM LLC**

Juris Number:	436558
Current Status:	N/A
Juris Type:	F
Admission Date:	N/A

Office Address:
437 NAUBUC AVENUE
SUITE 107
GLASTONBURY, CT 06033
(860) 471-8333

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Category	Docket No.	Case Name	Location	Activity
CV	HHD-CV-21-6139260-S	AGUILAR, RODOLFO v. WEST FARMS MALL, LLC	Hartford JD	
CV	HHD-CV-23-6165271-S	ALICEA, JOHNNY JUAN v. LE, MINH	Hartford JD	
CV	UWY-CV-23-6069629-S	ALLEYNE, TRINITY v. SNYDAR, DANIELLE MARIE	Waterbury JD	
CV	MMX-CV-24-6039593-S	AMARAL KAMARA, SUELLEN, AKA SUELLEN AMARAL DOS SAN v. SCHWARTZ, HANNAH	Middletown JD	
CV	HHD-CV-23-6177790-S	ANDERSON, GLORIA v. WOODBRIDGE CONDOMINIUM ASSOCIATION, INC.	Hartford JD	! NEW
CV	NNH-CV-22-6122051-S	ARCAMONE, PRISCILLA v. LEVY, ARTHUR	New Haven JD	
CV	DBD-CV-23-6046674-S	BAJRALIU, RONI v. MORRIS, BRENT	Danbury JD	
CV	HHD-CV-22-6157927-S	BARTLETT, TAYLOR v. MACARI, LINDA	Hartford JD	
CV	HHD-CV-17-6074867-S	BATES, JENNIFER v. RUDY, KELLY	Hartford JD	
CV	HHD-CV-23-6168083-S	BEAUPRE, JAHALA, THROUGH HER MOTHER AND CONSERVATO v. HOSPITAL FOR SPECIAL CARE	Hartford JD	! NEW
CV	HHD-CV-23-6170975-S	BEAUPRE, JAHALA, THROUGH HER MOTHER AND CONSERVATO v. ROSATI, DENNIS L.	Hartford JD	! NEW
CV	KNL-CV-14-5014789-S	BELANGER, MELISSA v. RICHARDSON, STACEY	New London JD	
CV	HHD-CV-24-6177989-S	BERTRAND, SCOTT v. FRIAS, NATALIA L.	Hartford JD	
CV	HHD-CV-22-6154260-S	BIBLE, SACHIKO v. LORD, AARIANNE C.	Hartford JD	
CV	HHD-CV-20-6124463-S	BONNEVILLE, EDITH v. MOULIS, DAVID	Hartford JD	
CV	HHD-CV-23-6165134-S	BOUCHER, KASSIE v. J. & A. FOODS, LLC D/B/A MCDONALD'S	Hartford JD	
CV	HHD-CV-23-6175562-S	BROWN, ANTWON v. WORLD CLASS DISTRIBUTION INC.	Hartford JD	! NEW
CV	DBD-CV-22-6043253-S	BROWN, CLAYTON v. KUTNICK, LAURA	Danbury JD	
CV	FBT-CV-22-6113921-S	BROWN, JERMAINE v. ARCIUOLO, MATTHEW	Bridgeport JD	
CV	MMX-CV-22-6036095-S	BROWN, SEAN v. COUNTRY SQUIRE III ASSOCIATION OF CROMWELL, INC.	Middletown JD	
CV	FST-CV-23-6060600-S	BRUST, ARIANNE JEAN v. LARGOS, DENIS RUFINO ESCOTO	Stamford JD	! NEW
CV	KNL-CV-23-6063836-S	BURDZY, JANEL v. WALMART, INC.	New London JD	
CV	FBT-CV-23-6127878-S	CAHILL, BARBARA v. PAOLETTO, MICHAEL	Bridgeport JD	

HHD-CV21-6139260-S AGUILAR, RODOLFO v. WEST FARMS MALL, LLC Et Al

Prefix: HD6 **Case Type:** T03 **File Date:** 03/09/2021 **Return Date:** 04/13/2021

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Information Updated as of: 01/12/2024

Case Information

Case Type: T03 - Torts - Defective Premises - Private - Other
Court Location: HARTFORD JD
List Type: JURY (JY)
Trial List Claim: 12/01/2021
Last Action Date: 04/24/2023 (The "last action date" is the date the information was entered in the system)

Disposition Information

HHD-CV22-6154260-S BIBLE, SACHIKO v. LORD, AARIANNE C. Et Al

Prefix: HD4 **Case Type:** V01 **File Date:** 04/11/2022 **Return Date:** 04/19/2022

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Information Updated as of: 01/12/2024

Case Information

Case Type: V01 - Vehicular - Motor Vehicles - Driver and/or Passenger(s) vs. Driver(s)
Court Location: HARTFORD JD
List Type: JURY (JY)
Trial List Claim: 06/24/2022
Last Action Date: 10/30/2023 (The "last action date" is the date the information was entered in the system)

Disposition Information

HHD-CV23-6170975-S BEAUPRE, JAHALA, THROUGH HER MOTHER AND CONSERVATO v. ROSATI, DENNIS L. Et A

Prefix: HD6 **Case Type:** T28 **File Date:** 06/27/2023 **Return Date:** 08/08/2023

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This case is consolidated with one or more cases

Information Updated as of: 01/12/2024

Case Information

Case Type: T28 - Torts - Malpractice - Medical
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 01/12/2024 (The "last action date" is the date the information was entered in the system)

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Attorney/Firm Case List

* Juris Number :	436558
Case Category :	CV
Location :	All
Case Status :	All Pending & Disposed Cases
Sort Order :	Case Name

Search

Page Created on 1/12/2024 at 10:26:10 AM

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	06/27/2023	P	SUMMONS	
	06/27/2023	P	COMPLAINT	
	08/10/2023	D	APPEARANCE Appearance	
100.30	06/27/2023	P	RETURN OF SERVICE	No
101.00	08/16/2023	P	NOTICE TO ALL PARTIES Directed to Dr. Pesce	No
102.00	08/16/2023	P	NOTICE TO ALL PARTIES Directed to Dr. Rosati	No
103.00	08/21/2023	D	MOTION FOR EXTENSION OF TIME TO PLEAD	No
104.00	08/25/2023	P	MOTION TO CONSOLIDATE *RESULT:* Granted 9/11/2023 HON SUSAN COBB	No
104.86	09/11/2023	C	ORDER *RESULT:* Granted 9/11/2023 HON SUSAN COBB	No
105.00	10/06/2023	D	MOTION FOR EXTENSION OF TIME TO PLEAD	No
106.00	10/12/2023	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13	No
107.00	11/09/2023	P	MOTION TO SUBSTITUTE PARTY	No

Civil Jury Instructions

This collection of Civil Jury Instructions is intended as a guide for judges and attorneys in constructing charges and requests to charge. The use of these instructions is entirely discretionary and their publication by the Judicial Branch is not a guarantee of their legal sufficiency.

The jury instructions are now posted in a PDF format to make it easier to search, print and download.

Instructions: Open the file below, then use the bookmark links on the left side of the screen to find the instruction you are looking for. Civil Jury Instructions - PDF

To search the file: After opening the file, use the Ctrl and F keys on the keyboard and enter the search terms in the box in the upper right hand corner.

OFFICIAL

2024

CONNECTICUT PRACTICE BOOK

(Revision of 1998)

APPENDIX OF FORMS

The forms in this appendix were adopted by the judges of the Superior Court and are specifically referenced in the rules, with the exception of Form 101, which implements Section 4-1.

Table of Contents

SAMPLE "RISKS OF TRIAL" LETTER

January 1, 2024

John Doe
123 Bliss Lane
Hartford, CT 06106

Re*: Doe, John et al.* v. *Accidents R' Us, Inc.*

Dear John:

I am writing to you because it is our practice to discuss the risks of trial with all of our clients. Over the last several months, we have had several discussions about the possibilities of settling and trying your case and the risks involved with each. The information below is provided to aid you in making an informed decision as to whether you would like to continue with trial.

We have provided you with our assessment of your case's value and our recommendation that the defendants' current offer of $1,000,000 be rejected. I invite you to ask any questions about this analysis, or any of the information below. I am here to assist and advocate for you. At the end of our discussion, I will ask you to initial the items below to reflect that we have discussed the topic and that you have had an opportunity to ask your questions about each item.

General Risks of Trial

Below is a statement of general risks of taking a case to trial. Our firm has identified these as risks that apply to all plaintiffs that have to choose between settling and trying a case. The risk of each factor may vary case to case, and we will discuss those factors with you in section two below, as well as during our discussion today.

Risk One: Losing.

If the jury comes back with a defense verdict, you will not receive any compensation in this case. Even with the strongest possible case there is always some chance you lose. We have spoken with judges who have informed us of several recent car accident cases – where the defendant stipulated to liability – which came back as defense verdicts from a jury.

Client Initials: _____

Risk Two: Less Money

The ultimate goal of any plaintiff's lawyer is to beat the last offer from the insurance company at trial. There are only two numbers that matter in a personal injury case – what a jury will award you and what an insurance company will pay you. As you know, prior to trial on January 15, 2024, the defendants made an initial settlement offer of $1,000,000. You both chose to reject this offer. If you go to trial and the jury awards more than $1,000,000, it is a win. If you are awarded less money by a jury than that last offer, it is a loss. We understand you were willing to resolve the case for three-million dollars ($3,000,000), but the defendants have made no additional offers. The jury may award you less than this amount, after spending hours of your time preparing the case, and incurring additional expenses to prepare for trial.

Client Initials: _____

Risk Three: You Owe the Defendant Costs

In the event that the jury finds in favor of the defendants and renders a defense verdict as discussed above in risk one, the defendants can seek reimbursement of some of the costs of trial, witness fees, depositions, experts and other such costs pursuant to Connecticut General Statutes § 52-257. Sometimes these costs can be in the thousands of dollars. John, you would be personally responsible for these costs. Given the current status of the evidence in the case, and the defendants' admission of negligence and their stipulation as to the relatedness of the past medical bills and wage loss, we believe this risk is extremely low.

Client Initials: _____

Risk Four: The Defendant Sues You

In Connecticut, a prevailing party in an action may bring a lawsuit for vexatious litigation or abuse of process. Essentially, the claim is that there was no probable cause for you to have brought your claim. It is a high burden for a party to meet, but such claims are on the rise nationally and in Connecticut. Even if you did not engage in vexatious litigation, it may cost you money to fight the claim. Given the current status of the evidence in the case, and the defendants' admission of negligence and their stipulation as to the relatedness of the past medical bills and wage loss, we believe this risk is extremely low.

Client Initials: _____

Risks and Considerations Unique to Your Case

Below are factors unique to your case that we have identified as potential issues at trial. While we have methods that we employ for addressing these issues, we would like you to be fully aware of them, as they may result in a verdict against you, or a lower award of damages.

Item One: Collectability of Verdict

The parties involved agree that you were not negligent in any way. They have also stipulated to your past medical bills and wage loss as being related to the incident. Therefore, it is highly unlikely a jury will fault you in any way or that a defense verdict will occur. It is possible, however, that the jury could find the defendant was not reckless. If a large verdict is awarded against the defendants, it is possible we could face collectability issues for any amount over their available insurance coverage of three million dollars ($3,000,000). There is also a risk that if the jury awards punitive damages against the defendants that their insurer would not pay them. We have informed Big Insurer, the defendants' insurance carrier, that we would pursue them for the entire verdict if they do not pay it. We will discuss and weigh options against them under Connecticut's insurance bad faith law if we obtain a verdict in excess of their available coverage or punitive damages they refuse to pay.

Client Initials: _____

Item Two: Possibility of Appeal

It is possible that we could get our desired outcome at trial and the defendants will appeal the verdict. This means that payment of any verdict would be on hold for a substantial period of time, possibly years, while we litigate further at the higher courts. There is a possibility we could receive a favorable result at trial, and it could be overturned on appeal. It is possible we could be forced to re-try the case, and lose, or get a less favorable result.

Client Initials: _____

Item Three: Less Money

We already discussed the risk of getting less money above. Some case specific factors that may contribute to a smaller verdict amount in this case are as follows: (1) the jury may not find the defendants' conduct as egregious as we do; (2) the jury may believe that you are hurt, but may not believe you need the future medical care our experts recommend; (3) the jury may award all of your economic damages, but provide a significantly lower amount in noneconomic damages like pain and suffering. Finally, with respect to your family's claims, a jury may believe that their claims are not worth as much or any money at all because they were not physically injured. We have done our best to pick fair and reasonable jurors, but we cannot predict with certainty who they will find credible, who they will choose to help, and to what extent.

Client Initials: _____

On behalf of Connecticut Trial Firm, I want to thank you for trusting us to represent you. Please do not hesitate to ask any questions that you may have, either today or during trial.

Sincerely,

Andrew Garza

Client Acknowledgement

I have read the above in full and understand the risks of trial. I have had an opportunity to ask questions regarding this information

_____ _____

John Doe Date

DOCKET NO.:	:	SUPERIOR COURT
	:	
PLAINTIFF	:	J.D. OF NEW BRITAIN
	:	
V.	:	AT NEW BRITAIN
	:	
DEFENDANT	:	DATE

OFFER OF COMPROMISE

Pursuant to Practice Book §§ 17-14 and 8-132, the plaintiff, hereby offers to compromise her claim underlying the above-entitled action as to the defendants, , for one hundred thousand dollars ($100,000).

THE PLAINTIFF,

/s/Alexa L. Mahony, Esq.
Alexa L. Mahony, Esq.
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Juris No.: 436558

CERTIFICATION

I certify that a copy of these documents was mailed or delivered electronically or non-electronically on the above date to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

XXX

By:/s/ Alexa L. Mahony, Esq.
Alexa L. Mahony, Esq.

Connecticut Judicial Branch

Civil Jury Trial Management Order

Revised October 2023

Unless otherwise ordered by the court, the following civil jury trial management order is in effect. Counsel and self-represented parties must attend any scheduled trial management conference prepared to engage in settlement negotiations, with their clients and/or decision makers available.

A joint trial management report must be filed with the court at least one business day prior to the scheduled trial management conference. If an agreement cannot be reached, each side's position shall be set forth in the joint trial management report.

The trial management report must include the following:

1. A brief, non-argumentative factual description of the case.
2. A list of the legal and factual issues in dispute.
3. A witness list with an identifier for each witness (party, expert, fact witness, document custodian) including any anticipated scheduling problems. Witnesses not listed will not be permitted to testify at trial, except for good cause shown or if the witness will provide rebuttal evidence. [Note: This order does not replace or change the requirements of Practice Book § 13-4 regarding the manner and time for expert disclosure.]
4. A list of all pending motions that must be decided before the start of trial including motions in limine or to preclude evidence. If any party anticipates filing such a motion before the start of evidence, that party should identify the anticipated motion(s).
5. A list identifying the operative pleadings (complaint, answer, counterclaim, etc.) and any Practice Book § 13-4 expert disclosures by name and docket entry number.
6. An estimate as to the amount of time required for jury selection.
7. An estimate of the amount of time necessary to try the case.
8. A statement as to any anticipated scheduling problems other than those involving witnesses, which must be set forth as required in paragraph 3.

Attorneys and law firms without an exemption from electronic services must submit electronically in PDF format all exhibit documents on paperless civil files for all hearings and trials, at least two business days prior to the start of evidence.

Electronic submission of exhibits is optional for self-represented parties. To submit electronic exhibits, log in to the E-Services site, look up the case in which you have an appearance, and select “E-File an Exhibit” from the dropdown menu.

Further information can be found at https://jud.ct.gov/external/super/e-services/efile/electronic_exhibits_atty_srp_qc.pdf . For all electronically submitted exhibits, the electronic exhibit that resides in the court’s e- filing database will be the official exhibit and will be deemed to be the original.

Preliminary requests to charge, proposed verdict forms and any requests for jury interrogatories will be at the discretion of the trial judge, and the timing of written requests to charge will be in accordance with the rules of practice unless ordered to be filed earlier by the trial judge.

Hon. Barbara N. Bellis
Chief Administrative Judge, Civil Division

DOCKET NO.	:	SUPERIOR COURT
PLAINTIFF	:	J.D. OF NEW HAVEN
V.	:	AT NEW HAVEN
DEFENDANT	:	DATE

JOINT TRIAL MANAGEMENT REPORT

1. FACTUAL DESCRIPTION OF CASE

On October 3, 2020 at approximately 11:48 PM, the plaintiff, was the operator of a motor vehicle that was parked at the end of a parking lot at 819 Boston Post Road in West Haven. The plaintiff, XX was the front seat passenger in XY's car. At the same time and place, the defendant was backing out of parking spot in the same parking lot. Suddenly and without warning, the defendant Jorge Villa collided with the rear of the vehicle occupied by the plaintiffs.

2. LEGAL AND FACTUAL ISSUES IN DISPUTE

a. Liability
b. Causation
c. Damages

3. WITNESS LIST

Plaintiff's Witness:

The plaintiff reserves the right to call the following witnesses at trial:

1. **Fact Witnesses**
   a) Plaintiff 1
   b) Plaintiff 2
   c) Witness

2. **Experts and/or Medical Reports – Plaintiff 1**
   a) Yale New Haven Health

b) Yale New Haven Health Orthopedic & Rehabilitation
c) Hamden Injury Center
d) Whitney Imaging Center
e) Hasbani Neurology
    a. Dr. Moshe Hasbani and Dr. M. Joshua Hasbani

3. **Experts and/or Medical Reports – Plaintiff 2**
    a) New Haven Health – Bridgeport Milford
    b) Physicians Group, L.L.C.
        a. Fabian Calixto Bejarano, D.C.
    c) Surgery Consultants
        a. Dr. Tan Duy Ly, DO

The plaintiff further reserves the right to call any of the witnesses listed on the defendant's list and to call rebuttal witnesses as needed.

Defendant's Witness:

1. Defendant
2. Independent Medical Examiner
3. Independent Medical Examiner

4. **PENDING / ANTICIPATED MOTIONS**
    a. **Plaintiffs' motions:**
        1. The plaintiff reserves the right to file motions in limine.
    b. **Defendant's motions:**
        1. The defendant reserves the right to file motions in limine, including, but not limited to any and all notes, reports, testimony and bills of plaintiffs' medical providers.
        2. Motion for Nonsuit for failure to comply with standard discovery.
        3. Motion for Trial Date Continuance.

5. OPERATIVE PLEADINGS

a. Complaint- 05/02/2022

b. Answer and Special Defenses (102.00) -06/15/2022

c. Reply to Special Defense (104.00) – 06/16/2022

6. ANTICIPATED TIME FOR JURY SELECTION

a. 2-3 days

7. ANTICIPATED TIME FOR EVIDENCE

a. 5-6 days

8. ANTICIPATED SCHEDULING ISSUES

Defense counsel seeks a continuance of 120-180 days.

The Plaintiffs	The Defendant
/s/437318 Alexa L. Mahony Connecticut Trial Firm 437 Naubuc Avenue, Suite 107 Glastonbury, CT 06033	/s/303782 Jeffrey Schwartz

Sec. 52-174. Admissibility of records and reports of certain expert witnesses as business entries.

(a) In all actions for the recovery of damages for personal injuries or death, (1) if a physician, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist, physician assistant, advanced practice registered nurse, professional engineer or land surveyor has died prior to the trial of the action, or (2) if such physician, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist, physician assistant, advanced practice registered nurse, professional engineer or land surveyor is physically or mentally disabled at the time of the trial of the action to such an extent that such person is no longer actively engaged in the practice of the profession, the party desiring to offer into evidence the written records and reports of the physician, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist, physician assistant or advanced practice registered nurse concerning the patient who suffered the injuries or death, or the reports and scale drawings of the professional engineer or land surveyor concerning matters relevant to the circumstances under which the injuries or death was sustained shall apply to the court in which the action is pending for permission to introduce the evidence. Notice of the application shall be served on the adverse party in the same manner as any other pleading. The court to which the application is made shall determine whether the person is disabled to the extent that the person cannot testify in person in the action. Upon the court finding that the person is so disabled, the matters shall be admissible in evidence as a business entry in accordance with the provisions of section 52-180 when offered by any party in the trial of the action.

(b) In all actions for the recovery of damages for personal injuries or death, pending on October 1, 1977, or brought thereafter, and in all court proceedings in family relations matters, as defined in section 46b-1, or in the Family Support Magistrate Division, pending on October 1, 1998, or brought thereafter, and in all other civil actions pending on October 1, 2001, or brought thereafter, any party offering in evidence a signed report and bill for treatment of any treating physician or physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, an emergency medical technician, optometrist or advanced practice registered nurse, may have the report and bill admitted into evidence as a business entry and it shall be presumed that the signature on the report is that of such treating physician, physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist or advanced practice registered nurse and

that the report and bill were made in the ordinary course of business. The use of any such report or bill in lieu of the testimony of such treating physician, physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist or advanced practice registered nurse shall not give rise to any adverse inference concerning the testimony or lack of testimony of such treating physician, physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist or advanced practice registered nurse. In any action to which this subsection applies, the total amount of any bill generated by such physician, physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist or advanced practice registered nurse shall be admissible in evidence on the issue of the cost of reasonable and necessary medical care. The calculation of the total amount of the bill shall not be reduced because such physician, physician assistant, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist or advanced practice registered nurse accepts less than the total amount of the bill or because an insurer pays less than the total amount of the bill.

(c) This section shall not be construed as prohibiting either party or the court from calling the treating physician, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist, physician assistant or advanced practice registered nurse as a witness for purposes that include, but are not limited to, providing testimony on the reasonableness of a bill for treatment generated by such physician, dentist, chiropractor, naturopath, physical therapist, podiatrist, psychologist, social worker, mental health professional, emergency medical technician, optometrist, physician assistant or advanced practice registered nurse.

(1957, P.A. 414; February, 1965, P.A. 235; 1967, P.A. 656, S. 40; 848; 1969, P.A. 215; 1972, P.A. 24; P.A. 77-226; P.A. 78-140; P.A. 82-160, S. 78; P.A. 84-101; P.A. 89-153; P.A. 94-158, S. 1; P.A. 95-42; P.A. 98-81, S. 8; P.A. 99-102, S. 48; P.A. 01-15; P.A. 08-48, S. 1; P.A. 12-142, S. 3; P.A. 14-37, S. 1.)

History: 1965 act added provisions re professional engineers; 1967 acts added Subdiv. (2) re use of written records as testimony where physician, dentist or engineer has impairment of mental faculties which prevents him from testifying and specified evidence consisting of reports, records, etc. is admissible "as a business entry in accordance with the provisions of section 52-180"; 1969 act applied provisions to chiropractors, osteopaths and land surveyors; 1972 act applied provisions to naturopaths and revised provisions to allow use of records, etc. when person is either

physically or mentally disabled "to such an extent that he is no longer actively engaged in the practice of his profession" and to make court responsible for determining if person is disabled so that he cannot testify where previously use of records allowed if person was judged mentally unfit to testify upon determination of hospital superintendent; P.A. 77-226 added Subsec. (b) re use of signed report and bill for services as evidence in actions for recovery of damages for personal injury or death; P.A. 78-140 restated Subsec. (b), specifying that report signature is presumed to be that of treating physician, dentist, etc. and the report and bill are presumed to have been made in ordinary course of business and deleting details re subpoena of medical expert; P.A. 82-160 amended Subsec. (a) by deleting provisions stating that the section was applicable to actions "pending on October 1, 1957, or which are thereafter brought", designated the last sentence of Subsec. (b) as a new Subsec. (c), and made minor technical changes to the section; P.A. 84-101 applied provisions to podiatrists; P.A. 89-153 amended Subsec. (b) to add provision that the use of any report or bill in lieu of the testimony of a treating health care provider shall not give rise to any adverse inference re testimony or lack of testimony of such treating health care provider; P.A. 94-158 applied provisions to psychologists, emergency medical technicians and optometrists; P.A. 95-42 applied provisions to physical therapists; P.A. 98-81 amended Subsec. (b) making provisions of section apply to proceedings in family relations matters or in the Family Support Magistrate Division; P.A. 99-102 deleted obsolete references to osteopathy and made technical changes re gender neutrality; P.A. 01-15 amended Subsec. (b) by adding provision re all other civil actions pending on October 1, 2001, or brought thereafter; P.A. 08-48 applied provisions to physician assistants and advanced practice registered nurses and made technical changes; P.A. 12-142 amended Subsecs. (a) and (b) by adding chapter references applicable to licensing of health care providers and making technical changes and, in Subsec. (b), by adding provisions re total amount of bill generated by certain health care providers to be admissible in evidence re cost of medical care and re total amount not to be reduced when provider accepts less than total amount or insurer pays less than total amount, and amended Subsec. (c) by adding provision re certain health care providers may be called to provide testimony on reasonableness of a bill for treatment, effective October 1, 2012, and applicable to all actions pending on or filed on or after that date; P.A. 14-37 amended Subsecs. (a) and (b) by deleting chapter references re licensure or certification and adding references to social worker and mental health professional, and amended Subsec. (c) by adding references to social worker and mental health professional, effective October 1, 2014, and applicable to all actions pending on or filed on or after that date.

Cited. 159 C. 397; 177 C. 677; 211 C. 555; 225 C. 637.

Cited. 5 CA 629; 17 CA 684; 23 CA 468; 24 CA 276; 29 CA 519; 36 CA 737.

Subsec. (b):

Statute not limited to resident medical practitioners. 205 C. 542. Cited. Id., 623; 219 C. 324. Statute not extended to dissolution case. 247 C. 356. Summary process actions are "other civil actions" under Subsec. for purposes of application of the medical treatment records exception to the hearsay rule. 325 C. 394. Medical records that were created in the ordinary course of diagnosing, caring for and treating a patient are admissible under Subsec. even if there was no opportunity to cross-examine the records' author, and to the extent *Rhode v. Milla*, 287 C. 731, and *Millium v. New Milford Hospital*, 310 C. 711, suggest that an opportunity for cross-examination is absolute prerequisite for admission of medical records prepared for use in diagnosis, care and treatment of a patient, such proposition is disavowed. 339 C. 495.

Cited. 2 CA 167; 12 CA 632; 38 CA 628; 45 CA 165; Id., 248; 47 CA 46. No adverse inference concerning use of written medical reports is permitted in court's charge to the jury. 65 CA 776. Section does not require that bill for treatment accompany a medical report admitted into evidence; requirements under section re admissibility of report were met where there was evidence that the signatory psychologist had treated the patient and had signed the report. 80 CA 111. Subsec. applies to document on a physician's letterhead, signed by such physician, who is plaintiff's treating physician; plaintiff is not required to lay a foundation under the business record exception in Sec. 52-180. 84 CA 667. Where a party seeks to offer an expert's reports or records into evidence, it is improper for the court to assist in precluding the deposition of an expert. 129 CA 81; judgment affirmed, see 310 C. 711. Medical records authored by a primary care provider who was prohibited from providing any opinion or expert testimony by 38 CFR 14.808, and therefore unavailable for cross-examination at any time, should not have been admitted into evidence. 190 CA 449; judgment reversed, see 339 C. 495.

Cited. 39 CS 301.

Sec. 52-174a. Admissibility of reports or bills re pregnancy, childbirth or genetic or blood testing as business record.

In any action, petition or proceeding under chapters 815j, 815y and 816, any reports or bills related to pregnancy, childbirth or genetic or blood testing, shall be admissible into evidence as a business record without the need of further foundation, provided any such report or bill is certified to be the original or a copy thereof by the creator or custodian of such report or bill and shall constitute prima facie evidence of amounts incurred for such services or tests. The use of any such report or bill in lieu of actual testimony shall not give rise to any adverse inference concerning the testimony of the creator of the record. This section shall not be construed to prohibit any party or the court from calling any such medical practitioner as a witness.

(June 18 Sp. Sess. P.A. 97-7, S. 18, 38.)
History: June 18 Sp. Sess. P.A. 97-7 effective July 1, 1997

LIST OF EXHIBITS
JD-CL-28 Rev. 2-21

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

Instructions

Attorneys and Self-Represented Parties

For trials:
Before the first day of jury selection or before the first day of a court trial, get exhibit stickers from the civil clerk's office.

Fill out this form as follows:
1. Fill in the Type of Proceeding, Name of Case, and Docket Number sections at the top of the form.
2. For each plaintiff's exhibit, fill in a description of the exhibit. Indicate whether the exhibit is Full (the parties agree) or ID (Identification) (the opposing party objects) by checking the appropriate box. Put a Plaintiff's Exhibit sticker on an open area of the exhibit. The sticker must include the docket number of the case and the exhibit number (the number on the form where the exhibit is described).
3. For each defendant's exhibit, fill in a description of the exhibit. Indicate whether the exhibit is Full (the parties agree) or ID (Identification) (the opposing party objects) by checking the appropriate box. Put a Defendant's Exhibit sticker on an open area of the exhibit. The sticker must include the docket number of the case and the exhibit letter (the letter on the form where the exhibit is described).
4. If there are more than 26 plaintiff's exhibits or more than 26 defendant's exhibits, use the *List of Exhibits (continued)*, form JD-CL-28A, continuing with the next number or letter (e.g., AA, BB, CC, etc.). Put the next number or letter in the same column as the description of the exhibit.
5. On or before the first day of evidence, give the form to the courtroom clerk. If you are an attorney, your exhibits must be submitted to the court electronically. Electronic exhibits may only be submitted in PDF format. Therefore, exhibits not in PDF format (e.g., spreadsheets, jpegs, etc.) must either be converted to PDF format, or submitted on paper. If you are representing yourself, you may submit exhibits electronically at your option by enrolling in E-Services and obtaining electronic access to your case.
6. In civil and family cases, you must give a copy of all exhibits to the opposing counsel or opposing self-represented party. Before submitting exhibits to the court, you should redact (take out) any personal identifying information (see Section 4-7 of the Connecticut Practice Book for a description of personal identifying information), unless the information is required to establish a fact at issue in your case.

Clerks

1. At the commencement of the trial obtain the List of Exhibits from the attorneys or self-represented party.
2. Complete the information at the top of the form.
3. As each exhibit is introduced, indicate on the exhibit list, under the appropriate column (Plaintiff, Defendant, State, Court) whether the exhibit is Full or ID by placing an "F" or "ID" in the column next to the description of the exhibit, and indicate whether the exhibit is an electronic or physical exhibit. If it is a physical exhibit, write the docket number, date, and your initials, and whether the exhibit is Full or ID on the exhibit sticker. All exhibits so marked must be retained by the clerk. If it is an electronic exhibit, mark the exhibit as Full or ID in E-filing. If an exhibit is not admitted during the trial, the column should be marked "N/A" indicating that the exhibit was not admitted into evidence. At the end of the trial be sure each exhibit has one of these markings.
4. Be sure all physical Full or ID exhibits have been given to the clerk for keeping until after judgment is entered and the appeal period has expired. Store in appropriate location as instructed by the Chief Clerk. Make appropriate entries in the Edison Exhibit Log.

Print Form Reset Form

LIST OF EXHIBITS
JD-CL-28 Rev. 2-21

STATE OF CONNECTICUT
SUPERIOR COURT

LISTEXH

Type of Proceeding: _____ Date(s) of Proceeding: _____

☐ All Exhibits are electronic ☐ Exhibits are both electronic and physical ☐ All Exhibits are physical

Court ☐ Geographic Area number _____ ☐ Judicial District of: _____ ☐ Housing Session | At *(Town)*

Name of Case | Name(s) of Clerk(s)

Name of Judge | Name(s) of Court Reporter(s) | Docket Number

Plaintiff's Exhibits				Entered as Full or ID	Defendant's Exhibits				Entered as Full or ID
☐ ID ☐ Full	1.		☐ Electronic ☐ Physical		☐ ID ☐ Full	A.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	2.		☐ Electronic ☐ Physical		☐ ID ☐ Full	B.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	3.		☐ Electronic ☐ Physical		☐ ID ☐ Full	C.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	4.		☐ Electronic ☐ Physical		☐ ID ☐ Full	D.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	5.		☐ Electronic ☐ Physical		☐ ID ☐ Full	E.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	6.		☐ Electronic ☐ Physical		☐ ID ☐ Full	F.		☐ Electronic ☐ Physical	
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☐ ID ☐ Full	22.		☐ Electronic ☐ Physical		☐ ID ☐ Full	V.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	23.		☐ Electronic ☐ Physical		☐ ID ☐ Full	W.		☐ Electronic ☐ Physical	
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Plaintiff's physical exhibits returned to | Date | Defendant's physical exhibits returned to | Date

Receipt acknowledged *(Attorney for Plaintiff)* | Date | Receipt acknowledged *(Attorney for Defendant)* | Date

Print Form

Reset Form

Name of case	Docket number

State's Exhibits				Entered as Full or ID
☐ ID ☐ Full	**1.**		☐ Electronic ☐ Physical	
☐ ID ☐ Full	**2.**		☐ Electronic ☐ Physical	
☐ ID ☐ Full	**3.**		☐ Electronic ☐ Physical	
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Court's Exhibits				Entered as Full or ID
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☐ ID ☐ Full	**Z.**		☐ Electronic ☐ Physical	

State's physical exhibits returned to	Date
Receipt Acknowledged	Date

Print Form

Reset Form

Sec. 4-7. Personal Identifying Information To Be Omitted or Redacted from Court Records in Civil and Family Matters

(a) As used in this section, "personal identifying information" means: an individual's date of birth; mother's maiden name; motor vehicle operator's license number; Social Security number; other government issued identification number except for juris, license, permit or other business related identification numbers that are otherwise made available to the public directly by any government agency or entity; health insurance identification number; or any financial account number, security code or personal identification number (PIN). For purposes of this section, a person's name is specifically excluded from this definition of personal identifying information unless the judicial authority has entered an order allowing the use of a pseudonym in place of the name of a party. If such an order has been entered, the person's name is included in this definition of "personal identifying information."

