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Connecticut Bar Association

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TORT DEVELOPMENTS IN 2017

By James E. Wildes*

There never seems to be a dearth of tort decisions and this past year was no exception. The volume of decisions necessarily precludes a discussion of all cases. Some decisions are discussed in depth, while other decisions are only briefly touched upon. Some areas of the law are represented more than other areas. Some of the areas of law from this past year include absolute immunity, defamation, damages, governmental immunity, negligence and causation, premises liability, professional responsibility, sovereign immunity and trial practice.

I. Absolute Immunity

Bruno v. Travelers Companies[1] is a reminder that absolute immunity implicates the trial court's subject matter jurisdiction. The plaintiff and her former husband were divorced in 2008. In response to a subpoena issued by her ex-husband's attorney, an employee or representative of the defendants appeared at a court hearing involving court-ordered alimony and support payments.[2] The plaintiff alleged that the defendants' employee made certain statements in court and produced two letters issued by the defendants that were admitted into evidence.[3] On the basis that the testimony and letters were allegedly defamatory, the plaintiff sued the defendants under various theories including, *inter alia*, defamation, negligent infliction of emotional distress, intentional infliction of emotion distress, vicarious liability and negligence.[4] The trial court granted the defendants' motion to strike each count of the complaint on the basis of absolute immunity.[5] The trial court concluded that the litigation privilege applied, but did not address the

* Of the New Haven Bar.

1 172 Conn. App. 717, 161 A.3d 630 (2017).

2 *Id.* at 720.

3 *Id.*

4 *Id.* at 721.

5 *Id.* at 721-22.

question of subject matter jurisdiction.[6] The plaintiff argued, on appeal, that the trial court erred by not requiring the defendants to file a motion to dismiss rather than allowing them to raise absolute immunity and the court's subject matter jurisdiction in a motion to strike.[7] The Appellate Court decided that once absolute immunity based on the litigation privilege was found applicable, the trial court should have dismissed the action against the defendants, essentially treating the motion to strike as a motion to dismiss.[8] The Court emphasized that once the issue of subject matter jurisdiction is raised, it must be disposed of regardless in what form it is presented.[9] The Court noted that Connecticut has long recognized the litigation privilege, and that the general rule is that defamatory words, though spoken falsely, knowingly, and with malice, impose no liability for damages.[10] The Court added that absolute immunity furthers the public policy of encouraging participation and candor in judicial and quasi-judicial proceedings.[11] The Court stated that absolute immunity bars various theories of liability including: claims of intentional interference with contractual or beneficial relations arising from statements made during a civil action; claims of intentional infliction of emotional distress arising from statements made during judicial proceedings; and claims of fraud against attorneys for their actions during litigation.[12] The Court stated that it was well-settled that communications stated or published in the course of judicial proceedings were absolutely privileged as long as they were in some way relevant to the subject of the controversy.[13] Turning to the facts of the case before it, the Court noted that the statements made and the documents produced by a representative of the defendants were made or produced in a formal

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6 *Id*. The Appellate Court observed that the doctrine of absolute immunity, like sovereign immunity, protects against suit as well as liability. *Id*. at 719, note 4.
7 *Id*. at 722-23.
8 *Id*. at 723.
9 *Id*. at 724.
10 *Id*. at 725.
11 *Id*. at 726.
12 *Id*.
13 *Id*. at 727.

judicial setting and that the representative appeared in response to a subpoena.[14] The Court concluded that because absolute immunity protected the defendants from suit and implicated the trial court's subject matter jurisdiction, the court should have dismissed the plaintiff's original complaint against the defendants and the plaintiff should not have been given an opportunity to replead because the court was without jurisdiction to permit the plaintiff to replead.[15]

II. DAMAGES

In *Munn v. Hotchkiss School*,[16] the issue was whether a jury award of $41.5 million, $31.5 million of which was noneconomic damages, warranted a remittitur. The plaintiff at the time of the events giving rise to the litigation was a student of the defendant, a private boarding school.[17] The plaintiff, a minor at the time of the incident, contracted tick-borne encephalitis while on a school sponsored educational trip to China.[18] As a result of the encephalitis, the plaintiff suffered permanent brain damage.[19] The Supreme Court stressed that proper compensation cannot be computed by a mathematical formula.[20] The Court further emphasized that the decision whether to reduce a verdict because it is excessive rests within the discretion of the trial court and that the relevant inquiry is whether the verdict falls within the necessarily uncertain limits of fair and reasonable compensation or whether it so shocks the conscience as to compel the conclusion that it is due to partiality, prejudice or mistake.[21] The Court concluded that the award of noneconomic damages, although clearly generous, fell within the acceptable range of compensation.[22] In support of its holding, the Court mentioned the plaintiff's young age, her inability to speak and have meaningful communications

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14 *Id.*
15 *Id.* at 729.
16 326 Conn. 540, 543, 165 A.3d 1167 (2017).
17 *Id.* at 543.
18 *Id.*
19 *Id.* at 544.
20 *Id.* at 575.
21 *Id.* at 575-76.
22 *Id.* at 577.

with others and the fact that her condition would probably become worse with time.[23]

Cusano v. Lajoie[24] is an illustration of the challenge a plaintiff faces in arguing in favor of an additur ordered by a trial court. After being rear-ended, the plaintiff sued the defendants for damages.[25] The defendants did not dispute liability and the jury returned a verdict awarding the plaintiff his claimed medical expenses of $3320, but no lost wages and no noneconomic damages.[26] The trial court ordered an additur for noneconomic damages in the amount of $2000; the plaintiff accepted the additur but the defendants did not.[27] On appeal, the Appellate Court agreed with the defendants that the trial court abused its discretion in ordering the additur because there was conflicting evidence and questions involving the plaintiff's credibility.[28] The Court explained that it is not enough for a trial court to base an additur on a conclusory statement that the jury award was inadequate.[29] The Court found that the jury reasonably could have determined that the plaintiff had not proven any noneconomic damages for pain and suffering, or damages for lost wages.[30] The Court, in support of its decision, noted that the plaintiff did not immediately seek medical treatment, he never went to the emergency room, he never had an MRI or CAT scan, he had not treated recently and he never had to call out of his work as a surveyor because of his injuries.[31]

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[23] *Id*. at 577-78.

[24] 178 Conn. App. 605, 176 A.3d 1228 (2017).

[25] *Id*. at 606.

[26] *Id*. at 607-08.

[27] *Id*. at 609.

[28] *Id*. at 610-11. In *Wichers v. Hatch*, 252 Conn.174, 188, 745 A.2d 789 (2000), the Supreme Court established a case by case determination for reviewing whether a verdict is inadequate as a matter of law. The trial court under *Wichers* must examine the evidence to decide whether the jury could reasonably have found that the plaintiff failed in his or her proof when the decision was to award economic damages and zero noneconomic damages. *Id*. at 188-89.

[29] *Cusano*, 178 Conn. App. at 610.

[30] *Id*. at 613-14.

[31] *Id*. at 612-13. The Appellate Court in rejecting the plaintiff's contention that the existence or nonexistence of a pre-existing injury is the determining factor in whether an award of virtually all of the plaintiff's economic damages but no economic damages is inconsistent and unreasonable, noted that while the existence of a preexisting injury may be a factor for the jury to consider when deciding whether to award noneconomic damages, it is not the sole deciding circumstance. *Id*. at 614, note 3.

DeEsso v. Litzie[32] also addressed the adequacy of a jury award of damages. The plaintiff alleged he sustained numerous personal injuries, including a rotator ruff tear, due to the negligence, recklessness and intentional conduct of the defendant.[33] A melee had occurred at a youth basketball game that the plaintiff and the defendant attended.[34] The plaintiff claimed that he injured his shoulder in the altercation and that he incurred economic damages, in the form of medical bills and lost wages, totaling $61,483.34.[35] After the jury returned a verdict in favor of the plaintiff in the amount of $5000 in economic damages and no noneconomic damages, the trial court denied the plaintiff's motion to set aside the verdict and an order for additur.[36] On appeal, the Appellate Court stated that although the defendant did not dispute the reasonableness of the economic damages, he did challenge the plaintiff's contention that the defendant's acts proximately caused the plaintiff's shoulder injury.[37] The Court further stated that during the trial, conflicting evidence was presented as to how the plaintiff injured his shoulder; specifically, the plaintiff admitted that he had no idea who was holding him back by his arm and the defendant denied that he pulled or grabbed the plaintiff.[38] The Court affirmed the denial of the motion to set aside and request for additur, noting that a jury may award less than the full amount of the claimed economic damages where there is conflicting evidence as to whether the defendant caused the full extent of the claimed damages.[39] The Court remarked that if the jury found that the defendant only caused some of the plaintiff's alleged injuries, then it reasonably could have awarded the portion of economic damages that it found attributable to those injuries.[40]

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[32] 172 Conn. App. 787, 163 A.3d 55, *cert. denied*, 326 Conn. 913, 173 A.3d 389 (2017).
[33] *Id*. at 790-91.
[34] *Id*. at 788-90.
[35] *Id*. at 790-92.
[36] *Id*. at 793-94.
[37] *Id*. at 792.
[38] *Id*. at 793.
[39] *Id*. at 800.
[40] *Id*. at 803.

The measurement of damages in a wrongful death case was the focus of *Procaccini v. Lawrence and Memorial Hospital, Inc.*[41] The defendant appealed the plaintiff's verdict, arguing that the plaintiff failed to present evidence of the decedent's life expectancy and, accordingly, the jury's award of damages for the destruction of the decedent's capacity to carry on and enjoy life's activities was speculative and unreasonable.[42] The Appellate Court turned to the legal principles governing damages awards in wrongful death actions, noting that a wrongful death action brought pursuant to General Statutes § 52-555[43] provides that a plaintiff may recover just damages, together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral services.[44] Just damages include (1) the value of the decedent's lost earning capacity less deductions for his or her necessary living expenses, such as for food, shelter, clothing and heath care, and taking into consideration that a present cash payment will be made, (2) compensation for the destruction of his or her capacity to carry on and enjoy life's activities in a way he or she would have done had he or she lived, and (3) compensation for conscious pain and suffering.[45] The parties in a death action are entitled to present an over-all picture of the decedent's activities to allow the jury to make an informed valuation of the total destruction of his or her capacity to carry on life's

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[41] 175 Conn. App. 692, 168 A.3d 538, *cert. denied*, 327 Conn. 960, 172 A.3d 801 (2017).

[42] *Id.* at 732.

[43] General Statutes § 52-555 provides: "(a) In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date of death, and except that no such action may be brought more than five years from the date of the act or omission complained of. (b) Notwithstanding the provisions of subsection (a) of this section, an action may be brought under this section at any time after the date of the act or omission complained of if the party legally at fault for such injuries resulting in death has been convicted or found not guilty by reason of mental disease or defect of a violation of section 53a-54a, 53a-54b, 53a-54c, 53a-54d, 53a-55 or 53a-55a with respect to such death."

[44] *Procaccini*, 175 Conn. App. at 735.

[45] *Id.*

activities.[46] Evidence of how pleasurable the decedent's future might have been is admissible, as is evidence of the decedent's hobbies and recreations.[47] The Court observed that although a claim for the destruction of a decedent's capacity to carry on and enjoy life's activities requires proof of the decedent's life expectancy, a mortality table is not the exclusive evidence admissible to establish the expectancy of life since age, health, habits and physical condition may afford evidence thereof.[48] The Court further observed that a jury is not bound by mortality tables because these constitute only one of many factors that may be considered in estimating life expectancy.[49] The Court next turned to the evidence presented at trial, stating that the plaintiff presented substantial evidence of the decedent's age, health, physical condition and habits, all of which were relevant in determining life expectancy.[50] The Court affirmed the judgment, indicating that the jury reasonably could have made a crude forecast of the decedent's life expectancy from its own knowledge and from proof of the decedent's age, health, physical condition and habits.[51]

III. Defamation

Whether the defendant was entitled to absolute immunity on the basis of the litigation privilege for making reports to the Department of Children and Families (DCF) was answered in *Kruger v. Grauer*.[52] The Appellate Court affirmed the denial of the defendant's motion for summary judgment, concluding that even it assumed, without deciding, that individuals who make reports to DCF are entitled to absolute immunity at common law, the legislature abrogated the common-law immunity to those who report abuse or neglect pursuant to General Statutes Section 17a-101e

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46 *Id*.
47 *Id*.
48 *Id*. at 736.
49 *Id*. at 737.
50 *Id*. at 738.
51 *Id*. at 738-39.
52 173 Conn. App. 539, 540, 164 A.3d 764, *cert. denied*, 327 Conn. 901, 169 A.3d 795 (2017).

