RECENT TORT DEVELOPMENTS

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In this article significant tort developments from 2022 through some of 2024 are covered. Some decisions are discussed in more depth than others. The number of decisions that were decided requires that some cases not be included in this survey or that some cases be discussed only briefly. The areas of the law represented in this article include defamation, governmental immunity, malicious prosecution, premises liability, professional negligence, sovereign immunity, trial practice, vexatious litigation and underinsured motorist.

I. Animal Liability

In *Houghtaling v. Benevides*,[1] the Appellate Court affirmed the summary judgment entered in favor of the defendant, Jakub Micengendler, because the plaintiff at the time she was injured was a keeper of the dog that allegedly caused her injuries. The plaintiff had borrowed a vehicle from the named defendant and agreed to take the named defendant's dog with her in the car while she went to an appointment.[2] The plaintiff alleged that the named defendant and Micengendler were the owners and/or keepers of the dog and were liable under General Statutes Section 22-357.[3] The

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1 217 Conn. App. 754, 755-56, 290 A.3d 429, *cert. denied*, 346 Conn. 924, 295 A.3d 418 (2023).

2 *Id.* at 756.

3 *Id.* at 756-57. General Statutes § 22-357 provides: "(a) As used in this section:

(1) "Law enforcement officer" means: Each officer, employee or other person otherwise paid by or acting as an agent of (A) the Division of State Police within the Department of Emergency Services and Public Protection; (B) the Office of the State Capitol Police; (C) a municipal police department; and (D) the Department of Correction;

(2) "Property" includes, but is not limited to, a companion animal, as defined in section 22-351a; and

(3) "The amount of such damage", with respect to a companion animal, includes expenses of veterinary care, the fair monetary value of the companion animal, including all training expenses for a guide dog owned by a blind person or an assistance dog owned by a deaf or mobility impaired person and burial expenses for

trial court granted Micengendler's motion for summary judgment, concluding that there was no genuine issue of material fact that the plaintiff was a keeper of the dog at the time of the incident.[4] On appeal, the plaintiff argued that, at most, she had temporary physical custody of the dog and that such custody did not rise to the level of possession for purposes of Section 22-357.[5] The Court explained that a keeper of a dog is precluded from recovery under Section 22-357.[6] The Court further explained that a person will not be deemed to be a keeper of a dog unless that person exercises control over the dog in a manner similar to that which would ordinarily be exerted by an owner.[7] The Court also explained that proof of being a keeper generally consists of evidence that the nonowner was feeding, giving water to, exercising, sheltering, or otherwise caring for the dog when the incident happened.[8] The Court agreed with the trial court that the plaintiff was a keeper for several reasons: (1) the plaintiff voluntarily agreed to take the dog with her to the appointment in the car that she borrowed; (2) the plaintiff had sole possession of the dog at the time that the incident occurred; (3) the plaintiff exercised control over the dog's actions from the moment that she took the dog; and (4) the plaintiff was in possession of both the car and the dog in a location away

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the companion animal.

(b) If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for the amount of such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time such damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action. In an action under this section against a household member of a law enforcement officer to whom has been assigned a dog owned by a law enforcement agency of the state, any political subdivision of the state or the federal government for damage done by such dog, it shall be presumed that such household member is not a keeper of such dog and the burden of proof shall be upon the plaintiff to establish that such household member was a keeper of such dog and had exclusive control of such dog at the time such damage was sustained."

4 *Houghtaling*, 217 Conn. App. at 759.

5 *Id*. at 760-61.

6 *Id*. at 761.

7 *Id*. at 762.

8 *Id*.

from the owner's property at the time of the incident.[9]

II. Defamation

Whether a defendant in a defamation action should be afforded absolute immunity in a suit for statements made during a university proceeding on sexual misconduct was the central issue in *Khan v. Yale University*.[10] By way of background, in the proceeding held by the defendant Yale University, the defendant Jane Doe accused the plaintiff of sexual assault in violation of Yale's sexual misconduct policy, resulting in the plaintiff's expulsion from school.[11] The Supreme Court stated that absolute immunity attaches to statements made in judicial or quasi-judicial proceedings.[12] The Court stated when Doe made accusations during a criminal trial, an official governmental proceeding with procedural safeguards, Doe enjoyed absolute immunity in any subsequent civil action claiming her testimony during the criminal proceeding was defamatory.[13] The plaintiff argued that the Yale proceeding was not quasi-judicial because it was neither a governmental proceeding nor a proceeding with sufficient judicial-like procedures to protect him from defamatory statements.[14] The Court explained that a proceeding is quasi-judicial only when the proceeding is specifically authorized by law, applies law to fact in an adjudicatory manner, contains adequate procedural safeguards, and is supported by public policy encouraging absolute immunity for proceeding participants.[15] The Court concluded that the proceeding in issue did not meet the conditions necessary to be considered quasi-judicial and, therefore, Doe was not entitled to absolute immunity.[16] However, the Court decided that a qualified privilege was appropriate for alleged victims of sexual assault in the context of the case.[17] The Court fur-

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9 *Id.* at 765-66.
10 347 Conn. 1, 295 A.3d 855 (2023).
11 *Id.* at 7.
12 *Id.* at 8.
13 *Id.* at 7.
14 *Id.* at 8.
15 *Id.* at 10.
16 *Id.* at 11.
17 *Id.*

ther found that the factual allegations in the plaintiff's complaint, including that the statements were made with malice, defeated the defendant's asserted privilege at the motion to dismiss stage of the proceedings.[18] The Court added that, at a later stage of the proceedings, with a more fulsome factual record, it may be appropriate to revisit whether the qualified privilege had been defeated.[19] In explaining its conclusion, the Court stated that Connecticut had long held that communications stated or published in the course of judicial proceedings are absolutely privileged as long as they are in some way relevant to the subject of the controversy.[20] The Court found that the proceeding in question could not properly be recognized as quasi-judicial because it lacked the adequate procedural safeguards necessary for absolute immunity to apply.[21] The Court stressed that the proceeding failed: to require the complainant to testify under oath; to afford the plaintiff or his counsel a meaningful opportunity to cross examine adverse witnesses in real time; to provide plaintiff a reasonable opportunity to call witnesses to testify; to afford the plaintiff an opportunity to have active assistance of counsel during the proceeding; and to provide the plaintiff a record or transcript of the proceeding that would assist him in obtaining adequate review.[22] The Court stated that not all of the procedural safeguards were required for a hearing to be recognized as quasi-judicial, but the collective absence of such features militated against a determination that the proceeding in question had adequate safeguards to ensure reliability and promote fundamental fairness.[23]

The distinct pleading requirements for defamation per se and defamation per quod were addressed in *Stevens v. Khalily*.[24] The plaintiff sued his ex-wife's mother and ex-

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[18] *Id*. The issues in the appeal were certified to the Supreme Court by the United States Court of Appeals for the Second Circuit pursuant to General Statutes § 51-199b (d).

[19] *Id*.

[20] *Id*. at 19.

[21] *Id*. at 36.

[22] *Id*. at 38-39.

[23] *Id*. at 39.

[24] 220 Conn. App. 634, 298 A.3d 1254, *cert. denied*, 348 Conn. 915, 303 A.3d 260 (2023).

wife's stepfather for defamation.[25] He alleged that his ex-wife's stepfather stated to representatives of the Department of Children and Families (department) that he was in the habit of sleeping with transvestite prostitutes.[26] He also alleged that his ex-wife's mother told representatives of the department that he had engaged in physical violence, had no interest in spending time with his daughter, was only interested in seeing his child to the extent that she was the beneficiary of a $50 million trust, lived a dangerous lifestyle, and was so desperate for money that he would prostitute his daughter.[27] The plaintiff, on appeal, argued that the trial court erred in striking the above claims for failure to plead defamation with requisite specificity.[28] The Appellate Court affirmed, concluding that the plaintiff failed to plead reputational harm, an element of defamation.[29] The Court reviewed the elements of a defamation action: (1) the defendant published a defamatory statement; (2) the statement identified the plaintiff to a third person; (3) the statement was published to a third person; and (4) the plaintiff's reputation was harmed.[30] The Court added that each statement furnishes a separate cause of action.[31] Whether a party must allege facts sufficient to prove reputational harm depends on the type of defamation: per se or per quod.[32] The Court summa-

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[25] *Id*. at 636-37.

[26] *Id*. at 637.

[27] *Id*.

[28] *Id*. at 645. The Appellate Court stated that a motion to strike challenges the legal sufficiency of a pleading. *Id*. The court takes the facts as pled and the complaint must be construed in the manner most favorable in sustaining its legal sufficiency. *Id*. If facts provable under the allegations in the complaint would support a cause of action, the motion to strike must be denied. *Id*. However, a motion to strike is properly granted if the complaint contains mere conclusions of law that are unsupported by the facts alleged. *Id*. at 645-46.

[29] *Id*. at 644. The trial court granted the motion to strike because the plaintiff failed to allege the defamation claim with the requisite specificity as set forth in *Stevens v. Helming*, 163 Conn. App. 241, 135 A.3d 728 (2016). The Appellate Court noted that the pleadings requirements in a defamation case as discussed in *Helming* was dicta. Stevens, 220 Conn. App. at 643-44. The Court stated that it did not need to reach the issue of the degree of specificity required to plead defamation because the plaintiff's complaint failed to allege reputation harm. *Id*. at 644. The Court explained that it may affirm a trial court decision that reaches the correct result, albeit for a different reason. *Id*.

[30] *Id*. at 642.

[31] *Id*.

[32] *Id*. at 646.

rized the law on defamation per se: A plaintiff must show that the libel, on its face, either charged some impropriety in the plaintiff's business or profession or that it charged a crime of moral turpitude or to which an infamous penalty is attached.[33] The Court additionally explained that, in a defamation per se action, proof of actual damages is not necessary in order to recover general damages; as opposed to a defamation per quod claim where the plaintiff may recover general damages for harm to their reputation only upon proof of actual damages.[34] Turning to the subject case, the Court noted that counsel for the plaintiff conceded at oral argument that the statements in question were not defamatory per se.[35] The Court stated that in the operative complaint the plaintiff alleged he suffered fear, terror and emotional distress as a result of the alleged defamatory statements made by the defendants.[36] The plaintiff attempted to argue that the trial court may reasonably infer reputational harm from the harms pleaded.[37] The Court disagreed with the plaintiff, stating that neither fear, terror nor emotional distress relate to the community perception of the plaintiff.[38] The Court found that the trial court properly granted the defendants' motion to strike because the plaintiff's complaint was devoid of any allegations of harm that he suffered to his reputation as a result of the alleged defamatory statements.[39]

III. Defective Highway

Murphy v. Clinton[40] addressed the notice requirements contained in General Statutes Section 13a-149. The plaintiff claimed she was injured when she tripped and fell while crossing a street in Clinton.[41] The plaintiff provided written notice pursuant Section 13a-149 to the defendant, which in-

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33 *Id*. at 646-47.
34 *Id*.
35 *Id*. at 647.
36 *Id*. at 648.
37 *Id*.
38 *Id*.
39 *Id*. at 649.
40 217 Conn. App. 182, 287 A.3d 1150 (2023).
41 *Id*. at 184-85.

cluded a written description and photographs of the alleged defect.[42] The defendant argued that the language that the plaintiff set forth in the notice was conclusory and that the photographs included as part of the notice could not cure the lack of express language in describing the alleged defect.[43] The trial court found that the notice was not sufficient and granted the defendant's motion to dismiss.[44] The Appellate Court, in reversing the judgment dismissing the case, noted that the failure to comply with the requirements of Section 13a-149 deprives the Superior Court of subject matter jurisdiction over a plaintiff's action.[45] The Court further noted that pursuant to Section 13a-149 the plaintiff must provide statutory notice within ninety days of the accident in order for an action to lie for damages caused by a defective highway, and that notice must include certain elements: (1) written notice of the injury; (2) a general description of that injury; (3) the cause; (4) the time and date; and (5) the place.[46] The Court also noted that the notice requirement should be liberally construed.[47] The Court rejected the defendant's argument that the appended photographs to the plaintiff's notice should not be considered in determining the sufficiency of the notice and found that the written notice and the photographs considered together sufficiently described the cause of injury and satisfied the mandates of Section 13a-149.[48]