(b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or paper format, unless otherwise required by law or ordered by the court. The party filing the redacted documents shall retain the original unredacted documents throughout the pendency of the action, any appeal period, and any applicable appellate process.

(c) The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The court or the clerk of the court need not review any filed document for compliance with this rule.

(Adopted June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 15, 2012, to take effect Jan. 1, 2013; amended June 12, 2015, to take effect Jan. 1, 2016.)

REQUEST TO BRING ITEMS INTO THE COURTHOUSE
JD-CL-90 Rev. 9-18
P.B. § 1-10

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

COURT USE ONLY
AVREQ

Instructions to the party making the request:
*Print or type all information requested and file with the **Clerk's Office.** If granted, present signed request to the Marshal at the courthouse entrance on the date(s) of the hearing or trial.*
*Do **not** use this form for requests for an accommodation under the Americans with Disabilities Act (ADA), as the contents of this form are not confidential. For ADA accommodations, please use the Request For Accommodation By Persons With Disabilities, form number JD-ES-264.*

Instructions to the Clerk:
After the request is reviewed by the judge or magistrate, ensure that the original is coded, if applicable, and placed in the court file. Provide a copy to the party making the request and, if granted, a copy to the Chief Judicial Marshal or his or her designee.

Case Information

Name of case *(First-named plaintiff v. First-named defendant)*	Docket number

Address of court *(No., Street and Town)*

Name of Judge or Magistrate presiding over trial or hearing	Date(s) of trial or hearing

Request

I am the:

☐ Plaintiff ☐ Defendant ☐ Attorney for plaintiff/State ☐ Attorney for defendant ☐ Other (*Specify*): _____

I request permission to bring the following item(s) into the courthouse for the hearing or trial indicated above:

☐ Audio/visual equipment *(Specify)*: ☐ Large and/or unusual exhibits *(Specify)*: ☐ Other *(Specify)*:

_____ _____ _____

_____ _____ _____

_____ _____ _____

I need to bring the item(s) for this hearing/trial for the following reasons:

Signed *(Party making request)*	Name of attorney or self-represented party *(Print)*

Address of party making request	Telephone number

Firm name *(If applicable)*

Juris Number of attorney or law firm *(If applicable)*	Date of request

Certification

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date)_____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was mailed or delivered to*

*If necessary, attach additional sheet or sheets with name and address which the copy was mailed or delivered to.

Signed *(Signature of filer)* ▶	Print or type name of person signing	Date signed

Mailing address *(Number, street, town, state and zip code)*	Telephone number

Order

The request to bring the item(s) listed above into the courthouse above having been considered, it is hereby ordered:

Name of Judge/Magistrate *(Print)*	Signature	Date of Order

Print Form Reset Form

6.1 Verdict Form – Simple Apportionment of Negligence (Plaintiff)

Revised to January 1, 2008

CV 06 1234567	SUPERIOR COURT
MARY PLAINTIFF	JUDICIAL DISTRICT OF
VS.	NEW HAVEN
THOMAS TORTFEASOR	AUGUST 9, 2007

VERDICT FOR PLAINTIFF

We, the jury, find the issues in favor of the plaintiff MARY PLAINTIFF and against the defendant THOMAS TORTFEASOR and award damages as follows:

SECTION ONE: PERCENTAGE OF NEGLIGENCE

Percentage of total negligence attributable to defendant THOMAS TORTFEASOR and to APPORTIONMENT RESPONDENT, if any:

(If defendant's portion is 0%, use defendant's verdict form.)

THOMAS TORTFEASOR	1a._____%
APPORTIONMENT RESPONDENT	1b._____%
TOTAL	1c._____%

SECTION TWO: FINDINGS OF DAMAGES

Economic Damages:	2a. $ _____
Noneconomic Damages:	2b. $ _____
TOTAL	2c. $ _____

SECTION THREE: ALLOCATION AND AWARD OF DAMAGES

Reduction in damages attributable to the negligence of THOMAS TORTFEASOR, if any: (Multiply line 2c by the percentage on line 1a.)

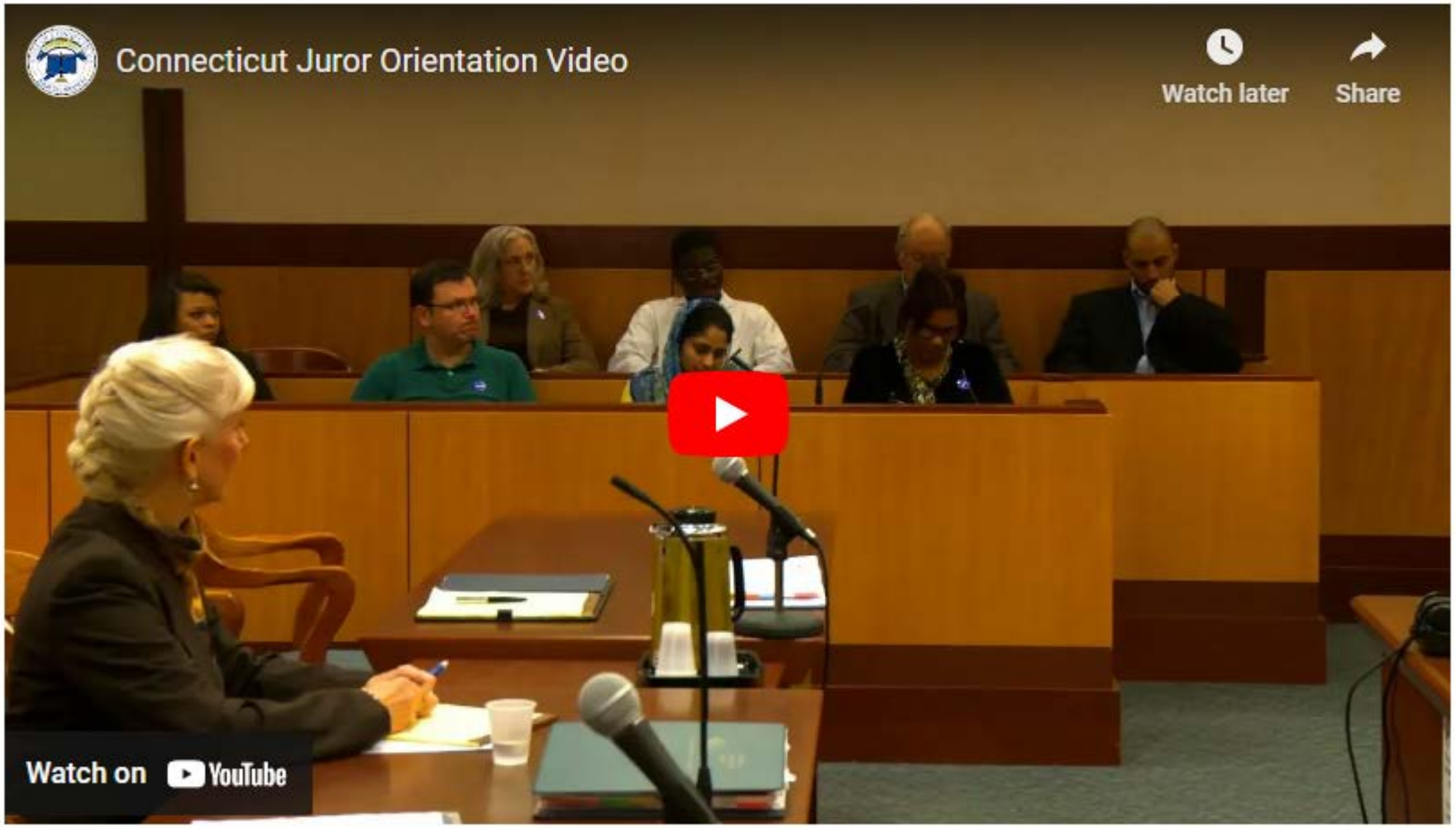
3. $ _____

The above findings and allocations constitute our award of damages to the plaintiff MARY PLAINTIFF against the defendant THOMAS TORTFEASOR.

_____ _____

Date Jury Foreperson

Juror Orientation Video



This video is shown to prospective jurors on the first day of jury service. It gives an overview of the jury process in Connecticut.

Jury Administration

JR52

Court: HHD - HARTFORD
Panel Number: HHD -CRUZ -01

STATE OF CONNECTICUT
ONE DAY / ONE TRIAL JURY SYSTEM
PANEL ASSIGNMENT LIST
08/09/2022

Run Date: 08/09/2022

Name of Judge:

Docket Number: HHD-CV19-6112129-S

Name of Case: Cruz v. Spec

Name of Counsel:

Name of Counsel:

Name	Town	Juror Id.	Challenged Plaintiff/ State	Defendant	Court	Other	Trial Date
[redacted]	HARTFORD	HHD -2022-064-2022073296	PC CC	PC CC	CC	NU T AT	Release
	ENFIELD	HHD -2022-049-2022073336	(PC) CC	PC CC	CC	NU T AT	
	SOUTH WINDSOR	HHD -2022-132-2022073341	PC CC	PC CC	CC	NU T AT	J #1
	ENFIELD	HHD -2022-049-2022073348	PC CC	PC CC	CC	NU T AT	J #2
	GLASTONBURY	HHD -2022-054-2022073349	PC CC	PC CC	CC	NU T AT	
	GRANBY	HHD -2022-056-2022073368	PC CC	PC CC	CC	NU T AT	
	SOUTH WINDSOR	HHD -2022-132-2022073381	PC CC	PC CC	CC	NU T AT	
	WEST HARTFORD	HHD -2022-155-2022073382	PC CC	PC CC	CC	NU T AT	
	WINDSOR	HHD -2022-164-2022073385	PC CC	PC CC	CC	NU T AT	
	HARTFORD	HHD -2022-064-2022073400	PC CC	PC CC	CC	NU T AT	
	MANCHESTER	HHD -2022-077-2022073475	PC CC	PC CC	CC	NU T AT	
	MANCHESTER	HHD -2022-077-2022073485	PC CC	PC CC	CC	NU T AT	
	ENFIELD	HHD -2022-049-2022073520	PC CC	PC CC	CC	NU T AT	
	HARTFORD	HHD -2022-064-2022073523	PC CC	PC CC	CC	NU T AT	
	MANCHESTER	HHD -2022-077-2022073531	PC CC	PC CC	CC	NU T AT	

No. of Peremptory Challenges: ------
No. of Challenges for Cause: ------
No. of Jurors Not Used: ------
No. of Jurors Assigned to Trial: ------

1. What is your date of birth? **1973**

2. Are you a citizen OR permanent legal resident? Permanent legal resident means you are not a US citizen but legally allowed to permanently live in the US. **Yes**

3. Are you a resident of Connecticut? **Yes**

4. If you answered no to question 3, provide your complete address. Otherwise enter N/A. **N/A**

5. Do you still live in CT, but at a different address than on your summons? If yes, visit jud.ct.gov/jury or call 1-844-970-1918. If at court, see the Jury Clerk. **No**

6. What is the highest level of education that you have completed? **Grade 13-17+**

7. What is your marital status? **Single**

8. Please select your gender. **X**

9. Select your race. This is to enforce nondiscrimination in jury selection, is not a prerequisite for qualification, and not needed if you find it objectionable. **Black or African American**

10. Are you Hispanic or Latino? This is to enforce nondiscrimination in jury selection, is not a prerequisite for qualification, and not needed if you find it objectionable. **No**

11. What is your present occupation? **Computer/Technology**

12. By whom are you employed? If retired, provide your former occupation and employer. **net commission inc**

13. If married or party to a civil union, state name, occupation and employer of spouse. If spouse is retired or deceased, give last occupation and employer. **N/A**

14. Have you ever been convicted of a criminal offense, or have a pending criminal charge? Include motor vehicle charges other than parking tickets. **No**

15. If you answered yes to question 14, state the offense, date and result. **N/A**

16. Have you ever been party to a civil court action of any kind? **No**

17. If you answered yes to question 16, state details briefly. **N/A**

18. Do any of the following apply to you or any member of your family or household? (A) Related to an attorney at law (B) Ever held public office (C) Ever been connected with any police department, court or other law enforcement agency (D) Ever been connected with the business of investigating claims. **Yes**

19. If you answered yes to question 18, state details. **My brother is an Attorney**

20. Have you ever served on a jury or grand jury, state or federal? **No**

21. If you answered yes to question 20, state the location, approximate date that you served, and whether the jury heard criminal, civil or both.

JD-JA-5A Rev. 10-21
C.G.S. § 51-232; P.A. 21-170

CONFIDENTIAL JUROR QUESTIONNAIRE

PLEASE PRINT

Please complete and bring with you to court

Juror ID: HHD -2022-132-2022073341

The information which you provide will be used by the judge, lawyers, and litigants during the selection of a jury and will be held confidential unless the judge orders that it be disclosed.

Name	Date of birth	Gender	Are you a resident of Connecticut?
	89	☑ Male ☐ Female ☐ X	☑ Yes ☐ No

Are you a citizen OR permanent legal resident of the United States? ("Permanent legal resident" means you are not a US citizen but you are legally allowed to permanently live in the United States) ☑ Yes ☐ No

Education *(select highest level completed)* ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ 11 ☐ 12 ☐ 13 ☐ 14 ☐ 15 ☑ 16 ☐ 17+

Marital status ☑ Single ☐ Married ☐ Party to civil union ☐ Divorced / separated ☐ Widow or widower

What is your present occupation? Social Worker

By whom are you employed? State of CT - DCF

Former occupation *(if retired)* N/A

Former employer *(if retired)* N/A

If married, or a party to a civil union, state the full name, occupation and employer of spouse
N/A

If spouse is retired or deceased, state last occupation and employer
N/A

If you have ever been convicted of a criminal offense or have a pending charge of same, state the offense, date, and result below. Include motor vehicle charges other than parking tickets.

Have you ever been party to a civil court action of any kind? ☐ Yes ☑ No
If "Yes", state details briefly.

Indicate if any of the following apply to you or any member of your family or household:
- ☐ (A) Related to an attorney at law
- ☐ (B) Ever held public office
- ☐ (C) Ever been connected with any police department, court or other law enforcement agency
- ☐ (D) Ever been connected with the business of investigating claims

If you selected any of the above, state details:

Have you ever served on a jury or grand jury, State or Federal? ☐ Yes ☑ No

If "Yes", state place: _____ Approximate date _____

Indicate whether the jury you previously served on heard: ☐ Civil ☐ Criminal ☐ or both

Pursuant to General Statutes section 51-232(c) information concerning race and ethnicity is required solely to enforce nondiscrimination in jury selection. The furnishing of this information is not a prerequisite to being qualified for jury service. This information need not be furnished if you find it objectionable to do so.

Indicate Race:
- ☐ Alaska Native
- ☐ Asian American
- ☐ Black or African American
- ☐ Native American
- ☐ Native Hawaiian
- ☐ Other Pacific Islander
- ☐ White American
- ☐ Other

Do you identify as Hispanic or Latino? ☑ Yes ☐ No

Notice: Any false written statement made by you which you do not believe to be true and which is intended to mislead a public servant in the performance of an official function is punishable by a fine and/or imprisonment.

8/9/22
Date

IMPORTANT: Please Complete and Bring with You to Court

IMPORTANT: Please Complete and Bring with You to Court

THE LAW OF JURY SELECTION

General Statutes § 52-215a. Jury of six in civil actions:

"On the trial of any civil action to a jury, the trial shall be to a jury of six."

General Statutes § 51-243. Alternate jurors in civil cases

"(a) In any civil action to be tried to the jury in the Superior Court, if it appears to the court that the trial is likely to be protracted, the court may, in its discretion, direct that, after a jury has been selected, two or more additional jurors shall be added to the jury panel, to be known as "alternate jurors". . . ."

General Statutes § 51-240. Examination of jurors in civil actions

"(a) In any civil action tried before a jury, either party shall have the right to examine, personally or by his counsel, each juror outside the presence of other prospective jurors as to his qualifications to sit as a juror in the action, or as to his interest, if any, in the subject matter of the action, or as to his relations with the parties thereto.

(b) If the judge before whom the examination is held is of the opinion from the examination that any juror would be unable to render a fair and impartial verdict, the juror shall be excused by the judge from any further service upon the panel, or in the action, as the judge determines.

(c) The right of examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the action."

The Court's Wide Discretion

" 'The court has **wide discretion** in conducting the voir dire ... and the exercise of that discretion will not constitute reversible error unless it has clearly been abused or harmful prejudice appears to have resulted.' " *Bleau v. Ward,* 221 Conn. 331, 340, 603 A.2d 1147 (1992), quoting *State v. Dahlgren,* 200 Conn. 586, 601, 512 A.2d 906 (1986). "[I]n exercising its discretion, the court should grant such latitude as is reasonably necessary to accomplish the twofold purpose of voir dire: to permit the trial court to determine whether a prospective juror is qualified to serve, and to aid the parties in exercising their right to peremptory challenges." (Internal quotation marks omitted.) ***626** *State v. Couture,* 218 Conn. 309, 318, 589 A.2d 343 (1991). In conducting the voir dire examination, however, the trial court's discretion is not absolute. Voir dire should be limited to those questions " 'which are pertinent and proper for testing the capacity and competency of the juror ... and which are neither designed nor likely to plant prejudicial matter in [the jurors' minds].' " *Bleau v. Ward,* supra, quoting *Duffy v. Carroll,* 137 Conn. 51, 57, 75 A.2d 33 (1950)." State v. Skipper, 228 Conn. 610, 625–26, 637 A.2d 1101, 1109 (1994), abrogated by State v. James K., 347 Conn. 648, 299 A.3d 243 (2023)

Address the tough issues. Race included.

"Whether or not a venireman harbored any prejudice against Negroes as a race had, under the circumstances of the case at bar, a very direct and peculiarly important bearing on his qualification to sit as a juror. It was of vital importance to the defendant that if any such prejudice existed it be brought to light. Only so could he intelligently challenge for cause or exercise his right of peremptory challenge. The rulings excluding from the examination on the voir dire of all questions concerning race prejudice were an abuse of the court's discretion. Since they prevented the defendant from exercising his rights under the statute, they were prejudicial to him. Consequently, the rulings constitute reversible error." State v. Higgs, 143 Conn. 138, 144, 120 A.2d 152, 155 (1956).

PEREMPTORY CHALLENGES

Conn. Const. art. I, § 19. Trial by jury. Challenging of jurors

"Sec. 19. [As amended] The right of trial by jury shall remain inviolate, the number of such jurors, which shall not be less than six, to be established by law; but no person shall, for a capital offense, be tried by a jury of less than twelve jurors without his consent. In all civil and criminal actions tried by a jury, the parties shall have the right to challenge jurors peremptorily, the number of such challenges to be established by law. The right to question each juror individually by counsel shall be inviolate."

General Statutes § 51-241. Peremptory challenges in civil actions

"On the trial of any civil action to a jury, each party may challenge peremptorily three jurors. Where the court determines a unity of interest exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a "unity of interest" means that the interests of the several plaintiffs or of the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs."

Speak now or forever hold your peace.

"In DeCarlo v. Frame, 134 Conn. 530, 535, 58 A.2d 846, 848, 3 A.L.R.2d 496, we reaffirmed the rule that '[w]hen the examination is on the voir dire, a party has no right ***597** to a peremptory challenge **after he has accepted a juror** upon the conclusion of his examination; but the court, where the ends of justice so require, may in its discretion permit such a challenge to be made at any time before the jury is sworn.' See also State v. Taborsky, 147 Conn. 194, 213, 158 A.2d 239; State v. Potter, 18 Conn. 166, 176; cf. Bluett v. Eli Skating Club, 133 Conn. 99, 104, 48 A.2d 557. " Walczak v. Daniel, 148 Conn. 592, 596–97, 172 A.2d 915, 917 (Conn. 1961)

General Statutes § 51-243. Alternate jurors in civil cases

"(a) . . . In any case when the court directs the selection of alternate jurors, each party may peremptorily challenge four jurors. Where the court determines a unity of interest exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this subsection, a "unity of interest" means that the interests of the several plaintiffs or of the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs."

CAUSE CHALLENGES

Principal Challenge or Challenge for "Principal Cause"

- Absolute disqualification or bias, leaving no discretion to the court.
- Relationship to parties, arbitrator, interest in outcome, connection to entity, LL or tenant, prior conversations with either party.

"Challenge to the Favor" / "Challenges for Favor"

- Bias in favor of one party or another.
- Probable circumstances of suspicion
- Friendships, enmity, facts showing bias but not presumed disqualified.
- "Reason to believe that bias or prejudice in fact existed to such an extent that the prospective veniremen could not render an impartial decision, disqualified."

"In proving actual jury bias, party challenging for cause must show that juror's state of mind is fixed and settled and not a mere impression. Johnson v. New Britain General Hospital, 203 Conn. 570, 525 A.2d 1319 (1987).

"Challenge for cause in medical malpractice case was not warranted, despite juror's expressed antipathy to both nature of certain malpractice suits brought in recent years and size of awards, where juror made clear that his antagonism was a generalized opinion held in the abstract and that it would not enter into his consideration of a specific case, and juror never indicated any antagonism toward plaintiff." Johnson v. New Britain General Hosp., 203 Conn. 570, 525 A.2d 1319 (1987); McCarten v. Connecticut Co., 103 Conn. 537, 542–543, 131 A. 505, 507–508 (1925).

CONNECTICUT PRACTICE BOOK:

Sec. 16-3. Preliminary Proceedings in Jury Selection

"The judicial authority shall cause prospective jurors to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall require counsel to make a preliminary statement as to the names of other counsel with whom he or she is affiliated and other relevant facts, and shall require counsel to disclose the names, and if ordered by the judicial authority, the addresses of all witnesses counsel intends to call at trial. The judicial authority may excuse any prospective juror for cause."

Sec. 16-4. Disqualification of Jurors and Selection of Panel

(a) A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair this person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or being hard of hearing.

(b) The clerks shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct.

(c) The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required of the panel, designate by lot those who shall compose the panel."

Sec. 16-5. Peremptory Challenges

"Each party may challenge peremptorily the number of jurors which each is entitled to challenge by law. Where the judicial authority determines a unity of interests exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the judicial authority may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a "unity of interest" means that the interests of the several plaintiffs or the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs."

Sec. 16-6. Voir Dire Examination

“Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to the person's interest, if any, in the subject matter of the action, or as to the person's relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The right of such examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the trial.”

DOCKET NO. HHD-CV18-5051489-S	:	SUPERIOR COURT
JUAN CRUZ ET AL	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
SPEC PERSONNEL, LLC ET AL	:	JULY 22, 2022

PLAINTIFFS' MOTION TO REQUEST ADDITIONAL PEREMPTORY CHALLENGES AND ALTERNATIVE EXERCISE OF PEREMPTORY CHALLENGES

As the Court is aware, jury selection is scheduled to begin on July 12, 2022. Connecticut General Statute §51-243 and Connecticut Practice Book §16-5 set forth in pertinent part: "in all civil actions the total number of peremptory challenges allowed to the Defendant or Defendants shall not exceed twice the number of peremptory challenges allowed to the Plaintiff or Plaintiffs". In the present action, the Defendants would presumably be entitled to 4 peremptory challenges each, given that alternate jurors are expected to be added to the jury panel under Connecticut General Statutes §51-243. The Defendants collectively therefore have 12 peremptory challenges to the Plaintiffs' 4 peremptory challenges. To ensure that there will not be a gross imbalance between the Plaintiffs and the Defendants, the Plaintiffs Juan Cruz and Emily Lopez-Cruz respectfully request that the Court, in its discretion, grant the Plaintiffs 8 peremptory challenges. Kalams v. Giacchetto, 268 Conn. 244, 263-264 (2004).

ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

ASSIGNED FOR JURY SELECTION: AUGUST 2, 2022

The purpose of peremptory challenges is to help secure an impartial jury. Carrano v. Yale-New Haven Hospital, 279 Conn. 622, 639 (2006). Peremptory challenges are not an end in themselves, but rather a means to an end: an impartial jury. Carrano, Id. Plaintiffs' counsel is attempting to secure additional peremptory challenges to allow counsel to reject certain prospective jurors whom counsel believes, but cannot demonstrate, harbor latent predisposition against the Plaintiffs. Obviously, the goal is a fair and impartial jury for all parties. The Practice Book, Connecticut General Statutes and case law support the Plaintiffs' position that it would be a substantial injustice to have such a disparate set of peremptory challenges for the defense. Allowing the Plaintiffs an additional 8 peremptory challenges would make voir dire in this case an even playing field.

In complex cases similar to this one, involving multiple defendants, consortium claims, and complex legal issues - trial courts have consistently leveled the playing field on peremptory challenges to ensure justice in jury selection. See Exhibit A attached hereto with docket information and associated trial court orders on this issue. Mr. Cruz was paralyzed and Mrs. Lopez-Cruz had her life changed forever as she was thrust into the role of caregiver, the plaintiffs have waited nearly 5 years for their day in court, and deserve nothing less than a fair trial. In order to have a fair trial there must be fairness in jury selection. The plaintiffs are asking for nothing more or nothing less than other trial judges have entered in similar matters. Any other result would lead counsel to be at a loss on how to explain to his clients why they were treated differently than other similarly situated plaintiffs.

Plaintiffs' counsel is requesting a minimum of 8 peremptory challenges. It is bedrock Connecticut Supreme Court law that a parent who brings an action on behalf of a minor and in the same action has a separate count on behalf of themselves is entitled to 8 peremptory strikes. Krause v. Almor Homes, Inc., 147 Conn. 333, 335–36 (Conn. 1960). The same reasoning the court applied in Krause to a parent and child having separate peremptory strikes certainly applies to a husband and wife bringing a negligence action and a loss of consortium claim.

The Court has discretion to order this during the voir dire process. No state in the union or any court in the federal system is more liberal in the conduct of voir dire than the State of Connecticut. State v. Marsh, 168 Conn. 520, 528 (1975). It is within the Court's power to fashion a remedy that would be fair to all parties.

THE PLAINTIFFS,
JUAN CRUZ and EMILY CRUZ:

Ryan McKeen
Connecticut Trial Firm, LLC
437 Naubuc Avenue
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Tel: (860) 471-8333
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Juris No. 436558

EXHIBIT A

FST-CV18-6036046-S RUSSO, MICHELE v. 2061 WEST MAIN LLC

Prefix: FS3 **Case Type:** T02 **File Date:** 04/20/2018 **Return Date:** 05/22/2018

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help

To receive an email when there is activity on this case, click here.

Information Updated as of: 07/27/2022

Case Information

Case Type: T02 - Torts - Defective Premises - Private - Snow or Ice
Court Location: STAMFORD JD
List Type: JURY (JY)
Trial List Claim: 06/20/2019
Last Action Date: 07/27/2022 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**MICHELE RUSSO** **Attorney:** WOCL LEYDON LLC (106151) 80 FOURTH STREET STAMFORD, CT 06905	File Date: 04/20/2018	Plaintiff
P-02	**RON RUSSO** **Attorney:** WOCL LEYDON LLC (106151) 80 FOURTH STREET STAMFORD, CT 06905	File Date: 06/25/2018	Plaintiff
P-03	VCA ANTECH,INC. ***REMOVED***		Plaintiff - Intervening
P-04	COMPASS GROUP ***REMOVED***		Plaintiff - Intervening
P-05	**VICAR OPERATING,INC.** **Attorney:** NUZZO & ROBERTS LLC (019193) ONE TOWN CENTER PO BOX 747 CHESHIRE, CT 06410	File Date: 10/23/2020	Plaintiff - Substituted
D-01	**2061 WEST MAIN LLC** **Attorney:** FORMICA P.C. (431099) 195 CHURCH STREET FLOOR 11 NEW HAVEN, CT 06510	File Date: 02/08/2019	Defendant
D-02	**VCA ANIMAL HOSPITALS,INC.("VCA") AS A THIRD-PARTY DEFENDANT** **Attorney:** ANTHONY B CORLETO (401167) 500 MAMARONECK AVE. SUITE 503 HARRISON, NY 10528	File Date: 08/13/2021	Defendant
D-03	**WEST HIGH SERVICE STATION,INC.** **Attorney:** WOOD SMITH HENNING & BERMAN (437620) 40 RICHARDS AVENUE 3RD FLOOR NORWALK, CT 06854	File Date: 01/04/2022	Defendant

ORDER 443502

DOCKET NO: FSTCV186036046S

SUPERIOR COURT

RUSSO, MICHELE
V.
2061 WEST MAIN LLC

JUDICIAL DISTRICT OF STAMFORD
AT STAMFORD

7/13/2022

ORDER

ORDER REGARDING:
07/12/2022 273.00 REQUEST

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Plaintiffs motion is granted to the extent it seeks the same number of challenges granted the defendants in total. The plaintiffs further request for relief concerning alternate use of peremptory challenges is granted.

Judicial Notice (JDNO) was sent regarding this order.

443502

Judge: ROBERT G GOLGER
Processed by: Amy Melashvili

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

UWY-CV11-6014102-S FARRELL, MARY BETH Et Al v. JOHNSON & JOHNSON Et Al

Prefix: X06 **Case Type:** T90 **File Date:** 11/22/2011 **Return Date:** 12/27/2011

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help

To receive an email when there is activity on this case, click here.

Information Updated as of: 07/27/2022

Case Information

Case Type: T90 - Torts - All other
Court Location: WATERBURY JD
List Type: JURY (JY)
Trial List Claim: 02/25/2014
Last Action Date: 04/23/2021 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 07/13/2016
Disposition: JUDGMENT ON VERDICT FOR DEFENDANT
Judge or Magistrate: HON TERENCE ZEMETIS

Party & Appearance Information

Party		No Fee Party	Category
P-01	**MARY BETH FARRELL** **Attorney:** WOCL LEYDON LLC (106151) 80 FOURTH STREET STAMFORD, CT 06905	File Date: 11/22/2011	Plaintiff
P-02	**VINCENT FARRELL** **Attorney:** WOCL LEYDON LLC (106151) 80 FOURTH STREET STAMFORD, CT 06905	File Date: 11/22/2011	Plaintiff
D-50	JOHNSON & JOHNSON *REMOVED*		Defendant
D-51	ETHICON INC. *REMOVED*		Defendant
D-52	ETHICON WOMEN'S HEALTH AND UROLOGY *REMOVED*		Defendant
D-53	GYNECARE A DIVISION OF ETHICON INC. *REMOVED*		Defendant
D-54	AMERICAN MEDICAL SYSTEMS INC. *REMOVED*		Defendant
D-55	STAMFORD HEALTH SYSTEM INC. D/B/A STAMFORD HOSPITAL *REMOVED*		Defendant
D-56	**BRIAN J HINES M.D.** **Attorney:** HEIDELL PITTONI MURPHY & BACH LLP (103041) 855 MAIN STREET SUITE 1100 BRIDGEPORT, CT 06604	File Date: 12/28/2011	Defendant
D-57	**UROGYNECOLOGY AND PELVIC SURGERY LLC** **Attorney:** HEIDELL PITTONI MURPHY & BACH LLP (103041) 855 MAIN STREET SUITE 1100 BRIDGEPORT, CT 06604	File Date: 03/02/2012	Defendant
O-01	FILE ACCESS *REMOVED*		Witness

ORDER 428419

DOCKET NO: UWYCV116014102S

SUPERIOR COURT

FARRELL, MARY BETH Et Al
V.
JOHNSON & JOHNSON Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

11/24/2015

ORDER

ORDER REGARDING:
10/26/2015 718.00 MOTION IN LIMINE

The foregoing, having been considered by the Court, is hereby:

ORDER:

The plaintiffs are allowed the same number of peremptory challenges as the defendants: a total of twelve (12) peremptory challenges. These peremptory challenges are allowed pursuant to General Statutes §§ 51-241 and 51-243 and Kalams v. Giacchetto, 268 Conn. 244, 263-264 (2004). The court requires the selection of six regular jurors and 4 alternate jurors given the estimated length of trial. The order of exercise of challenges shall be: plaintiffs/defendants, defendants/plaintiffs, plaintiffs/defendants, with all defendants consecutively expressing their choice to challenge or not challenge.