(b).[53] The plaintiff alleged that the defendant falsely accused him of sexually assaulting their four year old son.[54] The defendant moved for summary judgment as to the plaintiff's claims for defamation, intentional infliction of emotion distress and negligent infliction of emotional distress.[55] The Court found that notwithstanding a presumption that legislative action is not in derogation of the common law, Section 17a-101e (b) expresses a clear legislative intent to abrogate the absolute immunity that the common law may have afforded to individuals who report child abuse to DCF.[56] The Court observed that Section 17a-101e reflects a determination that although child protection is an important goal, its achievement does not outweigh the harm caused from reports of child abuse that are made in bad faith.[57]

IV. Defective Highway

Whether the notice provided under General Statutes

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[53] *Id*. at 540-41. The Appellate Court explained that although the denial of a motion for summary judgment is not a final judgment and not appealable, where the motion asserts absolute immunity the denial is an appealable final judgment. *Id*. at 540, note 1. General Statutes § 17a-101e provides: "(a) No employer shall (1) discharge, or in any manner discriminate or retaliate against, any employee who in good faith makes a report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103, testifies or is about to testify in any proceeding involving child abuse or neglect, or (2) hinder or prevent, or attempt to hinder or prevent, any employee from making a report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103, or testifying in any proceeding involving child abuse or neglect. The Attorney General may bring an action in Superior Court against an employer who violates this subsection. The court may assess a civil penalty of not more than two thousand five hundred dollars and may order such other equitable relief as the court deems appropriate. (b) Any person, institution or agency which, in good faith, makes, or in good faith does not make, the report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report provided such person did not perpetrate or cause such abuse or neglect. (c) Any person who is alleged to have knowingly made a false report of child abuse or neglect pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 shall be referred to the office of the Chief State's Attorney for purposes of a criminal investigation. (d) Any person who knowingly makes a false report of child abuse or neglect pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 shall be fined not more than two thousand dollars or imprisoned not more than one year or both."

[54] *Kruger*, 173 Conn. App. at 543.

[55] *Id*. at 544.

[56] *Id*. at 552.

[57] *Id*. at 557.

Section 13a-144[58] is defective is a common issue on appeal. In *Bin Ding v. Lazaro*,[59] the defendant state of Connecticut appealed from the denial of its motion to dismiss for lack of subject matter jurisdiction based on a patently defective notice. The Appellate Court first summarized the pertinent law. The Court explained that proper notice is a condition precedent to an action pursuant to Section 13a-144, and that unless the notice—in describing the place or cause of action—patently meets or does not meet this test, the issue of its adequacy is one for the jury and not the court.[60] The Court stated that there are two types of cases where the written notice is patently defective: (1) where the notice states a location different from the actual place of injury; and (2) where the description is so vague that the commissioner cannot reasonably be expected to make a timely investigation based on the information provided.[61] The defendant argued that the notice fell within the second category because the notice did not specify which of four manholes near the accident scene was defective.[62] The Court held that the notice was not patently defective because the notice, along with the attached police report diagram sufficiently narrowed the location of the manhole to allow the

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[58] General Statutes § 13a-144 provides: "Any person injured in person or property by means of a defective road or bridge may recover damages from the party bound to keep it in repair. No action for any such injury sustained on or after October 1, 1982, shall be brought except within two years from the date of such injury. No action for any such injury shall be maintained against any town, city, corporation or borough, unless written notice of such injury and a general description of the same, and of the cause thereof and of the time and place of its occurrence, shall, within ninety days thereafter be given to a selectman or the clerk of such town, or to the clerk of such city or borough, or to the secretary or treasurer of such corporation. If the injury has been caused by a structure legally placed on such road by a railroad company, it, and not the party bound to keep the road in repair, shall be liable therefor. No notice given under the provisions of this section shall be held invalid or insufficient by reason of an inaccuracy in describing the injury or in stating the time, place or cause of its occurrence, if it appears that there was no intention to mislead or that such town, city, corporation or borough was not in fact misled thereby."

[59] 171 Conn. App. 558, 559-60, 158 A.3d 441 (2017). The Appellate Court stated although the denial of a motion to dismiss is an interlocutory ruling that is not an appealable final judgment, the denial of a motion to dismiss based on a colorable claim of sovereign immunity is an appealable final judgment. *Id*. at 559, note 2.

[60] *Id*. at 563-64.

[61] *Id*. at 564-65.

[62] *Id*. at 565.

defendant to make a timely investigation of the claimed defect.[63]

V. Governmental Immunity

The special corporate profit or pecuniary benefit exception to governmental immunity was discussed in *St. Pierre v. Town of Plainfield*.[64] The plaintiff claimed that he fell on accumulated water in the vicinity of the defendant's municipal pool.[65] The plaintiff argued that the propriety function exception applied to abrogate the defendant's immunity.[66] Specifically, the plaintiff contended that the defendant derived a special corporate profit or pecuniary benefit from the operation of a municipal pool because it rented the pool to a for-profit entity for a nominal fee.[67] The Supreme Court disagreed with the plaintiff, holding that, under the facts of the case, the operation of the municipal pool did not constitute a propriety function so as to abrogate its discretionary act immunity because the total fees collected from all parties reserving the pool did not cover the cost of maintaining the pool.[68]

Lamar v. Brevetti[69] involved claims sounding in negligence, recklessness, negligent infliction of emotional distress and intentional infliction of emotional distress brought by the plaintiff against a Waterbury police officer who arrested him, as well as against other high ranking members of the police department and the city of Waterbury. In affirming summary judgment rendered in favor of the defendants, the Appellate Court explained that if an arrest is supported by and based upon probable cause, then an

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63 *Id.*

64 326 Conn. 420, 165 A.3d 148 (2017).

65 *Id.* at 423-24.

66 *Id.* at 427. The propriety function exception has been codified in General Statutes § 52-557n (a) (1) (B), which provides, in pertinent part: "(a) (1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by … negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit ...."

67 *St. Pierre*, 326 Conn. at 427.

68 *Id.* at 432-33.

69 173 Conn. App. 284, 285-86, 163 A.3d 627 (2017).

absolute bar exists as to common law tort claims.[70] The Court added that the existence of probable cause in the case before it was irrefutable and, therefore, summary judgment was properly rendered on the negligent and intentional infliction of emotional distress claims.[71] Finally, the Court found that the claims against the city were derivative of the claims against the individual defendants and, accordingly, the city was entitled to summary judgment.[72]

In *Cuozzo v. Town of Orange*,[73] the plaintiff appealed from the summary judgments entered in favor of the defendants, the town of Orange and the city of West Haven. The plaintiff alleged that he sustained injuries when the Volvo vehicle he was driving struck a pothole.[74] He claimed that the defendants controlled, maintained and managed the property where the accident occurred.[75] The trial court granted the summary judgment of each defendant, finding that the evidence presented in support of the motions for summary judgment established that the alleged defect was in the driveway of Sam's Club, which was not an area possessed or controlled by either defendant.[76] The Appellate Court stated that the dispositive issue in deciding whether the defendants owed a duty to the plaintiff was whether the defendants were in possession and control of the property.[77] The Court explained that the word control refers to the power or authority to manage, superintend, direct or oversee.[78] Based upon affidavits

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[70] *Id*. at 290. The Appellate Court declined to consider the reckless claims since the claim was inadequately briefed. *Id*. at 290-91. The Court also stated that the trial court properly granted summary judgment as to the negligence claims because the alleged actions were discretionary, not ministerial, acts. *Id*. at 289-90. The Court explained that police functions are generally deemed discretionary in nature and the doctrine of governmental immunity barred the negligence claims. *Id*.

[71] *Id*.

[72] *Id*. at 291.

[73] 178 Conn. App. 647, 176 A.3d 586, *cert. denied*, 328 Conn. 906, 177 A.3d 1159 (2017).

[74] *Id*. at 649.

[75] *Id*. at 649-50.

[76] *Id*. at 653-54. The trial court also held that the plaintiff's claim was barred by governmental immunity. *Id*. at 654. The Appellate Court did not reach the issue of governmental immunity because it found that the trial court properly granted the summary judgments on the issue of control and possession. *Id*.

[77] *Id*. at 655.

[78] *Id*. at 655-56.

signed by engineers on behalf of each defendant, which concluded that the pothole was not within an area the defendants were responsible for, the Court affirmed the granting of the summary judgments. The Court also found that the plaintiff's evidence—three letters from Orange's zoning enforcement officer and a traffic study—did not create a genuine issue of material fact because the evidence did not show that Orange had the power or authority to manage, direct, superintend or oversee the allegedly defective area.[79]

Although school children who are on school property during school hours have been recognized as an identifiable class of foreseeable victims, *Costa v. Plainville of Board of Education*[80] makes it clear that a plaintiff must not be voluntarily participating in a nonmandatory school event at the time of the injury to fall within the identifiable-person imminent harm exception to the defense of governmental immunity. The action arose out an accident at a senior class picnic when one player poked the minor plaintiff in the eye during a pick-up basketball game.[81] The claims against the named defendant and a high school principal sounded in negligence.[82] In response to the defendants' motion for summary judgment based on governmental immunity, the plaintiffs raised the identifiable-person imminent harm exception.[83] In affirming the summary judgment in favor of the defendants, the Appellate Court first found that the claims of negligent supervision involved discretion and were cloaked with governmental immunity.[84] Turning to the plaintiffs' claim that the identifiable-person imminent harm exception applied, the Court set forth the elements of the exception: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject the victim to harm.[85] The

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79 *Id.* at 657-58.

80 175 Conn. App. 402, 167 A.3d 1152 (2017).

81 *Id.* at 404.The plaintiff's mother also brought a claim for reimbursement for expenditures she made related to her son's medical care. *Id.* at 405.

82 *Id.* at 404-05.

83 *Id.* at 406.

84 *Id.* at 407-08.

85 *Id.* at 408.

Court stated that the minor plaintiff was not required to attend the senior class picnic and that he voluntarily participated in the basketball game.[86] Under the circumstances, the Court held that the minor plaintiff was not an identifiable person entitled to protection by school authorities.[87]

In *Ventura v. Town of East Haven*,[88] the Appellate Court stated that although the question of whether official acts are ministerial or discretionary is normally a question of fact for the trier of fact, where that determination depends on an interpretation of a statute or municipal ordinance, the question is one of law, which an appellate court may resolve *de novo*. The defendant town appealed from a verdict rendered in favor of the plaintiff awarding damages for injuries he sustained when he was struck by a private individual.[89] The jury found that the defendant was not immune from liability because earlier in the day, a police officer of the defendant, after investigating an unrelated domestic violence incident involved the private citizen, had a ministerial duty to tow the private citizen's vehicle on the basis of an invalid registration and improper plates.[90] The Court stated that municipal employees are immune from liability for negligence arising out of their discretionary acts; however, municipal employees are not immune from liability for negligence arising out of ministerial acts.[91] The Court stated that since the question at trial called for the interpretation of the tow truck rules as they applied to police officers, the

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[86] *Id.* at 408-09.

[87] *Id.* at 409.

[88] 170 Conn. App. 388, 402-03, 154 A.3d 1020, *cert. granted*, 325 Conn. 905, 156 A.3d 537 (2017).

[89] *Id.* at 390.