IV. Governmental Immunity

Adesokan v. Town of Bloomfield[49] addressed whether the special defense of governmental immunity for discretionary

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[42] *Id*. at 185.
[43] *Id*. at 188.
[44] *Id*. at 185-86.
[45] *Id*. at 187.
[46] *Id*. at 186.
[47] *Id*. at 187. The Appellate Court contrasted the notice requirement contained in General Statutes § 13a-144 which must be strictly construed. *Id*.
[48] *Id*. at 188-91.
[49] 347 Conn. 416, 419-420, 297 A.3d 983 (2023). General Statutes §14-283 provides, in relevant part: "(a) As used in this section, 'emergency vehicle' means (1) any ambulance or vehicle operated by a member of an emergency medical service organization responding to an emergency call or taking a patient to a hospital, (2) any vehicle used by a fire department or by any officer of a fire department while on the way to a fire or while responding to an emergency call but not while returning

acts bars claims of negligence against drivers operating an "emergency vehicle" pursuant to the privileges provided by the emergency vehicle statute, General Statutes Section 14-283. The plaintiff claimed, on appeal, that the trial court improperly granted the motion for summary judgment filed by the defendants, the town of Bloomfield, the Bloomfield Police Department, and one of its officers.[50] The plaintiff argued that Section 14-283 (d) imposed a ministerial rather than a discretionary duty on emergency vehicle operators to drive with due regard for the safety of all persons and property.[51] The Supreme Court held that the defense of discretionary act immunity provided by General Statutes Section 52-557n (a) (2) (B)[52] does not apply to claims arising from the manner

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from a fire or emergency call, [or] (3) any state or local police vehicle operated by a police officer or inspector of the Department of Motor Vehicles answering an emergency call or in the pursuit of fleeing law violators ....

(b) (1) The operator of any emergency vehicle may (A) park or stand such vehicle, irrespective of the provisions of this chapter, (B) except as provided in subdivision (2) of this subsection, proceed past any red light, stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle, (C) exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a, 14-219, or 14-307a as long as such operator does not endanger life or property by so doing, and (D) disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions.

(2) The operator of any emergency vehicle shall immediately bring such vehicle to a stop not less than ten feet from the front when approaching and not less than ten feet from the rear when overtaking or following any registered school bus on any highway or private road or in any parking area or on any school property when such school bus is displaying flashing red signal lights and such operator may then proceed as long as he or she does not endanger life or property by so doing.

(c) The exemptions granted in this section shall apply only when an emergency vehicle is making use of an audible warning signal device, including, but not limited to, a siren, whistle or bell which meets the requirements of subsection (f) of section 14-80, and visible flashing or revolving lights which meet the requirements of sections 14-96p and 14-96q, and to any state or local police vehicle properly and lawfully making use of an audible warning signal device only.

(d) The provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property.

(e) Upon the immediate approach of an emergency vehicle making use of such an audible warning signal device and such visible flashing or revolving lights or of any state or local police vehicle properly and lawfully making use of an audible warning signal device only, the operator of every other vehicle in the immediate vicinity shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the emergency vehicle has passed, except when otherwise directed by a state or local police officer or a firefighter. ..."

[50] *Adesokan*, 347 Conn. at 420-21.

[51] *Id*. at 422-23.

[52] General Statutes § 52-557n (a) provides: "(a)(1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or

in which an emergency vehicle is operated under the privileges provided by Section 14-283.[53] In particular, the Court concluded that "the duty to drive with due regard" mandated by Section 14 283 (d) functions as an exception "provided by law" under the savings clause applicable to discretionary act immunity in Section 52-557n (a) (2) (B).[54] The Court reversed the summary judgment and remanded the case for further proceedings according to law.[55]

In *Hughes v. Board of Education of City of Waterbury*,[56] the Appellate Court affirmed the judgment rendered in favor of the defendants. The plaintiffs, a minor and her mother, argued that the trial court improperly granted the defendants' motion to strike the complaint on the basis of governmental immunity.[57] The suit was brought against the city of Waterbury, the Board of Education, a teacher and a counselor.[58] The gravamen of the complaint was that another student was not properly supervised when the defendants knew or should have known of the aggressive tendencies of the student, resulting in the student striking the minor plaintiff with a metal object.[59] The Court stated that where it is ap-

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property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties; (B) negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit; and (C) acts of the political subdivision which constitute the creation or participation in the creation of a nuisance; provided, no cause of action shall be maintained for damages resulting from injury to any person or property by means of a defective road or bridge except pursuant to section 13a-149. (2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct; or (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law."

[53] *Adesokan*, 347 Conn. at 421.

[54] *Id*. at 432. *River Front Development, LLC v. New Haven Police Department*, 222 Conn. App. 504, 306 A.3d 2 (2023) relied on *Adesokan v. Town of Bloomfield*, 347 Conn. 416, 297 A.3d 983 (2023) in reversing the summary judgment in favor of the defendants where the plaintiffs' claims arose from the manner in which an emergency vehicle was operated under General Statutes § 14-283.

[55] *Adesokan*, 347 Conn. at 449.

[56] 221 Conn. App. 325, 326-27, 300 A.3d 1209, *cert. denied*, 348 Conn. 922, 304 A.3d 147 (2023).

[57] *Id*.

[58] *Id*. at 327.

[59] *Id*. at 327-28.

parent from the face of the complaint that a municipality was engaged in a governmental function while performing the acts and omissions complained of, the municipality is not required to plead governmental immunity as a special defense and may file a motion to strike to test the legal sufficiency of the complaint.[60] The Court stated that a municipality may be liable for the negligent performance of a duty only if the official's duty is clearly ministerial.[61] The Court also stated that the plaintiffs did not allege that the supervision of children was ministerial in nature.[62] The Court further stated that the subject conduct was indisputably discretionary in nature and, therefore, the defendants were entitled to governmental immunity unless an exception to the doctrine applied.[63] The Court stated that there is a limited exception to governmental discretionary act immunity when it is apparent to the municipal officer that his or her failure to act would be likely to subject an identifiable person to imminent harm.[64] The defendants agreed that the minor plaintiff was an identifiable victim because she was a student at the school during school hours when the alleged incident occurred.[65] The Court stated that to satisfy the imminent harm element of the exception, the plaintiff must establish that (1) the dangerous condition alleged by the plaintiff was apparent to the municipal defendant, (2) the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff, (3) the likelihood of the harm must be sufficient to place upon the municipal defendants a clear and unequivocal duty to alleviate the dangerous condition, and (4) the probability that harm would occur must be so high as to require the defendant to act immediately to prevent the harm.[66] The Court found that the allegations in the plaintiffs' complaint failed to set forth the above elements with requisite specificity to survive the motion to strike.[67]

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60 *Id*. at 330.
61 *Id*. at 331.
62 *Id*.
63 *Id*.
64 *Id*.
65 *Id*. at 332.
66 *Id*.
67 *Id*. at 334.

Ahern v. Board of Education of Regional School District Number 13[68] addressed whether the defendants were entitled to governmental immunity. The plaintiff, a former student of Coginchaug Regional High School and a former member of the high school's cheerleading squad, sued the following defendants: the board of education of the school district; the superintendent of the district; the high school's head cheerleading coach; and the high school's assistant cheerleading coach.[69] The plaintiff alleged that, due to the negligence of the defendants, she was injured while attempting a stunt during a high school cheerleading practice.[70] Summary judgment was rendered for all of the defendants.[71] The Appellate Court dismissed the appeal with respect to the board because it was not a final judgment as to the board since the trial court's decision did not dispose of all of the counts against the board.[72] The Court affirmed the summary judgment in favor of the other defendants on the ground that they were entitled to governmental immunity because there was no genuine issue of material fact that the plaintiff was not subject to imminent and apparent harm.[73] The Court stated that the determination of whether governmental immunity applies is generally a question of law for the court, unless there are unresolved factual issues material to the applicability of the defense, in which case resolution of the factual questions are left to the jury.[74] The Court found that the evidence in support of the motion for summary judgment demonstrated that the continued practice of a stunt after the plaintiff repeatedly had fallen safely and without injury during the same practice while practicing that same stunt did not subject the plaintiff to a harm that was imminent and apparent.[75]

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68 219 Conn. App. 404, 295 A.3d 496 (2023).
69 *Id*. at 406-07.
70 *Id*. at 407.
71 *Id*.
72 *Id*. at 407-08.
73 *Id*.
74 *Id*. at 424-25.
75 *Id*. at 425.

V. Invasion of Right to Privacy

In *Cornelius v. Markle Investigations, Inc.*,[76] the plaintiff appealed from the judgment of the trial court granting the motions for summary judgment filed by the defendants, Markle Investigations, Inc. (Markle) and Hopkins School, Inc. (Hopkins). By way of background, the plaintiff attended high school at Hopkins, during which time he was disciplined on several occasions, and was expelled from the school for plagiarism.[77] At a later time, the police lawfully searched the plaintiff's home which was located across the street from Hopkins and seized an arsenal of weapons of mass destruction, bomb making materials, racist materials, and anti-Semitic materials.[78] The plaintiff pleaded guilty in state and federal court to charges stemming from the conduct underlying the search.[79] Hopkins registered as a victim of the plaintiff's crimes.[80] The plaintiff alleged that the defendants invaded his right to privacy because Hopkins retained Markle to conduct surveillance of him following his release from prison.[81] In particular, the plaintiff alleged that the defendants intentionally intruded upon his solitude, seclusion and private affairs or concerns.[82] The Appellate Court reviewed the applicable law and stated that to prove a claim for intrusion upon the seclusion of another, a plaintiff must establish three things: (1) an intentional intrusion, physical or otherwise; (2) upon the plaintiff's solitude or seclusion or private affairs or concerns; (3) which would be highly offensive to a reasonable person.[83] The Court agreed with the trial court that the conduct that the plaintiff complained of could not, as a matter of law, satisfy the second element.[84] The Court stated that because the defendants surveilled the plaintiff only while he was in a public setting, such as riding

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76 220 Conn. App. 135, 137, 297 A.3d 248 (2023).
77 *Id*. at 138.
78 *Id*. at 139.
79 *Id*.
80 *Id*.
81 *Id*.
82 *Id*. at 140.
83 *Id*. at 152-53.
84 *Id*. at 163.

public transportation, visiting the library and walking along the street, he lacked an objectively reasonable expectation of seclusion or solitude.[85] The Court further stated that the defendants never reviewed the plaintiff's private or personal mail, safe, wallet or bank account.[86] Additionally, the Court stated that the defendants only used basic equipment including cell phones, walkie-talkie radio devices and binoculars to obtain images of the plaintiff while he was in public.[87] The Court also found that the plaintiff's claim failed as to the third element of his claim.[88] The Court agreed with the trial court that the defendants' surveillance of the plaintiff was not conduct to which a reasonable person would strongly object.[89] The Court further noted that once the moving party has met its burden, as in the case before it, the opposing party must present evidence that demonstrates the existence of some genuine issue of material fact.[90] The Court found that the plaintiff had not submitted sufficient evidence to show a genuine issue of material fact and affirmed the judgment of the trial court.[91]

VI. Malicious Prosecution

In *Silano v. Cooney*,[92] the plaintiff appealed from the summary judgment entered in the defendant's favor. The plaintiff sued the defendant, a police officer, for malicious prosecution.[93] The Court stated that the elements of an action for malicious prosecution against a private person include that: (1) the defendant initiated or procured the institution of criminal proceeding against the plaintiff: (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other