Judicial Notice (JDNO) was sent regarding this order.

428419

Judge: TERENCE ZEMETIS

CERTIFICATION

I certify that a copy of these documents were mailed or delivered electronically or non-electronically on the above date to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

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Purpose of Opening Statement

The purpose of an opening statement: "[C]ounsel for any party shall be permitted to make a brief opening statement to the jury in jury cases, or in a court case at the discretion of the presiding judge, to apprise the trier in general terms as to the nature of the case being presented for trial. The presiding judge shall have discretion as to the latitude of the statements of counsel." *Practice Book Section 15-6*. There is no constitutional right to make an opening statement, the court retains discretion whether to allow opening statements. *State v. Ridley, 7 Conn App 503 (1986); see also, Pasiakos v. BJ's Wholesale Club Inc., 93 Conn App 641 (2006).*

United States v. Forbes, 2005 WL 8146315 Oct. 13, 2005. "An **opening statement** has a narrow **purpose** and scope. It is to state what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole; it is not an occasion for argument."

"'To make statements which will not or cannot be supported by proof is, if it relates to significant elements of the case, professional misconduct. Moreover, it is fundamentally unfair to an opposing party to allow an attorney, with the standing and prestige inherent in being an officer of the court, to present to the jury statements not susceptible of proof but intended influence the jury in reaching a verdict.'" *Id., (citation omitted).*

"Similarly, the American Bar Association's Standards for Criminal Justice state that an attorney's opening statement 'should be confined to a brief statement of the issues in the case and evidence the lawyer intends to offer which the lawyer believes in good faith will be available and admissible.' A.B.A. Standard for Crim. Just. § 4-7.4." *Id.*

Case Law

State v. Gerald A 183 Conn App 82 (2018). Ruled improper comments during an opening statement to explain legal concepts such as the presumption of innocence, the burden of proof, and to contrast the burden of proof beyond a reasonable doubt with the more-probable-than-not burden of proof. That discussion is appropriate for closing arguments but not opening statements.

Leigh v. Schwartz, 2016 WL 1315611 (March 7, 2016). Comments made by counsel during opening statements may open the door to the admission of otherwise inadmissible evidence.

Bligh v. Travelers Home and Marine Insurance Company, 154 Conn App 564 (2015). In an underinsured motorist lawsuit, plaintiff's counsel told the jury in closing argument that she was offended by a remark made by defense counsel during opening statements. The court sustained the defendant's objection to the comment by plaintiff's counsel. The appellate court held the objection was proper. Expression of counsel's personal opinions are improper. Personal attacks on parties and opposing counsel are improper. It is improper for counsel to make arguments that are not supported by evidence in the record.

Sabatasso v. Hogan, 91 Conn App 808 (2005). The trial court properly prohibited plaintiff's counsel from suggesting in opening statement that the plaintiff might have surgery for her

injuries in the future. The plaintiff's complaint and expert witness disclosures did not contain any mention of future surgery.

Murray v. Taylor 65 Conn App 300 (2001). This case arose out of a sledding accident at the Woodbury Ski & Racket Facility. Both the plaintiff and the defense made improper statements and claims, and offered personal opinions, beginning in opening statements and continuing throughout the trial. The trial court refused to set aside a plaintiff's verdict and the case went up on appeal. The appellate court discussed the improper remarks of counsel, finding that the improper comments had minimal effect on the outcome of the trial. In reading the opinion, one might conclude the appellate court felt that there was a pox on both houses. The opinion discusses a variety of improper arguments, including the "golden rule" argument. As part of its rational for turning away some of the appellate claims about improper arguments, the appellate court noted the offended party had not objected to certain of the comments during trial.

Naughton v. Hager 29 Conn App 181 (1992). The defendant was a coin dealer and the plaintiff was a printing business. The plaintiff and defendant entered into an agreement whereby the plaintiff would print a book written by the defendant in exchange for a large number of valuable coins. The plaintiff sued the defendant for misrepresenting the value of the coins given under the deal, causing the plaintiff to receive much less in value than the defendant had represented the value to be. The defendant moved for a mistrial after the plaintiff, in his opening statement, said that the defendant had been dismissed from the American Numismatic Association for failing to respond to a complaint. Counsel also referred to the Association as "an organization that apparently oversees coin dealers and people who invest in coins and people who buy coins." Following a plaintiff's verdict, the appellate court upheld the denial of a mistrial for two reasons. First, the defendant made the tactical decision to introduce evidence concerning prior complaints against him. Second, there was ample evidence to support the jury's verdict for the plaintiff.

NO: HHDCR19-6114966-S	:	SUPERIOR COURT
MONDAL, MADHUMITA	:	DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
CLAVETTE, CHRISTOPHER	:	JANUARY 18, 2023

(OPENING STATEMENTS ONLY)

BEFORE THE HONORABLE STUART D. ROSEN, JUDGE

A P P E A R A N C E S:

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Representing the Defendant:

ATTORNEY BRIAN M. PAICE
ATTORNEY MICHAEL S. SELBST
Conway Stoughton, LLC.
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Hartford, CT. 06105

Recorded By:
Selvyn Valencia

Transcribed By:
Selvyn Valencia
Court Recording Monitor
101 Lafayette Street
Hartford, CT. 06106

THE COURT: All right. Those are the opening instructions. The parties will now present their opening statements. We'll hear from the plaintiff's first.

(PAUSE)

THE COURT: Attorney Mahony?

ATTY. MAHONY: Yes, Your Honor.

(PAUSE)

ATTY. MAHONY: May I proceed?

THE COURT: Yes.

ATTY. MAHONY: Good morning, ladies and gentlemen.

This case is about adding insult to injury. The evidence in this case will show that the defendants, Christopher Clavette and APCO Wholesale Distributors, caused serious physical, mental, and emotional injuries to an entire family.

The defendant drove a 4500-pound Trail Blazer into the rear of the plaintiff's vehicle, breaking the bones in her body.

And after, the defendant told everyone that his brakes failed all of a sudden, and then he got rid of the vehicle before anyone could ever question his word.

What brings us to the Hartford County Courthouse here today are the safety rules that protect drivers on the road in this state. These safety rules are

given to you to aid in your decision you will make in this case.

There are four driver safety rules in this case. Rule number one, all drivers must keep their vehicles in good repair to prevent serious injury and harm.

Rule number two, all drivers must keep a safe distance between their vehicle and others to precent serious injury and harm.

Rule number three, all drivers must follow the speed limit to present serious injury and harm.

And four, all drivers must keep their eyes on the road to prevent serious injury and harm.

If you remember one thing, this case is about adding insult to injury.

Now, I'd like to tell you a story of what the defendant did in this case. It's December 20th, 2018, just five days before Christmas. It's rush hour on a dark winter evening. The defendant Christopher Clavette leaves his business, APCO Wholesale Distributers in New Britain. He gets into his company vehicle, a 2009 Chevy Trail Blazer. He pulls out on to West Main Street and begins to driver home to Avon.

As West Main Street turns into New Britain Avenue the defendant approaches a line of cars stopped for a red light. But the defendant does not stop, he does not slow, he does not see. Without so

much as touching his brakes, he slams into the back of a blue Honda Civic, crushing the trunk and passenger compartment.

The force of the collision sends the driver's head forward and backwards and forward again, smashing her face on to the steering wheel, fracturing the bones in her eye, in her nose, and knocking her out cold. This collision is so powerful that the defendant pushes the blue Honda Civic into the car stopped in front of it, causing the Honda's airbags to explode. All at once it's quiet and dark. The unconscious driver with the broken face is our client, Madhumita Mondal.

Now I'd like to tell you what the defendant did next. Police officers and emergency responders arrived on scene. They ask the defendant hat happened. He tells them that his brakes suddenly failed, but he also says something else that's very important. He tells the police that he's had problems with his brakes before, and he'd been meaning to have them looked at.

He sees the damage he caused, the defendant sees both drivers leave in an ambulance, and he is told the plaintiff could have a bad head injury. Because the defendant claims his brakes failed, his vehicle is impounded, and the officer tells him the brakes may need to be inspected.

After the collision four evidence preservation letters are mailed to the defendant at his home and his business instructing him to save the vehicle, so that the brakes can be inspected, and his story can be verified.

The defendant does not get his vehicle inspected. The defendant ignores every letter.

And while the woman in the Honda is still recovering from surgery, a surgery that implanted a metal plate in her face, the defendant gets rid of the car before anyone can learn the truth, a truth you're not here to decide.

Now, let me tell you why we're suing the defendant. Madhumita Mondal, her husband Tanmoy Dey, and their nine-year-old son Ari are suing the defendants Christopher Clavette and APCO Wholesale Distributors because they violated the driver's safety rules that protect drivers on the road in this state.

All drivers must keep their cars in good repair, keep a safe distance between their car and others, follow the speed limit, and keep their eyes on the road to prevent serious injury and harm.

Before we brought this case to you here at trial, we had to determine three very important things. First, we had to determine how this collision happened. We obtained the police report,

the collision photos, we spoke to the responding officers who investigated the collision, we reviewed the dash cam footage from each of the police cruisers, we obtained the materials from the investigation that was conducted by Hanover Insurance. The defendant was their client. We spoke to the Hanover adjuster about their investigation, and the recorded statement that they took from the defendant, Christopher Clavette, within weeks of the incident. We spoke to Christopher Clavette, and we asked him. We asked his colleagues.

The evidence will show that the defendant Christopher Clavette was speeding, distracted, and following too closely. That he was driving recklessly in the moments before the crash.

Second, we had to determine whether this collision was preventable. So we reviewed all of the same materials we just discussed, but most importantly, we listened to the words of Christopher Clavette.

Officer DiMauro of the Plainville Police Department will tell you that the defendant admitted that he knew about the problems with his breaks. You will hear the defendant on the dash cam footage at the scene tell Officer DiMauro that he had problems with his brakes, and he had been meaning to have them looked at. Meaning to have them looked at. You will

also hear him say that he was speeding. Then you will hear the defendant on a recorded statement he gave to his own investigating insurance company saying he was travelling closer to the vehicles in front of him than he should have been. You will see the damage to the plaintiff's vehicle, and how the defendant hit her square on. You'll also see that despite claiming a brake failure, the defendant was able to stop his vehicle neatly in the breakdown lane after the crash.

That's how we determine that the defendant Christopher Clavette was driving recklessly, and this collision was preventable. Its undisputed that my client did anything wrong. The parties agree to that.

Third, we had to determine what injuries were caused by the defendants recklessness. We received Madhumita's medical records, the diagnostic imaging, we spoke with her medical providers, we spoke with those who know her best, and they all pointed to one simple truth, the evidence will show that before this crash Madhumita had no physical, no mental, no emotional issues. This collision caused serious physical, mental, and emotional injuries.

Madhumita's different now, and her injuries are permanent. She lives with a metal plate in her face, constant fear of another collision, physical

limitations that make her question how much longer she can continue working as a nurse, and she has a brain injury that affects her every day of her life. In her roles as a mother to a son, a wife to her husband, and a nurse to her patients. You will also hear that an injury to a mother is an injury to a whole family. You will hear how the defendant's reckless conduct changed three people's lives that December day.

Now, you're probably wondering why, despite everything you've just heard, you're even here at all. You're here because despite the statements the defendants made to investigating officers or to his own investigator or under oath at his deposition, he claims in this case this collision was not preventable and that his brakes suddenly failed.

He is going to ask you to believe that. He will blame the brakes on his vehicle he was asked to save so that it could be inspected. The vehicle which was the only evidence in the world, other than the defendant's word, that would have allowed us to verify his story.

His conduct leave us with a single question. If the defendant's brakes failed, why would he get rid of the one piece of evidence that proves his truth?

And after Clavette tells you that this collision was not preventable, his lawyers will argue, well, if

it was preventable, the plaintiff were not as injured as they claim. They're simply asking for too much.

Now let's turn our attention to the most important reason we're here, which is to assess the damages, the harms, and the losses of Madhumita Mondal, Tanmoy Dey, and their son Ari.

Madhumita or as her friends call her, Madhu, was born in Calcutta, India. She became a nurse because she wanted to help people. She became licensed and started working in India, and then her and her husband came to the United States hoping to make a better life for themselves.

They both went back to school here, graduated, and began successful careers. They had a son, made a house a home, and enjoyed spending time together as a family.

You will learn that before this crash Madhu was a force to be reckoned with. She tried to do it all. She worked full time as a cardiology nurse, went to the gym several nights a week after work, she would tutor her son for hours in the morning, in the evenings, and she still found time to prepare traditional Indian meals most nights for her family.

And on December 20th, 2018 that all changed. It changed because of the defendants. The evidence will show that Madhu suffered bleeding and lacerations to her right eye, mouth, and nose. The crash chipped

teeth, and fractured the bones in her face, nose, and right eye requiring surgeon to implant a metal plate. Madhu suffered injuries to her right shoulder, neck, and back. She suffered a permanent traumatic brain injury, and continued to live with anxiety, depression, and PTSD.

The evidence will show that though her bones have healed, Madhu has not. The symptoms she continues to live with affect her ability to be the mother, the wife, and the nurse that she was before. She thinks about this crash every time she looks in the mirror and sees the permanent scar under her eye and on her nose. These symptoms and these injuries continue to affect her and will for the rest of her life.

Her injuries and her symptoms also affect her husband, Tanmoy, and their son, Ari, which is why they are a part of this case too.

One thing that didn't change after the collision, Madhu still tries to do it all. But no matter how much she tries, she is very limited by her injuries. The injuries force her to make choices each day about whether she will be the best mother, the best wife, or the best nurse because she can't be all three at the same time anymore.

Ladies and gentlemen, at the end of this case you will be asked to make decisions that will provide

accountability and closure for everyone, important decisions that will affect the rest of our clients' lives, decisions that will enable Madhu to finally undergo the treatment she needs, decisions to help her family heal. Thank you.

THE COURT: All right. Thank you, Attorney Mahony. Attorney Paice?

ATTY. PAICE: Thank you, Your Honor.

(PAUSE)

ATTY. PAICE: Ladies and gentlemen, Your Honor, good morning.

As you heard, my name is Brian Paice. And at me at counsel's table is Michael Selbst and my client Christopher Clavette seated at the end there.

We have the privilege of representing Christopher Clavette int his lawsuit. Chris is a lifetime resident of Connecticut. Currently he is living in Avon with his wife and his daughter, Madison.

We also have the privilege of representing Chris' family business of 40 years, ABCO Wholesale Distributors. ABCO is located in New Britain, Connecticut, and provides household cleaning supplies and wholesale cleaning supplies.

You'll hear in the trial that ABCO was started back in the 80s by Chris' father Bob. His real name is Edmond, but e goes by Bob.

And in 2007 Chris joined that family business and has worked there ever since. His mother worked there, although recently she's taken less and less roles in order to enjoy retirement and in order to be a grandmother. It is still very much a family-owned business, and you'll hear testimony from some of those employees and some of Chris' family members throughout this trial. ABCO is involved because they own the vehicle that Chris was driving on September 20th, 2018.

Now, the purpose of the opening statements of Attorney Mahony and from myself is not evidence, as the Judge will instruct you, but is really meant to give you a blueprint or kind of a roadmap of what we expect you will hear at trial. It's to tell you about the testimony, the witnesses, and the exhibits that we think you're going to hear from.

Now, if we tell you something and you don't hear from it or it doesn't come out in the same way, remember that. Remember what is inconsistent between what you are told today and what you see and hear at trial.

As a jury it's your determination -- your objective viewpoint and your determination of the fact and evidence in this case that matters, not what we may say to you today. This is really just an opportunity for us to give you -- to set the stage

for the trial and give you our view of what we expect to come.

Now, because the plaintiffs in this case have brought the lawsuit, just like any civil case in Connecticut, they have the burden of proof. And they didn't tell you much about that, and I'm not going to tell you in much detail, you'll hear instructions from the Judge about that. But what that basically means is if you've brought the claim, you have to prove the claim.

Claims, as the Judge will instruct you in this case -- and there are a variety of causes of action that have been filed against Mr. Clavette. The burden of proof, on all of the elements for each one of those claims, must be proven by the plaintiffs. They must be proven independent of one another. Now, there may be some evidence that goes towards multiple causes, but you can't -- you must value each of those and how it applies to that cause of action independently. It's not dominoes. If one thing is proven, it doesn't mean all are proven.

The decision you'll make in this case, regarding the facts and the evidence, cannot be swayed by any speculation, and it can't be swayed by sympathies, or emotion. It's got to be decided on the facts, the evidence, and the testimony here before you in this Court.

Now, you've just heard the story from plaintiffs counsel and their version of the events of December 20th, 2018 and some timeframe before and some time after. The problem with the plaintiff's version, as they've described to you, and as they're going to try to tell you throughout the course of this trial is it's incomplete, it ignores omits facts that you'll hear at trial. And as you probably heard since you're very young, there's always two sides to every story. That is as true today as it was when you were younger. The only difference now is you're sitting as the Jury. You are the trier of fact, the objective decider in this case. And it's your job at the end of the trial, not at the beginning and not during the middle, at the end of the trial to render an objective and fair decision based on the evidence and facts that you hear after hearing from both sides of the stories.

The plaintiff's story that they've just told you requires you to believe that Chris Clavette was driving his Trail Blazer on December 20th, 2018 and for months prior with known brake problems.

They've also alleged and will try to introduce evidence and tell you that he was speeding, or he was following too close, or he wasn't paying attention while he was driving. And those are claims being made by the plaintiffs. It is their burden to prove

to you that those claims are true. Not just make the claim, prove it. Now, at the end of the day, we believe that the evidence will not support those claims.

They also want you to believe that after this accident Chris received letters asking to preserve his vehicle and he ignored them, disregarded them, and that he got rid of the vehicle.

They're going to try to get you to believe that things that you hear, and see from Chris, and other members that they will be calling int, witnesses from his family and co-worker and the police, they are not relevant, and you should ignore them. But you will be deciding what to believe. You'll be weighing the credibility of those witnesses and their testimony and include all of that in your consideration.

There's a lot to unpack from the plaintiff's version of the events that night, as they just told you, but it starts with the requirement that you believe that the evidence suggests -- not that it suggests, that it proves that Chris Clavette knew he was driving a vehicle, his Trail Blazer, with bad breaks. As I have said before, that's the crux of their case. There's other claims that they are going to present to you as well, but that is the crux of their case, and that is required for you to believe it in order for you to even consider the other causes

of action that they've made in this case. At the end of the day, the evidence will make clear to you that that simply is not the case. The evidence does not support that story.

Now, with respect to both sides of the story, you also hear Chris' story. And Chris' story is some overlapping and some different.

On the morning December 20th, 2018, Chris drove his daughter Madison to school that morning in his Trail Blazer, as he did most days. After he dropped her off at school, he drove to ABCO where he worked till just before 5:00pm. And when he got into his car that day he was able to park in the front spots in front of his business by backing in, so that when he left at the end of the day he could pull out. Because if you know the road and you'll see the road, you'll hear the descriptions about it, it's a busy road. And, certainly, five o'clock is a busy time to try to back out on to a roadway. So Chris did what he could to try and make that as easy as possible. Why? He wasn't in a rush. He didn't have an appointment. He didn't have anywhere to be but to get home to his family. He was getting home to relieve his mother Kathy from watching his daughter Madison that day. That's where he was headed when he left that day.

As he proceeded down the roadway and he got

turned into New Britain Avenue, he noticed up ahead that cars had stopped, that there were brake lights on. He didn't notice this right as he came upon the cars, he didn't notice it as he hit the cars, he noticed it about 40 or 50 feet back. Several car lengths back he saw the brake lights. And he did what everyone does when you see brake lights ahead of you, he went to apply his brakes. He applied his brakes as he had done countless times before that day, that week, that month. Not expecting any issue. And that's where the nightmare began.

You'll hear from Chris directly, and he'll tell you he put on the brakes and felt nothing. The brakes went right to the floor. No resistance at all, nothing. With his vehicle still moving forward, not stopping, not slowing down, he panicked. He tried pumping his brakes, still nothing. He'll tell you he was travelling right around the speed limit, 40 miles an hour in that area, and he crossed that distance in a matter of seconds. You will repeatedly hear 'it happened so fast'. And it did. But it didn't happen so fast because he didn't hit his brakes as they're trying to claim to you. And listen to that claim -- he didn't try to claim -- he didn't hit his brakes at all, that's what you've been told by the plaintiff's counsel. The evidence will not support that.

And at the last second with his brakes not working, Chriss tried to turn his vehicle, hit his horn, but he wasn't able to avoid the collision. It was too late. And he'll tell you, that was his last-minute knee-jerk reaction, try to turn. But he was unable to do it, and he was unable to do it because his brakes had failed him moments before.

Now, after the impact with Mr. Mondal's vehicle, her car did get pushed forward, bit Chris' vehicle wasn't in a controlled, slow, down to a casual stop. He didn't park it neatly against the side of the road as they've alleged. He careened into the guard rail, and proceeded sliding along the guard rail for 40, or 50 or 60 feet. When Chris' car came to a stop, it was far beyond the original point of impact. It was beyond both the car that Ms. Mondal was driving and the car in front of her, and it was up against the guard rail. You'll see photographs and you'll hear testimony about that. This wasn't a controlled and neat stop. Chris didn't bring his vehicle to a stop after the impact, the guard rail did, momentum did. His vehicle simply stopped.

And what happened after that, after the smoke cleared from the accident, Chris was left wondering what just happened. How did this happen? You hear about brake failures maybe in the news or maybe in the movies, you never expect to be in that situation

experience it for yourself. And Chris will tell you, the panic, the shock that he felt, and just complete feeling of loss as to what could have caused this to happen to him. It was terrifying. His head was spinning trying to think of anything and everything that delt with brakes. What had he done. What issues that he had. And you'll see that, and you'll hear that on the video of the dashboard cameras from Officer Brian DiMauro, and you'll hear Chris tell you about that as well. The video statements do state he had brake problems in the past. He had them serviced. He does say that he was meaning to have them looked at. That's not the same thing as having brake problems. Chris will tell you he was not having break problems. Under no circumstances would he drive a vehicle that he knew the brakes weren't working.

And he gave a recorded statement. They're right about that. What he said about that is that would be suicide driving a car with known brake problems, and he's right. That's why he would never do it.

When you watch the police dash cam video, keep in mind you're hearing from someone who's trying to figure out what happened. He doesn't tell the police officers I have break problems or I've been having break problems. He said I had break problems in the past. I had my brake pads replaced in the past. He

went to the local body shop, Diamond Brite, and you'll see maintenance records from Diamond Brite. That will come in as evidence. Review those records. Those records, as you will see, confirm what Chris was saying. He had had some issues in the past. He had it serviced. And Chris will tell you that after having his breaks services more than a year before this accident, countless days driving his daughter to and from school, countless trips with his family, or himself -- just himself going back and forth to work. He never experienced a single issue with his brakes. He never had any softness when you apply the brakes. He never had, certainly, any failure to stop before this day. He never heard any odd sounds, any squealing or grinding before this. he'll tell you he heard that in the past, and that's why he went in to get it fixed. If he had had any of those things occur, Chris will tell you, his wife will tell you, his employees, and his family will tell you he would have had that done immediately, taken it in and got it checked out.

You'll hear testimony from the people who know Chris best, that he's a little bit OCD. A little meticulous when it comes to his vehicles, his business, and how he operates things. And he has to be to be able to run a successful family business, small family business, and to continue to keep his

family safe and himself.

And if there only were the dash camera video that you'll see, and the statements that he made to the police at that time, that he had brake problems before, that he was meaning to have them looked at, if that was the only thing you would see in this trial, it's understandable as to why they've made the claim that he knew he was driving with brakes. The problem is that is not the only evidence you're going to see.

You're going to see a lot of other testimony and a lot of other evidence that tells a very different story. The evidence that you will see supports Chris' story. It does not support the plaintiff's story. And they may ask you to ignore that and look only at that video. Look only at the person who was shocked and trying to figure out what had happened. Those are the statements -- not under oath, but those are the statements that you should listen to.

You'll hear testimony directly from Chris and you'll see other evidence that corrects those misstatements that he made that night in his shock after the accident. He will tell you, again, under no circumstances would he ever operate a vehicle with brake problems. He drove his daughter in that car daily. He drove her that morning. He would never have put her life, his life, or anyone else at risk

if he knew there was a problem with the breaks.

The reason we're here -- they are correct. Plaintiff's counsel is correct. We are here because Ms. Mondal was injured on December 20th, 2018. There's not going to be a lot of disputes about the initial injuries that she suffered. There is going to be a dispute as to the scope, the severity, and the extent of those injuries now. And you'll hear evidence, you'll see evidence regarding the medical treatment records she sought, the treatment providers that she got to treat those injuries.

You'll also hear testimony from a couple of experts that they hired several years after the accident to evaluate her. And you'll also hear from the defense expert who likewise reviewed records or testimony, reviewed the opinions of those experts that were hired by the plaintiffs to see, does it make sense, does it match up. Does the evidence support the opinions and the claims that have been asserted here.

That expert you're going to hear from is Dr. Brett Steinberg. And Dr. Steinberg didn't evaluate Ms. Mondal herself, he was only brought in well into the case, just as her hired experts were brought in well into this case. So compare the two when you hear their testimony. Dr. Steinberg will point out to you some deficiencies in the opinions and the

claims, not just in how he views it, but in medical sense, the records. They simply don't amount to the proper medical evidence required to assert the claims that Ms. Mondal's experts have asserted. They don't add up to the claims they made. They simply don't add up to the claim of any lasting impact on a brain injury related to this accident.

And it is your job as the jury, regardless of what I tell you and regardless of what plaintiff's counsel tells you, its your job to evaluate all of that. It's your job to objectively hear and listen to all of the evidence and testimony that's put forth in this case and at the end of the trial compare all those things. Discuss amongst yourselves and objectively come to a fair, just, and reasonable decision on this case. And one of those things you'll have to discuss, as has been highlighted, is what impact if any Ms. Mondal still has as a result of this accident.

You'll hear testimony from Ms. Mondal, as already alluded to, that she worked as a cardiology nurse, and she started there shortly before this accident. She also missed some time, expectedly so, after this accident. That was in 2019. She missed some time in 2020 for doctor's appointments, things related to the injuries from that night. That's not disputed in this case.

You will also hear testimony from Ms. Mondal and likely from her forensic accountant, Richard Royston, who's going to tell you that after this accident and up until today, Ms. Mondal has continued to increase her hours. She has received annual raises every year. Ms. Mondal continues to be employed as a cardiology nurse, not a simple job, and she continues to do what she enjoys, and excels at it. You'll hear that those hours that she is continued to improve upon are well above what she was hired to work as as a part-time cardiologist nurse.

At the end of the day, you've heard the claims against Mr. Clavette, but before you've heard all of the evidence and testimony -- once you've heard all of the evidence and testimony, that's when you can really consider those claims. And once you do so, it will be clear to you that the evidence does not support those claims.

Mr. Mondal -- or excuse me, Mr. Clavette, has admitted that he didn't turn his vehicle in time to avoid the collision, that's correct. He didn't, but that's not what caused this accident. What caused this accident, and Mr. Clavette will tell you, and we believe the evidence will support, is the break failure. His failure to turn was a byproduct of that failure. There would be no reason for him to need to turn if his brakes had worked properly.

At the end of the day we believe that the evidence will support one story, and that is Chris' story. The story of a father heading home to his wife and daughter, unexpectedly finding himself with no brakes as he approached a car and several cars in front of that that had been stopped. It's a terrible story for everyone involved. Everyone involved on December 20th, 2018 wishes it had never happened.

We're here today and throughout this trial t assess the evidence that you're presented with. If you feel at the end of the evidence that claims have been proven, then that's your decision. If you feel that claims have not been proven, that's also your decision. Whatever decision you make, whether it matches what we ask you to look for, whether it matches what the plaintiff's counsel asks you to look for, it's your decision and it is the right decision as to how you view that evidence.

There's obviously disagreement on many issues in this case. That's expected. That's normal. There very well might be disagreement amongst yourselves as to the evidence in this case. That's normal too. And that's why the jury's job is to be objective. To view the evidence, to hear the evidence, and then weight it and decide how you view it. And if appropriate, if you feel that there are injuries that have been proven, claims that have been made int his

case, then you look to award fair, just, and reasonable damages.

This is not about -- this is not about anything other than Ms. Mondal and her injuries, and the claims that they have asserted were caused by Mr. Clavette.

With that, on behalf of my clients, Mr. Clavette and ABCO, I want to thank you for serving as jurors both during this process and throughout the process. I want to thank you in advance. You know how important attention is to the details in this case, we ask you to do that. I know you will. And at the right time, at the end of this case, once you've seen and heard all of the evidence, weight those evidence properly and objectively, and we feel that you will find that, while everyone wishes December 20th, 2018 had never happened, the evidence simply does not support those claims that have been asserted against Mr. Clavette. Thank you.

THE COURT: All right. Thank you, Attorney Paice. Madam Clerk, can you see if any of the jurors wish to have a notebook?

THE CLERK: Yes, Your Honor.

* * *

NO: HHDCR19-6114966-S	:	SUPERIOR COURT
MONDAL, MADHUMITA	:	DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
CLAVETTE, CHRISTOPHER	:	JANUARY 18, 2023

C E R T I F I C A T I O N

I hereby certify that the foregoing pages are a true and correct excerpt of a transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Honorable Stuart D. Rosen, Judge on the 18th day of January 2023.

Dated this 19th of January 2023 in Hartford, Connecticut.

Selvyn Valencia
Court Recording Monitor

NO: HHD CV18-5051489S	:	SUPERIOR COURT
JUAN CRUZ, ET AL	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
SPEC PERSONNEL, ET AL	:	SEPTEMBER 13, 2022

E X C E R P T
OPENING STATEMENTS

BEFORE THE HONORABLE STUART D. ROSEN, JUDGE
AND JURY

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ATTY. GARZA: Thank you, Your Honor.

May it please the Court.

Ladies and gentlemen, thank you for being here with us today and your patience in our delayed start. Though we've been delayed in meeting you, we will finish on time. This case is about five minutes and five dollars. The evidence in this case will show that if Philips Lighting North American Corporation, now Signify North America Corporation, had only taken the time and spent the money to safely package the product it sold to its Connecticut customer, Juan Cruz would walk.

When you first came to this courthouse a number of weeks ago, we couldn't tell you much about the details of this case; in particularly we couldn't tell you that you've been seated on one of the most important cases in Connecticut history. The decision you make here in this case will echo for years to come.

What brings us to the Hartford County courthouse here today are the safety rules that protect us from injury and harm. There are two rules in this case that we'll give you to aid your determination in making decisions in this case. Safety rule number one, and the defendants agree with this, product must be secured to a shipping pallet to prevent injury and harm. Safety rule number two, parties to a lawsuit

must not destroy or fabricate evidence to prevent injury, harm, and injustice. If you remember one thing about this case, it's about five minutes and five dollars.

Now, I'd like to tell you the story about what happened in this case. Late in the summer of 2017 a company named Hengdian Tospo in the Zhejiang province of the People's Republic of China manufactured some lighting products. Philips Lighting North America Corporation purchases the Hengdian products through their Philips Lighting Hong Kong China sourcing group. And on August 16, 2017, Philips Lighting Hong Kong loads a sealed container onto a vessel bound for the U.S. The vessel leaves the busy Oort of Hong Kong, it travels across the ocean, and it arrives at the Port of Los Angeles on September 1, 2017.