[90] *Id.*

[91] *Id.* at 400-02. 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 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.

trial court should have made the determination and not submitted it to the jury.[92] The Court concluded that the plain language of the tow rules did not impose a ministerial duty on the defendant's police officer to tow the vehicle and, accordingly, reversed the judgment and remanded the case to the trial court with direction to grant the defendant's motion for directed verdict.[93]

VI. Negligence

In *McFarline v. Mickens*,[94] the issue was whether the defendant abutting landowner owed a duty to the plaintiff to maintain the public sidewalk in front of his home. The plaintiff claimed that she sustained injuries due to the defective condition of the sidewalk she was walking on.[95] The trial court granted the defendant's motion for summary judgment, agreeing with the defendant that he owed no duty to the plaintiff.[96] The Appellate Court reviewed the long-established law on the duty of abutting landowners, explaining that municipalities have the primary responsibility to maintain public sidewalks in a reasonably safe condition.[97] The Court added that an abutting landowner, in the absence of statute or ordinance, ordinarily is under no duty to maintain the sidewalk in front of his or her property in a reasonably safe condition.[98] The Court further explained that there are two exceptions to the above rule: (1) municipalities in limited situations may transfer liability to an abutting landowner through a charter provision, statute or ordinance; and (2) landowners may be liable for

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(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."

92 *Ventura*, 170 Conn. App. at 403-04.

93 *Id*. at 405, 415.

94 177 Conn. App. 83, 85-93,173 A.3d 417, *cert. denied*, 327 Conn. 997, 176 A.3d 557(2017).

95 *Id*. at 86.

96 *Id*. at 89.

97 *Id*. at 92-93.

98 *Id*. at 93.

injuries caused by defective conditions they created by their own positive acts.[99] Turning to the subject case, the Court noted that the plaintiff pursued only the second exception, and that the plaintiff failed to present evidence in support of a claim that the defendant created a defect through a positive act.[100] Specifically, the Court disagreed with the plaintiff that the evidence suggested that the defendant's positive act caused grass to grow on the sidewalk.[101] The Court found no error in the granting of the summary judgment.[102]

The necessity of proving causation in a negligence case was prominently on display in *Decastro v. Odetah Camping Resort, Inc.*[103] The plaintiff's decedent drowned while swimming in a lake abutting the defendant's resort.[104] The plaintiff brought a wrongful death action, alleging that the defendant was negligent because it knew or should have known of the dangers associated with encouraging guests to swim

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[99] *Id.* at 94. The Appellate cited to General Statutes § 7-163a as an example of the first exception. Section 7-163a provides: "(a) Any town, city, borough, consolidated town and city or consolidated town and borough may, by ordinance, adopt the provisions of this section. (b) Notwithstanding the provisions of section 13a-149 or any other general statute or special act, such town, city, borough, consolidated town and city or consolidated town and borough shall not be liable to any person injured in person or property caused by the presence of ice or snow on a public sidewalk unless such municipality is the owner or person in possession and control of land abutting such sidewalk, other than land used as a highway or street, provided such municipality shall be liable for its affirmative acts with respect to such sidewalk. (c) (1) The owner or person in possession and control of land abutting a public sidewalk shall have the same duty of care with respect to the presence of ice or snow on such sidewalk toward the portion of the sidewalk abutting his property as the municipality had prior to the effective date of any ordinance adopted pursuant to the provisions of this section and shall be liable to persons injured in person or property where a breach of said duty is the proximate cause of said injury. (2) No action to recover damages for injury to the person or to property caused by the presence of ice or snow on a public sidewalk against a person who owns or is in possession and control of land abutting a public sidewalk shall be brought but within two years from the date when the injury is first sustained." The Appellate Court provided two examples of the second exception: *Hanlon v. Waterbury*, 108 Conn. 197, 198-99, 142 A.681 (1928) (landowner who maintained a gas pump inches away from a sidewalk which spilled gas onto the sidewalk); and *Perkins v. Weibel*, 132 Conn. 50, 51, 42 A.2d 360 (1945) (a defendant who allowed grease from his restaurant to leak from the building onto the sidewalk). *McFarline*, 177 Conn. App. at 94-95 and note 6.

[100] *Id.* at 98.

[101] *Id.*

[102] *Id.* at 100.

[103] 170 Conn. App. 581, 155 A.3d 305, *cert. denied*, 325 Conn. 906, 156 A.3d 537 (2017).

[104] *Id.* at 583.

to its recreational floatation devices, yet it failed to take reasonable steps to ensure their safety in doing so.[105] After the jury returned a plaintiff's verdict, the trial court granted the defendant's motion for judgment notwithstanding the verdict, concluding that the plaintiff failed to establish that the defendant's conduct was a proximate cause of the decedent's death.[106] The Appellate Court stated that directed verdicts are not favored as parties have a constitutional right to have factual issues decided by a jury and a trial court should only grant a motion for judgment notwithstanding the verdict if the jury reasonably and legally could not have reached any other conclusion.[107] The Court reiterated the components of legal cause. The first component is causation in fact: where the test is whether the injury would have occurred were it not for the actor's negligence.[108] The second component is proximate cause: where the test is whether a defendant's conduct is a substantial factor in bringing about the plaintiff's injury.[109] The Court stated that although a jury may draw reasonable inferences from circumstantial evidence, such inferences must be reasonable and logical and must not be the result of conjecture and speculation.[110] The Court affirmed the granting of the motion for judgment notwithstanding the verdict, noting that the decedent's drowning was unwitnessed and unexplained by the autopsy.[111] The Court stated that the plaintiff presented no evidence that the defendant's failure to provide a life jacket was a cause in fact or a proximate cause of the death because there was no evidence of what caused the decedent to drown.[112]

Failure to establish causation was similarly fatal to the plaintiff's wrongful death action in *Theodore v. Lifeline Systems Company*.[113] After the plaintiff's decedent was

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[105] *Id.* at 585.
[106] *Id.* at 586.
[107] *Id.* at 589-90.
[108] *Id.* at 590.
[109] *Id.* at 591.
[110] *Id.* at 590-91.
[111] *Id.* at 595. The autopsy indicated that the cause of death was asphyxia by submersion; specifically, drowning. *Id.*
[112] *Id.*
[113] 173 Conn. App. 291, 163 A.3d 654 (2017).

found deceased on the floor of her residence, the plaintiff instituted a three count complaint against the defendants: the first count was against VNA Healthcare, Inc. (VNA) and claimed negligent installation of a medical alert system; the second count was directed to VNA and alleged breach of contract, in that, no emergency medical assistance was provided once the help button had been activated by the decedent in violation of the agreement with VNA; and the third count was against Lifeline Systems Company (Lifeline) and alleged a product liability claim for negligently putting the system into the stream of commerce.[114] The trial court granted the defendants' motions for directed verdict, finding that the plaintiff had not proven causation.[115] The Appellate Court found no error, explaining that to demonstrate that the defendants' alleged tortious conduct caused the damages, it was essential that the plaintiff prove what caused the death.[116] The Court further explained that if the jury was left without evidence of the cause and the timing of the decedent's death, it could not reasonably make a finding that the defendant's conduct actually caused the death.[117] In support of its decision, the Court stated that no autopsy was performed, the evidence presented did not provide clarification with respect to the cause of the death and the evidence left unanswered the question of whether it was likely

[114] *Id*. at 294-97.

[115] *Id*. at 299-302.

[116] *Id*. at 317. With respect to the negligence claim and the product liability claim, the Appellate Court reviewed the components of legal cause; namely, causation in fact: where the test is whether the injury would have occurred were it not for the actor's negligence; and proximate cause: where the test is whether a defendant's conduct is a substantial factor in bringing about the plaintiff's injury. *Id*. at 308-310. The Court also addressed causation with respect to the breach of contract claim, noting that the elements of a breach of contract are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages. *Id*. at 306, note 5. The causation requirement in a breach of contract action focuses on whether a loss may fairly and reasonably be considered as arising naturally, that is, according to the usual course of things, from such breach itself. *Id*. The causation standard does not ask whether a defendant's conduct was a proximate cause of the plaintiff's injuries; rather, the question is whether the injuries were foreseeable to the defendant and naturally and directly resulted from the defendant's conduct. *Id*. The Court stated that consistent with the plaintiff's other causes of action, the plaintiff had the burden of proof that VNA's conduct was a cause in fact of the injuries. *Id*.

[117] *Id*. at 317.

that the decedent would have lived any length of time after summoning emergency help so that a timely response would have saved her life.[118]

In *Snell v. Norwalk Yellow Cab, Inc.*,[119] the central issue also involved causation; specifically, whether the superseding cause doctrine was still viable where the conduct of the intervening actor was not merely negligent but was criminally reckless.[120] The plaintiff claimed that she sustained injuries when, while walking on the sidewalk, she was struck by a taxicab that had been stolen from the taxi driver after he negligently left it unattended in a high crime area with the keys in the ignition.[121] The Appellate Court disagreed with the plaintiff that the trial court improperly instructed the jury on the doctrine of superseding cause.[122] The focus of the plaintiff's argument was on the Supreme Court's decision in *Barry v. Quality Steel Products, Inc.*,[123] which abolished the use of the superseding cause doctrine except in certain circumstances.[124] The Appellate Court explained that the doctrine of superseding cause serves as a device by which one admittedly negligent party can, by identifying another's superseding conduct, exonerate itself from liability by shifting the causation element entirely elsewhere.[125] The Court construed the holding in *Barry* as enumerating three categories of unforeseen intervening events for which the doctrine of superseding cause retains viability: intervening intentional torts, intervening forces of nature, and intervening criminal events.[126] The Court held that the facts produced at trial fell within the exceptions announced

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[118] *Id.* at 317-18.

[119] 172 Conn. App. 38, 158 A.3d 787, *cert. granted*, 325 Conn. 927, 169 A.3d 232 (2017).

[120] *Id.* at 40-41.

[121] *Id.* at 41.

[122] *Id.*

[123] 263 Conn. 424, 820 A.2d 258 (2003). It is noted that the Supreme Court in *Barry* limited its holding to situations where a defendant claimed its tortious conduct was superseded by the subsequent act or acts of others. *Id.* at 439, note 16. The Court left to a different day whether its holding would necessarily apply where an unforeseen intentional criminal act superseded tortious conduct or where the doctrine of superseding cause arose in the context of criminal law. *Id.*

[124] *Snell*, 172 Conn. App. at 54-55.

[125] *Id.* at 58.

[126] *Id.* at 64-65.

in *Barry*, in which a defendant claims that an unforeseeable intentional tort, act of nature, or criminal event superseded its tortious conduct.[127]

VII. Premises Liability

The firefighter's rule reached the Supreme Court in *Lund v. Milford Hospital, Inc.*[128] The plaintiff, a police officer, was injured while subduing an emotionally disturbed patient who had been committed to the defendant hospital for an emergency psychiatric evaluation.[129] The Court summarized the firefighter's rule: generally, a firefighter or police officer who enters private property in the exercise of his or her duties cannot bring a civil action against the property owner for injuries sustained due to a condition which is not reasonably safe in the premises.[130] The Court explained that the firefighter's rule does not bar a police officer from bringing a negligence action in a nonpremises case for injuries sustained during the performance of his or her duties.[131] The plaintiff alleged that the defendant was negligent in: failing to supervise or restrain the assailant; failing to provide adequate security; allowing the assailant to go to the bathroom unrestrained and unaccompanied; and failing to train its staff properly.[132] The Court held that the plaintiff set forth a valid cause of action.[133] In *Sepega v. DeLaura*,[134] a decision released the same day as *Lund*, the Supreme Court also held, in appeal from the granting of the defendant's motion to strike, that the fire-

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[127] *Id.* at 68.

[128] 326 Conn. 846, 168 A.3d 479 (2017).

[129] *Id.* at 848.

[130] *Id.* at 858, note 9.

[131] *Id.* at 859-60.

[132] *Id.* at 848.

[133] *Id.* at 860. Justices Robinson and McDonald dissented, arguing that the firefighter's rule should have barred the plaintiff's action. *Id.* at 860-61.