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[85] *Id*. at 162-63.
[86] *Id*. at 162.
[87] *Id*. at 162-63.
[88] *Id*. at 164-68.
[89] *Id*. at 167-68.
[90] *Id*. at 168.
[91] *Id*. at 168-70.
[92] 223 Conn. App. 692, 694, 309 A.3d 333, *cert. denied*, 348 Conn. 960, 312 A.3d 36 (2024).
[93] *Id*. at 694.

than that of bringing an offender to justice.[94] In affirming the summary judgment, the Appellate Court found that the defendant satisfied his burden in establishing the absence of a genuine issue of material fact that the arrest warrant was supported by probable cause.[95] With respect to the plaintiff's recitation of circumstances regarding the issue of malice, the Court remarked that the defendant's state of mind does not negate the existence of probable cause.[96] The Court stressed that proof of malice does not dispense with the need to prove want of probable cause.[97]

VII. Premises Liability

In *Herrera v. Meadow Hill, Inc.*,[98] the plaintiff appealed from the summary judgment entered in favor of the defendants, a condominium association and the property manager. The plaintiff claimed that he was on his way home to his condominium unit when he fell due to icy exterior steps on the premises.[99] The defendants argued that at the time of the accident that there was an ongoing storm or that a reasonable amount of time had not passed after the cessation of the storm for them to have remediated the condition.[100] The defendants argued that under the facts of the case they had no liability pursuant to the ongoing storm doctrine adopted in *Kraus v. Newton*.[101] In granting the motion for summary judgment, the trial court found that liability may be imposed for snow and ice removal remediation that occurs during a

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94 *Id*. at 703.
95 *Id*.
96 *Id*. at 708.
97 *Id*. at 707-08.
98 217 Conn. App. 671, 672, 290 A.3d 377 (2023).
99 *Id*. at 673.
100 *Id*.
101 *Id*. at 673-74. In *Kraus v. Newton*, 211 Conn. 191, 558 A.2d 240 (1989), the Supreme Court held that in the absence of unusual circumstances, a property owner, in fulfilling its duty owed to invitees upon his property to exercise reasonable care in removing dangerous accumulations of snow and ice, may await the end of a storm and a reasonable time thereafter before removing the ice and snow. *Id*. at 198. The Court continued in stating that its decision did not prevent the submission to the jury, where there is a proper evidentiary foundation, the determination as to whether a storm had ended or whether a plaintiff's injury was caused by new ice or old ice when the effects of separate storms converge. *Id*. at 197-98.

storm if it is done in a negligent manner.[102] The trial court also found that the plaintiff had offered no evidence to rebut the defendants' proffer of the local ordinance regarding the removal of snow, sleet and ice after the end of precipitation as evidence of the standard of care.[103] The trial court further found that the plaintiff failed to establish that the defendants' remediation efforts were negligent in any way.[104] The Appellate Court noted that there was a split of authority in the Superior Court as to whether there was an exception to *Kraus v. Newton* that would allow liability to be imposed for snow or ice remediation that occurs during a storm if it is done negligently.[105] The Court stated that it did not need to decide whether the trial court correctly recognized this exception to the ongoing storm doctrine because, even if the trial court properly recognized the exception, the plaintiff did not present evidence demonstrating the existence of a disputed issue of material fact in opposition to the motion for summary judgment.[106] The Court stated that it had to determine whether the plaintiff provided any evidence that the allegedly negligent actions of the defendants caused the plaintiff's fall.[107] The Court further stated the plaintiff was required to show that there was an issue of fact as to whether the snow abatement efforts by the defendants exacerbated the natural hazard created by the snowstorm.[108] The Court agreed with the trial court that the plaintiff failed to raise a genuine issue of material fact as to whether the precipitation from the storm was not the cause of the accident.[109] The Court noted that it was unclear as to when and if salt was applied to the steps on which the plaintiff fell.[110] The Court further noted that even if the plaintiff was correct that the defendants did not salt the steps where he fell, he failed to raise an issue of

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[102] *Herrera*, 217 Conn. App. at 675-76.
[103] *Id.* at 676.
[104] *Id.*
[105] *Id.* at 679.
[106] *Id.* at 680.
[107] *Id.* at 682.
[108] *Id.*
[109] *Id.* at 683.
[110] *Id.* at 685.

fact as to whether the defendants created or exacerbated the allegedly dangerous condition by engaging in remediation efforts during the storm.[111] The Court stated that the failure of the defendant to remove all snow and ice, without more, does not establish that the defendant increased the risk of harm.[112] The Court affirmed the judgment.[113]

VIII. Professional Negligence

In *Carpenter v. Daar*,[114] the Supreme Court found that the good faith opinion letter requirement contained in General

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[111] *Id*.

[112] *Id*.

[113] *Id*. at 687.

[114] 346 Conn. 80, 84-87, 287 A.3d 1027 (2023). General Statutes § 52-190a provides: "(a) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate.

Statutes Section 52-190a was a statutory procedural device that does not implicate the court's jurisdiction in any way and, according, overruled *Morgan v. Hartford Hospital*.[115] In coming to its conclusion, the Court reviewed the rules of statutory construction, the legislative history of the statute in question, and remarked that the doctrine of stare decisis is not an inexorable command.[116] The Court additionally concluded that for purposes of a motion to dismiss pursuant to Section 52-190a (c) the sufficiency of the opinion letter is to be determined solely on the basis of the allegations contained in the complaint, without resort to a jurisdictional fact-finding process, and that the trial court retained authority to permit amendment or supplementation of an opinion letter.[117]

(b) Upon petition to the clerk of any superior court or any federal district court to recover damages resulting from personal injury or wrongful death, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods.

(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action."

[115] 301 Conn. 388, 21 A.3d 451 (2011).

[116] *Carpenter*, 346 Conn. at 103-113. General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[117] *Carpenter*, 346 Conn. at 87. The Appellate Court in *Carpenter v. Daar*, 199 Conn. App. 367, 396, 405, 236 A.3d 239 (2020) affirmed the trial court's dismissal of the complaint on the grounds that the opinion letter did not establish that the author was a similar health care provider to the defendant pursuant to Section 52-184c (b). Section 52-184c provides: "(a) In any civil action to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, in which it is alleged that such injury or death resulted from the negligence of a health care provider, as defined in section 52-184b, the claimant shall have the burden of proving by the preponderance of the evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care for a given health care provider shall be that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

(b) If the defendant health care provider is not certified by the appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a 'similar health care provider' is one who: (1) Is licensed by the appropriate regulatory agency of this state or another state requiring the same or greater qualifications; and (2) is trained and experienced in the same discipline or school of practice and such training and experience shall be as a result of the active involvement in the practice or teaching of medicine within the five-year period before the incident giving rise to the claim.

(c) If the defendant health care provider is certified by the appropriate

The Court added that a motion to dismiss for failure to file an opinion letter pursuant to Section 52-190a was waivable, including by inaction.[118] Turning to the opinion letter in issue, the Court agreed with the plaintiff that his complaint and opinion letter read broadly and realistically sufficiently established compliance with Section 52-190a.[119]

In *Gervais v. JACC Healthcare Center of Danielson, LLC*,[120] the issue was whether the trial court improperly concluded that it lacked authority to permit the plaintiff to amend the opinion letter in the plaintiff's medical malpractice action in response to the defendants' motion to dismiss. The Appellate Court explained that the trial court in its order dismissing the plaintiff's action, found that (1) the opinion letter attached to the plaintiff's complaint was deficient pursuant to Connecticut's good faith opinion letter statute, General Statutes Section 52-190a, because it failed to sufficiently identify the author's qualifications, thereby depriving the trial court of the ability to ascertain whether the author was a "similar health care provider" as set forth in General Statutes Section 52-184c and (2) it lacked the authority to grant the plaintiff's request to amend the complaint in response to the motion to dismiss.[121] The Court found in light of *Carpenter v. Daar* that the trial court improperly denied the plaintiff's request to amend the complaint to supplement

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American board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a 'similar health care provider' is one who: (1) Is trained and experienced in the same specialty; and (2) is certified by the appropriate American board in the same specialty; provided if the defendant health care provider is providing treatment or diagnosis for a condition which is not within his specialty, a specialist trained in the treatment or diagnosis for that condition shall be considered a 'similar health care provider'.

(d) Any health care provider may testify as an expert in any action if he: (1) Is a 'similar health care provider' pursuant to subsection (b) or (c) of this section; or (2) is not a similar health care provider pursuant to subsection (b) or (c) of this section but, to the satisfaction of the court, possesses sufficient training, experience and knowledge as a result of practice or teaching in a related field of medicine, so as to be able to provide such expert testimony as to the prevailing professional standard of care in a given field of medicine. Such training, experience or knowledge shall be as a result of the active involvement in the practice or teaching of medicine within the five-year period before the incident giving rise to the claim."

[118] *Carpenter*, 346 Conn. at 126.

[119] *Id*. at 127-28.

[120] 221 Conn. App. 148, 150-51, 300 A.3d 1244 (2023).

[121] *Id*.

the opinion letter.[122] The Court also found unpersuasive the defendants' argument that the trial court's decision should be affirmed because the denial of the request to amend did not constitute an abuse of discretion.[123] The Court found that the trial court never exercised its discretion because it concluded that it lacked authority to permit the amendment.[124] Accordingly, the Court could not determine whether the trial court abused its discretion by denying the plaintiffs' request to amend.[125] The judgment was reversed and the case was remanded for further proceedings consistent with the opinion.[126]

The wrongful conduct rule was the subject of *Lastrina v. Bettauer*.[127] The plaintiff, as conservator of the estate of his son Daniel, appealed from the granting of the motions for summary judgment filed by the defendants, a psychologist and a physician.[128] The plaintiff claimed that the defendant psychologist violated the applicable standard of care by improperly diagnosing Daniel with posttraumatic stress disorder and that the defendant physician violated the applicable standard of care by prescribing medical marijuana to his son when he knew that Daniel suffered from bipolar disorder.[129] The Appellate Court affirmed the judgment of the trial court.[130] The Court stated that the wrongful conduct rule served as a limitation on liability in civil actions based on the notion that a plaintiff should not recover for injuries that are the result of his or her knowing and intentional participation in a criminal act.[131] The trial court determined that

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[122] *Id*. at 151.
[123] *Id*. at 163-64.
[124] *Id*. at 164.
[125] *Id*.
[126] *Id*.
[127] 217 Conn. App. 592, 289 A.3d 1222 (2023). In *Greenwald v. Van Handel*, 311 Conn. 370, 374, 88 A.3d 467 (2014) the Supreme Court found that it was not necessary to adopt a sweeping rule or exceptions thereto because under the facts of the case it would violate public policy to impose a duty on the defendant to protect the plaintiff from injuries arising as a result of the plaintiff's admitted illegal conduct.
[128] *Lastrina*, 217 Conn. App. at 594-95.
[129] *Id*. at 596-97.
[130] *Id*. at 595.
[131] *Id*. at 597.