Upon arrival, the container is taken off of the boat, it's loaded onto a tractor trailer, and it's traveling to Philips Lighting Mountain Top warehouse in Pennsylvania, but a few hours from here; that's a commercial warehouse. And upon arrival, the Philips employees unload that and they store it in their warehouse.

On September 13th those same Philips workers place those lights onto a wooden pallet. The Philips Lighting employees will testify that the warehouse had a long-standing safety rule that required every

outbound shipment to be secured to the wooden pallet to prevent injury and harm, and they have the workers, the equipment, and they had the opportunity to do it right from the outset. But the evidence will show that Philips workers did not secure the lights to the wooden pallet on this day. The workers load that pallet of unsecured product onto a tractor trailer and that truck leaves for Connecticut.

The truck arrives in Hartford at the Rexel warehouse not far from here on Thursday, September 14th, and the lights are unloaded right before the weekend. Rexel is a long-standing and loyal customer of Philips Lighting. They store those Philips lights in their warehouse unaware of the hidden danger they present.

The weekend comes and goes without incident, and the same is true for the Monday. But the next day, Tuesday, is different. Just before 2:30 in the afternoon on Tuesday, September 19, 2017, a temp worker turns the key on a reach truck and he navigates it down aisle 205 in the Rexel warehouse and he raises the forks up 15, 20 feet. He inserts them into a wooden pallet on the upper rack on the right side, and he begins to lift. He's unaware that the Philips lights on the adjacent rack are not secured to the shipping pallet. He doesn't see, he doesn't hear, he testifies he doesn't feel the

contact that his load makes with that Philips Lighting load; and then the unsecured Philips load, weighing 1,300 pounds, slides and falls in a second onto the head of a man in aisle 204. The sheer weight of the Philips product knocks him unconscious and snaps his spine in half. Minutes go by and the man remains unconscious. And when he wakes up he says, I can't feel my legs. The man on the floor in aisle 204 is my client, Juan Cruz.

Now, let me tell you who we're suing and why. Juan Cruz, the paralyzed man, and his wife, Emily Lopez Cruz, are suing Philips Lighting North America, now Signify North America Corporation, because they sold and they sent their lights to Connecticut to their customer and they did not secure them to the shipping pallet as they promised. They're also suing Philips because the evidence will show that in this case Philips/Signify destroyed and fabricated evidence during an active investigation to prevent them from discovering the truth.

They're suing them for violating the safety rules that protect all of us from injury and harm. Safety rule number one, which they agree with, is that all products must be secured to the shipping pallet to prevent injury and harm. And the second rule, which is the law in this state, and the Court will instruct you on further, parties to a lawsuit

must not destroy or fabricate evidence to prevent injury, harm, and injustice.

Before we brought this case to you here at trial, we had to determine three very important things. First, we had to determine whether the product that paralyzed the plaintiff that you saw in that photograph was Philips/Signify's product or someone else's. You'll hear evidence that at the beginning of this investigation Philips denied that the object in the OSHA photograph even contained the product they shipped to their customer. We hired investigators and we reviewed the investigative materials prepared by the OSHA investigator who responded; when they are called out automatically in a situation like this to review the scene.

We asked Philips and our client's employer, Rexel, for any shipping documentation they have, and we determined the chain of custody for this product in the OSHA photograph every step of the way from the Port of Hong Kong to the floor in Hartford, Connecticut. We interviewed Rexel and Philips warehouse employees and supervisors. We conducted over 30 depositions over five years in this case. We spoke to the experts Philips hired to defend this case. We inspected the Mountain Top warehouse where that product was shipped from. The evidence will show that we found critical packaging evidence that

Philips/Signify hid in a trash can at their warehouse after they had cleared the shelves of product that looked like the ones in the OSHA photograph.

The second thing we had to determine was whether Philips/Signify followed their own safety rule, their own law that required them to secure all products to the shipping pallet, or whether something happened to it on the road to Connecticut, as they also initially claimed. Once again, we spoke to the Rexel and Philips warehouse employees and supervisors all the way to the director of logistics for all of North America for Philips and Signify, and you'll hear from him. We spoke to the experts Philips hired to defend this case, we asked our own experts, we asked Philips to tell us about their equipment, their training, their policies and procedures, we asked them to tell the truth.

We asked Philips to provide us with their evidence; any evidence that the package in the OSHA photograph was modified or damaged in any way on its short journey from Pennsylvania to the Hartford warehouse.

The third and final thing we had to determine was whether the product would have fallen if Philips followed their own rule, if they secured it to the wooden pallet. Did it make a difference here?

We hired one of the world's best packaging

experts who worked with the Department of Defense, the Defense Logistics Agency, the Marines, the Army, nearly every major U.S. company including Philips Lighting North America in the past. And he'd receive -- he's received the highest military honor a civilian can for his lifetime logistics support for his work in helping safely ship supplies to our troops.

We also reviewed the photographs and the models of the experts Philips hired. We inspected both the Connecticut warehouse where Mr. Cruz was paralyzed and again the Pennsylvania warehouse where we found the evidence in the trash can. We performed calculations and prepared 3D models, which you'll see, and animations with the help of one of the best forensic animators in the country who previously worked for Steve Jobs and Apple for seven years.

Our expert, Dr. Singh, the packaging expert, the decorated expert, will testify that this incident could not have happened if Philips/Signify had simply followed their own rule. It's why the rule exists in the first place. This is how we determined that Philips violated the safety rules requiring them to secure their product to the shipping pallet and to preserve evidence during an active investigation. Had they secured it to the pallet, Juan Cruz would walk.

I expect you'll hear many things from Philips/Signify's company lawyers and their representatives throughout this trial. They will blame my client's employer, their customer, that they shipped that dangerous product to, who they marketed, sold, and sent it to, who they profited from. They'll blame the temp worker who operated the reach truck and the company that sent him. And you'll have an opportunity at the end of this case to decide what, if any, role that played in this case. But what I suspect you will not hear at any point during this trial is a single witness from Philips/Signify accept any responsibility at all.

If you remember one thing at all, this case is about five minutes and five dollars. The evidence will show that over the course of this case, we discovered that Philips Lighting North America deliberately hid and destroyed and fabricated evidence to prevent us from discovering the truth. And when we asked their employees, including the director of logistics for all of North America, the evidence will show that not one, not two, but three of their highest ranking employees and their retained expert in this case, Mr. Girardi, raised their hand and swore an oath to tell the truth, but the facts and evidence didn't support their story.

Now, folks, as young lawyers we're often taught

that you should never make promises to a jury that you may not be able to keep. But I've seen the courage my clients have lived their lives with for the last five years despite the most significant pain and heartbreak any human being could ever be asked to endure. So I'm going to break that rule. Philips/Signify has promised us that they're going to bring those very same employees to this court, this week to face you. And based on the evidence currently in our possession, I believe they will take that stand, they will raise their hand and they will, again, swear that same oath they swore to me back them, and they will look at you all and we'll catch them again.

Now, let's turn our attention to the most important reason we're here, which is to assess the damages, the harms and losses of Juan and his wife, Emily Cruz. It's undisputed in this case that Mikey Cruz, as his friends call him, is not negligent in any way. He did nothing to cause his own injuries, he could not have avoided the fallen product, which paralyzed him in a moment.

Let me give you a preview of what that evidence will be. Juan Cruz started working at the age of 14. He excelled at every job he's ever had. He was a person you could set your watch to. He was at Rexel where this happened for 15 years, receiving promotion

after promotion. He was a valued employee. His family and his friends will tell you that he loved to walk to work every day. And his body was the only thing he had to support his five children, his wife, his grandchildren, and that was taken from him that day.

Ladies and gentlemen, these next few weeks will be difficult. We will discuss hard issues. There will be pain and heartache. You will hear about the daily realities of paralyzed life, about how his wife is now his full-time caretaker. And though she was a CPA before, she no longer is off the job ever. How she helps him bathe and dress and change his diapers, her husband. About how his bedroom will forever be a bathroom because that commode is necessary next to his bed. How he's been forgotten in a car from time to time like a child because he can't let himself out. How the paralysis has taken all feeling from his belly button down, permanently destroying his ability to have an erection, to ever again have an orgasm or be with his wife sexually in a way a man desires to and deserves to.

He'll tell you how this makes him feel, less than; as a Hispanic man, less than. You'll hear from Dr. Subramani Seetharama, the chief of physical medicine and rehabilitation at Hartford Hospital, and one of our nations very first spinal cord injury

specialist. He will tell you the impact that this has had on Mikey's ability to ever work again and on the significant obstacles in the way of a normal working life. He'll tell you that a wheelchair existence will steal at least five to fifteen years of life expectancy, and he'll explain what life there is left to expect. How paralysis and nerve pain leave the legs and the skin and the tissue burning of fire that never goes out; not with sleep, not with pills, not with time, it'll only grows hotter. About how the pain gets worse over time, and as it does, the medications become less effective. And about how the victims of spinal cord injuries kill themselves at a rate ten times higher than the regular population.

We're here for Mikey's friends, family, his coworkers about what they see even when he tries to hide it. What it means when his young grandson pulls at his pants in frustration and begs him to chase after him, and he can't. A grandson who will never again remember when his grandpa walked upright and did chase after him.

Ladies and gentlemen, at the end of this case I'll stand here before you again and I will ask you to award lifechanging money to Mikey and Emily Cruz for the life that Philips Lighting North America forever changed.

Ladies and gentlemen, please listen carefully to the damages Mikey and Emily Cruz have suffered through their words, their emotions, that of his doctors, his friends, his family, his coworkers, it's a lifetime and it ranks among the most egregious harm that a human can go through. Part of their need now is for Philips Lighting North America to accept responsibility, so it's up to you to show them how.

Thank you.

CHAPTER 15

TRIALS IN GENERAL; ARGUMENT BY COUNSEL

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 15-1. Order of Trial

In all cases, whether entered upon the docket as jury cases or court cases, the judicial authority may order that one or more of the issues joined be tried before the others. Where the pleadings in an action present issues both of law and of fact, the issues of law must be tried first, unless the judicial authority otherwise directs. If some, but not all, of the issues in a cause are put to the jury, the remaining issue or issues shall be tried first, unless the judicial authority otherwise directs. (See General Statutes § 52-205 and annotations.)

(P.B. 1978-1997, Sec. 283.)

Sec. 15-2. Separate Trials

The judicial authority may, upon motion, for good cause shown, order a separate trial between any parties.

(P.B. 1978-1997, Sec. 284.)

Sec. 15-3. Motion in Limine

The judicial authority to whom a case has been assigned for trial may in its discretion entertain a motion in limine made by any party regarding the admission or exclusion of anticipated evidence. If a case has not yet been assigned for trial, a judicial authority may, for good cause shown, entertain the motion. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. All interested parties shall be afforded an opportunity to be heard regarding the motion and the relief requested. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

(P.B. 1978-1997, Sec. 284A.)

Sec. 15-4. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. The judge holding the civil jury shall, at the opening session, order that all such records be available for inspection in the clerk's office to any counsel of record under the supervision of the clerk. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end.

(P.B. 1978-1997, Sec. 290.)

Sec. 15-5. Order of Parties Proceeding at Trial

(a) Unless the judicial authority for cause permits otherwise, the parties shall proceed with the trial and argument in the following order:

(1) The plaintiff shall present a case-in-chief.

(2) The defendant may present a case-in-chief.

(3) The plaintiff and the defendant may present rebuttal evidence in successive rebuttals, as required. The judicial authority for cause may permit a party to present evidence not of a rebuttal nature, and if the plaintiff is permitted to present further evidence in chief, the defendant may respond with further evidence in chief.

(4) The plaintiff shall be entitled to make the opening and final closing arguments.

(5) The defendant may make a single closing argument following the opening argument of the plaintiff.

(b) If there are two or more plaintiffs or two or more defendants and they do not agree as to their order of proceeding, the judicial authority shall determine their order.

(P.B. 1978-1997, Sec. 295.)

Sec. 15-6. Opening Argument

Instead of reading the pleadings, counsel for any party shall be permitted to make a brief opening statement to the jury in jury cases, or in a court case at the discretion of the presiding judge, to apprise the trier in general terms as to the

nature of the case being presented for trial. The presiding judge shall have discretion as to the latitude of the statements of counsel.

(P.B. 1978-1997, Sec. 296.)

Sec. 15-7. Time Limit on Argument

The argument on behalf of any party shall not occupy more than one hour, unless the judicial authority, on motion for special cause, before the commencement of such argument, allows a longer time. (See General Statutes § 52-209 and annotations.)

(P.B. 1978-1997, Sec. 297.)

Sec. 15-8. Dismissal in Court Cases for Failure To Make Out a Prima Facie Case

If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial authority may grant such motion if the plaintiff has failed to make out a prima facie case. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

(P.B. 1978-1997, Sec. 302.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

NO: HHDCV18-5051489-S	:	SUPERIOR COURT
CRUZ, JUAN ET AL	:	DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
SPEC PERSONNEL, LLC. ET AL	:	OCTOBER 04, 2022

(2:00 TO 4:30)

BEFORE THE HONORABLE STUART ROSEN, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

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ATTORNEY ANDREW P. GARZA
ATTORNEY RYAN McKEEN
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Representing the Defendant:

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New Haven, CT. 06508-1832

Recorded By:
Selvyn Valencia

Transcribed By:
Selvyn Valencia
Court Recording Monitor
101 Lafayette Street
Hartford, CT. 06106

THE CLERK: All rise. Court is in session.

THE COURT: All right. You may be seated. Thank you.

(PAUSE)

THE COURT: All right. So we have Mr. Garza?

ATTY. RANKS: He's going to be here in a second, but I'm ready to handle the matters. He'll be down for closing, Your Honor.

THE COURT: That's fine.

ATTY. RANKS: Classic Garza.

THE COURT: So did we work out a -- I'm sorry, what did you say?

ATTY. RANKS: Classic Garza.

THE COURT: Okay. Well, I haven't had enough exposure with him to know that that's a classic, but I'll just make a note for the future.

All right. So did we work out the language for the stipulation?

ATTY. BRADFORD: Yes, Your Honor.

THE COURT: All right. And do we have that ready for me?

ATTY. BRADFORD: Attorney Garza had the notes on it, Your Honor, so --

THE COURT: How convenient.

ATTY. BRADFORD: Yeah.

THE COURT: So --

ATTY. BRADFORD: But --

THE COURT: So is defense going to read it? Is that what we've agreed to?

ATTY. BRADFORD: I think that was the plan.

ATTY. RANKS: I believe so.

THE COURT: All right.

ATTY. RANKS: Do you have the version that you need?

ATTY. BRADFORD: I mean, I -- he had the highlighted version, but I have my own notes. But I --

ATTY. RANKS: Okay. That's fine. And then, Your Honor, as far as -- we're going to bring the jury in to read that, and then they're going to rest, we are going to rest, and then I assume --

THE COURT: Right. And then there will be motions, so we'll have to excuse the jury.

ATTY. RANKS: Okay. That's all I wanted to --

THE COURT: All right.

ATTY. VOSSLER: Yes. And, Your Honor, we actually -- we on the defense side thought about that motion and thought about some of the issues implicated by that, and we basically agree to remove Venture from the verdict form, and we would agree to have you take Venture out of the jury charge.

THE COURT: So that would be after I just printed the five copies of the charge and brought them here with me?

ATTY. VOSSLER: I apologize, Your Honor.

THE COURT: Not a problem. Not a problem.

ATTY. VOSSLER: We're looking for ways to shorten this up.

THE COURT: All right. I appreciate that. So --

ATTY. RANKS: And then there's going to be -- the only other issue, Your Honor, would be Spec.

ATTY. VOSSLER: We do not agree with regard to Spec.

THE COURT: All right. We'll take that up at the appropriate time. So I don't want to delay any further.

All right. So we can bring the jury in please?

(PAUSE)

ATTY. RANKS: Attorney Bradford, do you want the highlighted copy?

ATTY. BRADFORD: No. I mean, I've got my own, so --

ATTY. RANKS: Okay.

ATTY. BRADFORD: -- I'll be fine.

The only question we have, Your Honor, is if they're going to challenge the inclusion of Spec on the forms, how do we know whether or not to read the allegations against Spec because they --

THE COURT: I think the allegations will come in. The question is what's included in the charge

based on the evidence. So I have to hear what the argument is on that.

ATTY. BRADFORD: Okay.

THE COURT: So you can read that as part of the judicial admission.

ATTY. BRADFORD: All right. Thank you.

THE COURT: Well, now it's a stipulation instead of an admission. Is that how we're proceeding?

(PAUSE)

THE COURT: What are we calling this procedure?

(PAUSE)

ATTY. GARZA: Stipulated allegations. I don't know. I mean, I -- or we can say that the defendant has requested an opportunity to read in the allegations from the plaintiff's complaint. I think that makes more sense.

THE COURT: That's fine. We can do that. Okay?

ATTY. BRADFORD: Yeah. I guess that's (indiscernible).

(PAUSE)

THE CLERK: Jury entering.

(JURY ENTERS)

THE COURT: All right. The jury has been seated. You all may be seated.

(PAUSE)

THE COURT: All right. So we're continuing in the defendant's case. I understand, Attorney

Bradford, you are prepared to read the allegations of the complaint to the jury?

ATTY. BRADFORD: Yes, Your Honor.

THE COURT: All right. You may proceed.

(PAUSE)

ATTY. BRADFORD: Good morning -- or good afternoon, I guess.

In this case the plaintiffs have alleged that the paralyzing injuries were the direct and proximate result of the negligence and carelessness of Jeanpaul Paez in one or more of the following ways: In that he failed to clear adjacent aisles of Rexel or Spec employees prior to lifting the pallet, did not ensure that adjacent aisles were clear of Rexel or Spec employees before he operated the forklift, failed to inspect the pallet of lighting products to ensure that the load was properly secured to the pallet, failed to properly secure the lighting products to the pallet, failed to warn Rexel or Spec employees that he was moving a pallet from a great height and failed to secure the pallet properly on the forklift.

Additionally, the plaintiffs have alleged that the paralyzing injuries were a direct and proximate result of the negligence and carelessness of Spec acting by and through its agent, servants, managers, supervisors or employees in one or more of the following ways: In that it or they failed to train

their agents servants, apparent agents and/or employees, failed to adequately supervise its servants, agents, apparent agents and/or employees, allowed Jeanpaul Paez to continue to remain employed when the defendant knew or should have known that he did not possess the requisite training supervision or discretion to perform his job functions and failed to adhere to its core values of emphasis on safety and unwavering punctuality and reliability.

Thank you, Your Honor.

THE COURT: All right. Thank you, Attorney Bradford. Attorney Vossler?

ATTY. VOSSLER: We have no further witnesses, Your Honor. We close.

THE COURT: Defense rests?

ATTY. VOSSLER: Yes.

THE COURT: All right. Does the plaintiff have a rebuttal case?

ATTY. RANKS: Your Honor, the plaintiffs have no rebuttal case. We're ready to close.

THE COURT: All right. Thank you.

(PAUSE)

THE COURT: All right. So we're going to excuse the jury. I need to talk to the lawyers about some matters, and then we'll call you back for the closing arguments very shortly.

THE CLERK: All rise.

(JURY EXITS)

THE COURT: All right. The jurors have left the Courtroom. Are there any motions?

ATTY. RANKS: Your Honor, the parties have agreed that Venture will not be on the jury verdict form. The plaintiffs also move for directed verdict as to the defendant's ability to put Spec Personnel, LLC on the jury verdict form. The only evidence that's before this jury as to Spec Personnel was the testimony of one former employee, Daniel Wiles. She had very little recollection of her time as a Spec Personnel employee and testified primarily about her recollection in meeting Mr. Paez and signing him up to work as an employee and sending him to Rexel. There was no documentation as to the Spec/Rexel agreement for staffing. That is a document that was discussed at length during the discovery process. However, no one sought to admit that document as a piece of evidence in this case. There was no testimony from any higher ups at Spec Personnel during the discovery process. Jason LaMonica is the principle at Spec Personnel. He testified at length about their policies and procedures and expectations. As to furnishing temporary employees, there was no evidence of that in this case. There was no evidence as to what Spec Personnel's obligations were with respect to making sure someone was safe to furnish to

Rexel. What their obligation -- which would be covered primarily by the staffing agreement between Spec and Rexel. That agreement sets forth very specific requirements as to what Spec is required to do. The plaintiffs -- the defendants chose not to put that into evidence, so there would be nothing for the jury to consider.

And, so, for that reason we believe that Spec Personnel -- that there's insufficient evidence as to negligence to submit the claim of apportionment as to Spec Personnel to the jury.

And, additionally, for reasons we've already talked about with respect to charging and other related matters, we're moving for a directed verdict as to the sole proximate cause defense. And that argument I know I has been discussed at length with the Court, but we would rest on our previous arguments that we've made as to that issue. But there's insufficient evidence, and the evidence that as to Mr. Paez' negligence in this case would be prohibitive of any finding of sole proximate cause.

THE COURT: All right. Thank you, Attorney Ranks. Attorney Vossler?

ATTY. VOSSLER: Yes, Your Honor. Thank you.

So we just heard the plaintiff's allegations against the party that we know is a settled and withdrawn party. The plaintiff's allegations are

that Spec's actions caused the plaintiff to sustain and suffer the paralyzing injuries and the personal injuries and losses hereinafter set forth, and that -- I'm sorry, failed to train their agents, servants, apparent agents, and/or employees and/or failed to adequately supervise its servants, agents, apparent agents, and/or employees. Allowed Jeanpaul Paez to continue to remain employed when the defendant knew or should have known that he did not possess the requisite training, supervisions, or discretion to perform his job functions. And, finally, failed to adhere to his core values of emphasis on safety, unwavering punctuality, and reliability.

The evidence before the Court, Your Honor, is that Spec accepted Mr. Paez' job application -- that was I think Exhibit J. It's a full exhibit. Spec after screening him and taking his information made the decision to assign him to work at the Rexel warehouse.

The evidence before the Court, and we've heard some of it today, is that Mr. Paez was not trained and qualified to operate powered industrial trucks when he was at Rexel and particularly on the date of the accident.

We also heard evidence from Spec that it does not train the people that it hires to operate powered industrial trucks. They don't have trucks.

So, Your Honor, given the plaintiff's allegations, given the evidence that Spec was the entity that had first contact with Mr. Paez, Spec put Mr. Paez into its pool of potential workers to be sent down on the assignment. Spec did send Mr. Paez to Rexel, and then we know, based upon what we heard today, and actually from Mr. Paez himself, that he was not trained or certified to operate a powered industrial truck.

So the allegation J, for example, Spec allowed Jeanpaul Paez to continue to remain employed when the defendant knew or should have known that he did not possess the requisite training, supervision, discretion to perform his job functions.

Your Honor, there's certainly evidence in the record to support a finding that Spec was negligence. There's certainly evidence in the record that would support, in the event that there's a plaintiff's verdict of course, there is evidence in the record to support a finding by the jury that Spec is responsible for a percentage of the liability.

Again, this is coming about by way of statute. This -- Spec was not brought in as an apportionment defendant. We have a situation here where, under the statute, we are dealing with a settled and withdrawn party, and I believe that the law is clear that the main of the settled and withdrawn party shall be on

the verdict form, and it's up to the jury to decide.

So I think that there's enough evidence here for you to keep Spec in the jury charge and to keep Spec on the verdict form in the event that there's a plaintiff's verdict and the jury has to move on to the issue of apportionment.

THE COURT: All right. Thank you.

ATTY. VOSSLER: As far as sole proximate cause is concerned, Your Honor, I think that you have heard and the jury has heard quite a bit of evidence -- quite a bit of evidence that indicates that Rexel was the entity that allowed Mr. Paez to operate this powered industrial truck. We heard from an expert here in Court today who was involved in the revisions to 1910178. You heard that he actually testified before the committee and has been intimately involved with the federal regulation that requires Rexel to have its employees properly trained and certified before they're allowed to get on a powered industrial truck.

And on that basis, Your Honor, I think there is more than enough evidence here, more than enough, to allow the jury to consider whether Rexel's conduct, it's acts or omissions were or was not the sole proximate cause.

The one very easy piece of evidence here is not hard to understand at all, Mr. Paez testified not

only in his deposition, but here in Court that he never read the operators manual and he was never asked to read the operators manual. That by itself shows that he was not properly trained by Rexel because the reg requires that the operator read the operator's manual before the employer allows the person to operate the powered industrial truck.

So without marshalling a lot of other evidence and testimony, Your Honor, I think that certainly there's more than enough here for us to allow the jury to consider whether or not the negligence of Rexel was the sole proximately cause, as it should, because we have a general denial in this case and as the Court -- that we all are so familiar. There is a case called *Archibald* and it permits us to make this argument because the real issue here is causation and whether the plaintiff has been able to meet his burden of proof with regard to causation.

THE COURT: All right. Thank you. All right. I'm going to reserve decision in the motions. We'll move now to closing arguments. Can we bring the jury back, please?

(PAUSE)

ATTY. VOSSLER: Your Honor, I'm sorry --

THE COURT: Yes.

ATTY. VOSSLER: Mr. Babbin, had one comment. I apologies, but --

THE COURT: Yes. Attorney Babbin?

ATTY. BABBIN: Your Honor, I'm Jeffrey Babbin for Signify. I just wanted to put on the record, particularly if the charge ended getting read tomorrow, I want to be here just to reiterate what our position has been stated before. An exception to the jury charge to the extent that the Court is only allowing reference to Rexel and not to other entities such as Paez and Spec with respect to the sole proximate cause issue. That is our position, that the law is that we -- that multiple parties could -- can, even if not in concert but in combination, be the sole proximate cause such that Signify, the defendant, is not. That is our only obligation under the general denial to show that we were not a proximate cause, and so regardless of who is or is not an apportionment defendant, we should be able to argue that we are -- that we, Signify, is not a proximate cause by pointing to multiple actors who together were solely responsible for the injuries based on their negligence.

And for that reason we just reiterate our request from earlier that the charge be able to -- that the charge point to both Rexel or all of Rexel, Spec and Paez with regard to the proximate cause charge.

THE COURT: All right. Thank you. Your

exception is noted. As I have indicated previously, the Court reads the case law differently. The concept of sole proximate cause, as far as the Court is concerned, means sole means one loan only. *Archibald* itself I think was a case that had sole proximate cause involving one entity. The case upon which *Archibald* relied on in substantial measure was I believe *Dressler*, which was a case out of Texas which was also a situation with a sole proximate cause as in one entity. The Court has not found case law that supports the proposition I think in other context as in superseding cause and other cause. There are concepts where multiple parties may be involved or in combination, but not for the concept of sole proximate cause as far as this Court is concerned. So that's why I had, as we discussed on the record previously, declined to charge on that basis. But thank you for bringing that -- for putting that on the record.

ATTY. BABBIN: Understood, Your Honor.

THE COURT: All right. Are we now ready to close?

ATTY. GARZA: Yes, Your Honor.

THE COURT: And, Attorney Garza, you wanted to reserve some time. How much time?

ATTY. GARZA: No more than 15 minutes.

THE COURT: 15 minutes.

ATTY. GARZA: Yeah.

THE COURT: All right. I'll be the clock keeper.

ATTY. GARZA: Thank you, Your Honor.

THE COURT: All right. Let's bring in the jury, please.

(PAUSE)

THE CLERK: Jury entering.

(JURY ENTERS)

THE COURT: All right. The Jury has entered and has now been seated. Everyone else may be seated. Thank you.

(PAUSE)

THE COURT: All right. Ladies and gentlemen, we're now going to move on to the closing arguments. The plaintiff is going to go first, as is our rule, and Mr. Garza is reserving 15 minutes of his time for rebuttal after the conclusion of the defense's closing.

So with that, Mr. Garza?

ATTY. GARZA: Thank you, Your Honor.

(PAUSE)

ATTY. GARZA: May it please the Court.

Ladies and gentlemen, I want to first thank you for the time that you've taken to be here with us, the sacrifices you've made to be here over a number of weeks away from your family and your jobs to see my clients for

who they are and to be called upon to deliver justice in this case.

You also made a decision to serve during a global pandemic. You put yourselves at risk, and I see that every one of you has taken measures to ensure that you are here to complete the job and my clients and I appreciate that.

At the beginning of this case three weeks ago, I told you that you've been seated on one of the most important cases in Connecticut history. I meant it then and I mean it now. The decisions you make here in this case will echo for years come. And though the decisions you will make are important, the request that my clients have for justice are important. The role you play is equally important. You're the group who will deliver on our democracy.

At the end of argument you are going to here from the judge the instructions on the law and what's appropriate here, and what this case is about. And when you do, I'd ask that you listen carefully because you're going to hear language that you've heard in other context. Loss of enjoyment of life. And those words 'enjoyment of life' were written 250 years ago by Thomas Jefferson in our Declaration of Independence. Life liberty and the pursuit of happiness, that's what this case is about. What was taken from Mikey was his ability to pursue happiness in the manner in he wants because the defendant unnaturally imposed

the change in his health that day, and a change in his marriage, and a changed family. That's what this case is about too. And ultimately your verdict collectively is going to stand as a symbol as to how important and meaningful that constitutional right is because that's really what this case is, the right to be here is guaranteed in the Seventh Amendment.

Civil juries decide. The come together and determine the value of losses to our fellow citizens. It's an important, difficult job. And we tried to impress upon you in jury selection the seriousness of that job. And though that process was awkward and sometimes filled with stopped and starts like the trial, it was clear to us that you were up to the task because cases like these involve the rest of people's lives. Each of you indicated and you've showed us with your actions, and actions speak louder than words, how serious you've taken this responsibility. And now, on behalf of Mikey and Emily, I'm going to ask you to deliver on that promise.

And what is the promise that I'm asking you to deliver on? It's to deliver full justice in this case. Not partial justice, full justice. And we're going to talk about what that might be in my opinion. All right?

This case is not about, and I want to make clear, it's not about a big pile of money. It's about a big gaping hole that was created on September 19th, 2017. That gaping hole we've all heard about. And the only way to fill

it under our system is with money damages. In a heartbeat they've go back and trade any sum of money to never be here before you all and to return you to your families and lives. But we're not back in biblical times where they can trade places with the defendant or cause harm to them in the way that they were harmed. We don't impose in our civil society on the defendants what was imposed on them. They didn't volunteer for this. And given a choice, they wouldn't be here. And that big gaping hole we've heard about is the heart of this case.

At the beginning of it I introduced the two rules that bring us here today; the rules that protect us from injury, harm, and injustice. And the first rule in this case is that products must be secured to the shipping pallet to prevent injury and harm. And the second rule was that parties to a lawsuit must not destroy or hide evidence to prevent injury, harm, or injustice.

ATTY. VOSSLER: Your Honor, I really apologize, but I have to object.

THE COURT: Sustained.

ATTY. VOSSLER: I have to. Sorry.

THE COURT: Sustained.

ATTY. GARZA: Mikey and Emily Cruz are suing Phillips/Signify because they sold and sent their lights to a Connecticut customer and they failed to secure them to the shipping pallet. They failed to secure them in the way they promised their customer they would, the way their customer

relied on them to do. They failed to send safe.

This case three weeks ago, as it is now, is about five minutes and $5.00. It's all it would have taken. We know Phillips had the opportunity, the time, and the means to do it and they chose not to. If they'd only taken the time and spent the money to safely package the product they sold to their customer, Mikey Cruz would walk. And we found out in this case what happens when a global corporation fails to follow the safety rules, and what happened to Mikey and Emily on September 19th, 2017.

(SIMULATION VIDEO IS PLAYED FOR JURY)

(911 EMERGENCY CALL IS PLAYED FOR THE JURY)

ATTY. GARZA: I'd like to talk to you briefly about the defense in this case. Most of you probably heard the phrase in your life that everyone is entitled to their own opinions, not their own facts. And though there have been times in the past couple of years where talking heard would like us to believe that we live in a world where truth no longer exists, I suggest to you that the truth matters and there's no such thing as a post-truth world in a courtroom.

This courtroom was build nearly a 100 years ago. Like the courtrooms before it, on a simple foundation, that the witnesses who come in here and sit in that box and raise their hand and swear an oath to tell the truth make good on that promise, and they do it. And from the very first moments of this defense in this case you were met with

alternative facts as someone called them. You were told that Phillips didn't blame Mikey for a minute for what happened, and they never have. Of course, then you heard they took his deposition over two days where he was honest with them and he revealed the deepest and darkest struggles a human being could cope with, and how it's impacted his life, his marriage, his family, and they asked him question after question over days. And then they took his words, not 30 days later, and they turned them into weapons and used them against him. That was the first story in this case.