[134] 326 Conn. 788, 789, 167 A.3d 916 (2017). The often repeated standard of review on an appeal from a motion to strike was restated by the Supreme Court. The appellate court's review on appeal is plenary because a motion to strike tests the legal sufficiency of a pleading and requires no factual findings by the trial court. *Id.* at 791. The facts are taken as alleged in the complaint that has been stricken and the pleading is construed in a manner most favorable to sustaining

fighter's rule should not be extended beyond claims of premises liability. The plaintiff, a police officer, responded to a call at the defendant's premises because the defendant had locked himself into his home and was threatening to injure himself.[135] The plaintiff sustained bodily injuries as he attempted to forcibly enter the defendant's home.[136] The complaint did not set forth any allegations against the defendant relating to any dangerous or defective condition on the premises; rather, the allegations addressed the defendant's conduct that created a condition which mandated the plaintiff, as a police officer, to forcibly enter the premises to prevent injuries to the defendant or others.[137] The Court observed that because the firefighter's rule was an exception to the general rule of tort law that liability for any loss should be borne by the negligent party, the burden of persuasion is on the party who contends that the exception should be extended beyond its traditional boundaries.[138] The Court reversed the trial court and remanded the case for further proceedings.[139]

In *Marciano v. Olde Oak Village Condominium Association, Inc.*,[140] the Appellate Court stated that in a premises case the dispositive issue in deciding whether a duty exists is whether the defendant was in control and possession of the area where the plaintiff was injured. The plaintiff while exiting her unit at the defendant's condominium complex sustained personal injuries when she fell on a lawn.[141] The trial court granted the defendant's motion for summary judgment, finding that, by virtue of the plaintiff's failure to respond to the defendant's requests to admit, the plaintiff admitted that the area where she fell was the responsibility of the unit owner, rather than the defendant

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its legal sufficiency. *Id.* The issue of whether to recognize a common-law cause of action in negligence is a matter of public policy for the court to determine based on the changing attitudes and needs of society. *Id.*

135 *Id.* at 790.

136 *Id.*

137 *Id.*

138 *Id.* at 794.

139 *Id.* at 816.

140 174 Conn. App. 851, 854, 167 A.3d 469 (2017).

141 *Id.* at 852-53.

condominium association.[142] The Court affirmed the trial court's decision, holding that in light of the facts admitted by the plaintiff, there was no genuine issue of material fact and the defendant was entitled to judgment as a matter of law.[143]

Rivera v. CR Summer Hill, Limited Partnership[144] reversed a summary judgment entered in favor of the defendants in a premises liability case. The Appellate Court agreed with the plaintiff's argument that there existed a genuine issue of material fact regarding whether the defendants had constructive notice of the inadequate lighting and the lack of a handrail that allegedly caused the plaintiff's injuries.[145] The parties agreed that the plaintiff was a business invitee and, accordingly, the defendants owed the plaintiff a duty to keep the premises in a reasonably safe condition.[146] For purposes of the appeal, the defendants did not dispute that there was inadequate lighting and that the steps were unsafe, and the plaintiff did not contend that the defendants had actual notice of the defects.[147] The Court noted that the plaintiff must allege and prove that the defendant has actual or constructive notice of the specific unsafe condition which caused the injury.[148] The evidence presented in support of the motion for summary judgment indicated that the defendants' property manager inspected the property twice a day.[149] The Court found that there was a genuine issue of material fact because the fact finder could reasonably have concluded that the property manager would have noticed the claimed defects.[150]

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142 *Id*. at 853-54. The Appellate Court noted that because the plaintiff had not timely responded or objected to the defendant's requests to admit or sought to amend or withdraw that admission, then any presumption of truth in the plaintiff's assertion in her complaint that the defendant had a duty to maintain the area was defeated. *Id*. at 854.

143 *Id*. at 854.

144 170 Conn. App. 70, 154 A.3d 55 (2017).

145 *Id*. at 71.

146 *Id*. at 75.

147 *Id*. at 76.

148 *Id*. at 75.

149 *Id*. at 78-79.

150 *Id*.

VIII. Product Liability

In *Bagley v. Adel Wiggins Group*,[151] the issue was whether, in a product liability action brought pursuant to General Statutes Section 52-572m *et seq*., under strict liability and negligence theories, expert testimony was required to establish that an asbestos containing product caused a worker who came in contact with the product to contract a fatal lung disease. Subsequent to a plaintiff's verdict, the defendant filed a motion to set aside the verdict and a motion for judgment notwithstanding the verdict because the plaintiff failed to prove both that the product was unreasonably dangerous and that it was a legal cause of the decedent's fatal lung disease.[152] The Supreme Court agreed with the defendant, holding proof that FM-37, an adhesive product manufactured and sold by the defendant to the plaintiff's decedent's employer, emitted respirable asbestos fibers was crucial for the plaintiff to prevail on either of the plaintiff's theories of recovery and that such proof required the assistance of an expert because the subject matter was technical in nature and beyond the field of ordinary knowledge of a lay juror.[153] The judgment was reversed and the case was remanded with direction to grant the defendant's motions.[154]

IX. Professional Negligence

The propriety of submitting a jury interrogatory was the dispositive issue in *Wilkins v. Connecticut Childbirth and Women's Center*.[155] The plaintiff appealed after the jury returned a defense verdict in a medical malpractice suit. The plaintiff's theory of her case was that the defendant failed to diagnose and treat a fourth degree laceration sustained at the time of delivery of her child.[156] The defendant disputed the plaintiff's claim and contended that the plain-

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151 327 Conn. 89, 91, 171 A.3d 432 (2017).
152 *Id*. at 92.
153 *Id*. at 91-93, 113.
154 *Id*. at 113.
155 176 Conn. App. 420, 171 A.3d 88 (2017).
156 *Id*. at 426.

tiff did not suffer a laceration during delivery.[157] The trial court submitted jury interrogatories, the first of which read as follows: "'Do you find that the plaintiff has proven by a preponderance of the evidence that she sustained a fourth degree laceration and/or a severe tear of her vaginal tissue, her perineal skin and muscle and anal sphincter muscle during her labor and delivery on April 17, 2007?'"[158] The jury answered the question in the negative, and returned a defense verdict in accordance with the trial court's instruction.[159] The Appellate Court began its analysis by summarizing its standard of review; specifically, the power of the trial court to submit proper interrogatories to the jury does not depend on the consent of the parties, and in the absence of any mandatory enactment, it is within the reasonable discretion of the trial court to require or refuse to require the jury to answer interrogatories.[160] In finding that the trial court did not commit an error by submitting the interrogatory, the Appellate Court explained that because it was clear from the plaintiff's complaint, the evidence presented at trial, and the plaintiff's arguments that the case revolved around the existence of a laceration and/or tear, it was within the trial court's discretion to submit the interrogatory on the threshold issue of whether the plaintiff sustained the alleged injury.[161]

Ruff v. Yale- New Haven Hospital[162] is an example of the difficulty a plaintiff may have in a medical malpractice case if the expert witness does not satisfy the expert statutory requirements under General Statutes Section 52-184c. The

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[157] *Id*. at 427.
[158] *Id*. at 428.
[159] *Id*.
[160] *Id*. at 430.
[161] *Id*. at 436-37.
[162] 172 Conn. App. 699, 161 A.3d 552 (2017). General Statutes § 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.

plaintiff claimed that a registered nurse and employee of the defendant hospital negligently inserted a catheter into his bladder, causing his prostate to be punctured.[163] The defendant filed a motion in limine to preclude the plaintiff's medical expert, a registered nurse, from testifying because she was not a "similar health care" provider as defined by Section 52-184c.[164] The trial court granted the motion in limine and, thereafter, directed a verdict in favor of the defendant because the plaintiff no longer had a liability expert.[165] The Appellate Court explained that to testify as an expert, the health care provider must qualify as a similar health care provider under subsection (b) or (c), or, if he or she is not a similar health care provider, must satisfy the trial court pursuant to subsection (d) that he or she has sufficient training, practice, and knowledge including

(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 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."

163 *Ruff*, 172 Conn. App. at 701-03.

164 *Id*. at 705-06.

165 *Id*. at 706-08. The Appellate Court set forth the legal principles pertaining to medical malpractice cases: the plaintiff must establish the requisite standard of care, a deviation from that standard of care and a causal relationship between the deviation and the claimed injury. *Id* at 716. The Court additionally stated that expert testimony is generally required to prove the standard of professional care to which the defendant is held. *Id*.

practice and teaching within the five-year period of the incident to qualify.[166] The Court stated that absent evidence of specialized training, registered nurses are considered nonspecialists under Section 52-184c (b).[167] With respect to the case before it, the Court stated that the plaintiff's expert was a nonspecialist and, accordingly, her qualifications should be analyzed under Section 52-184c (b).[168] The Court stated that there was no disagreement that under the first prong of the nonspecialist test that the plaintiff's expert was licensed by the appropriate agency.[169] However, the Court agreed with the trial court that none of the expert's training and experience suggested that she was actively involved in the practice or teaching of nursing in the five year period before the date of the alleged negligent act.[170] The Appellate Court found no error in the trial court's rulings.[171]

X. Sovereign Immunity

Machado v. Taylor[172] is a reminder that when subject matter jurisdiction is raised the trial court must resolve the issue. The plaintiff, who was injured in a motor vehicle accident with a state employee, brought an action against the state of Connecticut pursuant to General Statutes Section 52-556.[173] At the close of evidence, the defendant filed a motion for judgment of dismissal pursuant to Practice Book Sections 10-30(a)(1)[174] and 15-8,[175] asserting that the plain-

166 *Id*. at 711.
167 *Id*. at 712.
168 *Id*. at 712-13.
169 *Id*. at 713.
170 *Id*. at 715. The Appellate Court also agreed with the trial court that the expert did not satisfy the requirements of the residual provision pursuant to Section 52-184c (d). *Id*.
171 *Id*.
172 326 Conn. 396, 163 A.3d 558 (2017).
173 *Id*. at 398. General Statutes § 52-556 provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury."
174 Practice Book § 10-30(a) (1) provides, in part: "A motion to dismiss shall be used to assert … lack of jurisdiction over the subject matter …."
175 Practice Book § 15-8 provides, in part: "If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial authority may grant such motion if the plaintiff has failed to make out a prima facie case...."

tiff failed to prove that the vehicle involved in the accident was insured by the state, which deprived the court of subject matter jurisdiction.[176] The Supreme Court initially noted although Section 10-30(a)(1) is the appropriate vehicle to contest subject matter jurisdiction, the trial court was required to dispose of the issue once it was raised regardless of the form it was presented.[177] The Court found that the trial court committed an error by denying the defendant's motion on the basis that it waited until the close of evidence to raise lack of subject matter jurisdiction.[178] The Court remanded the case for further proceedings.[179]

Arroyo v. University of Connecticut Health Center[180] arose out of alleged malpractice relating to a vasectomy performed by the defendant's employee, a urologist. The defendants appealed from a judgment entered for the plaintiff after a bench trial, arguing that the trial court found in favor of the plaintiff on a cause of action for which the plaintiff had failed to obtain a waiver of sovereign immunity from the state Claims Commissioner.[181] The Appellate Court first reviewed the sovereign immunity statutory scheme; in particular, General Statutes Section 4-147, which provides, in part, that: "[a]ny person wishing to present a claim against the state shall file with the Office of the Claims Commissioner a notice of claim ...."[182] The Court explained that the notice provided to the Claims Commissioner was accompanied by a certificate of good faith, as required in medical malpractice claims against the state pursuant to Section 4-160(b).[183] The Court further explained that in

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[176] *Machado*, 326 Conn. at 560.

[177] *Id*. at 401-02.

[178] *Id*. at 400-02.

[179] *Id*. at 405. The Supreme Court additionally rejected the plaintiff's contention that delay or laches precluded the resolution of a jurisdictional challenge. *Id*. at 403-04.

[180] 175 Conn. App. 493, 167 A.3d 1112, *cert. denied*, 327 Conn. 973, 174 A.3d 192 (2017).

[181] *Id*. at 495.

[182] *Id*. at 496 and note 5.