Daniel's behavior in intentionally deceiving the defendants to obtain certification for medical marijuana constituted a felony.[132] The Court stated that Daniel did not seek treatment from the defendants for a condition from which he suffered; rather, he misrepresented to the defendants that he suffered from posttraumatic stress disorder when he knew that he did not.[133] The Court stated that Daniel's illegal conduct was intertwined with the alleged negligent treatment by the defendants because the treatment was part of and resulted from Daniel's fraud.[134] The Court further stated that there was no genuine issue of material fact as to whether the alleged injuries of Daniel arose from his volitional criminal conduct and, therefore, the claims against the defendants were barred even if they were negligent.[135]

In *Perdikis v. Klarsfeld*,[136] the Appellate Court agreed with the plaintiff that the trial court erred in denying his request to charge the jury that the jury could not consider his postsurgical actions as a cause of his injuries. The Court concluded that the introduction of competent evidence in the form of a expert medical opinion stated within a degree of reasonable medical certainty was required to allow the jury to infer a causal link between the plaintiff's actions and his injury.[137] The plaintiff sued the defendant, a surgeon who specialized in otolaryngology, commonly known as an ear, nose and throat doctor, asserting that the defendant had been negligent in the performance of the nasal surgery on him and that as a result of such malpractice, he suffered injuries.[138] The trial court instructed the jury on the law and included a sole proximate cause charge; specifically, that if the jury found the plaintiff's actions were the sole proximate cause of his injuries, then they should find for the defendant.[139] The Court stated that

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[132] *Id*. at 598.
[133] *Id*. at 608.
[134] *Id*.
[135] *Id*. at 613.
[136] 219 Conn. App. 343, 346, 295 A.3d 1017, *cert. denied*, 348 Conn. 903, 301 A.3d 528 (2023).
[137] *Id*.
[138] *Id*. at 346-47.
[139] *Id*. at 359.

it was error to give the sole proximate cause charge in the absence of any competent evidence supporting the charge.[140] The Court noted that in a medical malpractice case expert testimony is generally required to establish a causal link between an injury and its alleged cause.[141] The Court explained that although the defendant may rely on a general denial to introduce evidence to establish that an actor other than the defendant was the sole proximate cause of the plaintiff's injuries, in medical malpractice actions, in which the causation issue raised by the defendant goes beyond the field of ordinary knowledge and experience of the layperson, competent expert medical opinion evidence must be introduced.[142] The Court further explained that the trial court has a duty not to submit to the jury an issue upon which the evidence would not reasonably support a finding.[143] The Court found that the jury charge in issue was improper and further concluded that the sole proximate cause instruction was harmful because it likely affected the outcome of the case.[144] The defendant argued that the sole proximate cause instruction was harmless because the plaintiff did not submit jury interrogatories in the case and, therefore, the record was silent as to whether the jury addressed the issue of sole proximate cause at all as the jury may have decided that the defendant met the applicable standard of care.[145] The Court concluded that, based on Supreme Court and Appellate Court precedent, the general verdict rule did not apply where various grounds are advanced to defeat a claim under a general denial.[146] The Court stated that, as an intermediate appellate tribunal, it could not overrule the precedent established by a previous panel, nor was it at liberty to modify, evaluate or overrule the precedent of the Supreme Court.[147] For the foregoing reasons, the Court concluded that the likelihood of prejudice to

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[140] *Id*. at 361.
[141] *Id*. at 364.
[142] *Id*. at 366.
[143] *Id*. at 380.
[144] *Id*. at 381-82.
[145] *Id*.
[146] *Id*. at 383.
[147] *Id*. at 383-84.

the plaintiff was significant enough to warrant a new trial.[148]

Gianetti v. Neigher[149] discussed causation in a legal malpractice case; specifically, the need of a plaintiff to establish the "case-within-a-case" to prevail in a legal malpractice action. The Appellate Court affirmed the summary judgment granted in favor of the defendant, an attorney who represented the plaintiff in a prior civil action against a hospital.[150] The plaintiff alleged that the defendant committed professional malpractice by failing to bring on his behalf claims of Connecticut Unfair Trade Practice Act (CUTPA) violations and tortious interference with business expectancies against the hospital in the prior action.[151] The Court rejected the plaintiff's claim that the trial court abused its discretion in precluding the plaintiff's expert witness from testifying.[152] The Court explained that the trial court principally precluded the plaintiff's expert from testifying as a sanction for the plaintiff's noncompliance with the disclosure requirements set forth in Practice Book Section 13-4.[153]

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[148] *Id*. at 389.

[149] 214 Conn. App. 394, 280 A.3d 555, *cert. denied*, 345 Conn. 963, 285 A.3d 390 (2022).

[150] *Id*. at 397-98.

[151] *Id*. at 450-51.

[152] *Id*. at 447-48.

[153] *Id*. at 435. Practice Book § 13-4 provides, in pertinent part: "(a) A party shall disclose each person who may be called by that party to testify as an expert witness at trial ....

(b) A party shall file with the court and serve upon counsel a disclosure of expert witnesses which identifies the name, address and employer of each person who may be called by that party to testify as an expert witness at trial, whether through live testimony or by deposition. In addition, the disclosure shall include the following information:

(1) ... [T]he field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; [and] the substance of the grounds for each such expert opinion ....

(3) ... [T]he party disclosing an expert witness shall, upon the request of an opposing party, produce to all other parties all materials obtained, created and/or relied upon by the expert in connection with his or her opinions in the case within fourteen days prior to that expert's deposition ....

(c) (1) Unless otherwise ordered by the judicial authority upon motion, a party may take the deposition of any expert witness disclosed pursuant to subsection (b) of this section ....

(h) A judicial authority may, after a hearing, impose sanctions on a party for failure to comply with the requirements of this section. An order precluding the testimony of an expert witness may be entered only upon a finding that: (1) the sanction of preclusion, including any consequence thereof on the sanctioned party's

The Court found that based on the record before it the trial court reasonably could have concluded that the sanction of preclusion was proportional to the plaintiff's noncompliance with disclosure rules and that his pattern of gamesmanship rose to a level of discovery abuse.[154] The Court also disagreed with the plaintiff that even if the trial court properly precluded his expert testimony, that genuine issues of material fact nonetheless existed as to the elements of causation and damages in his malpractice case.[155] The Court stated that, in general, a plaintiff must prove the following elements in a legal malpractice case: (1) the existence of an attorney-client relationship; (2) the attorney's wrongful act or omission; (3) causation; and (4) damages.[156] The Court stated that, as a general rule, the plaintiff in a malpractice case must present expert testimony to establish the standard of care or skill that an attorney must exercise.[157] The Court further stated that expert testimony is also generally required to establish the element of causation.[158] The Court explained that the traditional method of presenting the merits of the prior action is often called the case-within-a-case: the plaintiff must prove that, in the absence of the alleged breach of duty by the attorney, the plaintiff would have prevailed in the prior cause of action.[159] In other words, the plaintiff must present expert testimony to establish that the defendant's conduct caused the injury of which he or she complains.[160] With respect to the claimed violations of CUTPA, General Statutes Section 42-110a et seq., the Court stated that Section 42-110b (a) provides: "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."[161] The Court stated that, in de-

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ability to prosecute or to defend the case, is proportional to the noncompliance at issue, and (2) the noncompliance at issue cannot adequately be addressed by a less severe sanction or combination of sanctions. ..."

154 *Gianetti*, 214 Conn. App. at 447-48.

155 *Id.* at 448.

156 *Id.* at 448-49.

157 *Id.* at 449.

158 *Id.*

159 *Id.* at 450.

160 *Id.*

161 *Id.* at 451.

termining whether a practice violates CUTPA, Connecticut has adopted the criteria set out in the cigarette rule by the Federal Trade Commission: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy, as it has been established by statutes, the common law, or otherwise, or is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; or (3) whether it causes substantial injury to consumers or competitors or other business persons.[162] The Court continued by explaining that all three criteria do not need to be satisfied to support a finding of unfairness, and a practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent, it meets all three.[163] The Court additionally stated that although a breach of contract may form the basis for a CUTPA claim, not every contractual breach rises to the level of a CUTPA violation.[164] The Court also stated that to prevail on his CUTPA claim the plaintiff was required to show that he was entitled to relief in the prior action, above and beyond the damages award he received in connection with his prevailing on the breach of contract claim.[165] The Court next set forth the legal standard that governed the plaintiff's claim of tortious interference with business expectancies. The Court stated that in order to recover in an action for tortious interference with business expectancies, the plaintiff must establish: (1) A business relationship existed between the plaintiff and another party; (2) the defendant intentionally interfered with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffered actual loss.[166] The Court noted that the plaintiff failed to present expert testimony as to the elements of CUTPA, including whether the defendant's actions qualified as unfair pursuant to the cigarette rule, and whether he was entitled

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[162] *Id*.
[163] *Id*.
[164] *Id*. at 452.
[165] *Id*.
[166] *Id*. at 452-53.

to additional relief above and beyond the damages he recovered for breach of contract.[167] The Court also found that the plaintiff was unable to expert testimony as to the elements of his tortious interference with business expectancies claim.[168] In light of the fact that the plaintiff was unable to present expert testimony as to the foregoing material issues, the Court affirmed the summary judgment entered on behalf of the defendant.[169]

IX. Sovereign Immunity

Escobar-Santana v. State[170] addressed whether the statutory phrase "medical malpractice claims" as contained in General Statutes Section 4-160 (f) is broad enough to encompass a mother's allegation that she suffered emotional distress damages from physical injuries to her child that were proximately caused by the negligence of healthcare professionals during the birthing process. The Supreme Court held that claims alleging such damages can qualify as a medical malpractice claim under Section 4-160 (f).[171] The Court explained that Section 4-160 (f) waives the state's sovereign immunity with respect to certain medical malpractice actions and permits those actions to proceed against the state without the need of prior authorization from the Claims Commissioner.[172] The Court found that the trial court properly denied the defendant's motion to dismiss addressed to a count of the complaint brought by the named plaintiff and her son because the plaintiffs alleged a valid medical malpractice action in that count.[173] The Court acknowledged that in the healthcare context, both negligent infliction of emotional distress and bystander emotional distress are causes of action distinct from medical malpractice.[174] The Court also

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[167] *Id.* at 454.
[168] *Id.*
[169] *Id.*
[170] 347 Conn. 601, 604-05, 298 A.3d 1222 (2023).
[171] *Id.* at 605.
[172] *Id.* at 604-05.
[173] *Id.* at 605.
[174] *Id.* at 625. Connecticut recognizes a cause of action for bystander emotional distress arising out of medical malpractice. Squeo v. Norwalk Hospital Assn., 316 Conn. 558,113 A.3d 932 (2015).

noted that the waiver of sovereign immunity contained in Section 4-160 (f), which is limited to medical malpractice actions, does not extend to negligent infliction of emotional distress and bystander emotional distress claims.[175] The Court further remarked that the count in question could be read to allege a medical malpractice claim, and that the defendant could have eliminated portions of the complaint alleging negligent infliction of emotional distress and bystander emotional distress by utilizing a request to revise.[176]

In *Caverly v. State*,[177] the issue was whether the plaintiff's medical malpractice case against the state was barred by the doctrine of sovereign immunity. The state argued that, because the plaintiff received a settlement payment from a joint tortfeasor related to the plaintiff's decedent's death, the plaintiff's lawsuit was barred by General Statutes Section 4-160b (a).[178] The Supreme Court agreed with the trial court's denial of the state's motion to dismiss, holding that Section 4-160b (a) applies only to subrogated or assigned claims and not to payments made by joint tortfeasors.[179] The Court explained that the action against the joint tortfeasor, a pharmacy, sought damages for its own independent acts of alleged negligence, and, accordingly, the settlement proceeds the plaintiff received in that action did not constitute an indirect payment of the plaintiff's claim for monetary damages against the state.[180] The Court further explained that because the plaintiff's claims against the joint tortfeasor and the state were separate and distinct, the plaintiff's medical malpractice claim was not "indirectly paid by … a third party" within the meaning of Section 4-160b (a).[181] The Court

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[175] *Escobar-Santana v. State*, 347 Conn. at 625.

[176] *Id*. at 625-26.

[177] 342 Conn. 226, 228-29, 269 A.3d 94 (2022).

[178] *Id*. at 229. General Statutes § 4-160b (a) provides: "[t]he Office of the Claims Commissioner shall not accept or pay any subrogated claim or any claim directly or indirectly paid by or assigned to a third party."

[179] *Caverly*, 342 Conn. at 229. Although the denial of motion to dismiss is generally a nonappealable interlocutory ruling, the denial of a motion to dismiss based on a claim of sovereign immunity is an immediately appealable final judgment. *Id*. at 232, note 5.

[180] *Id*. at 235.