Of course they withdrew that claim before they had to come here and look you in the eyes and ask you to take it seriously and be held accountable for it. They told you Mr. Paez was untrained and the evidence would show that, and out of the very first witness' mouths that was directly controverted, and they would spend the rest of the trial trying to make that a fact. Trying to make alternative facts.

They told you they didn't question the damages of Mikey and Emily or that they were even hurt, and they're good people. They said very simply we're not the cause here. We're not responsible. They told you the true causes would reveal themselves to you. Respectfully, I'd submit the true causes have.

Phillips/Signify, their employees and their lawyers have revealed themselves, and the case itself has revealed another simple truth and it's this. The next time

you walk into a store and you look at the merchandise on the shelves, and you weight one brand against the Phillips product know this, even though you can't see it, it's there in big red can't miss it letters, buyer beware. Buyer beware because the moment they have your money and you walk out of that store or have products at your house, you're on your own and all bets are off. They'll collect their $17,000 like they did in this case for the lights and the pallet, the lights that they shipped on a lousy pallet on a sheet of black ice.

ATTY. VOSSLER: I apologize, Your Honor. I have to object. This is improper argument.

ATTY. GARZA: It is not.

THE COURT: Sustained.

ATTY. GARZA: They will ship their product on a lousy cheap pallet at a discount, on a sheet of black ice, which protects their product but not the people. Damian Fritz told you that. They are not concerned about the people. Buyer beware because when a 1300-pound pallet comes screaming off the shelf and it snaps your spine in half, they'll keep the money and blame you for not diving out of the way fast enough, just like they did to Mikey Cruz. They'll even blame their customer, who happens to be your employer, for not finding the hidden danger they sent. In fact, they'll blame anyone, anything, and everyone to keep you from looking at them. Buyer beware. Rather than accept any responsibility whatsoever in this case, they've chosen

to blame in a classic defense. This is what they do all the time: delay, deny, defend, point the finger at everyone else accept for what truly happened here.

I don't have to go through all the evidence because you paid close attention to what happened here. They stood up moments ago and they read you the allegations that were made against other parties. Look around, only party is still here. Why? I think you know why. They brought Mr. Paez in when we didn't, and I think you might have seen why. That man limped into the witness box, didn't make eye contact, and gave polite answers until he was excused. That's a man who has not for a moment since December 19th -- September 19th, 2017 not blamed himself too for what happened to Mr. Cruz. And the only regret I have is that he wasn't here for Dr. Singh's testimony because I think that might have been helpful for him to understand that regardless of what Mr. Paez did that day, if Phillips had only followed their own rule, Mr. Cruz would walk. Maybe he would have forgiven himself a little bit.

You saw the machine that their attorney put up on a video. They machine their own lawyer put into evidence to show you how they sent it safe, and we watched it together, and we saw that that machine wasn't capable of sending it safe and that's why we're here.

You heard it from Dr. Singh, who the military trusts to send supplies to our troops, about why this could never have happened if they'd followed their own rule, and

he showed you too. And that evidence was and remains uncontroverted in this case despite what counsel may have told you in opening statements. Everybody agrees that had they followed that rule, it never falls, and he could walk.

Now, let me turn to why we're here and what this case is really about. It's about you holding him accountable and responsible for the harms and losses they caused to Mikey and Emily because actions rewarded will be repeated. They come here in front of you asking you to reward them for ignoring the basic safety principles that could have prevented this. And if they're rewarded, it's business as usual.

Your verdict in this case matters not just for Mikey and Emily, but for all people in the future that know how important it is that corporation prioritize safety and people out of profits.

ATTY. VOSSLER: Your Honor, I must object again. I apologize, but this is improper argument. We're here to talk about this case.

THE COURT: Overruled.

ATTY. GARZA: And, again, your verdict matters in this case, not just for Mikey and Emily, because Phillips/Signify needs to understand it's not good enough, Mr. Fritz, to get up their and say we protect the lights. It's important to protect the people that move them.

We know the consequences and the terrible losses to the health of Mikey and Emily, and I'm going to talk more

about that in a moment, but this courtroom is about consequences for the defendant's actions and the losses that they caused to Mikey and Emily.

The Court will instruct you more particularly on the burden of proof in this case and it's often said that the burden in a civil case is a mere preponderance. There's a reason why the civil justice system uses a standard like mere preponderance, which means tip the scales ever so slightly. It means that you can have 49.9 percent doubt, and they win. And you may say to yourselves, that's too easy, why? Why is it such a minimal standard to meet? It's because the law wants to take care of the injured. We don't set a high standard. We're not talking about taking someone's life or their liberty away from them. You've all heard that criminal standard is beyond a reasonable doubt. But this case involves two folks who have already had their lives taken away from them, and when that happened the law says we want to make it easier to hold the party accountable, to benefit the party that had their life and their liberty taken away. It's what the burden is and that's their purpose. That's why you can have 49.9 percent doubt, and still find for Mikey and Emily. And I submit to you that there is very little doubt here.

Now, let me turn to what was taken from Mikey Cruz. As I sat down last night I didn't know how I was going to articulate this. Because when I think about what was taken from Mikey that September day it sometimes feels

it's easier to make a list of what he was left with. And then what I thought about it, I was left with a question. What is it that Mikey Cruz signed up for? He didn't volunteer for this, but this is where he's ended up. This is his job now. What would this job look like if it showed up as an add in a newspaper he read? Wanted, 42-year-old strong independent man, committed to his family, his friends his community, and his coworkers, must be health, active, enjoys dancing, swimming, walking, must be a person you can count on if you ever need help. The applicant must be willing to walk into a job they've loved for the last 15 years for the very last time. A job that was a second home and gave him a purpose. Must be willing to return from a lunch break, start work, and be knocked unconscious in a second by a 1300-pound load of lights, to have your spine snapped in half, and when the fog of the unconsciousness begins to lift to come to your sense slowly, you realize you can't feel your legs. To hope that your mind in that moment is playing tricks on you, and you're not yet fully awake. You must be willing to have your back split open and reshaped in ways you never could have imagined. Filled to the brim with stabilizing metal screws, brackets and wire, hardware that will tell you, a week in advance, when it's going to rain and it will make it unbearable to go shirtless in the summer because it heats up underneath your skin. You must be willing to go through years of physical rehabilitation clinging to the five percent hope that your

doctors have given to you that you'd ever walk again. That you'll stand up every day and fight with every muscle in your body for a millimeter of improvement, even though you know the road ahead is 100 miles. You must be willing to soil yourself occasionally like a child because you can neither feel nor predict your bowel movements. You must be willing to insert a plastic tube into your penis five to six times a day just to go to the bathroom. You will live a planned life with the prospect of freedom and spontaneity are forever gone. You will never again experience the pleasure of an orgasm in the intimate moments you share with your wife. Though, in a cruel way, your doctor's will tell you that your spine continues to transmit that bolt of electricity, but you'll never feel it. It's there, but it's not. Like your legs. You will feel isolated from family and friends. You'll feel demeaned because adult conversation occurs at a level above you and above your wheelchair. And you will be physically lower than those around you. You will feel physically lower regardless. Every day you will feel like a burden on your family and friends. The kind of burden that you once took pride in lifting from the shoulders of others. You'll be fearful about the future, and you will feel judged by strangers inadequate in your relationship with your wife. That job is 24 hours a day, seven days a week, 365 days a year, no vacations. The job lasts the rest of your life, a life that is now shortened for 10 years. What would we have to pay

him to take that job? And of course there is no dollar amount that he's accept willingly to sign up for that.

So I turn -- and what's the number that should be in that add so that Mikey would respond? That's what's asked in this case. That's all that the law affords. Is the number $150,000,000? No. That wouldn't be fair. Not 140, not 120. It's too much. It's not fair, just and reasonable as the Court will instruct you. 100,000,000? I don't know. I could understand how some of you might think that could be right based on what you've heard, but I think that's too much. Is it 80 to 90? If you think that's the right number, I'd encourage you to fight for it. That's your right on this jury, but that's too much. I think the right number for Mikey Cruz is between 50,000,000 and $60,000,000 and let me show you specifically how I get there.

Before I move on to the verdict I want to comment on two things. I expect Phillips/Signify attorneys to get up and say a few things. They'll tell you what they said in their opening. That the evidence will show that they are not a cause of this incident. They told you they dispute -- they don't dispute the legitimacy of his injuries or his damages. He's a nice guy. But then I suspect that in the next breath they'll tell you that if you find they are a cause, they want a discount, allow them to blame others in this case and shift that responsibility and the cost. Because their first position is they don't want to

pay anything, and the next position is they don't want to pay everything. And whenever a defense lawyer stands up in a case like this and says what they think you should give, I can't help but think who gets to say what the right damages are. The person who breaks it or the person who's broken? It's like someone goes into a shop and they knock something off the shelve and the owner comes over and they say that cost $300, and then person says I'll give you 20. Who gets to say what the right compensation is? Certainly not the person who broke it. And if they without hesitation stand up with the audacity to say that, that's not fair. That's not how this should work.

Your verdict in this case will do many things. One is bring closure to this. What you're about to do is very important and what you're about to do is powerful. Closure is powerful, and Emily and Mikey need closure. The defense in this case has been a shifting target for five years. It's been a shifting target during this trial, and I suspect that's why the theme was the cause will reveal itself because they hadn't yet decided what the story would be next.

They waited five long years for this day, and Mikey Cruz will never walk again, and his symptoms and the impact on him and Emily will never go away. But they need closure, the Court needs closure, and I suspect the defendants might too. We need you to close the books on this, and the way we do that is through your verdict and the

verdict will go on the books as a statement as to the importance of the rule in this case and why it needs to be followed to protect people like Mikey and Emily.

The Court will instruct you on the law of non-economic damages, which we've spoken about in jury selection. You know it as pain and suffering. And then Court will say as best as money can do it, because again, there's no do-over here. The money is to put them back in the position they were in as if this never happened.

I want to again be clear that this is not about a pile of money, this is not a windfall. This is as if their life was going along smoothly on a road and a giant pothole appeared. The money simply makes that road drivable again. There's no extra, there's no windfall.

For Mikey's past suffering and non-economics, for the moment when he regained consciousness on the warehouse floor and Claudio asked him if he could check his back and the firefighter looked at his back and turned his head and said I've never seen anything like that. For the moment he had to walk -- look up at his wife and for the first time out loud say I can't feel my legs, we're asking for $5,000,0000. That was the moment that changed his life forever.

For the pain of the surgery and the recovery that opened his back and fused metal hardware to his bones for life, the hardware that pokes at the skin of his frail frame, $5,000,000.

For the years of recovery that he's gone through, the hundreds and hundreds of hours of rehabilitation with his nephew, his righthand man; for the pain of that (indiscernible) towards the five percent, the pain of crawling out of bed that night because his legs wouldn't work and he had to get below the gun fire, the fear of crawling to that front door and not sure what he was going to find, the fear that stays with him that whether its guns or fire or a snowstorm, he may not get out; the feeling of being powerless and immobile every moment since that day, we're asking for $5,000,000.

For the darkness that surrounds Mikey at night when he is alone, the darkness that led him that day to swallow all the pills he could reach, to end the days of asking what if to quiet the never-ending burning pain in his legs, to spare his family and his friends their lives as caretakers, to end his feeling like a burden we're asking for $5,000,000.

For the impact on his relationship with his wife who has become his caretaker, a relationship that was not inverted in its power dynamic, but was damaged; they were a team, they always have been, they still are; but Mikey was no longer able to carry his end as he loved to do, though he still tries, and to no one's surprise Emily picked it up without a moment's hesitation; for the way in which their lives sexually, mentally, and emotionally were changed and will never come back, the way that it changes a wife no

matter how hard she tries to help her husband bath and to change him and clean him up, those moments when they're alone and they fight for a normal or as best as normal could ever hope to be; from the ways Mikey detailed the efforts he makes to let his wife know physically what she already knows mentally, that he loves her, always has and always will, and that he will never give up; even if his pride is wounded, he will fight; and for that impact on that marriage we're asking for 10,000,000.

And each of these independently nobody would bat an eye. They add up to 30,000,000 for the past. That's how it's the right number. But that's for what he's gone though, which is actually the easy part. Let's turn to what the future holds.

There is a road ahead that will look very different for each of them, for Mikey's future pain and suffering. The parties agree that (indiscernible) will live another 39.9 years. The Judge will instruct you on that. Mikey will now only live 24. 10 years of his life were stolen that day on the warehouse floor. Those are 10 years that Mikey and Emily will never live together. I told of the birth of his grandson, Victor, a few weeks ago and how much he cares for each of his children and their grandchildren. But the simple truth is that with only 24 years left, Mikey is going to miss a lot. He's unlikely to ever toast his grandson at a college graduation. He'll never attend or dance at his wedding, and the same is likely

true for each of his grandchildren.

He and Emily dreamed of travelling the Country together with their remaining years, reaping the rewards if a life of hard work. A rest well earned. A life that for Mikey began at the age of 14, never stopped and knew no limits until that was taken from him on September 19th, 2017. You've heard the daily realities of paralyzed life, about how his wife is his fulltime caretaker and how she helps him bath and dress, about how his bedroom will forever be his bathroom, and about how he's been forgotten in the car from time to time, about the nerve pain in his legs that burns and never never goes out; for the grandchildren that will never again remember when their grandpa did walk upright and chased them. You've heard what he will go through and the life that he has. For those harms, which I would suggest are harms worse than death, we're also asking for 30,000,000 and that's how I get to 60,000,000 for Mikey. And that includes the economic damages we've discussed in this case.

The parties agree and there will be an exhibit in evidence that the medical bills in the past are agreed upon, $684,000 and change. You'll have that exhibit. And the total past harms you heard for the future medical care -- past and future medical care that he will need, and the time away from work, total 6.5 million. And those are numbers you heard as well from Dr. Schuster, Mr. Royston and Dr. Seetharama.

And we're going to ask you to issue and vote for a verdict in this case for full justice, not partial. A verdict of 50 to 60 million for what Mikey has gone through and what he will go through in a shortened life is the right verdict for the right reasons, and because it is supported by the law and the evidence in this case.

I'd like to turn to Emily, Mikey's rock. I won't repeat the reasons above because although those are harms to Mikey, I think we're all aware that these are harms to their marriage and their family. And I'd suggest to you that the number full justice for Emily is somewhere between 10 and 15 million. We know that Emily will be alone for the last 16 years of her life. That Mikey and Emily will live the rest of their lives with just two words that constantly circle around in their heads, what if. What if they chose to properly secure the pallet? What if they'd chosen better safe than sorry? Of course they chose unsafe and they're not sorry in this case. And the life she lives from here on out will be punctuated with what ifs. What if I trust someone else with Mikey's care and they fail? What if he slips in the shower and I'm not there to help him up? What if the next burn lands him in the hospital? What if I leave him alone because I need some space for myself, and I the next suicide attempt is successful? What if something happens to me? Who will take care of him? What if he falls deeper into that darkness again and his depression gets worse and we can't leave the house? What if he injures his

arms and I can't carry him if I'm not strong enough? I know he'll die first, but how soon is too soon to plan? What does a widow do with a house full of wheelchairs? What will life be like without the love of her life? How will I prepare to be present and enjoy every Quinceañera, wedding or family event when there is a notable figure absent and missing? How will I feel celebrating our kids and our grandkids without him? For those harms and losses, ladies and gentlemen, I'm asking for 10 to 15 for Emily because I don't agree with Phillips' attorneys. I don't agree with that cross examination of Dr. Schuster that said how can you justify money for homecare. And you heard Dr. Schuster, he said because his wife's doing that for free right now. And, again, they said they don't need that money. I disagree. Because Emily's life matters, and she deserves a life of her own.

The purpose of the verdict in this case will bring closure, but it will also restore dignity to them. You've been here, you've seen the witnesses presented. You've seen the things said. And one of the things to remember about injuries is its not just an injury to the body part. For example, if someone injures their eye, you think physiologically the eyeball is one percent of the human body. And someone can cope with the loss of vision in one eye, but that's not the greatest harm. What people often forget is the person with one eye lives in terrific fear of what happens to the other one. They live in fear of

the darkness and the blindness and it's constant and terrifying for someone who only has one eye left. Or somebody that has legs that don't work -- what are legs? Legs are the ability to escape danger, to protect yourself, your family, to walk, to live, to exercise. And I know he worries about these things. He worries about his family having to come back and check on him because he can't escape these things.

I've been privileged and honored to get to know Mikey and Emily, and I consider them good friends and family. And I've been carrying -- and our team has been carrying a heavy burden throughout the pandemic and this trial. And for years it's weighed on us because we have the responsibility to make sure that they have the opportunity to recover full justice. Because full justice is full recovery.

There's an example of someone takes a $100 from you and they return 90, there hasn't been $90 of justice, there's been $10 of injustice. I want Juan and Emily to recover full justice, that's the strength of our democracy and you are the voice of our democracy. We don't have professional jurors; we have a community like you all that comes together as one to decide what justice is. And you have that right in this case, each of you, to stand up and say I vote for full justice and I won't rest and deliberations don't end until we've reached it.

And now I take the heavy burden that we've

carried on our shoulders and we pass it on to you. We know that your commitment and the concern and the seriousness with which you've taken your job that you are prepared for this task. And I know that ultimately you'll ring the bell of justice for Mikey and Emily. Thank you.

THE COURT: All right. Thank you. Attorney Vossler?

ATTY. VOSSLER: Yes, Your Honor. Sidebar, please?

(SIDEBAR)

THE COURT: All right. Ladies and gentlemen, before Mr. Vossler begins with his closing, I just wanted to instruct you on one thing. There was a reference to destruction of evidence. I'm going to instruct you to disregard that statement. There was no evidence that there was any destruction of evidence in this case. So please disregard that statement. Thank you.

All right. Attorney Vossler?

ATTY. VOSSLER: Thank you, Your Honor.

(PAUSE)

ATTY. VOSSLER: All set?

THE COURT: All right. Attorney Vossler?

ATTY. VOSSLER: May it please the Court. Counsel, ladies and gentlemen of the jury, I want to start by thanking you so much for the time and the energy and the commitment that you all have put into this trial because it

certainly is essential that we have people like you, attentive engaged, dedicated, to help us decide this dispute. So on behalf of my colleague Attorney Bradford, Mr. Manning from Signify, and on behalf of all of us, I thank you very much for your time.

Now, we heard in Mr. Garza's opening statement that safety rules matter. And I think we just heard, at the beginning of his summation, that safety rules matter. I want to submit to you that the safety rules that really matter here were Rexel's. You heard testimony -- and I'm going to talk in a little bit about this adjacent aisle rule as it was explained by Mr. Cruz. You've heard about the use of spotters when people were operating the forklifts in the racks. And you heard today about Rexel's failure to use a trained, certified, qualified power industrial truck operator at the time of this accident.

This was plaintiff's exhibit and I think this is worth a thousand words. It certainly illustrates to us the importance of the adjacent aisle rule, and that was Rexel's safety rule. It certainly exhibits for us what we actually think happened. Mr. Cruz went into the aisle first. He checked both aisles. He was clear. Some moments later he saw Mr. Paez come by, and Mr. Paez stepped into the adjacent aisle, and here we are.

When I first started to speak to you here in this courtroom, I addressed the fact that this really is a simple negligence case. If we kind of cut through the

clutter and tune out the noise, we know that the plaintiff by their own plan, if you will, had to prove one of three things. Number one, they have to prove that Mr. McGovern was not properly trained. Number two, they would have to prove that Mr. McGovern was not properly supervised. And number three, they would have to prove that the lights were shipped out of Mountain Top Pennsylvania without being stretch wrapped to the pallet.

I also spoke to you about the fact that the true cause of this case would reveal itself as we progressed through the evidence, and I will submit to you that we stayed true to our assessment as explained to you when we opened.

I just want to quickly remind everybody what it is that brought us here. You know that the lights were shipped from Asia to Mountain Top Pennsylvania. Later on they were loaded onto a truck, and they were shipped from Mountain Top Pennsylvania to the Rexel warehouse. Some time before we know that Spec hired Mr. Paez and put him in the pool of workers. And Spec sent Mr. Paez to work at the Rexel warehouse. And where did everything happen? Everything happened at the Rexel warehouse.

I thought it would be best just to give you a timeline, something to think about here, because facts matter. And what I really want to talk to you about over the next hour or so are the facts. And I think that if we look at this timeline, we've got some clear undisputed

facts. Around September 13th John McGovern picked and wrapped the lights and sometimes after that Jerry Medash loaded them on to the truck. There was a stop in Waterford, but we knew that the T LEDs that caused this injury were unloaded by Rexel using a fork truck on September 14th. The T LEDs were inspected by Rexel. Remember Mr. Solano told us about that. They were inspected for damage and for safety issues, and that happened probably on September 14th. Rexel's employees and agents then moved the lights with fork trucks or forklifts around the Rexel warehouse and ultimately put them up on a rack. Rexel had the lights from September 14th until September 19th. And on that date, Mr. Paez, while attempting to lift the load of one rack, wound up knocking the lights off of the adjacent rack.

As we go through the testimony here today I'll be focusing on the testimony of many of the witnesses, but I just wanted to bring your attention to something that Mr. Cruz told us. And you can see that I asked a question at one point:

Q Would you agree that in terms of moving them about the warehouse, Rexel had total control of that?

A Yes.

Q And after inspection Rexel had total control of where it might put the lights to store them, true?

A True.

Q And Rexel had total control over who it would designate to move the lights within the Rexel

warehouse, true?

A True.

Mr. Cruz also talked about the inspections, and you may recall that he said that they would be inspected to see if the lights were safe, if things were safe when they hit the loading dock. And you may recall that I asked:

Q I assume you mean safe to unload and to move around the Rexel warehouse?

A Yes.

Q And by that would you also mean safe for Rexel employees to put them up on the rack?

A Yes.

You know that the plaintiff has the burden of proof and the judge is going to tell you all about this. There are a lot of facts that are unknown and will never be known, and that's really not an issue for us because the plaintiff has the burden of proof. How were these pallets stored or positioned up on the racks in the moments before Mr. Paez attempted his lift. Were they overhanging? Were the lights stretch wrapped to the pallet when inspected on the Rexel loading dock? How many times did Rexel employees handle the T -LEDs? How many times did Rexel employees touch these lights between September 14th and September 19th?

One thing we know, ladies and gentlemen, is that the Phillips never had an opportunity to inspect the evidence. Phillips only learned of this accident when it was first served with a summons and complaint, the sue

papers, in March of 2018. We know that Rexel did not save the license plates that would have provided a lot of information about the things involved. We know that Rexel ultimately discarded the lights. They sold off the good lights, and they discarded the broken lights. They got rid of the pallet, they got rid of the stretch wrap before we ever had a chance to examine those things. Had we had that opportunity, many questions would have been answered right from the get-go.

The OSHA photos and the early deposition testimony, particularly from Mr. Kelly, who was one of the first to be deposed, informed us that what we thought was the packaging configuration consistent of something with cardboard, cardboard around three sides, we know that there's green banding. Everyone, for years, proceeded on the notion that this packaging configuration included cardboard sides, and on that basis it was a mystery because that's not anything that would have been shipped out of Mountain Top.

Mr. Kelly, Professor Singh, and even Mr. Garza recall the testimony from Mr. Garza, at least in terms of transcripts and questions that he asked witnesses, he acknowledged that we all struggled -- we all struggled with this issue. Was there cardboard, was there not? So at this point it certainly seemed like there was no cardboard, but when you consider the evidence and you consider the testimony, just recall that it was the Rexel guy who said

there was cardboard there, and everybody proceeded -- everybody proceeded on that information, in terms of discovery, depositions, and questions and things like that.

Now, the three things that the plaintiff has failed to prove. I would submit to you that the plaintiff has failed to prove that Mountain Top trained employees. The plaintiff failed to prove that Mountain Top was deficient in supervising its employees. And the plaintiff failed to prove that the lights were properly stretched wrapped, properly stretched wrapped to the T LEDs. Remember when I pressed Mr. Singh on his opinion? What is it, not stretch wrapped or properly stretched wrapped? And he conceded, counsel, they weren't properly stretch wrapped. So I think the plaintiff has failed to prove all three.

You've heard from the Signify witnesses, you've heard from Mr. Fritz, Cindy Bird, George Hardt, John McGovern, if you recall he was the picker, Jerry Medash was the guy that actually loaded the lights on to the truck. These individuals have worked for Signify, essentially, all of their lives. These folks have long tenure with the company, they take their job seriously, and I would submit to you as they came here today and took the oath and testified before you, they were giving you the best most credible testimony that they could provide. All confirmed that there was a long-standing policy at Signify to stretch wrap the lights a business custom or it was a practice. It's what you did. You didn't do anything else.

Now, Mr. McGovern had been there for 22 years. He's been a warehouseman all his life. He actually is a guy that trained other new hires. He told you that stretch wrapping to the pallet has been Phillips/Signify policy and procedure since way before 2017. He also told you that he does it 100 percent of the time. So while we do not have the burden of proof, ladies and gentlemen, we brought you solid evidence that there was no employee training deficiencies. No deficiencies in the training. This was one of the most experienced employees that they could have had on this job. It's one thing if it was a new hire, young kid out of college, hadn't done the work before, but how could you possibly find that Mr. McGovern was not properly trained. McGovern needed no supervision. As I said, he's been there for 22 years. At the time of the accident it was about 17. He did not need to look at a sheet of paper every time he used the Lantech machine. He was one of the best pickers according to Mr. Medash, who had been there for 11 years. I recall that Jerry was actually the second set of eyes, so if for some reason Mr. McGovern didn't do his job and the lights were not stretch wrapped to the pallet, Jerry would have call it. You also recall that Jerry was the kind of guy that he would actually take them over to the stretch wrap machine and stretch wrap them before he actually loaded them on the truck. So we have a 15-years employee checking on the work of a 17-year-old employee. Ladies and gentlemen, I would submit to you that they have failed to

prove that a lack of supervision was the cause of the injury.

You also heard from Mr. Hardt. Mr. Hardt didn't actually work at Mountain Top, but he provided testimony with regard to the policy. You may recall that there was a little back and forth about his testimony, which we think was mischaracterized, but in the end he testified that there was a policy and that everything was stretch wrapped to the pallet before it went out.

Over the course of time we saw the stretch wrap to the wood, wrapping the pallet one point lesson. Mr. McGovern testified that he didn't recall seeing it on the Lantech machine, but again, he does it every day. He doesn't need to check this piece of paper every single time he goes to the machine to wrap lights to a pallet. And Mr. Maddash said that he recalls seeing this at multiple places on machines, in fact, over the course of his career. Recall he retired in 2018. So Mr. McGovern testified that he does it the same way every time. 100 percent sure that that's the way he did it on September 13th and Maddash would have a corrected it.

Ladies and gentlemen, I would submit to you that there is no fact witness testimony in this case that Rexel ever complained to Phillips then Signify about the way that these lights were being delivered here in Hartford. It's undisputed, right? There's no evidence whatsoever that anyone from Rexel ever called Signify to say, hey, we've got

a problem. And, in fact, they never even called us to tell us about the accident. Never called us to say, hey, we just had an accident and we think it was because of the way you stretch wrapped or didn't.

So the other thing, ladies and gentlemen, is that Rexel's order specified that the lights should be stretch wrapped to the pallet. Remember Kelly and Solano, I asked both of them, and they said that no one could provide testimonial support to this notion that the lights were not stretch wrapped to the pallet. Mr. Cruz has told you that every single load of lights that came in, every single load of lights. That's hundreds, right? Two to three truckloads a week, 24 pallets per truck load, for weeks and weeks and weeks. Think of the number of lights that would have come in under that scenario. And he said that every single one came in the same way, they were not stretch wrapped to the pallet. Yet, Mr. Solano and Mr. Kelly did not confirm that. In fact, they couldn't even tell you that they had a recollection that the lights were coming in and not stretch wrapped to the pallet, and then, of course, Rexel inspected every delivery. So, at this point, walking through our little progression here, there really is no evidence that Rexel ever complained, and there's no fact witness testimony to support this claim.

Now, Mr. Cruz testified several times, recall he was on and off the stand and, you know, we certainly understand that, you know, that's probably a good thing for

him. But he did provide some testimony at one point that I wanted to share with you, and that is:

Q Is it true that you had no personal knowledge of the condition of the stretch wrap on the lights involved in this case at the time when they arrived at Rexel in Hartford?

A No.

Q That's true, you don't have personal knowledge. Correct?

A Yeah. That's true, I don't have personal knowledge.

So what do we have? We have a Kelly, we had Solano, we have Mr. Cruz, we had Mr. Singh, Dr. Singh. And what I would like to do is go to, for example, Kelly. Bear with me for a minute, I'm going to right to the transcript.

(PAUSE)

ATTY. VOSSLER: Actually, we'll go to Solano first. The testimony of Mr. Solano:

Q Before the time of this incident, you're not aware of any complaints that anyone made to Phillips about the way that these lights were coming out, true?

A Not at all.

Q You don't know?

A No, I don't remember any complaints.

Q Yeah. I realize it's been a long time, but to the best of your knowledge no complaints were ever

made to Phillips from the receiving department about the way the lights were coming into the warehouse, true?

A No, no. Well, true. That's true.

Q Okay.

And then when it came to his recollection of what the lights looked like when they landed on the loading dock. You may recall that we had maybe a misunderstanding. I was saying stretch wrap and he was misinterpreting it. And he corrected me and said shrink wrap. I said, oh, so if I change my question to shrink wrap, would that make a difference. And, apparently, it did because remember -- you may remember that at the very end of our exchange, our conversation, I asked question:

Q So in terms of the packing configuration, then using shrink wrap, *maybe they were all shrink wrapped, maybe they were not. As you sit here now, you don't recall. Is that fair?*

A Yes.

So Mr. Solano who is the receiving lead, if you will, he was the guy that was managing the receiving department, and a longtime acquaintance of the plaintiff. You may recall that they knew each other socially. At least they would play softball and things like that. Mr. Solano's testimony is that he could not tell us that the lights were coming in un-stretch wrapped to the pallet.

Now, Mr. Kelly, you may recall, was the very

first witness and he said some things that are quite important, in my view. He acknowledged that Rexel had complete control of the Hartford Warehouse. Once the lights were unloaded, they were under Rexel's complete control. He never called Phillips. Rexel policy was to inspect for damage to the lights and packaging, and the T LEDs are Rexel's property once they're delivered. Kelly knew of no one who would say that the lights were not stretch wrapped to the pallet.

We just discussed Solano, so now we move on to Professor Singh. And a few comments about this expert. He's been retained, what, thousands of times, testified hundreds of depositions, testified in Court hundreds of times. Certainly, he had the appearance of a hired gun, a litigation witness. And he was first retained two years after the accident. So imagine that, two years after the accident and over a year after the plaintiffs filed their lawsuit and alleged three things: Failure to train, failure to supervise, failure to stretch wrap. Then they hired him, and he come along and, obviously, supports -- supports their opinion. But it's my impression that he'll say whatever suits him at any given time, and I'll give you some examples. Initially, when he talked about Paez, he actually said here in Court I believe that he didn't think that Paez was negligent. And then, almost in the same breath, he said, oh, yeah, no, he was. He did the same thing over the course of deposition. Here at trial you might have found

this interesting, but he actually was not provided with the testimony of John McGovern. And you may remember that during his deposition, he was not provided, at last -- before he wrote his report, he was not provided with the testimony of the forklift operator. And even halfway through his deposition, he still had not read the testimony of the forklift operator, yet he had opinions and those opinions were all quite unfavorable to Signify. So how does that work? You come up with an opinion, you write your report, and then you gather the facts afterwards? That's what he did. Remember, Rexel never complained, right? Rexel inspected every delivery, and there is no evidence that they every complained.

Now, Mr. Singh came here and told you that he had opinions about causation. He's never even been to Rexel. Never came to Hartford. Never looked at the racks, never looked at the truck. There's really no factual basis for his testimony. Are we to believe that he knows more than the people that actually work there and the people who were there that day? He'd like you to believe so, right, because they can't say that the lights were not stretch wrapped to the pallet. None of them would. But he comes in and say, well, I looked at some pictures and I can tell by looking at a couple of OSHA pictures, years afterwards, that the lights were not stretch wrapped to the pallet when they left Pennsylvania. So how could that be, right?

So he never spoke to any witnesses. He never

tested anything. He never embarked on any engineering analysis. This is all per his testimony. He never attempted an accident reconstruction. He never did any mathematical calculations.