[183] *Id*. General Statutes § 4-160(b) provides: "(a) Whenever the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable. (b) In any claim alleging malpractice against the state, a state hospital or against a physician, surgeon, dentist, podiatrist, chiropractor or

most instances, the Commissioner may deny or dismiss the claim, order immediate payment of a claim not exceeding $7500, recommend to the General Assembly payment of a claim exceeding $7500 or grant permission to sue the

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other licensed health care provider employed by the state, the attorney or party filing the claim may submit a certificate of good faith to the Office of the Claims Commissioner in accordance with section 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim. (c) In each action authorized by the Claims Commissioner pursuant to subsection (a) or (b) of this section or by the General Assembly pursuant to section 4-159 or 4-159a, the claimant shall allege such authorization and the date on which it was granted, except that evidence of such authorization shall not be admissible in such action as evidence of the state's liability. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances. (d) No such action shall be brought but within one year from the date such authorization to sue is granted. With respect to any claim presented to the Office of the Claims Commissioner for which authorization to sue is granted, any statute of limitation applicable to such action shall be tolled until the date such authorization to sue is granted. The claimant shall bring such action against the state as party defendant in the judicial district in which the claimant resides or, if the claimant is not a resident of this state, in the judicial district of Hartford or in the judicial district in which the claim arose. (e) Civil process directed against the state shall be served as provided by section 52-64. (f) Issues arising in such actions shall be tried to the court without a jury. (g) The laws and rules of practice governing disclosures in civil actions shall apply against state agencies and state officers and employees possessing books, papers, records, documents or information pertinent to the issues involved in any such action. (h) The Attorney General, with the consent of the court, may compromise or settle any such action. The terms of every such compromise or settlement shall be expressed in a judgment of the court. (i) Costs may be allowed against the state as the court deems just, consistent with the provisions of chapter 901. (j) The clerk of the court in which judgment is entered against the state shall forward a certified copy of such judgment to the Comptroller. The Attorney General shall certify to the Comptroller when the time allowed by law for proceeding subsequent to final judgment has expired and the Attorney General shall designate the state agency involved in the action. Upon receipt of such judgment and certification the Comptroller shall make payment as follows: Amounts directed by law to be paid from a special fund shall be paid from such special fund; amounts awarded upon contractual claims for goods or services furnished or for property leased shall be paid from the appropriation of the agency which received such goods or services or occupied such property; all other amounts shall be paid from such appropriation as the General Assembly may have made for the payment of claims. (k) Not later than five days after the convening of each regular session, the Attorney General shall report to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary on the status and disposition of all actions authorized pursuant to this section or section 4-159, or brought against the state under any other provision of law and in which the interests of the state are represented by the Attorney General. The report shall include: (1) The number of such actions pending in state and federal court, categorized by the alleged ground for the action, (2) the number of new actions brought in the preceding year in state and federal court, categorized by the alleged ground for the

state.[184] Importantly, however, pursuant to Section 4-160(b), in any claim alleging malpractice against the state, a state hospital or against a physician or other licensed health care provider employed by the state, the attorney or party filing a malpractice claim may submit a certificate of good faith and, if such a certificate is submitted, the Commissioner "shall" authorize suit against the state on such claim.[185] The Court noted that the Claims Commissioner granted the plaintiff permission to sue in the case before it pursuant to Section 4-160(b).[186] The Court disagreed with the defendants' argument that the basis of the claim contained in the notice filed with the Commissioner was materially different from the basis of the claim at trial.[187] The Court added that although the claim in the notice was not as particularized as it might have been, the plaintiffs had not yet had the benefit of discovery.[188] The Court also observed that under Section 4-147(2) the claim in the notice need not be particularized, as all that is statutorily required is a concise statement of the basis of the claim.[189]

XI. Trial Practice

Lund v. Milford Hospital, Inc.[190] discussed the rules regarding repleading after a motion to strike has been granted. The plaintiff filed a substitute complaint after the trial court granted the defendant's motion to strike the original complaint on the ground that the plaintiff's

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action, (3) the number of actions disposed of in the preceding year, categorized by the ground for the action that was disposed of and whether the action was disposed of by settlement or litigation to final judgment, and the amount paid for actions within the respective categories, and (4) such other information as may be requested, from time to time, by the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary. The report shall identify each action disposed of by payment of an amount exceeding one hundred thousand dollars."

184 *Arroyo*, 175 Conn. App. at 501.
185 *Id.* at 501-02.
186 *Id.* at 497.
187 *Id.* at 505.
188 *Id.* at 506.
189 *Id.*
190 *Lund*, 326 Conn. at 846.

action was barred by the firefighters rule.[191] The trial court sustained the defendant's objection to the substitute complaint, finding that despite certain new allegations the plaintiff's pleading failed to state a claim for which relief could be granted.[192] The Supreme Court stated that the governing legal principles on motions to strike were well-established. After a trial court has granted a motion to strike, a party may either amend his or her pleading pursuant to Practice Book Section 10-44[193] or, on the rendering of judgment, file an appeal.[194] The Court emphasized that the choices are mutually exclusive because the filing of an amended pleading operates as a waiver of the right to claim that there was an error in the sustaining of the motion to strike of the original pleading.[195] Where the plaintiff elects to replead following the granting of a motion to strike, the defendant may take advantage of the waiver rule by arguing that the amended complaint is not materially different than the stricken complaint.[196] The trial court is required to compare the two complaints to determine whether the amended complaint "advanced the pleadings" by remedying the defects identified by the trial court in granting the earlier motion to strike.[197] The Court further stated that, in determining whether the substitute pleading was "materially different," the pleading must be read in the light most favorable to the plaintiff.[198] The Court continued by explaining that changes in the amended pleading are material if they reflect a "good faith" effort to

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191 *Id.* at 848-49.

192 *Id.* at 849.

193 Practice Book §10-44 provides: "Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross-complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules."

194 *Lund*, 326 Conn. at 850.

195 *Id.*

196 *Id.*

197 *Id.* at 851.

198 *Id.*

file a complaint that states a cause of action in a manner responsive to the defects found by the trial court in granting the earlier motion to strike.[199] Mere rewording that basically restates the prior allegations is insufficient to render a complaint new following the granting of a previous motion to strike; the changes in the pleading need not, however, be extensive to be material.[200] With respect to the subject case, the Court disagreed with the defendant's argument that the two complaints were not materially different and that the plaintiff had abandoned any claim of error with respect to the trial court's prior ruling striking the original complaint.[201]

The relation back doctrine was given additional clarity by the Supreme Court in *Briere v. Greater Hartford Orthopedic Group, P.C.*[202] The cause of action, as alleged in the original complaint, arose from the defendants' alleged negligent use of a skull clamp during an operation on the plaintiff, which caused an injury to the spinal cord leading to quadriparesis.[203] The proposed amended complaint replaced the allegations with allegations of the improper use of a retractor blade.[204] The Court stated that it is proper to amplify or expand what has already been alleged in support of a cause of action, but where an entirely new and different factual scenario is presented, a new or different cause of action is stated and the amendment does not relate back.[205] The Court added that it was apparent after a review of its case law that in order to provide fair notice to the opposing party, the proposed amendment must fall within the scope of the original cause of action, which is the transaction or occurrence underpinning the plaintiff's claim against the opposing party.[206] The Court explained that the determination of what the original cause of action is

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[199] *Id.* at 852.
[200] *Id.* at 853.
[201] *Id.* at 851.
[202] 325 Conn. 198, 157 A.3d 70 (2017).
[203] *Id.* at 201.
[204] *Id.*
[205] *Id.* at 207.
[206] *Id.* at 210.

requires a case-by-case inquiry by the trial court.[207] The Court further explained that if the new allegations state facts that contradict the original cause of action, then it is clear that the new allegations do not fall within the scope of the original cause of action and, therefore, do not relate back to the original pleading.[208] The Court additionally explained that an absence of a direct contradiction does not end the trial court's inquiry; the trial court must still determine whether the new allegations amplify the original cause of action or state a new cause of action entirely.[209] The Court instructed the trial court in undertaking this inquiry to consider certain factors, including whether the original and new allegations involve the same actor or actors, allege events that occurred during the same time frame, occurred at the same location, resulted in the same injury, allege substantially similar types of behavior, and require the same types of evidence and experts.[210] The Court concluded that the amended complaint related back because it did not contradict the plaintiff's theory that the surgeon improperly used medical instruments during the surgery and it adequately placed the defendants on notice that his claim related to the surgeon's conduct during the surgery.[211]

Gostyla v. Chambers[212] faced an impression of first impression; namely, whether a biomechanical expert may properly provide an opinion on causation in a personal injury case. The plaintiff alleged that he sustained injuries as a result of the defendant's truck backing into his motor vehicle.[213] The defendant's biomechanical expert testified at trial, and opined after reviewing documentation, including the plaintiff's medical records, that the collision caused the plaintiff to experience, at most, a g-force of 2.3, less than the force someone would be subjected to by sitting down

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[207] *Id.*

[208] *Id.* at 211.

[209] *Id.*

[210] *Id.*

[211] *Id.* at 213-14.

[212] 176 Conn. App. 506, 171 A.3d 98, *cert. denied*, 327 Conn. 993, 175 A.3d 1244 (2017).

[213] *Id.* at 508-09. The defendant admitted liability, but left the plaintiff to his proof as to causation. *Id.* at 509.

quickly.[214] Notwithstanding the expert's concession that he was not qualified to contest the accuracy of the diagnoses of the plaintiff's injuries, he testified based upon a reasonable degree of scientific and biomechanical certainty that the motor vehicle accident did not cause the plaintiff's injuries.[215] The plaintiff appealed after the jury returned a defense verdict, arguing that the trial court erred in admitting the expert testimony.[216] The Appellate Court began its discussion by reviewing the standards used in reviewing a claim involving whether expert testimony was properly admitted. The Court stated that a trial court has wide discretion in ruling on the admissibility of expert testimony.[217] The Court reiterated the standard as to whether expert testimony should be admitted: Expert testimony should be admitted when (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues.[218] The Court further stated that if reasonable qualifications are established, then objections go to the weight as opposed to the admissibility of the evidence.[219] The Court added that just because a witness qualifies to be expert regarding certain matters, it does not follow that the expert is qualified to offer opinions in other fields.[220] After noting that its research failed to uncover any Connecticut authority addressing the qualifications of biomechanical engineers to render opinions on causation, the Court looked to the law of other jurisdictions and adopted the following rule: a biomechanical engineer is qualified to provide his or her opinion as to the amount of force generated by a collision and the types of injuries likely to result from that force, but the expert may not testify that a specific plaintiff's injuries were caused by a collision because such testimony required

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214 *Id.*
215 *Id.* at 509-10.
216 *Id.* at 510-11.
217 *Id.* at 511.
218 *Id.* at 512.
219 *Id.*
220 *Id.*

the diagnosis of a medical condition, which requires the expertise of a medical doctor.[221] The Court held that it was an error to admit the expert opinion in the case before it because the engineer did not possess the qualifications required to offer an opinion as to whether the plaintiff sustained injuries as a result of the accident.[222] Notwithstanding the Court's holding regarding the admissibility of the expert testimony, the Court found that the plaintiff failed to meet his burden in a civil case that the improper ruling was harmful, in other words, that the error likely affected the result.[223] The Court emphasized that the plaintiff failed to provide an adequate record for review; specifically, the plaintiff did not present the Court with the trial transcripts of the plaintiff, the treating medical providers, the defendant's medical expert, the parties' summations or the trial court's jury charges.[224]

Whether a prevailing party in a civil action can enforce an unpaid award of costs through a motion for civil contempt rather than pursuing postjudgment remedies was answered by *Pease v. Charlotte Hungerford Hospital*.[225] The defendant after obtaining a defense verdict in a medical malpractice case, filed a bill of costs which was reviewed and approved by the trial court.[226] As a threshold issue, the Supreme Court found that the denial of a postjudgment motion for civil contempt constituted an appealable final judgment.[227] The Court next held that it would follow the majority rule that outside of the marital dissolution and child support area, taxation of costs are not subject to enforcement by civil contempt without a showing of extraordinary circumstances.[228]

Oliphant v. Health[229] discussed the standards used in reviewing a motion to open a judgment of nonsuit for failing

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[221] *Id*. at 514.
[222] *Id*. at 514-15.
[223] *Id*. at 515-16.
[224] *Id*. at 517.
[225] 325 Conn. 363, 157 A.3d 1125 (2017). The Supreme Court noted that the defendant did not utilize postjudgment remedies: executing the award of costs; placing a judgment lien on the plaintiff's real or personal property; and examining the plaintiff as a judgment debtor or engaging in other types of postjudgment discovery. *Id*. at 366.
[226] *Id*. at 365.
[227] *Id*. at 367.
[228] *Id*. at 378.
[229] 170 Conn. App. 360, 154 A.3d 582, *cert. denied*, 325 Conn. 921, 163 A.3d 620 (2017).

to attend a pretrial status conference. The plaintiff, a self-represented party, did not dispute that she received notice of the pretrial, but contended that she believed that an attorney representing her in a different matter was going to reschedule the matter.[230] The Appellate Court, in affirming the denial of the plaintiff's motion to open, began its analysis by referring to General Statutes Section 52-212.[231] The Court observed that it did not undertake a plenary review of a trial court's decision to deny or grant a motion to open; rather, the issue is whether a trial court abused its discretion.[232] The Court stated that the trial court did not abuse its discretion, explaining that the trial court found the plaintiff's arguments regarding her attorney in a different matter not be credible.[233] The Court also noted that the trial court found that the plaintiff's failure to attend the conference was not due to mistake, accident, other reasonable cause, or anything other than negligence.[234] The defendant failed to appear for a trial management conference in *Questell v. Farogh*.[235] On appeal, the defendant in *Questell* fared no better than the plaintiff in *Oliphant*. The defendant claimed that she was prevented by mistake from attending the conference.[236] The Appellate Court affirmed the trial court's denial of the

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[230] *Id.* at 361.