[181] *Id*.

also stated that its interpretation of Section 4-160b (a) does not permit a double recovery.[182] The Court stated that plaintiffs are not foreclosed from suing multiple defendants, either jointly or separately, for injuries for which each is liable, nor are they foreclosed from obtaining multiple judgments against joint or successive tortfeasors.[183] However, the possible rendering of multiple judgments does not defeat the rule that a litigant may recover just damages only once.[184] The Court added that a negotiated settlement does not equate to a satisfaction of a judgment representing full compensation for injuries.[185]

X. Trial Practice

Piercing the corporate veil was the principal issue discussed in *Deutsche Bank AG v. Sebastian Holdings, Inc.*[186] The plaintiff brought the action against the defendants, a holding company and its sole shareholder, in an attempt to enforce an approximately $243 million foreign judgment (English judgment) against the defendants.[187] After a trial to the court, the trial court denied the plaintiff's requested relief and render judgment in favor of the defendants.[188] On appeal, the plaintiff contended that the trial court improperly declined to pierce the defendant holding company's corporate veil and to hold the defendant shareholder jointly and severally liable for the foreign judgment.[189] The Supreme Court disagreed and affirmed.[190] The plaintiff argued that the trial court erred in applying the law of Turks and Caicos Islands, a British territory, when determining whether to allow the plaintiff to pierce the corporate veil because the trial court should have applied New York or Connecticut law.[191] The

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[182] *Id.* at 236.
[183] *Id.*
[184] *Id.*
[185] *Id.* at 237.
[186] 346 Conn. 564, 294 A.3d 1 (2023).
[187] *Id.* at 568.
[188] *Id.*
[189] *Id.* at 568-69.
[190] *Id.* at 569.
[191] *Id.* at 589. In Connecticut, there are two theories under which the corporate veil may be pierced, specifically, the instrumentality rule and the identity rule. *Id.* at 590. The instrumentality rule requires in any case, except an express agency,

Court concluded that the trial court's factual findings foreclosed the plaintiff's claim under the law of New York, Connecticut and Turks and Caicos Islands and, therefore, any error in the trial court's choice of law analysis or the application of the law of Turks and Caicos Islands was harmless.[192] The Court explained that although the law on piercing the corporate veil was not coextensive in the three jurisdictions, the law in all three of the jurisdictions demonstrates that it is an extraordinary remedy that requires, at a minimum, a determination by the trial court that the corporate form was used to promote a wrong or injustice, and that it would be fundamentally unfair if the corporate form were not disregarded.[193] The Court found that the trial court unequivocally absolved the defendant shareholder of any wrongdoing vis-à-vis the defendant corporation's dealing with the plaintiff.[194]

A bill of discovery was the subject of *Benvenuto v. Brookman*.[195] The defendant, who published an Internet blog, appealed from an order granting a bill of discovery requiring him to submit his laptop and cell phone for a forensic analysis that would allow the plaintiff to find out the identities of individuals who posted comments on the blog containing allegedly defamatory statements about the plaintiff.[196] The

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proof of: (1) control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice with respect to the transaction challenged so that the corporate entity had no separate mind, will or existence of its own; (2) that such control must have been used to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of the plaintiff's rights; and (3) that the control and breach of duty proximately caused the injury or loss complained of. *Id*, note 8. On the other hand, the identity rule states that if the plaintiff can show that there was such unity of interest and ownership that the independence of the corporation had in fact ceased or had never begun, and adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the entity to escape liability arising out of the operation conducted by one corporation for the benefit of the whole enterprise. *Id*. Under either rule, piercing the corporate veil is not lightly imposed. *Id*. at 591. The corporate veil is pierced only under exceptional circumstances, for example, when the corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetuate fraud or to promote injustice. *Id*.

192 *Id*. at 592.

193 *Id*.

194 *Id*. at 593.

195 348 Conn. 609, 612, 309 A.3d 292 (2024).

196 *Id*.

trial court also ordered that the parties attempt to reach an agreement as to the conditions of a protective order that governed the scope and procedures to be utilized in the forensic analysis, or, in the absence of an agreement, submit proposed orders so the court could resolve any disagreements regarding the protective order and forensic analysis.[197] The plaintiff claimed that he needed the information so he could file defamation actions against anonymous commenters on the blog.[198] The Supreme Court explained that a bill of discovery is an equitable action which seeks no remedy other than the disclosure of information or documentation for use in another action.[199] The Court further stated that a bill of discovery is an independent action.[200] Following oral argument, the Court ordered the parties to file supplemental briefs addressing whether the trial court's order was an appealable final judgment.[201] The Court stated that except as set forth in the state constitution, the jurisdiction of appellate courts is determined by statute.[202] The Court added that General Statutes Sections 51-197a and 52-263 limit the statutory right to appeal to appeals by aggrieved parties from final judgments.[203] Because the requirement of a final judgment implicates the Court's jurisdiction, the Court explained that it must determine whether a judgment is final before reaching the merits of the appeal.[204] The Court stated that the parties had not complied with the trial court order requiring them prior to conducting discovery to either file an agreed upon protective order and search protocols, or, in the event that there was no agreement, to return to the trial court for resolution of those issues.[205] The Court noted that both parties, in their supplemental briefs, agreed that the judgment in issue for purposes of appeal was not final unless it came

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197 *Id.*
198 *Id.* at 613.
199 *Id.* at 618.
200 *Id.*
201 *Id.* at 616.
202 *Id.*
203 *Id.* at 617.
204 *Id.*
205 *Id.* at 616.

within a *State v. Curcio*[206] exception.[207] The Court stated that an otherwise nonfinal judgment may be considered final and appealable under *Curcio* (1) when the order or action terminates a separate and distinct preceding or (2) the order or action so concludes the rights of the parties that further proceedings cannot affect them.[208] The defendant argued that the judgment was appealable under the second prong of *Curcio*.[209] The Court disagreed with the defendant and dismissed the appeal for lack of jurisdiction.[210]

King v. Hubbard[211] discussed whether the plaintiffs had an absolute right to withdraw an action. In response to the plaintiffs' action, the defendant filed a special motion to dismiss pursuant to General Statutes Section 52-196a, based on the defendant's claimed exercise of his right of free speech in connection with a matter of public concern. The defendant also requested costs and reasonable attorney's fees.[212] The trial court ordered a hearing on the defendant's special motion to dismiss but before the hearing took place the plaintiffs withdrew the action.[213] The defendant filed a motion to restore the case to the docket, which was denied by the trial court.[214] The Appellate Court stated that the issue of whether a case should be restored to the docket is one of judicial discretion.[215] The Court stated that a plaintiff may withdraw an action pursuant to General Statutes Section 52-80 before the commencement of a hearing on the merits, but that after the commencement of a hearing on the merits of an issue of

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206 191 Conn. 27, 463 A.2d 566 (1983).
207 *Benvenuto*, 348 Conn. at 616.
208 *Id*. at 620.
209 *Id*.
210 *Id*. at 620-25.
211 217 Conn. App. 191, 288 A.3d 218 (2023).
212 *Id*. at 196-97. General Statutes § 52-196a (b) provides: "In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim."
213 *King*, 217 Conn. App. at 197.
214 *Id*. at 199.
215 *Id*. at 201.

fact, the plaintiff may withdraw such action only upon leave of court for cause shown.[216] The Court construed Section 52-80 as reflecting only that prior to a hearing on the merits, the withdrawal of an action does not require the permission of the court.[217] The Court concluded that at the time of the plaintiffs' withdrawal of their action, the defendant did not have the right to have the court consider the merits of the special motion to dismiss.[218] The Court further concluded that the defendant had not acquired a vested right to attorney's fees by merely filing a special motion to dismiss.[219] The Court additionally concluded that the defendant had failed to demonstrate that the trial court's ruling prejudiced a vested right of the plaintiff.[220]

Laiuppa v. Moritz[221] found that the accidental failure of suit statute, General Statutes Section 52-592,[222] did not save the plaintiff's action. The trial court granted the defendant's motion to dismiss the plaintiff's underlying action due to insufficient service of process.[223] In response to the plaintiff's

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[216] *Id*. at 202. General Statutes § 52-80 provides: "If the plaintiff, in any action returned to court and entered in the docket, does not, on or before the opening of the court on the second day thereof, appear by himself or attorney to prosecute such action, he shall be nonsuited, in which case the defendant, if he appears, shall recover costs from the plaintiff. The plaintiff may withdraw any action so returned to and entered in the docket of any court, before the commencement of a hearing on the merits thereof. After the commencement of a hearing on an issue of fact in any such action, the plaintiff may withdraw such action, or any other party thereto may withdraw any cross complaint or counterclaim filed therein by him, only by leave of court for cause shown."

[217] *King*, 217 Conn. App. at 202-203.

[218] *Id*. at 209.

[219] *Id*. at 210.

[220] *Id*.

[221] 216 Conn. App. 344, 347, 285 A.3d 391 (2022), *cert. granted*, 347 Conn. 906, 288 A.3d 628 (2023).

[222] General Statutes § 52-592 (a) provides: "If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment."

[223] *Laiuppa*, 216 Conn. App. at 350-51.

new suit under the accidental failure of suit statute, the defendant filed a motion for summary judgment, arguing that she did not have actual notice of the first action to allow the plaintiff to claim the protection of the accidental failure of suit statute.[224] After the trial court granted the summary judgment motion, the plaintiff appealed contending that a genuine issue of material fact existed as to whether the action was saved by the accidental failure of suit statute.[225] The Appellate Court rejected the plaintiff's arguments including that the defendant's insurance company and designated counsel for the defendant each had actual notice before the statute of limitations had expired, noting that the plaintiff failed to provide any legal authority that the defendant's insurance company was her "agent" for the purpose of receiving service of process.[226] The Court further stated that General Statutes Section 52-57 (a)[227] permits only personal or abode service on an individual and not on an individual's agent.[228]

An issue raised in *Kinity v. US Bancorp*.[229] was whether a trial court has the authority to summarily enforce a settlement agreement, reached by the parties postjudgment, during the pendency of an appeal. The case arose from actions taken by the defendants, as servicer of a residential loan from a lender to the plaintiff, and his spouse (borrowers), under a note secured by a mortgage on the borrowers' residential property.[230] The Appellate Court concluded that a party seeking to enforce an agreement should not be deprived of the ability to file a motion to enforce simply because the matter that settled is on appeal when the parties reached

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[224] *Id*. at 351-52.

[225] *Id*. at 355.

[226] *Id*. at 368.

[227] General Statutes § 52-57 (a) provides, in part: "that process in any civil action shall be served by leaving a true and attested copy of it …with the defendant, or at his usual place of abode, in this state."

[228] *Laiuppa*, 216 Conn. App. at 368.

[229] 212 Conn. App. 791, 814-15, 277 A.3d 200 (2022). The trial court has the inherent authority to enforce summarily a settlement agreement, as a matter of law, when the terms of the agreement are clear and not in dispute. Audubon Parking Associates Ltd. Partnership v. Barclay & Stubbs, Inc., 225 Conn. 804, 811, 626 A.2d 729 (1993).