Now, you recall the animation. And I was able to kind of squeeze out of him that fact that when he was deposed he scoffed -- he almost laughed off the notion of doing an animation such as the one that you saw. Why? Because he said they're cartoons. They're cartoons. Then in April of 2022 his trial approaches. I think the testimony is that he asked Mr. Garza to help come up with an animation. So he goes from they're cartoon and scoffs at them, to, oh, well, I guess we better do one here on this case.

One of the things that really struck me is that Mr. Singh, Dr. Singh, Professor Singh, however you want to call him, he is telling you -- he told you that he knows -- he knows that the lights weren't stretch wrapped to the pallet because he looked at an OSHA photograph in 2019. That's how he knows, right? He didn't talk to any witnesses. Never talked to Kelly, never talked to anybody who worked at Rexel. What's the basis now? Well, the photograph. I can get it right because I can look at the photograph and I can just tell. Well, remember that he had looked at the photographs before his deposition and he got it wrong. Case in point, the cardboard, right? He said over and over, we're talking about cardboard. There's

cardboard around the lights. It's three sides. That's why there was such an issue as to whether it was ours, our packaging configuration, maybe somebody repackaged it. But in one instance he can look at the photographs and then, basically, dos a flip-flop, right, because he didn't get it right, but now he wants you to believe that he can look at a couple of photographs taken by OSHA years after the fact and on that basis he can tell you what the condition of the lights were when they left Mountain Top on September 13, 2017. I would just suggest to you folks that you need to take his testimony with a grain of salt.

Now, he is quite knowledgeable when it comes to packaging. Remember his book, and by going through chapters and lines in his book I was able to get him to agree to some of these things. The Lantech machine, that's the stretch wrap machine at Mountain Top. Very acceptable when properly used. He also conceded the lights could not have fallen on their own. He took some prodding, but he agreed that it took significant force to move those lights off the shelf, and that force, obviously, was provided by Mr. Paez. And then he fought me with, you know, with tooth and nail on this, but he also at his deposition he spotted us one. He said, you know, I think it could have happened anyway, and then he walked it back. He didn't quite use those words, but he said, yeah, Paez could have thrown then anyway -- thrown them meaning, I think could have knocked them off the shelf regardless of how they were secured or not secured to

the pallet.

The other thing coming from his book, the proper use of stretch wrap is affective unitization method, machine stretch wrap technology provides more consistent loads, the pallets that we use to grade the reconditioned pallets meet the standard of care. Very important here. Loading and unloading the truck can cause the wrap to tear or rip off. And he also indicated that there were inherent problems associated with the stretch wrap, such as the fact that when you take it off the truck at the destination the stretch wrap rubs against the stretch wrap next to it, on another pallet, and it can rip or tear it off.

So just to finish with Mr. Singh, Professor Singh. Sorry. He's not here, but he would want me to say that. He really didn't want all the facts. He didn't want McGovern's testimony. You may recall that when he took the stand the second day here, I asked him, did you get McGovern's testimony? Well, I got a little bit of it. But why didn't you get the whole thing? Well, he said I didn't really want -- I didn't want all of it. He just wanted something that would provide some cover and some support.

So we just talked about this, but does it make sense that every single load of T LEDs, every single one, shipped out of Mountain Top in this time frame, was not stretched wrapped to the pallet? Every single one, and we never heard a single complaint, we never got a damage claim, nothing ever shifted over the road or broke? I would submit

to you folks that it just doesn't make any sense. And what Mr. Garza and his clients are saying here, just -- it can't make sense. Ask yourselves, would Signify really ignore its long-standing policy to wrap to the pallet? Would Signify take the time to wrap it, but not take it down to the wood? It takes the same amount of time, right? So why would you wrap it, but not take it down to the wood? Signify used the Lantech wrapping machine, which Mr. -- Professor Singh said was probably of the best 10 percent of this equip -- yeah, I think he said 10 percent -- best 10 percent of equipment or best 10 percent of the companies that do this. So he was a fan of the Lantech machine.

And how could Rexel miss this? If every single pallet came in not stretch wrapped, how could Rexel miss it? Now, we heard about five minutes and 50 cents. I would submit to you that Rexel, a very sophisticated company, actually just said -- I think it was Mr. Kelly, I think, it would take seconds. So let's not talk about five minutes. Let's talk about Rexel, and let's talk about how many seconds would it take for you to look at that pallet and see that there was something wrong? If you know that you're going to have a put away guy move that thing and put it up on a rack, how long would it take you to look at that and determine whether or not it should go right up on the rack? He said a couple of seconds. Then we said, okay, well, if you saw something and you wanted to stretch wrap it, how long would that take? A couple of minutes. So this five-

minutes 50 cents, it cuts both ways here, folks, because Rexel owned the lights, Rexel had control of it.

Now, having said that, I don't think that the plaintiff had been able to prove failure to train, failure to supervise, and the last thing would be failure to properly stretch wrap.

I want to move on to causation, and I would suggest to you that all roads here lead to causation. Undisputed facts, unknown employee of Rexel stored the T LEDs on the upper rack. Unknown employee stored the Paez pallet somewhere up there before the accident happened. Substantial force is generated by Paez and the reach truck, and that's what caused the displacement. Without a substantial force, and this is Professor Singh, without that substantial force the lights could still be on the rack today. The banding did not fail. The banding is a total red herring. It's a distraction. The banding did not fail and did not cause the lights to fall. The wooden pallet did not crack. The wooden pallet did not fall apart and cause everything to shift and fall. We know that. These are facts we know. And no one saw how these things were moved or moving up top as Paez began his lift.

So Signify has denied that it has -- that it was negligent, and claims that Rexel was the sole proximate cause of the plaintiff's injury. I would submit to you that the plaintiffs -- and the Judge will tell you this. He's got an instruction coming. The plaintiffs cannot prevail

against Signify if you find that Rexel's negligence was the sole proximate cause. Now, again, Rexel was in complete control. Rexel was in complete control of the T LEDs once unloaded on September 14th. Rexel controlled who operated the equipment. Who controlled the aisles? Rexel did. Who controlled the racks? Rexel did. Even Professor Singh agreed with me on these points.

Now, I want to go through a couple of things here because we've been talking about rules and I started by talking about Rexel's rules. You will have in the jury room the Rexel safety manual. This is Exhibit X3. I guess I'd call it triple X, but that has bad connotations. So X3 is the Rexel safety manual. You'll have that.

You heard about Mr. Kelly. You heard that Mr. Kelly was the guy who was in charge of enforcing that and you can look at that in terms of what Rexel's policies and procedures were and what their approach was, at least in writing.

Next, you've heard that operators like Mr. Paez must be fully trained. So that's a rule here. That comes through OSHA. You heard Mr. Girardi explain all that. You also heard that they don't put things up on the rack if they're unsafe, and that comes from Mr. Solano. I think he said directly if they're not safe, they don't go up on the rack or something to that effect. Maybe I can find it, let's see.

(PAUSE)

ATTY. VOSSLER: Oh, here it is:

Q Let's just say it was you. If you observed something come off the truck and land on the loading dock there and you observed something that was not safe, would you just put that product up on the rack?

A If its not safe, it won't get put up on the rack.

So that was Solano talking about the way that he operated the loading dock and the incoming product.

You also heard from Mr. Cruz about the adjacent aisle rule, and you also heard testimony about the use of spotters when they've taken things down from the high racks. So Mr. Cruz told you that when he walked out into the -- into the aisles that day, he checked both aisles because he had to. He said I had to. And I knew when I heard him say that, why? Its because he had told us at his deposition that they had a rule. It was in the training module. He called it a policy. He called it a rule. And he basically said that we don't have people in adjoining aisles at the same time. We don't have a truck over here, and somebody over here with a truck working over here, and the reason why is because we don't want anything like this to happen. Right? No one wanted this to happen. We certainly did not. But there was -- there was a rule, and both Mr. Cruz and Mr. Paez spoke of that.

Mr. Cruz also told you about spotters. He said that, quote, most -- *the majority of the time, yes, every*

time I went into the warehouse, there was always someone spotting someone. So they did it. They knew about it. Quarry whether Mr. Paez knew about it.

So, also from Mr. Cruz and from Mr. Paez there was a question:

Q Sure. At the time of the accident Rexel had a rule that spoke to the situation that we have here on this case, right, reach truck in one aisle and somebody picking an order in the other?

A Yes.

So Mr. Paez, you may recall he testified, he's kind of soft spoken. He was here under subpoena. We called him because they didn't. And he came and he told you that:

Q Before the date of the accident, had you ever been told anything about the use of a spotter at Rexel?

A No.

Q Did you try to use a spotter on the day of the accident?

A No.

Q Do you know who was in the aisle first?

Now, this is Mr. Paez testifying to you:

Q Who was in the aisle first?

A Mr. Cruz was.

And then another questions:

Q And under the Rexel rule, if he was in the aisle first, then it would have been your obligation

to wait until he was out of there?

A Correct. He was heading towards the back.

But Mr. Paez agreed with me or at least understood that it was his obligation to wait.

Another questions:

A Wait till they're cleared. They get out of that aisle or that section that I'm in.

Q And why is that?

A So accidents -- so no accidents happen. If something were to happen, then nobody could be injured or, you know, something bad happens, they would be clear.

So this is coming from Mr. Paez. Again, ladies and gentlemen, a picture is worth a thousand words.

So I just want to talk briefly about Mr. Kelly again. He told you that it wouldn't take but a couple of seconds to visually observe if there was damage to the packaging. Rexel had a stretch wrap machine, and if something wasn't looking safe, they would take a couple of minutes to wrap it before storing it. Please consider this testimony on this issue of sole proximate cause.

About the stretch wrap machine, Mr. Paez told you that there was one, he used it. I basically cut and pasted some of that testimony for you here. And you may recall that he said that he used it every day, it was on the loading dock, and then he described the instances when he would use it. All the time, every time we picked, every

time we (indiscernible) we would shrink wrap.

So ladies and gentlemen, as I go through these list of rules, I would submit to you on this issue of sole proximate cause there was a rule about operators being fully trained, not followed. There was a rule that you don't put things up on the rack if you think they're unsafe. Well, we don't know what the condition of that package was when it went up, but if they put it up there in an unsafe condition, then that certainly would be something within Rexel's control, they did it. They could have stopped it. Next rule, adjacent aisle rule. Well, we know, based upon what we just looked at, that it wasn't followed. And, finally, the spotter rule. We know that Mr. Paez said that he did not have a spotter.

Now, as far as Mr. Paez' training is concerned, you heard a lot about that today. And I just wanted to show you Exhibit J, you saw this when he testified, but this is his job applications. This is page two. You'll have the whole thing when you deliberate. Note that at least when he told the Spec people about his experience, he did not check off forklift, but they sent him to the warehouse just the same. His testimony, no formal PIT training at Rexel. He said his training was on the fly. He never read the Crown Operators Manual.

Ladies and gentlemen, you heard about this today. It's an exhibit. This is going to be Exhibit Triple W. You will have this to look at in the jury room. Page

one, warning, it's the law, you must be trained and certified to operate this truck. OSHA 1910 178. Right there. He never read it. He doesn't recall anybody ever telling him to read it or asking him to read it.

Some of the things that were undisputed, I felt, in terms of Rexel and how they directed him, you can just read for yourself here.

Q But was there anybody from Spec there to assign tasks to you at Rexel?

A No.

Q While you were there was there ever a time when anybody from Spec was supervising you?

A No.

You get the story. Again, when did he get on the truck?

Q Well, at that point you first arrived, did that involve the use of any powered industrial trucks?

A Not that I remember.

So at some point when he starts there, he doesn't remember working on trucks, but then *yeah, after a while I had to get products down because there was nobody around.*

Q Did there come a point during your assignment to Rexel that you started operating a reach truck?

A Yeah, after a while I had to get the products down because there was nobody around.

We already spoke about the operator's manual. He never saw it. He wasn't asked to read it. Now, as far as training is concerned, I also included this:

Q During your time when you were assigned, had you ever been provided with any formal training concerning the operation of the reach truck?

A No.

Q Did you ever go for training sessions on Saturdays?

A No.

Q Did you ever take any quizzes?

A No.

Q Did you ever receive anything that looked like a certificate or a diploma that showed you were certified?

A No.

Here's where he says my training was on the fly, if you caught it. On the fly. Another question:

Q At the time of the accident, did you have any understanding as to whether or not you were certified to operate a forklift?

A No.

Q You did not have an understanding that you were or you weren't?

A No, I wasn't. I didn't.

So what was he doing that day? His answer was:

A I don't really recall what I was thinking at

the time.

Again, question about what he was doing:

A I don't -- any -- I just -- I could see where I would need to go, but I don't have an explanation for that.

So he doesn't have an explanation for what he was doing with the forks so high and the loads so high.

Most importantly, he's the guy that's in the middle of this, right? He's the guy that's in the middle of it. And you've heard this already, but I needed to bring it to your attention again today. Was he ever asked to participate in any type of accident investigation conducted by Rexel? No.

Q Were you ever interviewed by anyone from OSHA?

A No.

Mr. Cruz, talking about his knowledge of Jeanpaul Paez, said he rarely saw Mr. Paez operate a reach truck before the accident date. And he questioned others at the scene about why Mr. Paez was on the truck. So, again, I just wanted to bring you back to think about this, Rexel's rules not followed. Rexel's rules violated. Please consider this. Consider this and think about it because the Judge is going to tell you again about sole proximate cause.

Now, as far as damages are concerned, the plaintiff has the burden of proof. And I am not here to dispute how badly he was injured. With all due respect, I

am not here to dispute that. But in terms of money damages and compensation and a verdict, I am compelled at least to talk to you a little bit about my thoughts here. As for future economic damages, folks, there was very little proof regarding wage loss. Recall that Mr. Royston, who testified that -- I think he extrapolated that maybe there's close to a million dollars in future wage loss, was based upon his assumption that Mr. Cruz will never work again. Now, I wouldn't highlight this but for the fact that Mr. Cruz' medical expert and Mr. Cruz' vocational expert both told you that he has a working capacity. He can work in a sedentary job. I need to point that out to you, folks. And our expert who came in and talked about the vocational prospects, also indicated that based upon his interview with the plaintiff a couple of years ago, he felt that Mr. Cruz had really good translatable skills. Good with people, good on the phone, good with customers, good on the computer. He felt that Mr. Cruz could work. So to the extent that Mr. Royston is tallying up almost a million dollars in future damages on the notion that Mr. Cruz can't work, I just need to point out to you that there wasn't any real evidence to support that opinion. In fact, his evidence was undercut by Mr. Cruz' other experts.

Dr. Schuster, conceded that some of the expenses in the future are unknown. They are speculative at this point. Of course there are going to be future expenses. We're not disputing that, but to the extent that Mr.

Schuster -- Dr. Schuster is putting up big numbers for future expenses that he himself couldn't really vouch for. He said maybe, you know, as needed, kind of speculative. I think you get the point. So we're certainly not saying that there are no future damages here, but the plaintiffs have the burden of proof and under these circumstances, especially when it's the plaintiff's own experts that are undercutting the future economic damage claim -- obviously, it's my job to point that out to you. So you must not speculate, and any judgment must be fair just and reasonable. That's going to be the phrase of the day. The Judge is about to charge you and any verdict must be fair, just, and reasonable.

Mr. Garza will have the last word. This really is my last chance to speak to you about the evidence. I was happy to actually speak about the evidence here today, speak about the testimony, and I trust that you guys, having a very difficult task in front of you, will follow the facts and you'll follow the law.

Now, our rules permit Mr. Garza to argue dollar amounts. Judge Rosen will tell you that we can argue dollar amount, but what we say here is not evidence. So in the end, what becomes the evidence, what becomes the facts will be what you guys determine when you go into the room here or the other room to start to deliberate. We can tell you what the law is -- what we think the law is, but the Judge is going to tell you for sure what the law is. We can argue

the facts, the facts are going to be totally up to you to decide.

But in terms of the damages, ladies and gentlemen, first of all, I'm not in a position to really be enthusiastic about talking about damages because I think, based upon the evidence that I have brought to your attention, based upon your claims -- and remember it's three claims, they can't win if they don't prove one of those three: Failure to train, failure to supervise, failure to stretch wrap to the pallet. But even then they can't win if you find that Rexel's conduct was the sole proximate cause, right?

So I know I am asking you to do something that's difficult, but in the first instance I am going to ask you to bring back a verdict for the defendant. If that is not the case, then I would submit to you that a fair just and reasonable verdict in this case, taking into account the economic damages, the future economic damages, it's going to be somewhere in the 5,000,000 or $6,000,000 range, maybe less if you understand and accept what I just said about Royston. But I would submit to you folks that here in Connecticut fair just and reasonable damages, they're -- this is to compensate. This is not to do anything else by compensate. Fair, just, and reasonable damages, folks, I think would be something in the nine, 10, $11,000,000 range, but it's always up to you. It's always up to you to decide.

Now, there's going to be a charge on

apportionment of damages, and the Judge will tell you that if you find against Signify, then there will be instructions that you will look at the conduct and the evidence and you will decide whether or not to apportion percentages of fault or percentages of damages to other parties, and I think the Judge will tell you that that's going to involve at this point Spec and Mr. Paez. So if you get that far in the process and you're going to award damages against Signify, you will also be looking at the conduct of Spec and Paez and you might assign percentages of fault to them.

Just to finish, folks, again, thank you very much, you've been very attentive. What we have here is we have one worker knock the lights off the rack and injured another worker. The guy who knocked the lights off the rack was not following the rules. The employer broke the rules by allowing JPP, Jeanpaul Paez to operate the forklift. The simple rules that were in place, were there to prevent exactly what happened here. That's why there was the adjacent aisle rule. And the employer, Rexel, was in control of all of it.

So now it's your time. I know the plaintiffs have been through a lot, and I truly empathize for them, and I feel for them, but at the same time, folks, I must ask you to hold the plaintiffs to their burden of proof and perhaps make a tough decision here. Do not decide this case on sympathy, or feelings, or emotions, but on those facts, those stubborn facts, right? That's what I want to talk to

you about during my hour here, the facts. And I hope that you will decide, based upon the facts, that this accident was not caused by the negligence of Signify. And that to the extent that the plaintiffs have made those three claims that the plaintiffs have no been able to prove any one of them. Thank you very much.

THE COURT: All right. Ladies and gentlemen, we've been going at it about two hours. We're going to take a 10-minute recess, and then Mr. Garza has an opportunity for final closing.

THE CLERK: All rise. Court is in recess.

(RECESS)

THE CLERK: All rise. Court is in session.

THE COURT: All right. You may be seated. Thank you.

(PAUSE)

THE COURT: All right. Everyone settle down, please?

JUDICIAL MARSHAL: Court is session.

(PAUSE)

THE COURT: All right. Mr. Clerk, can you bring in the jury, please?

(PAUSE)

THE CLERK: Jury entering.

(JURY ENTERS)

THE COURT: All right. The jury has returned and has been seated. You all may be seated. Thank

you.

(PAUSE)

THE COURT: All right. Attorney Garza?

ATTY. GARZA: Thank you, Your Honor.

(PAUSE)

ATTY. GARZA: Did you catch it? We're on story number 15, ladies and gentlemen, if you're listening real carefully. It almost went right by you. Everyday in this case these folks have gotten up and they've put witnesses on that stand that have told us they've always had the rule, they followed it that day, and what Mikey Cruz said about it not being attached was impossible. But if you were listening carefully, story number 15 has now appeared. And if it wasn't attached and it wasn't any danger, Rexel should have spotted it. Their employees on the loading dock should have heard the ticking of the time bomb and it's their fault. We didn't send it safe, even though we said we had to and every witness up here said it wasn't the customer's fault if we didn't, but I guess Attorney Vossler disagrees with his own folks and he's asking you to as well. Buyer beware indeed.

He talked a lot about cardboard. I'm sure you've heard enough. But the undisputed facts in this case are that their witness, Mr. Girardi and Dr. Singh agree that the object wasn't attached in the moment before it fell, and that's uncontroverted. What's also uncontroverted is that had this been attached this couldn't have happened, and Dr.

Singh explained to you why that was.

The second theme they've just created is they're the victim here, in front of a paralyzed man. On the one hand they relied on Robert Kelly and they trusted what he said is gospel about the pieces of cardboard on an object, but that man was moving lights around when he was on the 911 call trying to get him help. Which is it?

A global lighting company claiming that they couldn't discover in this case a fact with their own product, when a group of small lawyers from Connecticut did. Enough.

As the Court will instruct you, ladies and gentlemen, as Attorney Vossler reminded you, the arguments of counsel are not evidence. You have the power to ask for the testimony in this case. We don't fear it. No one will ask you to take Attorney Vossler's word for it or what he says a witness said. Frankly, or what I say a witness said. But I think you were here the day that I had 30 objections sustained to the mischaracterization of testimony.

He commented in Dr. Singh's qualifications. He said who is this man? He's a gun for hire. He's testified about 1,000 times on both sides of the aisle evenly. He seemed good enough for them when they wanted a consultant to teach them how to do it right, but I guess they needed someone else in this case.

I told you all roads lead to causation. It's particularly true when they're trying the case on three

roads at the same time, and they are. You'll notice they use the phrase sole proximate cause, but he chose not to define it because they are doing something in this case I've never seen before, they are asking you to believe one of three different stories. Our story has always been the same, and it's been the truth. On the one hand, they've introduced evidence that Rexel, his employer, is the sole proximate cause. Your Honor will instruct you that that is the only cause. That they did nothing wrong, contributed in no way. And in order for you to find that, you have to find that Rexel was the entire reason this happened. Rexel who received the ticking time bomb and didn't hear it when it went off. It's exclusively their fault.

And if you don't buy that, which means they pay nothing, they want you to assign responsibility to the other folks who are not here anymore. It's easy to blame someone when they're not here to stand up for themselves.

We don't hide from the fact that we had folks in this case that are no longer here, and I told you they're not for a reason. It's your province to decide what role if any they played in this case, and it's the defendant's burden to prove they played a role, not ours.

And then you got road number three, and they even use the word discount twice. If you don't buy what we're selling you that Rexel is the only cause and you don't want to divide it up between others and we have to pay it, we want a discount. That's what they asked, and they put it

plain as day on the board.

And if you'll permit me a minute, there's one more difficult task you have here. When you go into the deliberation room, you're going to be faced with something called jury interrogatories. Now, I don't typically get in the weeds, but it's very important in this case because they're tricky and that's for a reason too. There's a series of questions you're going to be asked and there's a lot of smoke and mirrors that's been put up. Question number one: Was Phillips/Signify negligent? Have we proven to a more likely right than wrong standard that they failed to train their people, failed to supervise them or this thing went out unsafe? Which they appear to now agree and want to shift the blame to Rexel for if that's how it went out.

If you find that any one of those specifications of negligence was proven, you go to question two. Question two very simply asks: Is what they did or didn't do why we're here? If you find yes, you move on to damages. That's it. Rexel falls away, the rest of it falls away. The only question before you on that form is whether their conduct is what the law calls a substantial contributing factor, that's lawyer talk, and the Judge will tell you it means that it can't be trivial. It has to be meaningful. It has to be something more than inconsequential. And what could be more consequential than a stipulated expert telling you that if they had followed their own rule, which exists

for a reason, this could not have happened and we wouldn't be here. Yet, they want you to focus on who put it on the racks and when and how it got there and the mystery of Waterford and how this product looks, when the evidence -- the evidence is that this left Mountain Top exactly as they prepared it. It was a fast product, it was a hot product, they moved it quick, and they did. And they asked two witnesses to remember five years ago just two months ago, and nobody can. And they told you that, we can't possibly remember how that load went out. They were honest. I believe that. I don't think anybody could. But the truth is it wasn't attached, Girardi and Singh agree. And if it had been, Mr. Cruz would walk.

They ask you to believe the testimony of their not a doctor witness who told you he doesn't need an FES (indiscernible). What's an FES (indiscernible) Attorney Ranks asked him. I don't know. It costs money.

Fundamentally, this claim that they were prejudiced is a request for sympathy. As much as they've avoided that word, that's what they're asking for. They're the victim here. Robert Kelly didn't tell them. They didn't do an investigation.

My client is not looking for sympathy. Mikey and Emily are here looking for justice. And ladies and gentlemen, you know now what very few folks do know -- I don't demean your intelligence to suggest that you think what you've seen on TV is how this process goes, it's

interrupted and full of starts and stops. But what you know now is in order to get full justice, you have to deal with shifting stories for five years. And you have to come in here and get in that stand, whether your lawyers put you in there or not, Mikey Cruz will testify where everyone else does, and you have to share your darkest and deepest secrets with a group of strangers, with all due respect, things that you haven't even told you brother, things that you haven't shared with your daughter that make her angry after Court because she didn't know you tried to kill yourself. But those are necessary things. Those are the things that we have an obligation to present before you, so you understand how this has affected them and how this will affect them every year moving forward, despite what Mr. Pessalano` says about Mr. Cruz' need for mental health support, for physical therapy or wheelchairs.

Folks, I'm asking you for 50 to $60,000,000 for Mr. Cruz. That is full and fair justice. And for his wife and his partner, Emily, 10 to 15. And you'll notice that Attorney Vossler didn't even mention Emily Cruz, but she is here and she's not invisible and her life matters too and I'm asking you for full justice for both of them. Thank you.

THE COURT: All right. Thank you, Attorney Garza.

All right. Ladies and gentlemen, given the lateness of the hour, I won't be able to give you my

charge today and complete it and we don't do incomplete charges, which is why we are going to be starting tomorrow morning at 9:30. I understand that you are all available, and I very much appreciate that and I appreciate your flexibility and understanding throughout the scheduling of this trial. So I will give the charge tomorrow, and then the case will be in your hands.

So, again, I am going to give you the typical instruction. Done discuss the case with anyone, don't do any research.

And we'll see you bright and early tomorrow. the case will be in your hands probably by about 10:15 tomorrow, and then you'll have as much time as you need to deliberate.

All right. And with that, we are adjourned. Thank you.

THE CLERK: All rise. Court stands adjourned.

* * *

NO: HHDCV18-5051489-S	:	SUPERIOR COURT
CRUZ, JUAN ET AL	:	DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
SPEC PERSONNEL, LLC. ET AL	:	SEPTEMBER 04, 2022

C E R T I F I C A T I O N

I hereby certify that the foregoing pages are a true and correct excerpt of a transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Honorable Stuart Rosen, Judge on the 4th day of October 2022.

Dated this 13th of October 2022 in Hartford, Connecticut.

_____
Selvyn Valencia
Court Recording Monitor

198 Conn.App. 472
Appellate Court of Connecticut.

Carole AUDIBERT
v.
Wesley HALLE

(AC 42654)
|
Submitted on briefs February 18, 2020
|
Officially released June 30, 2020

Synopsis

Background: Leading driver brought personal injury action against trailing driver for injuries she alleged she sustained when trailing driver's vehicle struck the rear of leading driver's vehicle, pushing leading driver's vehicle off the roadway and up an embankment. After a jury trial, the Superior Court, Judicial District of Hartford, Elgo, J., 2016 WL 7165145, entered judgment accepting the verdict in favor leading driver in the amount of $17,000, and denied leading driver's motion to set aside the verdict and for a new trial. Leading driver appealed.

Holdings: The Appellate Court, Bishop, J., held that:

trial court acted within its discretion in denying leading driver's request for a curative jury instruction regarding trailing driver's counsel's closing argument, and

improper closing argument remarks concerning leading driver's credibility did not cause her manifest injury so as to require new trial.

Affirmed.

Procedural Posture(s): On Appeal; Motion for New Trial; Motion to Set Aside or Vacate Verdict.

Attorneys and Law Firms

****1239** J. Xavier Pryor, Hartford, filed a brief for the appellant (plaintiff).

Lewis S. Lerman, Westport, filed a brief for the appellee (defendant).

Keller, Bright and Bishop, Js.

Opinion

BISHOP, J.

****1240** ***473** The plaintiff, Carole Audibert, brought this personal injury action against the defendant, Wesley Halle, for injuries she alleges she sustained as the result of an automobile accident on April 12, 2013, caused by the defendant's negligence. The case was tried to the jury, which returned a verdict in favor of the plaintiff. The plaintiff appeals from the judgment of the trial court, rendered in accordance with the jury's verdict. The plaintiff claims that (1) the court improperly admitted irrelevant

evidence, (2) the court improperly failed to provide a curative instruction to the jury, (3) the defendant's counsel violated ***474** rule 3.4 (5) of the Rules of Professional Conduct [1] during closing argument, depriving the plaintiff of a fair trial, and (4) the court abused its discretion by failing to set aside the verdict and to grant the plaintiff a new trial. We affirm the judgment of the court.

The jury reasonably could have found the following facts. On April 12, 2013, the plaintiff was involved in a motor vehicle accident with the defendant in Tolland. The plaintiff was travelling in the northbound lane of a two lane road when she came to a stop behind another stopped vehicle. After stopping, the plaintiff's vehicle was struck in the rear by the defendant's vehicle, pushing the plaintiff's vehicle off the roadway and up an embankment. After the collision, both parties exited their vehicles and verbally confirmed to each other that they were all right. Thereafter, emergency personnel arrived on the accident scene, where they placed a cervical collar on the plaintiff, and she was transported to Rockville General Hospital. Once at the hospital, the plaintiff was transferred to the emergency room for a computerized axial tomography scan and an X-ray. While there, she was prescribed pain medication but she did not fill the prescriptions. Approximately ten days after the accident, the plaintiff visited her primary care physician, Michael Keenan, during which she complained of shoulder and mid-back pain. Keenan referred her to Robert O'Connor, an orthopedic surgeon.

O'Connor ordered a magnetic resonance imaging (MRI) scan for the plaintiff, and, after reviewing the results, he recommended that she start physical therapy for her injuries. The plaintiff completed numerous physical therapy sessions at Mansfield Physical Therapy but ***475** continued to experience pain. Thereafter, she met with Daniel Veltri, a sports medicine and orthopedic surgeon. To relieve the plaintiff's pain, Veltri injected her with a steroid in her right shoulder. Veltri also ordered an MRI, from which he determined that the plaintiff's neck injuries might be the reason for her pain and discomfort. He recommended to the plaintiff that she continue physical therapy, return to see him in six weeks, and complete an additional MRI that he ordered. Additionally, he referred the plaintiff to Howard Lanter, a neurosurgeon. ****1241** After examining the plaintiff, Lanter did not recommend that she undergo surgery to relieve the pain and discomfort.

In January, 2015, the plaintiff was in a subsequent motor vehicle accident in which her car struck another vehicle from behind, causing her car's airbag to deploy. As a consequence of this accident, the plaintiff's car was totaled. In March, 2015, the plaintiff returned to see Veltri for an evaluation due to ongoing symptoms. Despite Veltri's earlier recommendations in 2014, the plaintiff had neither completed the additional MRI nor returned to see him six weeks after her last appointment, and she had not returned to physical therapy.

The following procedural history also is relevant to our resolution of this appeal. The plaintiff brought this civil action against the defendant on March 18, 2014, alleging that, as a result of the defendant's negligence in causing the accident, the plaintiff had suffered serious injuries, including, but not limited to, a cervical sprain, shoulder pain, thoracic spine and back pain, and reduced motion in her back and shoulder. On May 27, 2014, the defendant filed an answer to the complaint, leaving the plaintiff to her burden of proof on the issues of liability, causation, and damages. On May 4, 2016, the evidence portion of the jury trial took place during which the plaintiff and a damages witness testified and the defendant presented the videotaped testimony of ***476** Steven Selden, an orthopedic physician who had conducted a medical records review pertaining to the plaintiff.

At the conclusion of the evidence, both parties delivered closing argument to the jury, and, thereafter, the court instructed the jury and provided it with interrogatories and a plaintiff's verdict form. [2] The jury answered the interrogatories, finding that the plaintiff was entitled to damages caused by the defendant's negligence in the amount of $17,000, consisting of $11,293.55 in economic damages and $5760.45 in noneconomic damages. The jury then completed the plaintiff's verdict form in accordance with its findings.

After the court accepted the jury's verdict, the plaintiff filed a motion to set aside the verdict and for a new trial, claiming that the defendant's counsel had violated rule 3.4 (5) of the Rules of Professional Conduct in his closing argument. In her memorandum of law in support of the motion, she argued that the defendant's counsel alluded to matters that were not relevant or supported by the evidence, asserted personal knowledge of the facts, stated his personal opinion as to the plaintiff's credibility, and improperly appealed to the emotions and passions of the jurors by attacking the plaintiff's character. The defendant objected, arguing that

counsel did not violate the Rules of Professional Conduct and that the court should not set aside the verdict and order a new trial because counsel's conduct did not result in manifest injury to the plaintiff.