[231] *Id.* at 362. General Statutes § 52-212 provides: "(a) 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 it was rendered or passed, 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. (b) The complaint or written motion shall be verified by the oath of the complainant or his attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or defendant failed to appear. (c) The court shall order reasonable notice of the pendency of the complaint or written motion to be given to the adverse party, and may enjoin him against enforcing the judgment or decree until the decision upon the complaint or written motion."

[232] *Id.* at 363.

[233] *Id.* at 364.

[234] *Id.*

[235] 175 Conn. App. 262, 167 A.3d 492 (2017).

[236] *Id.* at 264.

defendant's motion to open the default judgment, noting that a motion to open is addressed to the trial court's discretion and the action of the trial court will not be disturbed on appeal unless it acted unreasonably and in clear abuse of its discretion.[237] The Court explained that negligence is no ground for vacating a judgment.[238] The Court held that the trial court could reasonably have found that the defendant's failure to attend the conference was due to her own negligence because despite having actual notice of the conference she did not attempt to contact the court to clarify her assumption that the conference had been canceled.[239] *Emerick v. Town of Glastonbury*[240] was a third case involving the trial court's inherent power to impose sanctions on litigants. The plaintiff, a self-represented party, brought a claim against the defendant, sounding in private nuisance, reckless and wanton conduct, trespass, intentional infliction of emotional distress, negligent infliction of emotional distress and breach of fiduciary duty.[241] During the course of the jury trial, the plaintiff inappropriately challenged the trial court's rulings from the outset of the trial to the order of dismissal, including: consistently interrupting and speaking over the court; refusing to accept evidentiary rulings; insulting the court; making unsubstantiated allegations of gross incompetence; making unsubstantiated allegations of collusion between the court and defense counsel; and making gratuitous remarks, sarcastic grunts and audible sighs in response to the court's rulings.[242] The Appellate Court affirmed the trial court's dismissal of the plaintiff's case, remarking that the sanction of dismissal does not constitute an abuse of discretion where a party shows a deliberate, contumacious or unwarranted dis-

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[237] *Id*. at 264-67. The Appellate Court explained that in order to set aside a judgment, there must be a showing that (1) a good defense existed at the time judgment was entered and (2) the party seeking to set aside the judgment was prevented from appearing because of mistake, accident, or other reasonable cause. *Id*. at 268.

[238] *Id*. at 269-70.

[239] *Id*. at 269.

[240] 177 Conn. App. 701, 173 A.3d 28, *cert. denied*, 327 Conn. 994, 175 A.3d 1245 (2017).

[241] *Id*. at 703-04.

[242] *Id*. at 735.

regard for the court's authority.[243]

Weihing v. Preto-Rodas[244] affirmed a judgment in favor of the defendants following a jury trial. The plaintiff brought an action under General Statutes Section 22-357,[245] claiming that she was injured when she fell to the ground due to the defendants' twelve pound Corgi-Chihuahua mix attacking her two pit bull mixes and her German Shepard-Akita mix.[246] In response to jury interrogatories, the jury found (1) that the plaintiff did not prove that the actions of the defendants' dog were the proximate cause of her injuries and (2) that the photographs of the defendants' dog's injuries were evidence of teasing, tormenting, or abusing.[247] The Appellate Court rejected the plaintiff's argument that it was error to admit into evidence the photographs of the defendants' dog's injuries, explaining that it did not need to reach the plaintiff's claims regarding the photographs.[248] The Court stated that the only evidence in support of the plaintiff's contention that the defendants' dog attacked her dogs first and caused her injuries was her own testimony.[249] The Court further stated that it was reasonable to conclude from the jury's answers to the interrogatories that the jury did not credit the plaintiff's testimony.[250]

The plain error doctrine did not save the plaintiff's action in *Gordon v. Gordon*.[251] The trial court granted the defendant's motion for summary judgment because the plaintiff's

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[243] *Id.* at 736.

[244] 170 Conn. App. 880, 155 A.3d 1278 (2017).

[245] General Statutes § 22-357 provides: "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 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 the 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."

[246] *Weihing*, 170 Conn. App. at 882-83.

[247] *Id.* at 883.

[248] *Id.* at 884-85.

[249] *Id.* at 885.

[250] *Id.*

[251] 170 Conn. App. 713, 155 A.3d 809, *cert. denied*, 327 Conn. 904, 170 A.3d 1 (2017).

claims were barred by the applicable statutes of limitations.[252] On appeal, the plaintiff argued for the first time that the trial court committed plain error in granting the motion for summary judgment because the defendant had not raised the statute of limitations as a special defense.[253] The Appellate Court stated that it was not bound to consider a claim unless it was raised at trial or arose subsequent to the trial.[254] The Court explained that the plain error doctrine is not a rule of reviewability; rather, it is a rule of reversibility.[255] The Court further explained that the plain error doctrine is reserved for extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceeding.[256] The Court noted that under Practice Book Section 17-44, a party may move for summary judgment at any time, regardless of whether the pleadings are closed, if no scheduling order exists and the case has not been assigned for trial.[257] The Court was not persuaded that the granting of the summary judgment motion under the circumstances affected the fairness and integrity of the judicial proceeding and, accordingly, affirmed the summary judgment.[258]

In *Hammer v. Posta*,[259] the defendants appealed after an adverse judgment in a courtside trial. The defendants' argued that the trial court committed error by relying on the arguments of counsel, rather than the medical records that had been admitted as evidence, in determining the damages in the case.[260] The Appellate Court explained that although a trial court is obligated to carefully consider all of the evidence, it does not have to read the full text of every exhibit.[261] The Court, in rejecting the defendants' argument, observed

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[252] *Id*. at 718-20.
[253] *Id*. at 720-21.
[254] *Id*. at 721.
[255] *Id*.
[256] *Id*. It is noted that Practice Book § 60-5 codifies the plain error doctrine.
[257] *Id*. at 722-23.
[258] *Id*. at 723.
[259] 170 Conn. App. 701, 155 A.3d 801 (2017).
[260] *Id*. at 710. The trial court stated that it did not read the exhibits and reports but that it was sure they were recited properly by counsel. *Id*. The court further stated that based on the evidence it heard and the arguments, judgment would enter in favor of the plaintiff. *Id*.
[261] *Id*. at 711.

that both counsel thoroughly examined the plaintiff about his claimed injuries and that portions of the medical reports were read into the record.[262] The defendants fared no better in their next argument that the trial court could not rely on the plaintiff's testimony alone in finding that his injuries were permanent. The Court stressed that the permanency of an injury is a finding that can be determined by the trier of fact without expert testimony.[263] The Court continued in stating that a trier of fact can infer that an injury is permanent notwithstanding that there is no medical testimony in support of the permanency.[264]

Meridian Partners, LLC v. Dragone Classic Motorcars, Inc.[265] involved motions to enforce a settlement agreement. The trial court after a hearing on the plaintiff's motion to enforce the settlement agreement and the defendants' motion to enforce the settlement agreement entered an order that the parties should execute mutual releases within a certain number of days.[266] The trial court denied the defendants' motions to vacate the settlement order.[267] On appeal, the defendants maintained that after the settlement was agreed to, the mutual releases, confidentiality agreement, and nondisparagement agreement all still to be drafted, assented to and executed.[268] The Appellate Court, in deciding in favor of the plaintiff, explained that there was no dispute about the settlement agreement or its terms and

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[262] *Id*. The Appellate Court remarked that even though the trial court did not commit reversible error under the circumstances of the case, it did not countenance the failure of a trial court to consider all of the evidence submitted by the parties. *Id*., note 8.

[263] *Id*. at 711-12.

[264] *Id*. at 712. The Appellate Court cited to *Royston v. Factor*, 1 Conn. App. 576, 474 A.2d 108, *cert. denied*, 194 Conn. 801, 477 A.2d 1021 (1984) in support of its holding. In *Royston*, the Appellate Court concluded that the trier of fact could find, by inference, that the plaintiff's injury was permanent on the basis that her disability was still present two years after the accident. *Id*. at 577.

[265] 171 Conn. App. 355, 157 A.3d 87 (2017). 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).

[266] *Id*. at 358-59.

[267] *Id*. at 359-61.

[268] *Id*. at 365.

emphasized that both the plaintiff and the defendants filed motions to enforce.[269] The Court found that the trial court properly concluded that the settlement agreement should be enforced because the terms of the agreement were clear and unambiguous.[270]

Exceptions to the hearsay rule were the principal issues discussed in *Reyes v. Medina Loveras, LLC*.[271] The facts giving rise to the case were contested; the plaintiff alleged that while she was in men's bathroom in the defendant's restaurant, she steadied herself on the bathroom sink to take a picture of herself and the sink fell off the wall, causing her to injure her buttocks when she fell onto shattered pieces of the sink; the defendant contended that the plaintiff was urinating into the sink when the sink collapsed.[272] The critical evidentiary issue was whether the trial court properly admitted a hospital medical record wherein a doctor stated that the plaintiff while drunk was attempting to urinate into a sink when it collapsed, which caused her to fall.[273] After the jury returned a verdict for the defendant, the plaintiff appealed and argued that the introduction of the hospital record was an error.[274] The Appellate Court stated that a trial court's ruling on an evidentiary matter will be overturned only upon a showing of a clear abuse of discretion.[275] The Court further stated that whether evidence is admissible under an exception to the hearsay rule is a question of law and, accordingly, subject to plenary review on appeal.[276] The Court also stated that an admission of a

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[269] *Id*. at 367-68. The Appellate Court distinguished the cases of *WiFiLand, LLP v. Hudson*, 153 Conn. App. 87, 100 A.3d 450 (2014) and *Santos v. Massad-Zion Motor Sales Co., Inc.*, 160 Conn. App. 12, 123 A.3d 883, *cert. denied*, 319 Conn. 959, 125 A.3d 1013 (2015) where the settlement agreements were not clear and unambiguous and, consequently, the agreements were not summarily enforceable. *Meridian Partners, LLC*, 171 Conn. App. at 365-68. The Court stressed that in *WiFiLand* and *Santos* the confidentiality provisions were essential terms of the settlement agreements and the parties never agreed to the terms of the provisions. *Id*. at 367-68.

[270] *Id*. at 368-69.

[271] 174 Conn. App. 804, 166 A.3d 88 (2017).

[272] *Id*. at 805-06.

[273] *Id*. at 806.

[274] *Id*. at 806-07.

[275] *Id*. at 807.

[276] *Id*. at 810.

party may be admissible as an exception to the hearsay rule.[277] The Court additionally stated that there is no requirement that the statement be against the interest of the party when made or that the party have firsthand knowledge of its content.[278] At trial, the physician from the hospital who prepared the record testified that the information contained in the record would have come from the plaintiff.[279] The Court found that the record was properly admitted because there was testimony attributing the statement to the plaintiff and the trial court properly classified the statement as a party admission.[280] In the alternative, the Court explained that the statement was admissible under the hospital records exception to the hearsay rule.[281]

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[277] *Id.* Code of Evidence § 8-3 (1) provides: "(1) Statement by a party opponent. A statement that is being offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, (B) a statement that the party has adopted or approved, (C) a statement by a person authorized by the party to make a statement concerning the subject, (D) a statement by a coconspirator of a party while the conspiracy is ongoing and in furtherance of the conspiracy, (E) in an action for a debt for which the party was surety, a statement by the party's principal relating to the principal's obligations, or (F) a statement made by a predecessor in title of the party, provided the declarant and the party are sufficiently in privity that the statement of the declarant would affect the party's interest in the property in question."