[230] *Kinity*, 212 Conn. App. at 794-95.

an agreement.[231] The Court also disagreed with the plaintiff's argument the trial court's decision was clearly erroneous because there was no meeting of the minds as to the nature of the agreement.[232] The Court stated that a settlement agreement is a contract between the parties.[233] The Court stated that in order for an enforceable contract to exist, the trial court must find that the parties' minds had truly met because if there had been a misunderstanding between the parties or a misapprehension by one or both so that their minds had never met, no contract had been entered into by them and the trial court will not make one for them which they themselves did not make.[234] The Court further stated that a meeting of the minds is defined as a mutual agreement and assent of two parties to contract to substance and terms.[235] The Court also explained that mutual assent is to be judged only by overt acts and words rather than by the hidden, subjective or secret intention of the parties.[236] The Court further stated that although the phrase meeting of the minds is commonly used by the courts to determine whether there has been mutual assent, it has been described as a misnomer because the minds of the parties to a contract may not, in fact, subjectively meet; rather the objective assent is what is required.[237] The Court concluded that the trial court did not err in finding that the parties had a meeting of the minds because the overt acts and words established assent to a settlement agreement.[238]

The failure to satisfy either prong of the test to set aside a judgment rendered after a nonsuit was fatal in *McDonnell v. Roberts*.[239] The plaintiff appealed after the trial court entered a judgment of nonsuit against her for failing to comply with discovery orders.[240] The Appellate Court stated that

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[231] *Id.* at 823.
[232] *Id.*
[233] *Id.* at 824.
[234] *Id.* at 825.
[235] *Id.*
[236] *Id.*
[237] *Id.* at 826.
[238] *Id.* at 828.
[239] 224 Conn. App. 388, 312 A.3d 1103 (2024).
[240] *Id.* at 390-92.

the authority to set aside a judgment of nonsuit is conferred by General Statutes Section 52-212.[241] The Court explained that there is a two-pronged test for setting aside a judgment of nonsuit; specifically, there must be a showing (1) that a good cause of action, the nature of which must be set forth, existed at the time judgment was entered, and (2) that the plaintiff was prevented from prosecuting the claim because of mistake, accident or other reasonable cause.[242] The Court affirmed the denial of the plaintiff's motion to open and set aside the judgment of nonsuit, finding that the plaintiff did not satisfy her burden of showing reasonable cause for her failure to comply with discovery.[243] The Court further found that, because the failure of the plaintiff to satisfy either prong is fatal to her motion to open, it was unnecessary to discuss the plaintiff's arguments as to the first prong.[244]

In Re Cole,[245] the primary issue, which reached the Supreme Court by way of a certified question in a bankruptcy

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[241] *Id*. at 396. General Statutes § 52-212 (a) provides, in part: "Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which the notice of judgment or decree was sent, and the case reinstated on the docket, on such terms in respect to costs as the court deems reasonable, upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense...." Practice Book § 17-43 (a) provides in part: "Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion...."

[242] *McDonnell*, 224 Conn. App. at 397.

[243] *Id*. at 400.

[244] *Id*.

[245] 347 Conn. 284, 288-90, 297 A. 3d 151 (2023). The amended homestead exemption is codified at General Statutes § 52-352b (21). The relevant change by the legislature was to increase the homestead exemption from $75,000 to $250,000

appeal from the United States District Court for the District of Connecticut, was whether the expanded homestead exemption, contained in P.A. 21-161 (Reg. Sess.) Section 1 (Act), applied in bankruptcy proceedings filed on or after the effective date of the Act to debts that accrued prior to that date. The arguments of the parties centered around the principle, contained in General Statutes Section 55-3,[246] that procedural amendments to a statute presumptively apply retrospectively and substantive amendments presumptively apply prospectively only.[247] The Court stated that Section 55-3 is applicable only if the amendment would have a retrospective effect.[248] The Court found that the Act was not retroactive as applied to the debtor's bankruptcy petition and, therefore, Section 55-3 was not applicable.[249] The Court concluded that, because the legislature did not direct otherwise, the enhanced homestead exemption set forth in the Public Act applied to all bankruptcy and postjudgment proceedings filed on or after the effective date of the Act, regardless of when the underlying debts accrued.[250]

In *John Hancock Life Insurance Company v. Curtin*,[251] the plaintiff insurance company instituted an interpleader action to determine the appropriate distribution of a life insurance policy issued to the decedent. The defendants, the decedent's former spouse and her daughter, appealed from a summary judgment entered in favor of the coexecutors of the decedent's estate and the order distributing the proceeds

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to certain debts. *In Re Cole*, 347 Conn. at 288. The legislature maintained the $75,000 exemption for money judgments arising out of certain tort claims. *Id*., note 2. The Court explained that under the federal Bankruptcy Code all property of the debtor, including exempt property, initially becomes part of the bankruptcy estate, and the debtor is, thereafter, permitted to assert exemptions by filing a list of property that he or she claims as exempt. *Id*. at 290, note 4.

[246] General Statutes § 55-3 provides: "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect." Section 55-3 is a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. *In Re Cole*, 347 Conn. at 298.

[247] *In Re Cole*, 347 Conn. at 289.

[248] *Id*. at 299.

[249] *Id*. at 310.

[250] *Id*.

[251] 219 Conn. App. 613, 615, 295 A.3d 1055, *cert. granted*, 348 Conn. 921, 304 A.3d 147 (2023).

of the policy to the decedent's estate.[252] The Appellate Court explained that actions pursuant to General Statutes Section 52-484[253] involve two distinct parts: (1) the trial court must determine whether the interpleader plaintiff has alleged facts sufficient to establish that there are adverse claims to the fund or property at issue, and if the court considers interpleader to be proper under the circumstances, then the court may render an interlocutory judgment of interpleader; and (2) only once an interlocutory judgment of interpleader has been rendered may the court hold a trial on the merits, compelling the parties to litigate their respective claims to the disputed property.[254] The Court concluded that the trial court properly determined, as a matter of law, that the decedent's former spouse and her daughter, were not entitled to equitable relief in the form of a distribution of the policy proceeds.[255]

Stanley v. Scott[256] found that the failure to brief a claim, even by a self-represented party, can be fatal to an appeal. The plaintiff appeared to claim that the defendants illegally obtained his cell phone records and used them against him in his underlying criminal prosecution.[257] The Appellate Court stated that the plaintiff's brief failed to identify any claim of error made by the trial court nor did it analyze any of the bases for the trial court's granting of the defendants' motion for summary judgment.[258] The Court noted that the plaintiff

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[252] *Id*.

[253] General Statutes § 52-484 provides: "Whenever any person has, or is alleged to have, any money or other property in his possession which is claimed by two or more persons, either he, or any of the persons claiming the same, may bring a complaint in equity, in the nature of a bill of interpleader, to any court which by law has equitable jurisdiction of the parties and amount in controversy, making all persons parties who claim to be entitled to or interested in such money or other property. Such court shall hear and determine all questions which may arise in the case, may tax costs at its discretion and, under the rules applicable to an action of interpleader, may allow to one or more of the parties a reasonable sum or sums for counsel fees and disbursements, payable out of such fund or property; but no such allowance shall be made unless it has been claimed by the party in his complaint or answer."

[254] *John Hancock Life Insurance Company*, 219 Conn. at 621.

[255] *Id*.

[256] 222 Conn. App. 301, 302, 306, 304 A.3d 892 (2023), *cert. denied*, 348 Conn. 945, 308 A.3d 34 (2024).

[257] *Id*. at 305.

[258] *Id*. at 306.

had filed other civil actions and appeals in connection with his conviction and incarceration.[259] The Court stated that although Connecticut courts are solicitous of self-represented parties, the treatment afforded to self-represented parties does not permit it to address a claim when the self-represented party has failed to brief that claim.[260] The Court affirmed the judgment, noting that plaintiff's omissions operated as an abandonment of any challenge to the trial court's judgment.[261]

Another self-represented party fared no better in *Worth v. Picard*,[262] where the Appellate Court dismissed the appeal as moot. The plaintiff appealed the summary judgment entered in favor of the defendant.[263] Although the plaintiff argued, on appeal, that the trial court erred in concluding that the litigation privilege applied, she did not challenge one of the independent grounds upon which summary judgment was entered.[264] The Court explained that since the plaintiff did not challenge every independent ground, it needed to consider whether the appeal was moot.[265] The Court stated that mootness is a question of justiciability that must be decided, as a threshold matter, because it invokes subject matter jurisdiction.[266] The Court dismissed the appeal because it was moot, explaining that where a plaintiff fails to challenge all bases of a trial court's adverse ruling, even if the Court were to agree with the plaintiff on the issue raised, the Court still would not be able to provide any relief in light of the adverse rulings which were not raised.[267] In *Doe v. Quinnipiac Uni-*

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[259] *Id.* at 303. The Appellate Court explained that it, like the trial court, may take judicial notice of files of the Superior Court in the same or other cases. *Id.*, note 2.

[260] *Id.* at 306.

[261] *Id.*

[262] 218 Conn. App. 549, 550-51, 292 A.3d 754 (2023). The plaintiff brought an action against the defendant, who was the attorney for the mortgagee who obtained a summary process execution following a judgment of strict foreclosure of the subject property against the plaintiff. *Id.* at 551-52. The gravamen of the complaint was that the defendant engaged in impropriety with respect to the summary process execution. *Id.* at 552.

[263] *Id.* at 550.

[264] *Id.* at 553.

[265] *Id.* at 553-54.

[266] *Id.* at 554.

[267] *Id.* at 554-55.

versity,[268] the Appellate Court also dismissed the plaintiff's appeal as moot because the plaintiff did not challenge every independent basis on which the trial court granted the defendants' motion to dismiss the plaintiff's claims.

Cameron v. Santiago,[269] another case involving a self-represented party, resulted in a reversal where the Appellate Court found that the plaintiff had been denied her procedural due process where the trial court *sua sponte* dismissed her action, with prejudice, because she was not given notice and an opportunity to be heard with respect to the reasons on which the trial court based its dismissal. The Court stated that whether a party was deprived of his or her due process rights is a question of law to which the appellate courts grant plenary review.[270] The Court further stated that fundamental principles of due process require that all persons directly concerned in an adjudication be given reasonable notice and an opportunity to present their claims or defenses.[271] In deciding in the plaintiff's favor, the Court noted that the plaintiff was entitled to adequate notice of the issues that the trial court intended to address at a pretrial conference and that the trial court did not give the plaintiff an opportunity to be heard on any of the grounds that it raised on its own on which it based its dismissal of the action.[272]

Stanziale v. Hunt[273] discussed the applicability of the general verdict rule and certain evidentiary issues. The plaintiff appealed from a judgment entered in favor of the defendants, which was rendered upon the general verdict of a jury.[274] On appeal, the plaintiff asserted, among other things, that the trial court improperly denied his pretrial motion in limine to redact from his medical records all statements as to the speed at which he was operating his motor vehicle at the time of

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[268] 218 Conn. App. 170, 177-179, 291 A.3d 153 (2023).
[269] 223 Conn. App. 836, 837, 310 A.3d 391 (2024).
[270] *Id*. at 842.
[271] *Id*.
[272] *Id*. at 843.
[273] 219 Conn. App. 71, 293 A.3d 931, *cert. denied*, 347 Conn. 905, 297 A.3d 198 (2023).
[274] *Id*. at 73.

the accident.[275] The defendants argued that the general verdict rule precluded review of the plaintiff's arguments, and, if the general verdict rule did not bar the review of those arguments, the arguments did not require the reversal of the judgment.[276] In their answer, the defendants denied the essential allegations of the plaintiff's complaint and interposed a special defense of comparative negligence, alleging that the plaintiff due to his own negligence in operating his motorcycle caused the accident and his own injuries.[277] The Appellate Court began by summarizing the relevant legal principles governing the operation of the general verdict rule. The Court stated that under the general verdict rule, if a jury renders a general verdict for one party, and the party raising a claim of error on appeal did not request interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party.[278] The Court further explained that in a case in which the general verdict rule operates, if any ground for the verdict is proper, the verdict must stand; only if every ground is improper does the verdict fall.[279] The Court continued in stating that, as in the case before it, the general verdict rule applies where there is a denial of a complaint and the pleading of a special defense.[280] With respect to the specific arguments advanced by the plaintiff, the Court stated that when an appellant's claim on appeal challenges the trial court's evidentiary rulings, the applicability of the general verdict rule to any such claim is contingent on whether the evidence challenged is relevant to just some, but not all, of the grounds on which the jury may have based its verdict.[281] In addition, the general verdict rule does not bar review of claims if the contested evidence is relevant to all the possible grounds of the jury's general verdict.[282] The Court concluded that the general verdict rule did not bar its

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[275] *Id.*
[276] *Id.* at 74.
[277] *Id.* at 75-76.
[278] *Id.* at 85.
[279] *Id.*
[280] *Id.* at 86.
[281] *Id.* at 87-88.
[282] *Id.* at 89.