By memorandum of decision, the court rejected the claims raised by the plaintiff and denied the motion. The court ruled that setting aside the verdict and ordering ***477** a new trial was unwarranted because, on the basis of the record, the plaintiff was not deprived of a fair trial. The court stated that its instructions to the jury were sufficient to charge the jurors properly on their responsibilities and obligations. This appeal followed. Additional facts and procedural ****1242** history will be provided as necessary.

I

The plaintiff first claims that the court improperly admitted evidence of her January, 2015 motor vehicle accident. Specifically, she claims that any evidence of the subsequent motor vehicle accident was irrelevant under § 4-2 of the Connecticut Code of Evidence[3] because the defendant only introduced the evidence in order to confuse the jury. In response, the defendant argues that the plaintiff's claim fails because she failed to properly preserve her objection to evidence concerning the subsequent accident. We agree with the defendant.

Our standard of review of a claim alleging an improper evidentiary ruling at trial is well established. "Unless an evidentiary ruling involves a clear misconception of the law, the [t]rial court has broad discretion in ruling on the admissibility ... of evidence. ... The trial court's ruling on evidentiary matters will be overturned only upon a showing of clear abuse of the court's discretion. ... We will make every reasonable presumption in favor of upholding the trial court's ruling ...." (Internal quotation marks omitted.) *Perez* v. *D & L Tractor Trailer School*, 117 Conn. App. 680, 688, 981 A.2d 497 (2009), cert. denied, 294 Conn. 923, 985 A.2d 1062 (2010). "In order to preserve an evidentiary ruling for review, trial counsel must object properly. ... In objecting to evidence, counsel must properly articulate the basis of the objection so as to apprise the trial ***478** court of the precise nature of the objection and its real purpose, in order to form an adequate basis for a reviewable ruling. ... Once counsel states the authority and ground of his objection, any appeal will be limited to the ground asserted." (Internal quotation marks omitted.) *Daley* v. *McClintock*, 267 Conn. 399, 404–405, 838 A.2d 972 (2004). "These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act. ... Assigning error to a court's evidentiary rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush." (Internal quotation marks omitted.) *State* v. *Bell*, 113 Conn. App. 25, 40, 964 A.2d 568, cert. denied, 291 Conn. 914, 969 A.2d 175 (2009).

The essence of the plaintiff's evidentiary claim relates to evidence adduced by the defendant regarding the plaintiff's subsequent motor vehicle accident in 2015. For the first time on appeal, the plaintiff asserts that such evidence was not relevant. The following additional facts are relevant to our resolution of this issue.

In the plaintiff's initial responses to discovery, she failed to disclose her 2015 motor vehicle accident. Additionally, when questioned by the defendant's counsel at her deposition, the plaintiff initially testified that she was not involved in any subsequent motor vehicle accidents. At trial, the defendant's counsel questioned the plaintiff about initially denying involvement in the subsequent accident during her deposition. In response, the plaintiff admitted that she had been involved in an accident in January, 2015.

While the defendant's counsel was cross-examining the plaintiff about the January, 2015 accident, the plaintiff's counsel objected to counsel's initial questions of whether the plaintiff was in a subsequent accident. Specifically, the defendant's ****1243** counsel asked the plaintiff, "in between your visit to Dr. Veltri in April of 2014 and ***479** your visit to him in March of 2015 you had a car accident, didn't you?" The plaintiff responded "yes," to which the defendant's counsel asked, "[a]nd that was in January of 2015. Correct?" The record reflects that the plaintiff's counsel objected to these initial questions but did not state a basis for doing so. After the court invited counsel to approach the bench and conducted a sidebar discussion with counsel, the court

overruled the plaintiff's objection. The record, however, does not reflect the basis of the objection, and there is no indication of the basis on which the court overruled it.

Once the objection by the plaintiff's counsel to the defendant's initial questions were overruled, the defendant's counsel continued cross-examination. The plaintiff's counsel, however, failed to object to questions regarding the details of the January, 2015 accident, relating to the damage to the vehicles. Thereafter, the defendant's counsel continued: "And at your deposition, when you were asked about being involved in any motor vehicle accidents after the one we're here for today, the one that occurred on April 12, 2013, didn't you originally state that you had not been involved in any subsequent motor vehicle accidents?" The plaintiff's counsel objected to that question, again without stating the basis for the objection, and another sidebar discussion took place. After the sidebar discussion, the court overruled the objection but did not specify its basis for doing so.

In sum, our careful review of the record indicates that, at trial, the plaintiff's counsel failed to specify the basis of his objections to any of the questions by the defendant's counsel regarding the plaintiff's subsequent motor vehicle accident. As noted, and as our decisional law demonstrates, the plaintiff's counsel was required to specify the authority and basis of any objections to the cross-examination of the plaintiff. Because the plaintiff's counsel failed to do so, this claim is not preserved adequately for any meaningful review on appeal. Accordingly, we decline to review it.

***480** II

The plaintiff next claims that the court improperly failed to provide a curative instruction to the jury in response to improper remarks of the defendant's counsel during closing argument. We are not persuaded.

The following additional facts are relevant to our resolution of this issue. Before the commencement of evidence, the court instructed the jury to decide the case solely on the basis of the evidence presented and that it had the responsibility to weigh the testimony of the witnesses and to resolve any conflicts to determine the truth. At the conclusion of the evidence and before the start of closing argument, the court again charged the jury on its responsibilities. In this instruction, the court reminded the jury that lawyers are not permitted to state their personal opinions as to the facts of the case or the credibility of witnesses. After closing argument, but before the court's final instructions, the parties engaged in a colloquy with the court, outside the presence of the jury, regarding certain comments made by the defendant's counsel during closing argument. It is noteworthy that, during closing argument, neither counsel made any objection to the arguments of opposing counsel. Nevertheless, after closing argument concluded, the plaintiff's counsel requested that the court issue a curative instruction regarding the closing argument of the defendant's counsel.

****1244** When discussing the plaintiff's testimony, the defendant's counsel stated in his closing argument: "This is all about money. You couldn't see it more clearly than we see that .... If someone wants to get money, and this is what it's about, whether they do it on purpose or they trick themselves into thinking that things are different ... they might ... say things that are going to benefit them. ... Clearly if she was asymptomatic, she was living with this condition, this arthritis in her spine, she's saying it was symptomatic—it never ***481** bothered her .... She might have had it in the past. She could have ... had it and not be telling the truth about it today ... it can go away because you can have that condition in your back, obviously, because it preexisted [the accident]." When discussing the plaintiff's medical treatment, counsel stated: "It's probably not what she wanted to hear. I don't want to go to physical therapy. Maybe she's feeling completely better, but she doesn't do those things. ... That doesn't seem like someone who's trying to get better. That doesn't sound like someone who actually has pain and discomfort. ... She can't make the excuse that she's got other things to do and, you know, I can't make it. She has all the time in the world to go to physical therapy. ... She didn't go to physical therapy ... [s]he didn't do it, and she lied to her doctor. Looks that way, and she misled him. ... She goes back to Dr. Veltri months later ... to get the rating. ... [She] [h]as misled you ... the records are clear when she's in there ... and the therapy is working out .... You know, maybe she's not really thinking that ... she says, yeah, I'm doing better. ... I'm doing better, but then she [is thinking]—you know, [about the] lawsuit .... Attorney Pryor's the one that's ... on the letter in January not long after this accident; so that's what's going on."

Further, the defendant's counsel stated: "She told [her story] in the very first visit probably before she kind of formulated the idea that this could be a lawsuit and everything. ... [W]hen I asked her [questions regarding the accident] she said I was stopped right behind the other vehicle, five inches behind it ... for a minute. I don't think she was stopped for a minute. ... I think the thing—she said she stopped for a minute ... but that doesn't fit the narrative well when you want to sue somebody. You want to say that I was stopped there and that I did nothing wrong, nothing unusual happened, and then he collided with me. ... ***482** So she's changed the story on a very important thing ...."

In response, the defendant's counsel stated that, on the basis of the parties' previous discussions with the judge in chambers, the best approach would be not to provide an instruction specific to defense counsel's argument. The court agreed and concluded that, although the defendant's counsel had crossed the line during closing argument, its careful instructions to the jury adequately charged it regarding its responsibilities and duties and the role of counsel during closing arguments, and, thus, the court concluded a curative instruction was unnecessary. Thereafter, during the final charge, the jury was instructed concerning the rules governing attorney conduct, and, again, the court reminded the jury that the arguments and statements of counsel are not evidence.

The standard we use for determining whether the court erred in failing to provide a curative instruction is abuse of discretion. See *Pin* v. *Kramer*, 119 Conn. App. 33, 45, 986 A.2d 1101 (2010), aff'd, 304 Conn. 674, 41 A.3d 657 (2012); *Fonck* v. *Stratford*, 24 Conn. App. 1, 5, 584 A.2d 1198 (1991). Further, we note that, in the absence of a showing that the jury failed ****1245** or declined to follow the court's instructions, we presume that the jury followed them. See *State* v. *Reynolds*, 264 Conn. 1, 131, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004).

During its colloquy with counsel, the court articulated the reasons for its decision not to give the requested curative instruction. First, the court stated that its instructions were sufficient to inform the jury of its responsibilities and the duties of attorneys. Second, the court stated that, during rebuttal argument, the plaintiff's counsel "effectively underscored [the court's] charge to the jury with respect to closing arguments." Third, the court stated that reiterating the instructions ***483** yet again "might unduly prejudice the defendant." On the basis of this record, we conclude that the court soundly exercised its discretion in denying the plaintiff's request and that the court's numerous instructions to the jury were sufficient.

III

The plaintiff next claims that the defendant's counsel violated rule 3.4 (5) of the Rules of Professional Conduct during closing argument by stating his personal opinion as to the plaintiff's credibility and by expressing opinions on evidence by asserting personal knowledge of the underlying facts in an effort to appeal to the passions and prejudices of the jurors, and, consequently, deprived the plaintiff of a fair trial. The plaintiff also claims that, because the defendant's counsel made improper remarks during closing argument, the court abused its discretion by not setting aside the verdict and granting the plaintiff a new trial. We are unpersuaded.

To assess the plaintiff's claims, we use a two step analysis. First, we must determine whether the remarks of the defendant's counsel were improper, and, second, if we conclude that the remarks were improper, we must determine whether a new trial is necessary. See *Palkimas* v. *Lavine*, 71 Conn. App. 537, 546, 803 A.2d 329, cert. denied, 262 Conn. 919, 812 A.2d 863 (2002).

A

We first examine whether, on the basis of the plaintiff's claim that he violated rule 3.4 (5) of the Rules of Professional Conduct during closing argument, the remarks of the defendant's counsel to the jury were improper.

"Under current case law, the test for whether there has been impropriety in the remarks of a prosecutor and whether a new trial must be ordered requires a more intense scrutiny in criminal cases than in civil cases because the duty of fairness on the part of a ***484** state's attorney exceeds that of other advocates. ... This does not excuse counsel, however, in civil cases from adhering strictly to the Rules of Professional Conduct regarding conduct during the trial and during closing argument. Comments of attorneys that are proscribed in both civil and criminal cases are (1) comments on the veracity of a witness' testimony, (2) personal expressions of opinion on evidence, (3) references to matter not in evidence and (4) appeals to the emotions, passions and prejudices of the jurors." (Citation omitted; internal quotation marks omitted.) *Palkimas* v. *Lavine*, supra, 71 Conn. App. at 546–47, 803 A.2d 329.

We agree with the plaintiff that the remarks made by the defendant's counsel in closing argument as set forth in part II of this opinion were improper statements on the credibility of a witness intended to appeal to the emotions, passions and prejudices ****1246** of the jurors. [4]

B

Because we have determined that the remarks of the defendant's counsel were improper, we next address whether the plaintiff's motion to set aside the verdict and for a new trial should have been granted in view of the improper remarks. "When a verdict should be set aside because of improper remarks of counsel, rather than because of the insufficiency of the evidence to support the verdict, the remedy is a new trial. ... Our standard of review for such a claim is whether the court abused its discretion when it denied the motion." (Citation omitted.) *Palkimas* v. *Lavine*, supra, 71 Conn. App. at 542, 803 A.2d 329. "In determining whether there has been an abuse of discretion, every reasonable presumption should be given to the correctness of the court's ruling." Id., at 544, 803 A.2d 329.

***485** To determine whether the court abused its discretion in not granting the plaintiff's motion to set aside the verdict and for a new trial, we examine whether the improper remarks made by the defendant's counsel deprived the plaintiff of a fair trial. In other words, we look to see whether permitting the verdict to stand in light of the impropriety of counsel's argument would constitute a manifest injury to the plaintiff. The plaintiff has the burden of proving that she suffered manifest injury, that the remarks were unreasonable or that they were flagrantly prejudicial. See *Skrzypiec* v. *Noonan*, 228 Conn. 1, 15–16, 633 A.2d 716 (1993); *Yeske* v. *Avon Old Farms School, Inc.*, 1 Conn. App. 195, 204, 470 A.2d 705 (1984). If we determine that the remarks of the defendant's counsel deprived the plaintiff of a fair trial, then the court abused its discretion by denying the plaintiff's motion.

"Closing argument in civil cases, deemed improper upon appellate review, but not sufficiently improper to warrant the granting of a motion to set aside the verdict and to order a new trial, includes calling the opposing side's arguments a combination of sleaze, slime and innuendo, and characterizing the testimony of a defendant as weasel words ... or arguing that the defendants provided testimony to save their filthy money ... or asking the jurors to imagine that they had suffered the same injury when assessing damages, and discussing the defendant country club's lack of insurance and the impact on the jury's decision if one of the jurors' children had visited the country club and was injured ... or arguing that defense counsel used tactics like criminal defense lawyers in sexual assault cases. ...

"A verdict should be set aside and a new trial ordered, however, if counsel has misstated the law, despite a court's prior ruling ... or if counsel comments without evidence to support a statement that implies that ***486** if a verdict is rendered for a plaintiff, the financial burden on the defendant town will eliminate sports in that town. ...

"If the trial court determines that the remarks of counsel did [not] jeopardize the right of a party to a fair trial by commenting on opposing counsel's appearance or implying that he would resort to trickery to win his case, there is no abuse of discretion if the court [does not grant] a motion to set aside the verdict. ... This is so because the trial court is in a better position than an appellate court to evaluate ****1247** the damage done by remarks made in closing argument. Because it is difficult for an appellate court to view the remarks from the same vantage as the trial court, to divine on which side of the impropriety line the

remarks fall, we give great weight to the trial court's assessment of the situation. ... A verdict should be set aside if there has been manifest injury to a litigant, and it is singularly the trial court's function to assess when such injury has been done since it is only that court which can appraise the atmosphere prevailing in the courtroom. ...

"A trial court is invested with a large discretion with regard to arguments of counsel, and appellate courts should only interfere with a jury verdict if the discretion has been abused to the manifest injury of a party. ... We recognize that advocacy must be tempered by the professional responsibility of the attorney and that advocacy must be restrained when necessary by the court's obligation to provide the parties a fair trial. Those factors limit the latitude allowed in closing argument and affect the discretion of the court in deciding motions for a new trial." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Palkimas* v. *Lavine*, supra, 71 Conn. App. at 547–48, 803 A.2d 329.

Before turning to whether the improper remarks of the defendant's counsel deprived the plaintiff of a fair ***487** trial, we note that the plaintiff claims in her brief that such a determination requires us to perform a six step analysis articulated by our Supreme Court in *State* v. *Williams*, 204 Conn. 523, 529 A.2d 653 (1987). The plaintiff, however, is incorrect, as the six step analysis described in *Williams* is applicable only in the context of evaluating whether prosecutorial impropriety deprived a criminal defendant of a fair trial. Instead, we look to our analysis in *Palkimas*, in which this court stated that, when assessing whether a lawyer's improper conduct during a civil trial warrants a new trial, we look to whether a manifest injury has occurred. *Palkimas* v. *Lavine*, supra, 71 Conn. App. at 548, 803 A.2d 329. This court, in *Palkimas*, distinguished the review we accord in criminal cases from that in civil cases. Our reasoning there was that in a criminal case, a state's attorney has a special role, unlike that of an attorney in a civil case. Id., at 545, 803 A.2d 329. We noted that a state's attorney is a high public officer and representative of the state, and has a duty of fairness that exceeds that of other advocates because he or she represents the public interest. Id., at 546, 803 A.2d 329. Thus, we observed, remarks made by a state's attorney in closing argument are examined with special scrutiny. Id., at 545, 803 A.2d 329. This is so because remarks made by a state's attorney during closing argument may deprive a defendant of a fair trial and violate his or her federal and state constitutional rights to due process of law. Id., at 546, 803 A.2d 329. On the other hand, in a civil matter in which both counsel share equal footing before a jury, we look to determine whether a party has suffered a manifest injury due to the misconduct of opposing counsel. Id., at 548, 803 A.2d 329.

In *Palkimas*, the plaintiff brought an action against the defendant for personal injuries allegedly sustained in a rear-end collision. Id., at 538 n.2, 803 A.2d 329. After the jury returned a general verdict for the defendant, the plaintiff filed a motion to set aside the verdict and to order ***488** a new trial, which the trial court denied. Id., at 541–42, 803 A.2d 329. On appeal, the plaintiff claimed that the trial court abused its discretion in failing to set aside the verdict and to order a new trial because the defendant's counsel allegedly made improper remarks during closing argument. Id., at 538, 803 A.2d 329. We concluded that, although the remarks of the defendant's counsel were improper, the plaintiff ****1248** was not deprived of a fair trial because the improper remarks did not skew the results and invite the jury to ignore the facts. Id., at 549–50, 803 A.2d 329.

Guided by our analysis and holding in *Palkimas,* we conclude that the improper remarks in the present case did not jeopardize the right of the plaintiff to a fair trial. The issues in this case were not complex and the evidence portion of the trial started and ended on the same day. On the basis of the evidence, the jury reasonably could have concluded that the plaintiff's injuries were exaggerated and that they did not all relate to the accident in question. Moreover, remarks made by the defendant's counsel on the issue of the plaintiff's credibility did not misstate the law or invite the jury to ignore facts or inflame the juror's passions and emotions. In short, although his remarks were improper for the reasons we have discussed, they were not so overly prejudicial as to deprive the plaintiff of a fair trial, as there was little risk that his remarks distracted the jury from focusing on the issues at hand and deciding the case solely on the basis of the evidence.

In sum, the remarks of the defendant's counsel, although improper, did not result in manifest injury to the plaintiff. Accordingly, we find no abuse of discretion in the court's decision to deny the plaintiff's motion to set aside the verdict and for a new trial.

The judgment is affirmed.

In this opinion the other judges concurred.

All Citations

198 Conn.App. 472, 233 A.3d 1237

Footnotes

1 Rule 3.4 (5) of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not ... (5) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused ...."

2 The record does not disclose the basis for the court's decision to submit only a plaintiff's verdict form to the jury. We will not speculate as to the court's reasoning except to note that the record reflects that the parties' disagreement revolved around the extent of the plaintiff's injuries, and not whether the defendant had been negligent in causing the accident.

3 Section 4-2 of the Connecticut Code of Evidence provides in relevant part: "Evidence that is not relevant is inadmissible."

4 In reaching this conclusion, we do not make any specific finding as to whether counsel's improper argument constituted a violation of the Rules of Professional Conduct, as such a determination is not necessary to our resolution of the claim before us and such a finding would require due notice to counsel and an opportunity to be heard. See *State* v. *Perez*, 276 Conn. 285, 296–97, 885 A.2d 178 (2005).

Tapping the Scales of Justice - A Dose of Connecticut Legal History

The "Chip Smith" Charge

The Chip Smith charge derives from State v. Smith, 49 Conn. 376 (1881). James "Chip" Smith was a 21-year-old who was drinking, firing his gun, and causing a general disturbance of the peace on December 23rd, 1880. Smith's father went to the home of Daniel J. Hayes, the Chief of Police for the city of Ansonia, and asked him to arrest his son. Chief Hayes searched for Smith, and found him in a downtown street. A struggle ensued, and Smith shot Hayes in the abdomen. Hayes lived for some time after being shot, and he locked up his killer himself before succumbing to his injuries. James "Chip" Smith was convicted of Hayes' murder.

In an opinion reviewing Smith's conviction, the Connecticut Supreme Court set forth language concerning the duty of jurors when deliberating. This language became known as the Chip Smith charge, and trial courts repeatedly gave the instruction to jurors when

they reported that they were deadlocked.

Over the years, the Chip Smith charge became an established part of Connecticut jurisprudence. However, the instruction was often challenged as being coercive and implying that a juror in the minority should "give in" to the majority for the sake of unanimity. In State v. O'Neil, 261 Conn. 49 (2002), the instruction was challenged once again, and our old Chip Smith charge was given a new dressing.

In State v. O'Neil, the defendant was on trial for murder. After some deliberation, the jurors reported to the court that they were unable to agree. The trial court delivered a Chip Smith instruction to the deadlocked jury. Later that same day, the jury returned a guilty verdict. On appeal, the defendant argued the Chip Smith charge improperly pressured minority view jurors to abandon their position in favor of the position of the majority view jurors, unfairly increasing the likelihood that the defendant would be convicted.

In its decision, the Connecticut Supreme Court upheld O'Neil's conviction and the use of the Chip Smith charge. However, the Supreme Court set forth a modified version of the charge to be used by trial courts in future cases. Henceforth, judges must remind jurors that they should vote their consciences and not "acquiesce in the conclusion of their fellow jurors merely for the sake of arriving at a unanimous verdict." The version of the Chip Smith charge adopted for use today strikes a balance between encouraging a unanimous verdict and protecting a defendant's right to a fair trial.

Sources of Information:

State v Smith, 49 Conn. 376 (1881);
State v O'Neil, 261 Conn. 49 (2002);
Borden & Orland. 5 *Connecticut Practice Series: Criminal Jury Instructions* §4.4 3rd ed. West, 2001;
Yules. 6 *Connecticut Practice Series: Trial Practice* §11.18 2nd ed. West, 2000;
Wright & Ankerman. 1 *Connecticut Jury Instructions (Civil)* §18(1) 4th ed. Atlantic, 1993;
Mayko, Michael P. Ansonia renames Downtown Street after its Murdered First Police Chief, CTPost, May 15, 2018.

Doses of Connecticut Legal History

has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why he or she cannot admit or deny it. The responding party shall attach a cover sheet to the response which shall comply with Sections 4-1 and 4-2 and shall specify those requests to which answers and objections are addressed.

(b) The party who has requested the admission may move to determine the sufficiency of the answer or objection. No such motion shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the motion and that counsel have been unable to reach an accord. Unless the judicial authority determines that an objection is justified, it shall order that an answer be served. If the judicial authority determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The judicial authority may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial.

(P.B. 1978-1997, Sec. 239.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 13-24. —Effect of Admission

(a) Any matter admitted under this section is conclusively established unless the judicial authority on motion permits withdrawal or amendment of the admission. The judicial authority may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.

(b) The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered.

(P.B. 1978-1997, Sec. 240.)

Sec. 13-25. —Expenses on Failure To Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested herein, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The judicial authority shall make the order unless it finds that such failure to admit was reasonable.

(P.B. 1978-1997, Sec. 241.)

Sec. 13-26. Depositions; In General

In addition to other provisions for discovery and subject to the provisions of Sections 13-2 through 13-5, any party who has appeared in a civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, may, at any time after the commencement of the action or proceeding, in accordance with the procedures set forth in this chapter, take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13-28. The attendance of a party deponent or of an officer, director, or managing agent of a party may be compelled by notice to the named person or such person's attorney in accordance with the requirements of Section 13-27 (a). The deposition of a person confined in prison may be taken only by leave of the judicial authority on such terms as the judicial authority prescribes. (See General Statutes § 52-178.)

(P.B. 1978-1997, Sec. 243.)

Sec. 13-27. —Notice of Deposition; General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization

(a) A party who desires to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Such notice shall not be filed with the court but shall be served upon each party or each party's attorney in accordance with Sections 10-12 through 10-17. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which he or she belongs and the manner of recording. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) Leave of a judicial authority, granted with or without notice, must be obtained only if the party seeks to take a deposition prior to the expiration of twenty days after the return day, except that leave is not required (1) if the adverse party has served a notice of the taking of a deposition or has otherwise sought discovery, or (2) if special notice is given as provided herein.

(c) Leave of a judicial authority is not required for the taking of a deposition by a party if the notice (1) states that the person to be examined is about to go out of this state, or is bound on a voyage to sea, and will be unavailable for examination unless such person's deposition is taken before the expiration of twenty days after the return day, and (2) sets forth facts to support the statement. The party's attorney shall sign the notice, and this signature constitutes a certification by such attorney that to the best of his or her knowledge, information and belief the statement and supporting facts are true.

(d) Whenever the whereabouts of any adverse party is unknown, a deposition may be taken pursuant to Section 13-26 after such notice as the court, in which such deposition is to be used, or, when such court is not in session, any judge thereof, may direct.

(e) The judicial authority may for good cause shown increase or decrease the time for taking the deposition.

(f) (1) The judicial authority may upon motion order that the testimony at a deposition be recorded by other than stenographic means such as by videotape, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(2) Notwithstanding this section, a deposition may be recorded by videotape without prior court approval if (A) any party desiring to videotape the deposition provides written notice of the videotaping to all parties in either the notice of deposition or other notice served in the same manner as a notice of deposition and (B) the deposition is also recorded stenographically.

(g) The notice to a party deponent may be accompanied by a request made in compliance with Sections 13-9 through 13-11 for the production of documents and tangible things at the taking of the deposition. The procedure of Sections 13-9 through 13-11 shall apply to the request.

(h) A party may in the notice and in the subpoena name as the deponent a public or private corporation or a partnership or an association or a governmental agency or a state officer in an action arising out of the officer's performance of employment and designate with reasonable particularity the matters on which examination is requested. The organization or state officer so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude the taking of a deposition by any other procedure authorized by the rules of practice.

(P.B. 1978-1997, Sec. 244.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 13-28. —Persons before Whom Deposition Taken; Subpoenas

(a) Within this state, depositions shall be taken before a judge or clerk of any court, notary public or Commissioner of the Superior Court. In any other state or country, depositions for use in a civil action, probate proceeding or administrative appeal within this state shall be taken before a notary public, of such state or country, a commissioner appointed by the governor of this state, any magistrate having power to administer oaths in such state or country, or a person commissioned by the court before which such action or proceeding is pending, or when such court is not in session, by any judge thereof. Any person so commissioned shall have the power by virtue of his or her commission to administer any necessary oaths and to take testimony. Additionally, if a deposition is to be taken out of the United States, it may be taken before any foreign minister, secretary of a legation, consul or vice-consul appointed by the United States or any person by him or her appointed for the purpose and having authority under the laws of the country where the deposition is to be taken; and the official character of any such person may be proved by a certificate from the secretary of state of the United States.

(b) Each judge or clerk of any court, notary public or Commissioner of the Superior Court, in this state, may issue a subpoena, upon request, for the appearance of any witness before an officer authorized to administer oaths within this state to give testimony at a deposition subject to the provisions of Sections 13-2 through 13-5, if the party seeking to take such person's deposition

has complied with the provisions of Sections 13-26 and 13-27.

(c) A subpoena issued for the taking of a deposition may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Sections 13-2 through 13-5. Unless otherwise ordered by the court or agreed upon in writing by the parties any subpoena issued to a person commanding the production of documents or other tangible thing at a deposition shall not direct compliance within less than fifteen days from the date of service thereof.

(d) The person to whom a subpoena is directed may, within fifteen days after the service thereof or within such time as otherwise ordered by the court or agreed upon in writing by the parties, serve upon the issuing authority designated in the subpoena written objection to the inspection or copying of any or all of the designated materials. If objection is made, the party at whose request the subpoena was issued shall not be entitled to inspect and copy the disputed materials except pursuant to an order of the court in which the cause is pending. The party who requested the subpoena may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

(e) The court in which the cause is pending, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may, upon motion made promptly and, in any event, at or before the time for compliance specified in a subpoena authorized by subsection (b) of this section, (1) quash or modify the subpoena if it is unreasonable and oppressive or if it seeks the production of materials not subject to production under the provisions of subsection (c) of this section, or (2) condition denial of the motion upon the advancement by the party who requested the subpoena of the reasonable cost of producing the materials being such.

(f) If any person to whom a lawful subpoena is issued under any provision of this section fails without just excuse to comply with any of its terms, the court before which the cause is pending, or any judge thereof, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may issue a capias and cause the person to be brought before that court or judge, as the case may be, and, if the person subpoenaed refuses to comply with the subpoena, the court or judge may commit the person to jail until he or she signifies a willingness to comply with it.

(g) (1) Deposition of witnesses living in this state may be taken in like manner to be used as evidence in a civil action or probate proceeding pending in any court of the United States or of any other state of the United States or of any foreign country, on application of any party to such civil action or probate proceeding.

(2) Any person to whom a subpoena has been directed in a civil action or probate proceeding, other than a party to such civil action or Probate Court proceeding, pending in any court of any other state of the United States or of any foreign country, which subpoena commands (A) the person's appearance at a deposition, or (B) the production, copying or inspection of books, papers, documents or tangible things may, within fifteen days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than fifteen days after service, serve upon the party who requested issuance of the subpoena written objection to appearing or producing, copying or permitting the inspection of such books, papers, documents or tangible things on the ground that the subpoena will cause such person undue or unreasonable burden or expense. Service of the objection shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer. Such written objection shall be accompanied by an affidavit of costs setting forth the estimated or actual costs of compliance with such subpoena, including, but not limited to, the person's attorney's fees or the costs to such person of electronic discovery. If a person makes such written objection, the party who requested issuance of the subpoena (i) shall not be entitled to compel such person's appearance or receive, copy or inspect the books, papers, documents or tangible things, except pursuant to an order of the Superior Court, and (ii) may, upon notice to such person, file a motion with the court in the judicial district wherein the subpoenaed person resides, for an order to compel such person's appearance or production, copying or inspection of such materials in accordance with the terms of such subpoena. Upon receipt of such motion together with the payment of all entry fees, if required, the clerk shall schedule the matter for hearing and provide the moving party notice of the time and place of the hearing. The moving party shall serve the motion to compel and the notice of the time and place of the hearing upon the subpoenaed party. When ruling on such motion to compel, the court shall make a finding as to whether the subpoena subjects the person to undue or unreasonable burden or expense prior to entering any order to compel such person's

appearance or the production, copying or inspection of such materials. If the court finds that the subpoena issued to the person subjects such person to undue or unreasonable burden or expense, any order to compel such person's appearance or production, copying or inspection of such materials shall protect the person from undue or unreasonable burden or expense resulting from compliance with such subpoena and, except in the case of a subpoena commanding the production, copying or inspection of medical records, may include, but not be limited to, the reimbursement of such person's reasonable costs of compliance, as set forth in the affidavit of costs.

(3) The provisions of subdivision (2) of this subsection shall not be applicable to a civil action filed to recover damages resulting from personal injury or wrongful death in which it is alleged that such injury or death resulted from professional malpractice of a health care provider or health care institution.

(P.B. 1978-1997, Sec. 245.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 24, 2016, to take effect Jan. 1, 2017.)

Sec. 13-29. —Place of Deposition

(a) Any party who is a resident of this state may be compelled by notice as provided in Section 13-27 (a) to give a deposition at any place within the county of such party's residence, or within thirty miles of such residence, or at such other place as is fixed by order of the judicial authority. A plaintiff who is a resident of this state may also be compelled by like notice to give a deposition at any place within the county where the action is commenced or is pending.

(b) A plaintiff who is not a resident of this state may be compelled by notice under Section 13-27 (a) to attend at the plaintiff's expense an examination in the county of this state where the action is commenced or is pending or at any place within thirty miles of the plaintiff's residence or within the county of his or her residence or in such other place as is fixed by order of the judicial authority.

(c) A defendant who is not a resident of this state may be compelled:

(1) By subpoena to give a deposition in any county in this state in which the defendant is personally served, or

(2) By notice under Section 13-27 (a) to give a deposition at any place within thirty miles of the defendant's residence or within the county of his or her residence or at such other place as is fixed by order of the judicial authority.

(d) A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place within the county of his or her residence or within thirty miles of the nonparty deponent's residence, or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(e) In this section, the terms ''plaintiff'' and ''defendant'' include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Section 13-27 (h) as appropriate.