[278] *Id.*

[279] *Id.* at 811.

[280] *Id.*

[281] *Id.* In support of its analysis, the Appellate Court cited to General Statutes § 52-180, which provides: "(a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if the trial judge finds that it was made in the regular course of any business, and that it was the regular course of the business to make the writing or record at the time of the act, transaction, occurrence or event or within a reasonable time thereafter. (b) The writing or record shall not be rendered inadmissible by (1) a party's failure to produce as witnesses the person or persons who made the writing or record, or who have personal knowledge of the act, transaction, occurrence or event recorded or (2) the party's failure to show that such persons are unavailable as witnesses. Either of such facts and all other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of the evidence, but not to affect its admissibility." *See also* Code of Evidence § 8–4. The Appellate Court further cited to General Statutes § 4-104, which provides: "Each private hospital, public hospital society or corporation receiving state aid shall, upon the demand of any patient who has been treated in such hospital and after his discharge therefrom, permit such patient or his physician or authorized attorney to examine the hospital record, including the history, bedside notes, charts, pictures and plates kept in connection with the treatment of such patient, and permit copies of such history, bedside notes and charts to be made by such patient, his physician or authorized attorney. If any such hospital, society or corporation is served with a subpoena

The Court went on to explain that a hospital record, as a whole, is not necessarily admissible; entries in the record are not admissible unless they contain information having a bearing on diagnosis or treatment.[282] The Court concluded that per the testimony of the hospital physician the statement contained in the hospital records was relevant to the diagnosis or treatment of the plaintiff given the nature of her injuries.[283] Moreover, the Court observed that drunkenness is often medically germane to treatment and is, therefore, admissible.[284]

Kurisoo v. Ziegler[285] held that a trial court lacks authority to render summary judgment on a ground not raised or briefed by the parties that does not implicate the court's subject matter jurisdiction. The plaintiff sued the defendant, Mystic Seaport Museum (Museum), for injuries he suffered when he was struck by a motor vehicle operated by the named defendant, who was participating in an antique

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issued by competent authority directing the production of such hospital record in connection with any proceedings in any court, the hospital, society or corporation upon which such subpoena is served may, except where such record pertains to a mentally ill patient, deliver such record or at its option a copy thereof to the clerk of such court. Such clerk shall give a receipt for the same, shall be responsible for the safekeeping thereof, shall not permit the same to be removed from the premises of the court and shall notify the hospital to call for the same when it is no longer needed for use in court. Any such record or copy so delivered to such clerk shall be sealed in an envelope which shall indicate the name of the patient, the name of the attorney subpoenaing the same and the title of the case referred to in the subpoena. No such record or copy shall be open to inspection by any person except upon the order of a judge of the court concerned, and any such record or copy shall at all times be subject to the order of such judge. Any and all parts of any such record or copy, if not otherwise inadmissible, shall be admitted in evidence without any preliminary testimony, if there is attached thereto the certification in affidavit form of the person in charge of the record room of the hospital or his authorized assistant indicating that such record or copy is the original record or a copy thereof, made in the regular course of the business of the hospital, and that it was the regular course of such business to make such record at the time of the transactions, occurrences or events recorded therein or within a reasonable time thereafter. A subpoena directing production of such hospital record shall be served not less than twenty-four hours before the time for production, provided such subpoena shall be valid if served less than twenty-four hours before the time of production if written notice of intent to serve such subpoena has been delivered to the person in charge of the record room of such hospital not less than twenty-four hours nor more than two weeks before such time for production."

[282] *Reyes*, 174 Conn. App. at 812.

[283] *Id.* at 812-13.

[284] *Id.* at 813. The Appellate Court cited *D'Amato v. Johnston*, 140 Conn. 54, 61-62, 97 A.2d 893 (1953).

[285] 174 Conn. App. 462, 470-71, 66 A.3d 75 (2017).

car show sponsored by the Museum.[286] The defendant Museum filed motions for summary directed to the plaintiff's claims of direct negligence and vicarious liability for the negligence of the named defendant, arguing that it owed no duty to the plaintiff under either theory.[287] The trial court granted the motions for summary judgment because the defendant owed no duty to the plaintiff based on public policy considerations.[288] The Appellate Court reviewed Connecticut's jurisprudence regarding the establishment of a duty; namely, (1) whether an ordinary person knowing what that party knew or should have known would anticipate that harm of the general nature of that sustained was likely to occur, and (2) whether on the basis of public policy the defendant's responsibility should extend to the particular consequences or particular plaintiff.[289] The Court reversed the entry of the summary judgments in favor of the defendant because the trial court based its decisions on the second prong of the duty test regarding public policy, an argument neither raised nor briefed by the defendant in either motion for summary judgment.[290]

The meaning of "personally delivered" as provided in General Statutes Section 52-593a[291] was discussed in *Johnson v. Preleski*.[292] The petitioner appealed from the dismissal of his petition for a new trial based on newly discovered evidence under General Statutes Section 52-270.[293]

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[286] *Id.* at 463-64.
[287] *Id.* at 466-68.
[288] *Id.*
[289] *Id.* at 469-70.
[290] *Id.* at 470-71.
[291] General Statutes § 52-593a provides: "(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal, constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery."
[292] 174 Conn. App. 285, 166 A. 3d 783 (2017).
[293] *Id.* at 286-87. The respondent was the state's attorney for the judicial district of New Britain. *Id.* at 286. General Statutes § 52-270(a) provides: "The Superior Court may grant a new trial of any action that may come before it, for mispleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute

Subsequent to being convicted of murder, the petitioner was sentenced to a term of incarceration of forty-five years.[294] The Appellate Court first stated that under General Statutes Section 52-582[295] no petition for a new trial shall be brought beyond three years after the rendition of the judgment complained of.[296] The Court next stated that in a criminal case the date of rendition of judgment is the date of the imposition of the sentence by the trial court.[297] The Appellate Court summarized the salient facts as follows: The date of the sentencing was August 5, 2011; the petitioner's counsel faxed a copy of the process in the petition for a new trial to the marshal's office on August 5, 2014; and the marshal served the respondent on August 6, 2014.[298] The Court rejected the petitioner's argument that General Statutes Section 52-593a saved his action from the statute of limitations because the faxed process established that service was "personally delivered to the state marshal" before the statute of limitations expired.[299] The Court stated that it had previously interpreted the phrase "personally delivered" in *Gianetti v. Connecticut Newspapers Publishing Co.*,[300] where it decided that although a plaintiff is permitted to mail the process to the marshal, the determinative standard is when the marshal received the process, not when it was mailed.[301] The Court stated that "personally

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with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of an action." The Appellate Court explained that in an action on a petition for a new trial, a petitioner is not a criminal defendant; rather he or she is a civil petitioner and the action is commenced by service of civil process and brought as a civil action. *Johnson*, 174 Conn. App. at 286, note 1.

294 *Johnson*, 174 Conn. App. at 286.

295 General Statutes § 52-582 provides: "No petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition based on DNA (deoxyribonucleic acid) evidence that was not discoverable or available at the time of the original trial may be brought at any time after the discovery or availability of such new evidence."

296 *Johnson*, 174 Conn. App. at 294.

297 *Id.*

298 *Id.* at 287, 289, 296.

299 *Id.* at 292-95.

300 136 Conn. App. 67, 73-74, 44 A.3d 191, *cert. denied*, 307 Conn. 923, 55 A.3d 567 (2012).

301 *Johnson*, 174 Conn. App. at 295.

delivered" required receipt in person or a showing that the item to be delivered has come into the physical possession of the person to whom it is delivered.[302] Applying the above standard, the Court found that the faxed process to the state marshal fell short of demonstrating that the process was personally delivered to the marshal on that date, as it only established that the process was sent but not whether the process came into possession of the marshal on that date.[303] The Court affirmed the dismissal of the petition.[304]

The proper method of submitting a request to charge was the central issue in *Shook v. Bartholomew*.[305] The defendant argued, on appeal, that the trial court erred by refusing to charge the jury on comparative negligence notwithstanding the submission of a request to charge on the issue.[306] The Appellate Court observed that the defendant's request to charge contained no facts or evidence tailored to the particular case and it provided no guidance to the trial court regarding how the principles of comparative negligence applied to the facts of the case.[307] The Court stated that a proper request to charge cannot merely be a statement of an abstract principle of law.[308] The Court declined to review the defendant's argument because the defendant failed to follow the procedural rules to preserve the claim.[309]

Hosein v. Edman[310] makes it clear that the trier of fact can disbelieve any and all evidence presented at trial, including testimony of an expert. The plaintiff commenced an action against the defendant Department of

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302 *Id.* at 296.
303 *Id.*
304 *Id.* at 298.
305 173 Conn. App. 813, 165 A.3d 256 (2017).
306 *Id.* at 815.
307 *Id.* at 822.
308 *Id.* at 821-23. Practice Book § 16-23(a) provides: "When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, and the evidence to which the proposition would apply. Requests to charge should not exceed fifteen in number unless, for good cause shown, the judicial authority permits the filing of an additional number. If the request is granted, the judicial authority shall apply the proposition of law to the facts of the case."
309 *Shook*, 173 Conn. App. at 819-24.
310 175 Conn. App. 13, 21, 166 A.3d 94 (2017).

Transportation for damages allegedly sustained in a motor vehicle with an employee of the defendant.[311] After a court-side trial, the court entered a judgment for the defendant, finding that the plaintiff failed to prove her claim of negligence.[312] The plaintiff argued, on appeal, that the trial court erred in disregarding the testimony of her expert witness, an accident reconstructionist.[313] The Appellate Court stated that the trial court admitted the testimony, but decided not to credit it.[314] The Court affirmed the judgment, concluding that it was peculiarly within the province of the court, as the fact finder, to accept or reject the opinions of expert witnesses.[315]

A few Practice Book changes are noteworthy. The amendments took effect on January 1, 2018. New standard interrogatories and requests for production in uninsured or underinsured motorist cases are set forth in Forms 213, 214, 215 and 216.

XII. WORKERS' COMPENSATION

Dinino v. Federal Express Corporation[316] analyzed the "motor vehicle exception" to the exclusivity provision of the Workers' Compensation Act, General Statutes Section 31-275 *et seq*. The plaintiff while moving a container off a truck was injured when he fell into a gap between the truck and

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311 *Id*. at 15.
312 *Id*.
313 *Id*.
314 *Id*. at 21-22.
315 *Id*.
316 176 Conn. App. 248, 169 A.3d 303 (2017). The exclusivity provision is contained in General Statutes § 31-284(a). The Section provides: "An employer who complies with the requirements of subsection (b) of this section 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 employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury has been caused by the wilful and serious misconduct of the injured employee or by his intoxication. All rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation."

the loading dock.[317] The plaintiff alleged that his co-employee failed to properly position the truck in the loading dock by stopping the truck too far away from the edge of the loading dock.[318] The Appellate Court affirmed the granting of the defendant co-employee's motion for summary judgment, concluding that the co-employee was not operating the truck within the meaning of Section 31-293a because the truck was in park and remained immobile during the incident.[319]

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[317] *Dinino*, 176 Conn. App. at 251.

[318] *Id.* at 252. The "motor vehicle exception" is set forth in General Statutes § 31-293a. The Section provides, in part: "If an employee or, in case of his death, his dependent has a right to benefits or compensation under this chapter on account of injury or death from injury caused by the negligence or wrong of a fellow employee, such right shall be the exclusive remedy of such injured employee or dependent and no action may be brought against such fellow employee unless such wrong was wilful or malicious or the action is based on the fellow employee's negligence in the operation of a motor vehicle ...."

[319] *Dinino*, 176 Conn. App. at 256. The Appellate Court observed that the fact that the vehicle engine was on when the accident occurred was insufficient to trigger the motor vehicle exception. *Id.* at 260.