review of the plaintiff's claims because the evidence of the speed of the plaintiff's motorcycle and the distance it skidded were relevant to the jury's determination whether the plaintiff or the defendant operator was negligent, and if both were negligent, whose negligence was greater.[283] Turning to the plaintiff's contention that the trial court improperly denied his motion in limine to redact from his medical records all statements as to the speed at which he was operating his motor vehicle, the Court noted initially that the moving party has the burden in demonstrating that the challenged statements were inadmissible.[284] The Court also noted that with respect to an otherwise admissible medical record, the burden is on the objecting party to specify in his or her objection which statements are inadmissible under the medical treatment hearsay exception.[285] The Court rejected the plaintiff's argument that he did make any of the challenged statements regarding his speed because a review of the record showed that at least several of the statements were attributable to him.[286] The Court further noted that the plaintiff failed to establish that the statements involving speed were inadmissible under the hearsay exception for statements by a party opponent.[287] Moreover, the Court found that the plaintiff failed to show that the challenged statements were not admissible under the medical treatment exception to the hearsay rule by demonstrating that they were not relevant to the diagnosis or treatment of his injuries.[288] The plaintiff maintained that statements in medical records as to facts regarding only the legal responsibility of other persons in causing the accident should be excluded from such records since they are not relevant to the plaintiff's medical treatment.[289] The Court agreed with the defendant that if the medical records include additional information as to the nature and extent of the injury and inform the medical provider's judgment as to

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[283] *Id*. at 90-92.
[284] *Id*. at 96.
[285] *Id*. at 96-97.
[286] *Id*. at 97-98.
[287] *Id*. at 99.
[288] *Id*.
[289] *Id*. at 99-100.

the type of treatment, then such information is admissible.[290] The Court stated that it was clear that information regarding speed and physical impact was relevant to the diagnosis of the extent of injuries and treatment and was, therefore, admissible.[291]

The standards to be applied in order to find a party in civil contempt were addressed in *Lafferty v. Jones*.[292] The horrific underlying facts to the case are, unfortunately, well known. The case arose out of the Sandy Hook Elementary School mass shooting of children and adults.[293] The plaintiffs, including a first responder and family members of those killed in the shooting, brought claims against the defendants, including Alex Jones.[294] Before the case proceeded to trial for a hearing in damages, the plaintiffs noticed the deposition of Jones.[295] By agreement of the parties the deposition was to take place on two consecutive days.[296] The day before the deposition Jones filed a motion for protective order, asserting that he was under the care of a doctor for a medical condition that required immediate testing and that his doctor was of the opinion that he should not be submit to the deposition.[297] An emergency hearing took place that day, during which Jones's attorney submitted a letter from a doctor, under seal, for an in camera inspection.[298] The trial court found that the letter was actually a bare-bones note.[299] At the hearing, the plaintiffs' attorney argued that Jones was not at home under his doctor's care, but was actually broadcasting his live show at that time.[300] The trial court denied the motion for protective order.[301] Jones did not appear for his deposition and the plaintiff filed a motion for civil contempt against Jones.[302]

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290 *Id*. at 100.
291 *Id*. at 101-102.
292 222 Conn. App. 855, 307 A.3d 923 (2023).
293 *Id*. at 858.
294 *Id*.
295 *Id*. at 859.
296 *Id*.
297 *Id*.
298 *Id*. at 859-60.
299 *Id*. at 860.
300 *Id*.
301 *Id*.
302 *Id*. at 862-63.

After a hearing on the motion for civil contempt, the trial court granted the motion and ordered Jones to pay conditional fines, which would be suspended on each day that Jones completed a full day's deposition.[303] Thereafter, Jones submitted to the deposition and the court ordered the fines to be returned to Jones.[304] On appeal to the Appellate Court, Jones argued that the trial court abused its discretion in holding him in civil contempt.[305] The Court stated that civil contempt is committed when a person violates a court order which requires a person in specific and definite language to do or refrain from doing an act or a series of acts.[306] To constitute contempt, it is not sufficient that a party violate a court order; the violation must be willful, and the party seeking an order has the burden to prove, by clear and convincing evidence, that there was willful noncompliance of a clear and unambiguous directive.[307] The only issue that Jones raised on appeal was whether the trial court abused its discretion in finding that his violation of a court order was willful.[308] The Court agreed with the trial court that the fact that Jones elected to host a live radio broadcast from his studio at the time of the motion for protective order hearing undermined his claim that he was too ill to submit to a deposition.[309] The Court concluded that the trial court could reasonably infer, based on the facts before it, that Jones's violation of the trial court's order was willful and, accordingly, the trial court did not abuse its discretion in finding Jones in contempt.[310]

The right to oral argument on a summary judgment motion was addressed in *Bradley v. Yovino*.[311] The plaintiff argued, on appeal, that the trial court improperly failed to provide him an opportunity for oral argument before rendering summary judgment on behalf of the defendant because

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303 *Id*. at 863.
304 *Id*. at 864.
305 *Id*.
306 *Id*. at 865.
307 *Id*.
308 *Id*. at 866.
309 *Id*. at 867.
310 *Id*.
311 218 Conn. App. 1, 291 A.3d 133 (2023).

a motion for summary judgment is arguable as a matter of right under Practice Book Section 11-18.[312] The Appellate Court found that the plaintiff had a right to oral argument on the motion and that his right was improperly denied.[313] The Court also stated that to prevail on a claim of a procedural error, the party must demonstrate that the trial court's erroneous actions likely affected the result.[314] The Court set forth the standard of review and the legal principles relevant to the claim. The Court stated that the party seeking summary judgment has the initial burden of showing the absence of any genuine issue of material fact, which under applicable substantive law entitle him to judgment as a matter of law.[315] The Court further stated that the party opposing the motion for summary judgment must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.[316] Turning to the record before it, the Court stated that the defendant had met its initial burden in establishing that there was no genuine issue of material fact and that the burden then shifted to the plaintiff to establish, on the basis of timely submission of evidentiary materials, that a genuine issue of material fact existed in order to defeat the defendant's motion.[317] The Court further noted that, during the approximately six month period after the motion was filed and before it was granted, the plaintiff failed to file any opposition to the motion and, accordingly, failed to meet his burden to defeat the motion.[318] The Court found that in light of the procedural posture of the record, it was not convinced

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[312] *Id.* at 20. Practice Book § 11-18 (a) provides in relevant part: "Oral argument is at the discretion of the judicial authority except as to ... motions for summary judgment ... and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided: (1) the motion has been marked ready in accordance with the procedure that appears on the short calendar on which the motion appears, or (2) a nonmoving party files and serves on all other parties ... a written notice stating the party's intention to argue the motion .... Such a notice shall be filed on or before the third day before the date of the short calendar date ...."

[313] *Bradley*, 218 Conn. App. at 24.

[314] *Id.*

[315] *Id.* at 23.

[316] *Id.*

[317] *Id.* at 28.

[318] *Id.*

that oral argument on the defendant's motion for summary judgment likely would have resulted in a decision other than the one granting the motion in favor of the defendant.[319] The Court concluded that the improper denial of oral argument was harmless under the circumstances.[320]

Glory Chapel International Cathedral v. Philadelphia Insurance Company[321] addressed whether the trial court committed error by sustaining the defendant's objection to an offer of compromise that the plaintiff filed during the pendency of the appeal. The plaintiff appealed from the judgment of the trial court entered in favor of the defendant, striking all counts of the plaintiff's complaint against the defendant.[322] The offer of compromise was filed more than six months after the trial court rendered judgment in favor of the defendant and during the pendency of the appeal.[323] The Appellate Court agreed with the defendant, finding that General Statutes Section 52-192a does not allow the plaintiff to file an offer of compromise directed to a defendant for whom judgment has already been rendered.[324]

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[319] *Id*. at 28-29.

[320] *Id*. at 29. The Court distinguished *Bayview Loan Serving, LLC v. Frimel*, 192 Conn. App. 786, 218 A.3d 717 (2019) and *Chase Home Finance, LLC v. Scroggin*, 194 Conn. App. 843, 222 A.3d 1025 (2019) where it reversed the trial court's granting of summary judgment for not providing oral argument because in those cases the trial court did not consider whether the moving party met its burden in demonstrating that there was no genuine issue of material fact and granted the motions solely because no timely opposition to the motions had been filed. *Bradley*, 218 Conn. App. at 28, note 16.

[321] 224 Conn. App. 501, 505, 313 A.3d 1273 (2024).

[322] *Id*. at 504-05.

[323] *Id*. at 518.

[324] *Id*. at 520. General Statutes § 52-192a provides: "(a) Except as provided in subsection (b) of this section, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. For the purposes of this section, such plaintiff includes a counterclaim plaintiff under section 8-132. The plaintiff shall give notice of the offer of compromise to the defendant's attorney or, if the defendant is not represented by an attorney, to the defendant himself or herself. Within thirty days after being notified of the filing of the offer of compromise and prior to the rendering of a verdict by the jury or an award by the court, the defendant or the defendant's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer

XI. Uninsured/Underinsured Motorist

Menard v. State[325] addressed underinsured motorist claims brought by Connecticut state troopers who had been injured in a motor vehicle accident. The plaintiffs argued that the Appellate Court improperly (1) affirmed the trial court's judgments insofar as the trial court concluded that the plaintiffs were not entitled to recover underinsured motorist benefits for alleged post-traumatic stress disorder, and (2) reversed the judgments insofar as the trial court determined that the State was not entitled to a reduction in the trial court's awards for sums received by the plaintiffs in settlement of a claim under Connecticut's Dram Shop Act, Gen-

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of compromise. Upon such filing and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action against the defendant accordingly. If the offer of compromise is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless refiled. Any such offer of compromise and any acceptance of the offer of compromise shall be included by the clerk in the record of the case.

(b) In the case of any action to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, the plaintiff may, not earlier than three hundred sixty-five days after service of process is made upon the defendant in such action, file with the clerk of the court a written offer of compromise pursuant to subsection (a) of this section and, if the offer of compromise is not accepted within sixty days and prior to the rendering of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless refiled.

(c) After trial the court shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in the plaintiff's offer of compromise, the court shall add to the amount so recovered eight per cent annual interest on said amount, except in the case of a counterclaim plaintiff under section 8-132, the court shall add to the amount so recovered eight per cent annual interest on the difference between the amount so recovered and the sum certain specified in the counterclaim plaintiff's offer of compromise. The interest shall be computed from the date the complaint in the civil action or application under section 8-132 was filed with the court if the offer of compromise was filed not later than eighteen months from the filing of such complaint or application. If such offer was filed later than eighteen months from the date of filing of the complaint or application, the interest shall be computed from the date the offer of compromise was filed. The court may award reasonable attorney's fees in an amount not to exceed three hundred fifty dollars, and shall render judgment accordingly. This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action."

[325] 346 Conn. 506, 509, 291 A.3d 1025 (2023).

eral Statutes Section 30-102.[326] The Supreme Court resolved the first issue by holding that the plaintiffs' claims failed on grounds of evidentiary insufficiency and, accordingly, declined to reach the broader legal issue as to whether Connecticut's uninsured/underinsured motorist statute provides coverage for post-traumatic stress disorder, if accompanied by physical manifestations.[327] With respect to the second issue, the Court stated that the legislature abrogated the common law rule with respect to pre-trial settlement payments when it adopted General Statutes Section 52-216a.[328] The Court stated that a jury award may be reduced by amounts obtained pursuant to such settlements only by way of a trial court's order of remittitur, which is available only if the trial court determines that settlement payments, when added to the jury award, render the award excessive as a matter of law.[329] The Court noted that although the subject case was determined by the court in a bench trial, not by a jury, the same principles apply.[330] The Court further explained that the trial court may reduce the damages to account for pre-trial settlement payments, whether in a trial to the jury or to the court, only when the award would otherwise be excessive as a matter of law.[331] The Court explained that a settlement does not necessarily represent fair, just and reasonable damages; rather, it represents, in part, the parties' assessments

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[326] *Id*. at 509-10. *Menard v. State*, 208 Conn. App. 303, 264 A.3d 1034, *cert. granted*, 340 Conn. 916, 266 A.3d 886 (2021) sets forth the underlying facts.