(f) If a deponent is an officer, director or managing agent of a corporate party, or other person designated under Section 13-27 (h), the place of examination shall be determined as if the residence of the deponent were the residence of the party.

(P.B. 1978-1997, Sec. 246.)

Sec. 13-30. —Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action

is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent certifying that the deposition is a true record of the deponent's testimony, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless, on a motion to suppress under Section 13-31 (c) (4), the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then cause a watermark or other indicia of origin to be added to the deposition and shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (1) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice

of deposition and (2) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall bear the cost of the original transcript, and any permanent electronic record including audio or videotape. Any party or the deponent may obtain a copy of the deposition transcript and permanent electronic record including audio or videotape at its own expense.

(P.B. 1978-1997, Sec. 247.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012; amended June 9, 2023, to take effect Jan. 1, 2024.)

HISTORY—2024: In the second sentence of subsection (e), ''securely seal the deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked 'Deposition of (*here insert the name of the deponent*),' '' before ''and shall then promptly'' was deleted and replaced with ''cause a watermark or other indicia of origin to be added to the deposition.'' Additionally, in the third sentence of subsection (e), ''sealed'' after ''file the'' was deleted.

COMMENTARY—2024: The change to this section removes the requirement in subsection (e) that the person recording the testimony securely seal the deposition in an envelope and, in lieu thereof, requires that the person cause a watermark or other indicia of origin to be added to the deposition.

Sec. 13-31. —Use of Depositions in Court Proceedings

(a) **Use of Depositions.**

At the trial of a civil action, probate proceeding or administrative appeal, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were there present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of any physician, psychologist, chiropractor, natureopathic physician, osteopathic physician or dentist licensed under the provisions of the General Statutes may be received in evidence in lieu of the appearance of such witness at the trial or hearing whether or not the person is available to testify in person at the trial or hearing.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or managing agent or employee or a person designated under Section 13-27 (h) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness other than a person falling within the scope of subdivision (2) hereof, whether or not a party, may be used by any party for any purpose if the judicial authority finds: (A) that the witness is dead; (B) that the witness is at a greater distance than thirty miles from the place of trial or hearing, or is out of the state and will not return before the termination of the trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) that the parties have agreed that the deposition may be so used; (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) Substitution of parties does not affect the right to use depositions previously taken; and when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) **Objections to Admissibility.**

Subject to the provisions of subsection (c) of this section, objection may be made at the trial or hearing to receiving in evidence any deposition

or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) **Effect of Errors and Irregularities in Depositions.**

(1) As to notice: All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer: Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition: (A) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. (B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(4) As to completion and return of deposition: Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(P.B. 1978-1997, Sec. 248.)

Sec. 13-32. Stipulations regarding Discovery and Deposition Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used as other depositions, and (2) modify the procedures provided by this chapter for other methods of discovery.

(P.B. 1978-1997, Sec. 249.)

Sec. 13-33. Claim of Privilege or Protection after Production

(a) If papers, books, documents or electronically stored information produced in discovery are subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subsection (a), a party shall immediately sequester the specified information and any copies it has and: (1) return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or (2) present the information to the judicial authority under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(c) If a party that received notice under subsection (b) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

DOCKET NO.	:	SUPERIOR COURT
	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
	:	

PLAINTIFFS' MIL TO ADMIT DEPOSITION
VIDEO PORTIONS OF

The plaintiffs— —respectfully move this Court for an order permitting the plaintiff to admit the deposition video excerpts of _____, attached hereto as **Exhibit A**.

Practice Book § 13-31 (a) (3) provides, in relevant part: "At the trial of a civil action, . . . any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were there present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions: . . . (3) The deposition of a party . . . may be used by an adverse party for any purpose."

_____ is a long-tenured employee of the defendants, _____, who was deposed on _____. The deposition exhibits, attached hereto as **Exhibit D**, are otherwise relevant and admissible, not subject to objection by the defendants, and are either comprised of exhibits already admitted as full or constitute specific pages from previously marked trial exhibits:

For the foregoing reasons, and the defendants indication that they do not object to the admission of the provided deposition excerpts, the plaintiffs—_____—respectfully request that the Court grant their motion to admit the attached excerpts from _____'s _____, video deposition, and the attendant exhibit pages which are reviewed by the

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Juris No. 436558

witness during the plaintiffs' examination, so the plaintiffs may complete the trial video deposition and efficiently present their evidence for the benefit of the Court and the jury.

THE PLAINTIFFS,

Andrew P. Garza, Esq.
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
Juris No. 436558

CERTIFICATION

I certify that a copy of these documents were mailed or delivered electronically or non-electronically on the above date to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

/s/ Andrew P. Garza
Andrew P. Garza

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55 Conn.App. 150
Appellate Court of Connecticut.

Lillian MACK
v.
Bernard LaVALLEY et al.

No. 18196.
|
Argued April 29, 1999.
|
Decided Oct. 5, 1999.

Synopsis
Tenant, who was injured when she slipped and fell on exterior stairs of landlords' premises, brought negligence action against landlords. The Superior Court, Judicial District of Tolland, Sullivan, J., entered judgment for tenant, and landlords appealed. The Appellate Court, Dupont, J., held that evidence was sufficient to support jury's determination that landlords were negligent.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

****721** ***151** Michael S. Taylor, with whom were Brian P. Leaming and, on the brief, Daniel P. Scapellati and David G. Hill, Hartford, for the appellants (defendants).

Brian W. Prucker, Stafford Springs, for the appellee (plaintiff).

Before LAVERY, SCHALLER and DUPONT, JJ.

Opinion

DUPONT, J.

The defendants, Bernard LaValley and Pauline LaValley, appeal from the judgment of the trial ***152** court, rendered after a jury trial, in favor of the plaintiff, Lillian ****722** Mack, in this premises liability action. On appeal, the defendants claim that the trial court improperly (1) admitted into evidence deposition testimony of a plaintiff's witness and failed to redact the witness' opinion testimony contained in that deposition, (2) denied the defendants' motions to set aside the verdict and for judgment notwithstanding the verdict, and (3) failed to reduce the economic damages award by the amount of collateral source payments received by the plaintiff. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. On May 29, 1992, the plaintiff, a tenant of the defendants, was injured when she slipped and fell on the exterior stairs of the premises owned by the defendants. Thereafter, the plaintiff commenced a negligence action against the defendants seeking damages for her injuries. The plaintiff claimed that a defective and dangerous condition existed at the top threshold of the steps, which caused her to fall, and that the defendants knew or should have known of the condition and failed to make repairs.

At the close of the plaintiff's case-in-chief, the defendants filed a motion for a directed verdict, which the trial court denied. The defendants rested their case without presenting witnesses or evidence, and the jury returned a verdict in favor of the plaintiff.

The defendants then filed motions to set aside the verdict and for judgment notwithstanding the verdict, which the court denied. This appeal followed. Other facts will be discussed where they are relevant to the defendants' claims.

I

The defendants first claim that the trial court improperly admitted the deposition testimony of a plaintiff's witness because there was insufficient evidence to ***153** show that the witness was unavailable as required by Practice Book § 13–31. We disagree.

"The admissibility of a deposition into evidence under Practice Book § 248 [now § 13–31] is permissive in nature, leaving the ultimate determination to the trial judge.... On appeal, the trial court's rulings on the admissibility of evidence are accorded great deference ... [and] will be disturbed only upon a showing of clear abuse of discretion.... The party making the claim of error has the burden of showing that the court clearly abused its discretion." (Internal quotation marks omitted.) *Pelarinos v. Henderson,* 34 Conn.App. 726, 728–29, 643 A.2d 894, cert. denied, 231 Conn. 909, 648 A.2d 155 (1994).

Practice Book § 13–31(a) provides in relevant part: "At the trial of a civil action ... any part or all of a deposition ... may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions ... (4) The deposition of a witness ... may be used by any party for any purpose if the judicial authority finds ... (B) that the witness is at a greater distance than thirty miles from the place of trial or hearing, or is out of the state and will not return before the termination of the trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition...."

The following additional facts are relevant to this claim. At trial, the plaintiff sought to introduce the deposition testimony of a witness, John Fitzgerald, an engineer deposed by both parties prior to trial, whom the plaintiff was unable to locate for the trial. The defendants objected to the admissibility of the deposition, claiming that the plaintiff had failed to establish the witness' unavailability. The defendants also requested ***154** that if the deposition testimony was admitted, portions of the testimony be redacted.

The plaintiff's counsel then called a paralegal who works in his law office to testify as to the witness' unavailability. ****723** She testified that when she called the witness at his home in Westbrook she heard a message on his answering machine stating that he was unavailable, that he was in Florida and that he could be reached at a certain telephone number that was recited. She further testified that she telephoned the number in Florida several times, including the day of trial, and no one answered. The trial court found that there was no indication that the absence of the witness was procured by the plaintiff. The court further found that fair and reasonable efforts were made to locate the witness, who at the time was not within thirty miles of the place of the trial, and, therefore, that the plaintiff had established unavailability as required by Practice Book § 13–31.

Under the circumstances, we conclude that the trial court did not clearly abuse its discretion in finding that the plaintiff had established the witness' unavailability and had satisfied the requirements of Practice Book § 13–31 for the admission of the deposition testimony. The cases relied on by the defendants are inapposite and do not concern the admissibility of deposition testimony under Practice Book § 13–31. The defendants have failed to demonstrate that the trial court clearly abused its discretion in finding that the witness was at a distance greater than thirty miles from the place of trial, as set forth in the rules of practice. Therefore, their claim must fail.

The defendants next claim that the trial court improperly admitted the opinion testimony of the plaintiff's witness. We are not persuaded.

***155** The following additional facts are relevant to this claim. After concluding that the plaintiff established the witness' unavailability for trial, the court addressed the issue of the witness' qualifications. The defendants claimed that the plaintiff failed to lay a foundation establishing the witness as an expert and, therefore, the testimony should have been excluded. The

court agreed with the defendants that there was nothing in the testimony qualifying the witness as an expert. The court concluded that the witness could not testify as an expert, but found that "there is nothing to prevent [the witness] from being able to testify as an individual person, as a fact witness, as someone who has actually seen and observed circumstances that may be, in fact, relevant."

The trial court determined that the witness could testify as a fact witness because photographs of the stairs he had taken already had been introduced into evidence without objection and had been testified to by the plaintiff as depicting the stairs at the time of the accident. The court concluded that the witness could testify as to two things, namely, the steps being slippery and the fact that there was a portion of the threshold, that sloped away from the door toward the street. [1] ***156** These conditions ****724** are capable of being observed by laypersons.

The defendants claim that the admission of the witness' opinion testimony was improper because (1) it essentially constituted expert opinion, (2) sufficient assurances of reliability were lacking because the defendants did not have an opportunity at trial to cross-examine the witness, (3) the witness' observations were not corroborated because they were too remote in time and there was no evidence that the condition that caused the plaintiff's fall was the same as that observed by the witness, and (4) the plaintiff's introductory comments to the venire panels that the witness was a professional engineer, along with the portion of the testimony that was admitted, left the jury to speculate as to the qualifications of the witness, thereby prejudicing the defendants.

"The trial court has broad discretion in the admission of opinion testimony; *Hammer v. Mount Sinai Hospital,* 25 Conn.App. 702, 718, 596 A.2d 1318, cert. denied, 220 Conn. 933, 599 A.2d 384 (1991); which necessarily includes broad discretion to ascertain if the testimony is supported by a proper foundation.... Accordingly, its determination is accorded great deference by this court." (Citation omitted.) *Amwax Corp. v. Chadwick,* 28 Conn.App. 739, 744, 612 A.2d 127 (1992). The trial court also has "broad discretion in ruling on the admissibility [and relevancy] of evidence.... The trial court's ruling on evidentiary matters will be overturned only ***157** upon a showing of a clear abuse of the court's discretion." (Citation omitted; internal quotation marks omitted.) *New England Savings Bank v. Bedford Realty Corp.,* 238 Conn. 745, 752, 680 A.2d 301 (1996).

The defendants first claim that the witness' testimony was not a proper lay opinion because it "should have been more properly characterized as expert opinion." The defendants, however, offer no authority or legal analysis in support of this assertion. We therefore decline to review this claim. *Burke v. Avitabile,* 32 Conn.App. 765, 772, 630 A.2d 624, cert. denied, 228 Conn. 908, 634 A.2d 297 (1993).

The defendants next claim that the testimony was improperly admitted without sufficient assurances of its reliability because the defendants did not have an opportunity at trial to cross-examine the witness. We disagree.

Our review of the transcripts reveals that while the defendants raised numerous claims concerning the admissibility of the deposition testimony at trial, they did not raise this claim at trial or in their motions to set aside the verdict and for judgment notwithstanding the verdict. "It is axiomatic that the trial court can be expected to rule only on those matters that are put before it. See *Lee v. Lee,* 174 Conn. 5, 7, 381 A.2d 529 (1977). With only a few exceptions ... we will not decide an appeal on an issue that was not raised before the trial court. See *State v. Golding,* 213 Conn. 233, 239, 567 A.2d 823 (1989). 'To review claims articulated for the first time on appeal and not raised before the trial court would be nothing more than a trial by ambuscade of the trial judge.' *Baker v. Cordisco,* 37 Conn.App. 515, 522, 657 A.2d 230, cert. denied, 234 Conn. 907, 659 A.2d 1207 (1995)." ***158** *Flewellyn v. Hempstead,* 47 Conn. App. 348, 353, 703 A.2d 1177 (1997). Accordingly, we do not review this claim. [2]

****725** The defendants next claim that the admission of the lay opinion was improper because the witness' observations were not corroborated in that they were too remote in time and there was no evidence that the condition that caused the plaintiff's fall was the same as that observed by the witness.

The witness' testimony was based on his personal observation of the area where the plaintiff fell. The trial court found that the testimony was relevant and properly admissible because photographs of the stairs taken by the witness were introduced

into evidence by the plaintiff and testified to by the plaintiff as depicting the stairs at the time of the accident. Also, another witness testified at trial that he had observed the same condition on the premises as long as six months before the incident. The court, therefore, found that the deposition witness' observations, although occurring almost one year after the plaintiff's fall, were sufficiently reliable, and that the defendants' objection essentially concerned the weight to be accorded the testimony and not its admissibility. "Once a witness' competency is established, questions relating to any supposed lack of knowledge of the fact at issue go to the weight rather than the admissibility of the evidence." *Chouinard v. Marjani,* 21 Conn.App. 572, 581, 575 A.2d 238 (1990). We cannot conclude that the trial court abused its discretion in admitting the witness' opinion testimony.

***159** The defendants' final claim as to the admissibility of the opinion testimony is that the court's allowing the witness to testify as a fact witness, after he had been introduced to the venire panels as a professional engineer, "was prejudicial to the defendants because the jurors, naturally, would accord his testimony greater weight." The defendants essentially claim that the remarks to the jury panels and the substance of the witness' testimony combined to prejudice them, thereby necessitating a new trial. The defendants are unable to cite any case law that supports that argument. We are not persuaded.

The following additional facts are relevant to this claim. During the jury selection process, the plaintiff's counsel gave one venire panel the names of persons that he intended to call as witnesses in order to discern if any members of the panel knew the witnesses. Specifically, he stated: "We have an investigator in this case, a professional engineer by the name of John Fitzgerald, no relation to our firm. He will be providing certain engineering reports." He stated to a different venire panel: "There's also an engineer by the name of John Fitzgerald who may be providing testimony in this case." The jury was selected from those panels.

At trial, out of the presence of the jury, the trial court heard arguments from counsel and determined the admissibility of the witness' deposition testimony. The court concluded that the witness could not testify as an expert but that he could testify as a fact witness. When the jury was brought back into the courtroom, the plaintiff's counsel stated that he wanted to introduce a part of a deposition that took place on May 7, 1996, of a witness named John Fitzgerald. The trial court explained to the jury the procedure by which the testimony of someone who is not able to be in court is admitted into evidence. No mention was made of the witness' status as an engineer or that he was an expert ***160** testifying in the case. In its charge to the jury on expert testimony, the trial court stated: "The expert that we're—testimony that we're dealing with here are medical reports that you will have before you. In weighing the credibility of the experts who in this particular case furnished reports, that is the doctors and medical suppliers, you should apply the same standards to which any other witness is subjected."

For this court to accept the defendants' claim that the statements made to the venire panels that the witness was an ****726** engineer were prejudicial and that the jury accorded the witness' testimony more weight would require improper speculation. We cannot speculate, as the defendants would have us do, as to how and why the jury arrived at its verdict. We note that the defendants did not ask for a curative instruction with regard to the remarks made to the venire panels about the witness. "The [defendants], therefore, presumably did not regard those remarks ... as seriously prejudicial at trial." *State v. Chasse,* 51 Conn.App. 345, 356, 721 A.2d 1212 (1998), cert. denied, 247 Conn. 960, 723 A.2d 816 (1999). Furthermore, the court stated to the jury in its final charge that the only experts testifying were the doctors and medical suppliers. "Absent evidence to the contrary, we presume that the jury acted in accordance with the instructions given by the court." *Willow Springs Condominium Assn., Inc. v. Seventh BRT Development Corp.,* 245 Conn. 1, 46, 717 A.2d 77 (1998). We therefore reject the defendants' claim.

"Moreover, it is well settled that before a party is entitled to a new trial because of an erroneous evidentiary ruling, he or she has the burden of demonstrating that the error was harmful.... When determining that issue in a civil case, the standard to be used is whether the erroneous ruling would likely affect the result." (Citation omitted; internal quotation marks omitted.) ***161** *New England Savings Bank v. Bedford Realty Corp.,* supra, 238 Conn. at 752, 680 A.2d 301. The defendants have failed to meet their burden of demonstrating that the allegedly improper evidentiary rulings were likely to have affected the result.

The defendants next claim that the trial court improperly denied their motions to set aside the verdict and for judgment notwithstanding the verdict because there was insufficient evidence to support a finding of negligence. We disagree.

"The standard for reviewing the denial of motions to set aside the verdict and for judgment notwithstanding the verdict on evidentiary grounds is clear. Our review of the trial court's refusal to [grant the motions] requires us to consider the evidence in the light most favorable to the prevailing party, according particular weight to the congruence of the judgment of the trial judge and the jury, who saw the witnesses and heard their testimony.... The verdict will be set aside and judgment directed only if we find that the jury could not reasonably and legally have reached their conclusion." (Internal quotation marks omitted.) *Suarez v. Dickmont Plastics Corp.,* 242 Conn. 255, 277, 698 A.2d 838 (1997).

The defendants claim that the evidence was insufficient to show that a defective condition existed on the stairs because there was no testimony concerning the portion of the threshold that the plaintiff was standing on when she fell. The defendants claim that because there was insufficient evidence of a defective condition, it follows that there was insufficient evidence of notice of that condition. They further claim that there was insufficient evidence to support the finding of proximate cause because there was no testimony that the area of the step with the worn-off paint caused the plaintiff to fall and, therefore, there was no evidence ***162** of a causal relation between any alleged defect and the plaintiff's fall.

"Connecticut subscribes to the common-law view that a landlord is under no obligation or liability to the tenant for personal injuries due to the defective condition of the demised premises or the lack of repair of defects therein in the absence of an agreement, express or implied to the contrary.... One of the many exceptions to this rule, however, is where the landlord retains control of a portion of the demised premises. In such a case the landlord must use reasonable care to keep that portion of the premises in a reasonably safe condition.... In order to demonstrate ****727** a breach of this duty the plaintiff must show that the defendants had actual knowledge of the defect or that they were chargeable with constructive notice of it, because, had they exercised a reasonable inspection of the premises, they would have discovered it." (Citations omitted.) *Pollack v. Gampel,* 163 Conn. 462, 468, 313 A.2d 73 (1972).

To prove her negligence claim, the plaintiff also had to demonstrate that the defendants' negligence was the proximate cause of her injuries. "[T]he test of proximate cause is whether the [defendants'] conduct is a substantial factor in bringing about the plaintiff's injuries.... The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection." (Internal quotation marks omitted.) *Grayson v. Wofsey, Rosen, Kweskin & Kuriansky,* 231 Conn. 168, 182, 646 A.2d 195 (1994). "The question of proximate causation generally belongs to the trier of fact because causation is essentially a factual issue.... It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Citations ***163** omitted; internal quotation marks omitted.) *Stewart v. Federated Dept. Stores, Inc.,* 234 Conn. 597, 611, 662 A.2d 753 (1995).

We conclude that the evidence adduced at trial was sufficient to support the jury's determination that the defendants were negligent. The plaintiff alleged that a defective condition existed on the exterior steps and that she fell on them because of a worn metal plate affixed to the threshold step and an uneven surface that sloped and was unusually slippery. The plaintiff introduced as exhibits photographs, which she testified were a fair and accurate representation of the steps in question as they existed at the time of her fall. The photographs showed a worn metal sill and a slope to the steps. A witness who lived with the plaintiff on the premises testified that the condition of the stairs as shown in the photographs existed for at least six months prior to the plaintiff's fall and that the stairs were slippery. Another witness also testified that the metal surface where the paint had worn away was slippery and that the step sloped downward. Although the plaintiff did not testify as to the exact location of the step she was on when she fell, she testified that when she stepped on the top threshold of the steps she slipped and fell.

There also was evidence that the defendant Bernard LaValley was on the property on a number of occasions, that he undertook responsibility for constructing and maintaining other stairs, and that two years prior to the plaintiff's fall he painted the sill up to the threshold but not the threshold. He testified that the metal sill was not slippery.

On the basis of the evidence, the jury reasonably could have concluded that the defendants had constructive notice of the defective condition of the stairs where the plaintiff fell, that they were negligent in failing to ***164** keep the premises in a reasonably safe condition and that their negligence was a proximate cause of the plaintiff's injuries. "The right to a jury trial is fundamental in our judicial system, and ... the right is one obviously immovable limitation on the legal discretion of the court to set aside a verdict, since the constitutional right of trial by jury includes the right to have issues of fact as to which there is room for a reasonable difference of opinion among fair-minded [persons] passed upon by the jury and not by the court. *Camp v. Booth,* 160 Conn. 10, 13, 273 A.2d 714 (1970)." (Internal quotation marks omitted.) *Donahue v. State,* 27 Conn.App. 135, 140, 604 A.2d 1331 (1992). The trial court properly denied the defendants' motions.

****728** III

The defendants' final claim is that the trial court improperly failed to reduce the economic damages award by the amount of collateral source payments received by the plaintiff. We are not persuaded.

The following additional facts are necessary to our resolution of this claim. The jury returned a verdict in favor of the plaintiff and awarded economic damages in the amount of $37,000 and noneconomic damages in the amount of $75,000 for a total damages award of $112,000. The jury, however, found the plaintiff to be 30 percent negligent and, therefore, $33,600 was deducted from the total award as the amount attributable to the plaintiff's percentage of negligence, thereby reducing the total damages award to $78,400.

After the jury returned its verdict, the court held a hearing to determine the amount, if any, of the damages award that should be reduced on account of collateral benefits received by the plaintiff. Both parties stipulated that the amount of $4275.15 was received by the plaintiff from a collateral source in connection with a hospital bill. The defendants requested the trial court to deduct ***165** this amount from the economic damages award or, in the alternative, that 70 percent of $4275.15, or $2992.61, the amount representing the collateral source less the portion attributable to the plaintiff's percentage of negligence, be deducted from the economic damages award.

The trial court concluded that no reduction in the economic damages award was warranted by the applicable statute, General Statutes § 52–225a (a). The trial court explained that because the plaintiff had received the amount of $4275.15 from an outside source that was less than the amount of the reduction in the plaintiff's economic damages attributable to her percentage of negligence, namely $11,100, the award should not be reduced. On appeal, the parties do not dispute the amount the plaintiff received in collateral benefits or that the amount received was from a collateral source as defined by General Statutes § 52–225b.

The issue we must decide is whether the defendants were entitled to a reduction in the economic damages award, which requires an interpretation of § 52–225a. This court is not aware of any case resolving this issue, nor have the parties offered one. In deciding this issue, we are guided by well defined principles of statutory interpretation. "Statutory construction is a question of law and therefore our review is plenary." (Internal quotation marks omitted.) *Alvarado v. Black,* 248 Conn. 409, 414, 728 A.2d 500 (1999). "[T]he process of statutory interpretation involves a reasoned search for the intention of the legislature.... *Wright Bros. Builders, Inc. v. Dowling,* 247 Conn. 218, 226, 720 A.2d 235 (1998); *State v. Albert,* 50 Conn.App. 715, 719, 719 A.2d 1183 (1998) [cert. granted on other grounds, 247 Conn. 954, 723 A.2d 810 (1999)]. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case.... In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history ***166** and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.... It is the duty of the court to interpret statutes as they are written ... and not by construction read into statutes provisions which are not clearly stated.... *Luce v. United Technologies Corp.,* 247 Conn. 126, 133, 717 A.2d 747 (1998).

"Moreover, principles of statutory construction require the court to construe a statute in a manner that will not frustrate its intended purpose or lead to an absurd result. *Turner v. Turner,* 219 Conn. 703, 712, 595 A.2d 297 (1991). The court must avoid a construction that fails to attain a rational and sensible result that ****729** bears directly on the purpose the legislature sought to achieve." (Internal quotation marks omitted.) *New Milford Savings Bank v. Jajer,* 52 Conn.App. 69, 78–79, 726 A.2d 604 (1999).

We first look to the language of the statute. Section 52–225a (a) provides in relevant part: "In any civil action, whether in tort or in contract, wherein the claimant seeks to recover damages resulting from (1) personal injury or wrongful death occurring on or after October 1, 1987 ... and wherein liability is admitted or is determined by the trier of fact and damages are awarded to compensate the claimant, the court shall reduce the amount of such award which represents economic damages ... by an amount equal to the total of amounts determined to have been paid under subsection (b) of this section less the total of amounts determined to have been paid under subsection (c) of this section, except that there shall be no reduction for ... (2) that amount of collateral sources equal to the reduction in the claimant's economic damages attributable to his percentage of negligence pursuant to section 52–572h."

***167** "Prior to the enactment of § 52–225a in 1985, Connecticut adhered to the common-law collateral source rule, which provides that 'a defendant is not entitled to be relieved from paying any part of the compensation due for injuries proximately resulting from his act where payment [for such injuries or damages] comes from a collateral source, wholly independent of him.... The basis for our well-established collateral source rule is that a wrongdoer shall not benefit from a windfall from an outside source.' ... In 1985, however, the legislature by enacting Public Acts 1985, No. 85–574 (P.A. 85–574), abolished the common-law collateral source rule in medical malpractice actions." (Citation omitted.) *Alvarado v. Black,* supra, 248 Conn. at 416, 728 A.2d 500. In 1986, § 52–225a was extended by No. 86–338, § 4, of the 1986 Public Acts, thereby abolishing the common-law collateral source rule in all personal injury actions. *Id.*, at 417, 728 A.2d 500. "The language and legislative history of § 52–225a clearly indicate that § 52–225a was intended to prevent plaintiffs from obtaining double recoveries, i.e., collecting economic damages from a defendant and also receiving collateral source payments." *Id.*

Here, the defendants claim that § 52–225a does not prohibit a collateral source deduction unless and until the amount of a collateral source exceeds the deduction from the economic damages award due to the plaintiff's comparative negligence. Thus, they claim that they are entitled to a reduction in the economic damages award of $4275.15, the amount agreed to by the parties as representing the collateral source payments received by the plaintiff, less 30 percent attributable to the plaintiff's comparative negligence.

The trial court, in a comprehensive and well reasoned oral decision, set forth its reasoning for its decision. The court explained that of the $37,000 awarded the plaintiff in economic damages for medical expenses, $11,100 was deducted on account of the 30 percent ***168** attributable to the plaintiff's own negligence. Thus, the plaintiff actually received $25,900 from the defendants, resulting in a shortfall to the plaintiff. The court reasoned that if $4275.15 were added to $25,900, the plaintiff would still lack approximately $7000.

The trial court explained the statute at issue was designed to prevent double recovery by a plaintiff. Here, because the plaintiff was receiving less than 100 percent of her economic damages, there was no double recovery. The court stated that the only rational way to read the statute is that it absolutely prohibits a plaintiff from collecting more than the total amount of economic damages from the combination of all sources that are available, but the statute allows individuals the benefit of their own prudence in providing themselves with a collateral source.

****730** We agree with the trial court's interpretation of the statute. The plain language of the statute prohibits a reduction in the economic damages award for "that amount of collateral sources equal to the reduction in the claimant's economic damages attributable to his percentage of negligence...." General Statutes § 52–225a (a). We interpret § 52–225a (a) to mean that when the amount of the collateral sources received by the plaintiff is less than or equal to the amount of the reduction in the claimant's economic damages attributable to the claimant's own negligence, there shall be no collateral source reduction in the award.

This interpretation comports with the purposes the legislation was designed to achieve. The statute was enacted to abolish the common-law collateral source rule that permitted a plaintiff to receive economic damages from a defendant along with collateral source payments, thereby resulting in a possible double recovery. The legislation reflects "the understanding that the entitlement of an injured party to be made whole does not ***169** include an entitlement to a double recovery for the same loss." *Nash v. Yap,* 247 Conn. 638, 649, 726 A.2d 92 (1999). Our Supreme Court explained the competing concerns underlying collateral source recovery in *Haynes v. Yale–New Haven Hospital,* 243 Conn. 17, 23–24, 699 A.2d 964 (1997) (en banc). "The first is that the tortfeasor should not be rewarded by collateral sources that have benefited an injured party. This principle recognizes the social value in making the tortfeasor pay the injured party even for already 'compensated' losses in order to prevent a windfall to the tortfeasor ... and to fulfill the general tort policy of deterring similar tortfeasors from wrongful conduct.... The second, competing principle is that a litigant may recover just damages for the same loss only once. The social policy behind this concept is that it is a waste of society's economic resources to do more than compensate an injured party for a loss and, therefore, that the judicial machinery should not be engaged in shifting a loss in order to create such an economic waste." (Citations omitted.) *Id.*

Here, the statute as written reflects an intention by the legislature not only to prohibit a double recovery by a plaintiff, but also to provide that in a situation where an award already is reduced by an amount attributable to a plaintiff's percentage of negligence, a defendant is not to receive a benefit or windfall of a further reduction in the award on account of benefits received by a plaintiff due to the plaintiff's prudence. The legislature abolished the common-law collateral source rule when it enacted § 52–225a (a), and "[i]t is a rule of statutory construction that statutes in derogation of the common law should be strictly construed so as not to exceed, modify or enlarge [their] provisions beyond [their] scope by the mechanics of statutory construction." *Brennan v. Burger King Corp.,* 46 Conn.App. 76, 82–83, 698 A.2d 364 (1997), aff'd, ***170** 244 Conn. 204, 707 A.2d 30 (1998). Our construction of the statute would not frustrate or enlarge its intended purpose.

We conclude that the trial court properly applied the provisions of § 52–225a (a) and denied the defendants' motion for a collateral source reduction in the award.

The judgment is affirmed.

In this opinion the other judges concurred.

All Citations

55 Conn.App. 150, 738 A.2d 718

Footnotes

1 A limited portion of the witness' deposition testimony was introduced into evidence. The portion introduced reads as follows:

"[Plaintiff's Counsel]: Mr. Fitzgerald, okay, on April 8th, 1993?

"[Witness]: Yes, that's when I went to the premises.

* * *

"A. Yes, that's when I went to the premises. I felt or sensed the surface with my foot and pretty much understood what kind of results I'm going to take, which I would have done here. I would have felt the metal surface and then felt the

painted metal surface which what confronted my comment in my notes that the sides were okay but worn off paint was slippery.

"Q. How about the footwear? Does that play any part in the slipperiness of the step?

"A. Yes.

"Q. Do you know what [the plaintiff] was wearing at the time of her fall?

"A. She had—she was wearing sneakers.

"Q. What type of footwear were you wearing?

"A. Probably a soft-soled shoe. The outer portion of the sill contained a significant slope.

"Q. Okay. Can you point me to the photograph which best depicts that slope?

"A. Probably exhibit six, which shows the outer portions sloping downward.

"Q. Downward away from the house?

"A. Away from the house.

"Q. Thank you, Mr. Fitzgerald."

2 There is no indication that the defendants' counsel was not present at the taking of the deposition or that the defendants were precluded from cross-examining the witness at the deposition. Even if we were to review the defendants' claim, it would fail because Practice Book § 13–31(a) provides that deposition testimony that would be admissible if the witness were present and testifying may be used in a civil action "against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof...."