[327] *Menard*, 346 Conn. at 518.

[328] *Id*. at 525. General Statutes § 52-216 provides: "An agreement with any tortfeasor not to bring legal action or a release of a tortfeasor in any cause of action shall not be read to a jury or in any other way introduced in evidence by either party at any time during the trial of the cause of action against any other joint tortfeasors, nor shall any other agreement not to sue or release of claim among any plaintiffs or defendants in the action be read or in any other way introduced to a jury. If the court at the conclusion of the trial concludes that the verdict is excessive as a matter of law, it shall order a remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. If the court concludes that the verdict is inadequate as a matter of law, it shall order an additur, and upon failure of the party so ordered to add the amount ordered by the court, it shall set aside the verdict and order a new trial. This section shall not prohibit the introduction of such agreement or release in a trial to the court."

[329] *Menard*, 346 Conn. at 526.

[330] *Id*.

[331] *Id*.

of litigation risks.[332] The Court held that the Appellate Court incorrectly concluded that the trial court should have reduced the underlying award by sums received in settlement of a dram shop claim.[333]

In *Curley v. Phoenix Insurance Company*,[334] the plaintiff brought an action to recover underinsured motorist benefits. After summary judgment was entered for the defendant, the plaintiff appealed claiming, inter alia, that the trial court improperly rendered summary judgment because the trial court's construction of the commercial automobile liability insurance policy issued by the defendant to the plaintiff's employer violated General Statutes Section 38 a-336 (a) (2).[335] The Appellate Court agreed with the plaintiff and reversed the judgment for the defendant.[336] The Court stated that appellate review of a trial court's decision to grant summary

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[332] *Id.*

[333] *Id.* at 530.

[334] 220 Conn App. 732, 734, 299 A.3d 1133, *cert. denied*, 348 Conn. 914, 303 A.3d 260 (2023). The author was counsel for the defendant at the trial level and on appeal. General Statutes § 38a-336 (a) (2) requires that an automobile liability insurance policy "provide uninsured and underinsured motorist coverage with limits for bodily injury and death equal to those purchased to protect against loss resulting from the liability imposed by law unless any named insured requests in writing a lesser amount, but not less than the limits specified in subsection (a) of section 14-112." By way of background, in response to the defendant's motion for summary judgment, the plaintiff set forth several arguments in her objection. *Id.* at 736-38. Following the trial court's granting of the motion based on the defendant's contention that the plaintiff was not an insured under the underinsured endorsement issued to the plaintiff's employer, the plaintiff filed a motion for reargument claiming that the trial court's interpretation of the policy violated General Statutes § 38a-336 (a) (2). *Id.* at 738-40. The defendant filed an objection to the motion to reargue, arguing that the plaintiff failed to raise this argument in her objection and that she should not have been permitted to raise arguments for the first time in a motion to reargue. *Id.* at 740. The trial court denied the motion to reargue without comment and the plaintiff then appealed. *Id.* On appeal, the defendant maintained that the Appellate Court should not consider the above argument because it was raised for the first time in the motion to reargue. *Id.* at 742. The Appellate Court found that the plaintiff's claim was reviewable. *Id.* at 743. The Appellate Court decided that the interests of justice, fairness, integrity of the courts and consistency of the law significantly outweighed the interest in enforcing procedural rules governing the preservation of claims. *Id.* at 748. The Appellate Court remarked that its conclusion was limited to the particular circumstances of the present case and that it should not be construed as relaxing the well-established rule that it would not review claims of error not raised before and decided by the trial court. *Id.*, note 9.

[335] *Id.* at 734.

[336] *Id.* at 735.

judgment is plenary.[337] The Court further stated that when an insurance policy is unambiguous, the construction of an insurance policy presents a question of law that it reviews de novo.[338] The Court explained that when construing an insurance policy it looks to the policy as a whole, considers all relevant portions together and, if possible, gives operative effect to every provision in order to reach a reasonable result.[339] The Court also stated that the construction of a statute presents a question of law subject to de novo review.[340] The Court first determined that the plaintiff was an insured under the policy for purposes of liability coverage, and then turned to the plaintiff's argument that, in the absence of a waiver by the named insured, Section 38a-336 mandated that she also be insured for underinsured motorist coverage.[341] The Court stated that Section 38a-336 (a) (1) requires that each automobile liability policy provide uninsured and underinsured motorist coverage to a class of persons that is coextensive with that insured under the liability section of the policy.[342] The defendant argued that Section 38 a-336 (f)[343] by its express terms did not authorize an underinsured motorist claim by the plaintiff because, although she was an employee of the named insured, she was not occupying a covered motor vehicle at the time of the accident.[344] The Court disagreed with the defendant's reading of the statutes and found that the "otherwise applicable" language of Section 38 a-336 (f) clearly required that the defendant comply with the other provisions of Section 38a-336 before reducing the limits of uninsured and underinsured coverage to an amount less than the limits of liability coverage under

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[337] *Id*. at 742.
[338] *Id*.
[339] *Id*.
[340] *Id*.
[341] *Id*. at 757.
[342] *Id*. at 759.
[343] General Statutes § 38a-336 (f) provides: "Notwithstanding subsection (a) of section 31-284, an employee of a named insured injured while occupying a covered motor vehicle in the course of employment shall be covered by such insured's otherwise applicable uninsured and underinsured motorist coverage."
[344] *Curley*, 220 Conn App. at 765. The plaintiff was operating a rental vehicle at the time the accident and was on her way to an event as part of her duties for her employer when her vehicle was struck by the tortfeasor. *Id*. at 735.

the policy.[345] The Court found that because there was no evidence establishing that the named insured expressly waived the statutorily mandated coverage, as required by Section 38 a-336 (a) (2), the trial court erred in rendering summary judgment for the defendant.[346]

XII. Vexatious Litigation

Christian v. Iyer[347] reversed the trial court because it failed to apply the correct legal standard or make the requisite findings with respect to its conclusion that the defendants established the defense of good faith reliance on advice of counsel in a vexatious litigation trial. The litigation arose out of a dispute involving a prior trespass case brought by the defendants against the plaintiffs.[348] After a bench trial in the underlying trespass action, the trial court found in favor of the plaintiffs.[349] Thereafter, the plaintiffs brought a vexatious litigation action against the defendants, asserting a common law vexatious litigation claim and two statutory vexatious litigation claims pursuant to General Statutes Section 52-568 (1) and (2).[350] The plaintiffs appealed from the judgment entered for the defendants after a bench trial in the vexatious litigation action.[351] The Appellate Court explained that the cause of action for vexatious litigation exists both at common law and pursuant to Section 52-568.[352] The Court stated that to prove a claim for vexatious litigation at common law, the plaintiff must prove want of probable cause, malice and a termination of suit in the plaintiff's favor.[353] The statutory cause of action for vexatious litigation differs

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345 *Id.* at 770.
346 *Id.*
347 221 Conn. App. 869, 870-71, 303 A.3d 604 (2023).
348 *Id.* at 871.
349 *Id.* at 872.
350 *Id.* General Statutes § 52-568 provides: "Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages."
351 *Christian*, 221 Conn. App.at 870.
352 *Id.* at 877.
353 *Id.*

from a common-law action only in that a finding of malice is not an essential element, but will serve as a basis for higher damages.[354] The Court further explained that in a vexatious litigation suit, the defendant lacks probable cause if he or she lacks a reasonable, good faith belief in the facts alleged and the validity of the claim asserted.[355] With respect to the defense of good faith reliance on counsel, the Court stated that there are five elements: (1) the defendant must actually have consulted with legal counsel about his or her decision to institute a civil action; (2) the consultation with legal counsel must be based on a full and fair disclosure by the defendant of all facts he or she knew or was charged with knowing concerning the basis for his or her contemplated action; (3) the lawyer to whom the defendant turns for advice must be one from whom the defendant can reasonably expect to receive an accurate, impartial opinion as to the viability of his or her claim; (4) the defendant, having sought such advice, actually did rely upon it; and (5) the defendant must show that his or her reliance on counsel's advice was made in good faith.[356] The Court also stated that a defendant is not permitted to rely upon advice of counsel if the defendant did not disclose all of the material facts related to the claim because the lawyer cannot render accurate legal advice regarding whether there is a good faith basis to bring the claim in the absence of knowledge of all material facts.[357] With respect to the subject case, the Court found that the trial court failed to make a determination whether the defendants made a full and fair disclosure of all material facts concerning the contemplated trespass action to the defendants' attorney who brought the trespass action on their behalf.[358] The Court concluded that, because the trial court failed to apply the proper legal standard or make the material findings of fact, it was compelled to reverse and remand for a new trial.[359]

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354 *Id*.
355 *Id*.
356 *Id*. at 878.
357 *Id*. at 878-79.
358 *Id*. at 879.
359 *Id*. at 882.

XIII. Workers' Comensation

In *Dusto v. Rogers Corporation*,[360] the Appellate Court agreed with the plaintiff, the executrix of the estate of Harold Dusto and his spouse Anita Dusto, that the trial court improperly rendered summary judgment in favor of the defendant, Harold's former employer, on the ground that her claims against the defendant were barred by the exclusivity provision of the Workers' Compensation Act (Act), General Statutes Section 31-275 *et seq*. The Court found that a genuine issue of material fact existed as to whether the plaintiff's claims against the defendant satisfied the substantial certainty exception to the exclusivity provision of the Act.[361] The plaintiff alleged that Harold was employed by the defendant, an asbestos product manufacturer, and that throughout the course of his employment he was exposed to dust and particles of asbestos fibers from asbestos materials supplied to the defendant, which caused him to develop cancer and ultimately die.[362] The Court stated that the exclusive remedy provision of the Act provides that an employer shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his or her employment with one narrow exception where the employer has committed an intentional tort or where the employer has engaged in willful or serious misconduct.[363] The Court noted that Connecticut first recognized the narrow intentional tort exception where an employer intentionally directed or authorized another employee to assault the injured party.[364] The Court further noted that the intentional tort exception was not extended to situations in which an injury resulted from the employer's intentional, willful, or reckless violation of safety standards as provided under federal or state laws.[365] The Court also explained that Connecticut has

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[360] 222 Conn. App. 71, 74-75, 304 A.3d 446 (2023), *cert. denied*, 348 Conn. 939, 307 A.3d 274 (2024).

[361] *Id*. at 75.

[362] *Id*.

[363] *Id*. at 77-78.

[364] *Id*. at 79.

[365] *Id*.

adopted an alternative method of proving intent where the employer's intentional conduct permits an inference that the employer knew that there was a substantial certainty that an injury would occur.[366] The Court added that under the substantial certainty test the employer must be shown actually to believe that the injury would occur.[367] The Court further explained that satisfaction of the substantial certainty exception requires a showing of the employer's subjective intent to engage in activity that it knows bears a substantial certainty of injury to its employees.[368] The Court also stated that Connecticut has adopted four factors for consideration in determining whether a plaintiff has satisfied the substantial certainty test: (1) prior similar accidents related to the conduct at issue that resulted in an injury, death or a near-miss; (2) deliberate deceit on the part of the employer with respect to the existence of the dangerous condition; (3) intentional and persistent violations of safety regulations over a lengthy period of time; and (4) affirmative disabling of safety devices.[369] The Court found, after its review of the evidence submitted to the trial court in support of and in opposition to the defendant's motion for summary judgment, that the defendant was aware of the risks associated with asbestos exposure before the plaintiff's decedent commenced his employment with the defendant, that the defendant had a history of workplace safety violations, and that the defendant had engaged in deception with respect to the danger.[370] The Court concluded that a jury could reasonably infer that the defendant subjectively believed that his conduct was substantially certain to result in injury to its employees and, therefore, the trial court erred in rendering summary judgment in favor of the defendant.[371]

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366 *Id*. at 80-81.
367 *Id*. at 81.
368 *Id*. at 82.
369 *Id*. at 83.
370 *Id*. at 99.
371 *Id*. at 101. Judge Prescott dissented with respect to this part of the decision.