THE FREEDOM OF INFORMATION ACT AND ITS EXCEPTIONS

By Martin B. Burke*

The Freedom of Information Act expresses a strong legislative policy in favor of the open conduct of government and free public access to government records.

> The legislature finds and declares that…the people do not yield their sovereignty to the agencies which serve them. That the people in delegating authority do not give their public servants the right to decide what is good for them to know and that it is the intent of this law that actions taken by public agencies be taken openly and their deliberations be conducted openly and that the records of all public agencies be open to the public except in those instances where superior public interest requires confidentiality.[1]

As to the genesis of the Connecticut Freedom of Information Act, it cannot be emphasized too strongly that the political climate in 1975, in the aftermath of the Vietnam War and Watergate, was such that people were fed up with furtive government. The Watergate scandal set in motion a series of negative changes in Washington resulting in a loss of faith in government and politicians. This morphed into the party in power operating without any involvement from the opposite party, making it difficult to function as a nation. Secondly, there was a slide into continuing partisan investigations.[2] The time was ripe for "good-government" proposals.

Our Freedom of Information Act was enacted in 1975. It built upon statutes enacted as far back as 1957. The first of these, An Act Concerning Public Records,[3] declared that all state and municipal records shall be public and may be copied or inspected unless they would adversely affect the

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1 18 H.R. Proc., Pt. 8, 1975 Sess., p. 3911 (remarks of Rep. Martin B. Burke).

2 *Commentary* by Alan Caron in the July 30, 2017 *Kennebec Journal* p. A6.

3 1957 P.A. 427, An Act Concerning Public Records, codified as § 1-19 of the General Statutes. Its author, John Filer, later became CEO of Aetna.

public security or financial interests of the state or municipality or if denial is necessary to provide reasonable protection to the reputation or character of the person. It also provided for a de novo appeal. A later act[4] added a repository for such records and a third[5] created a limited set of exemptions, as well as setting limitation on public meetings, requiring the adoption of a yearly schedule of meetings, and making provision for special and emergency meetings. Finally, a fourth[6] created records of investigations of tenant houses.

The 1975 Act went far beyond these provisions in requiring disclosure of public records and open meetings. The key difference was the establishment of the Freedom of Information Commission, an administrative agency open to anyone aggrieved by a denial of the access mandated by the Act.

From the initial draft of the Act, interested parties have sought to carve out exemptions to public records and open meetings. Initially State agencies, concerned with appraisals, sought an exemption from site selection discussions. Others wished discussions of employment, evaluation and dismissal of public employees to be exempt and, of course, discussions of pending claims and litigation needed to be secret for fear of educating the governments' opponents. In addition to matters deemed appropriate for executive sessions, the exempt records section of the act proved fertile ground for staking out what are now some 28 exemptions, not to mention other untold number of exemptions lurking in the General Statutes and United States Code.[7]

This article is about three kinds of public record exemptions. First, there are exceptions within the text of the statute itself, now Section 1-210(b) of the General Statutes. Upon passage in 1975, the Freedom of Information Act exempted ten categories of records from disclosure, and

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4 1963 P.A. 260, codified as an amendment to § 1-19.
5 1967 P.A. 723, codified as an amendment to §§ 1-19 and 1-21.
6 1971 P.A. 193, codified as an amendment to § 1-19.
7 Exceptions to disclosure of public records in federal statutes will be addressed in a future article.

authorized closed executive sessions for five reasons. Now there are 28 exceptions.[8] The recent, Section 1-210(b)(27) exception, concerning visual images depicting the victim of a homicide, is a result of the Newtown tragedy. Similarly, Section 1-210(b)(28) relates to documents of claims for failing foundations. Thus, some recent serious occurrences are excluded for serious protective purposes.

Second, there have been countless legislative attempts to weaken the Freedom of Information Act by addition or deletion. These must be contrasted with its purpose – free public access to government records, in light of an "overarching policy" favoring the disclosure of public records.[9]

For example, House Bill 5501 proposed to amend Sections 1-200(6) and 1-231 of the Act to eliminate the requirement that a public agency may only convene in executive session for one of the five explicitly permitted purposes before it receives oral testimony or opinion from its attorney. If the bill had passed, it would have allowed multimember public agencies to discuss with their attorneys any legal matter behind closed doors, resulting in significantly less transparency in government operations.[10] Another proposed to authorize municipalities to charge additional fees for public records requested for "commercial purposes."[11] Others were completely unnecessary. For example, House Bill 6603 would have added an exemption from disclosure for any communication privileged by the marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common or state law. But statutory protection for these privileged communications already fall within the "except as otherwise provided" language of the Act.

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8 See Section II, *infra.*

9 Gifford v. Freedom of Information Commission, 227 Conn. 641, 651, 631 A. 2d 252 (1993), quoting Superintendent of Police v. Freedom of Information Commission, 222 Conn. 621, 626, 609 A. 2d 998 (1992).

10 Final Report, Public Access and Accountability Legislation, Connecticut General Assembly, 2016 Regular Session, Freedom of Information Commission. (Hereinafter cited as "Final Report, 2016 Session").

11 House Bill 5512.

The Commission opposed a portion of Senate Bill 230,[12] which excluded a custodial statement as a public record. It did not oppose stated purpose of the bill – to improve the reliability of confessions by providing that statements made by a person during a custodial interrogation at a place of detention are presumed inadmissible unless the custodial interrogation is electronically recorded. The Commission did object to the bill's provisions excluding the recording of statements made by a person during a custodial interrogation from disclosure under the FOI Act.

A final example of an attempt to erode the Act in the 2010 Regular Session was House Bill 5344, *An Act Concerning the Nondisclosure of Information Regarding Persons Arrested for Domestic Violence*. The Commission testified in opposition that, if passed, the bill would have severely eroded the public right to access law enforcement records by excluding from public scrutiny a broad category of criminal records without giving the victims of crime the sense of privacy they seek; and that the bill ignored the fact that there are protections in place for victims when to comes to criminal records.

All these failed bills illustrate private and public attempts to withhold governmental information from the public and the mandate "that the records of all public agencies be open to the public except in those instances where superior public interest requires confidentiality."[13] Some of the proposals, such as the Newtown addition are grounded in common sense exclusions from public records. Others, most of which failed passage, were merely at the behest of special interests for their own limited purposes, adding an incursion into the original intent of the Act, which "is to make every public record and every public meeting open to the public at all times with certain specified exclusions"[14]

However, the most important purpose of this article, and perhaps the real "sleeper" in understanding exceptions to

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[12] *An Act Concerning the Videotaping of Custodial Interrogations.*
[13] 18 H.R. Proc., Pt. 8, 1975 Sess., p. 3911.
[14] *See Gifford, supra* note 9.

public records, is contained in the first eleven words of the opening sentence of Section 1-210(a) which reads:

> **Except as otherwise provided by any Federal Law or State Statute**, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.[15]

There are hundreds of these.[16]

I. Exceptions within the Act Itself

Then and now, the statute excepts specified records from its mandate of public availability. At the time of its adoption, there were ten exceptions. As of this writing, there are twenty-eight.

The original exceptions[17] were:

(1) Preliminary drafts or notes.[18]

(2) Records of law enforcement agencies not otherwise available to the public and compiled in connection with the detection or investigation of crime.[19]

(3) Records pertaining to pending claims and litigation.[20] This exception was later broadened by amending it to "pending claims *or* pending litigation".[21]

(4) Trade secrets.[22]

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15 Conn. Gen. Stat. § 1-210(a) (emphasis added).

16 Mitchell Pearlman, the former Executive Director and General Counsel of the Freedom of Information Commission was quoted as saying Connecticut's open records law lists 27 exemptions (now 28), but the statutes are "literally packed with hundreds if not thousands of superseding sections" that add many more exceptions.

17 Actual wordings of the ten original exceptions to disclosure contained in then Section 1-19 of the Connecticut General Statutes have been reduced to summaries for the sake of brevity.

18 Now codified at Conn. Gen. Stat. § 1-210(b)(11).

19 Conn. Gen. Stat. § 1-210(b)(3).

20 Conn. Gen. Stat. § 1-210(b)(4).

21 P.A. 91-140.

22 Conn. Gen. Stat. § 1-210(b)(5).

(5) Test questions, scoring keys and other examination data used to administer a licensing exam.[23]

(6) The contents of real estate appraisals and the like, made for or by an agency in connection with the acquisition of property.[24]

(7) Statements of an applicant's personal worth or personal financial data required by a licensing agency.[25]

(8) Records, reports and statement of strategy or negotiations with respect to collective bargaining.[26]

(9) Records, tax returns, reports and statements exempted by federal law or state statutes.[27]

(10) Communications privileged by the attorney-client relationship.[28]

Over the past four decades, the number of exceptions within the Act itself has nearly tripled. The ninth and tenth of the original exceptions were combined into one, and nineteen new ones have been added:

The exception for personnel and medical files and similar files, if disclosure would constitute an invasion of personal privacy, was enacted in 1977[29] and placed in second position with the subsequent exceptions renumbered accordingly. The exception protecting the names and addresses of public school and public college students was also added at that time.[30] The exceptions for information obtained by illegal means, and the exception for whistle-blowers and the resulting investigations were added in 1979.[31] Adoption records were the subject of a 1981 amendment.[32] Uncertified petitions for primaries, nominations, referenda and town meetings were made exempt from disclosure until they were

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[23] CONN. GEN. STAT. § 1-210(b)(6).
[24] CONN. GEN. STAT. § 1-210(b)(7).
[25] CONN. GEN. STAT. § 1-210(b)(8).
[26] CONN. GEN. STAT. § 1-210(b)(9).
[27] CONN. GEN. STAT. § 1-210(b)(10).
[28] CONN. GEN. STAT. § 1-210(b)(10).
[29] P.A. 77-609, now codified at CONN. GEN. STAT. § 1-210(b)(1).
[30] CONN. GEN. STAT. § 1-210(b)(1).
[31] P.A. 79-575, 79-599, now codified at CONN. GEN. STAT. § 1-210(b)(12) and (13) respectively.
[32] P.A. 81-40, now codified at CONN. GEN. STAT. § 1-210(b)(14).

processed and certified, and the subject of mandatory disclosure afterward, by a 1985 amendment.[33] Complaints made to a health authority or department, and the resulting investigations, were made exempt while they were pending or for 30 days after they were received, whichever is shorter.[34]

Educational records that are not subject to disclosure under the federal Family Educational Rights and Privacy Act were redundantly excepted from disclosure under the Act as well.[35] A wordy exception for blueprints and manuals that might be of use in a jailbreak was added in 1999,[36] and a similar exception to protect the security of public buildings a year later.[37]

Security records, codes and software that could compromise an IT system were protected in the year 2000,[38] and the residential, work and school addresses of protected witnesses in 2003.[39] Email addresses collected by the department of transportation in order to notify individuals about incidents were exempted from disclosure in any other circumstances in 2005.[40] A single amendment in 2007 added two new exceptions, one for the names and addresses of minors enrolled in parks and rec programs, and one for the responses to bid solicitations and requests for proposals until a contract is awarded.[41] Contact information for senior center enrollees became exempt in 2010.[42]

Records that are made confidential by virtue of Medicare and Medicaid contracts with the federal government are now also, redundantly it would appear, exempt from the Act.[43] Visual images of homicide victims became exempt in the wake of the Sandy Hook shootings, if they would consti-

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33 P.A. 85-577, now codified at CONN. GEN. STAT. § 1-210(b)(15).
34 P.A. 95-233, now codified at CONN. GEN. STAT. § 1-210(b)(16).
35 P.A. 97-293, now codified at CONN. GEN. STAT. § 1-210(b)(17).
36 P.A. 99-156, now codified at CONN. GEN. STAT. § 1-210(b)(18).
37 P.A. 00-69, now codified at CONN. GEN. STAT. § 1-210(b)(19).
38 P.A. 00-134, now codified at CONN. GEN. STAT. § 1-210(b)(20).
39 P.A. 03-200, now codified at CONN. GEN. STAT. § 1-210(b)(21).
40 P.A. 05-287, now codified at CONN. GEN. STAT. § 1-210(b)(22).
41 P.A. 07-213, now codified at CONN. GEN. STAT. § 1-210(b)(23) and (b)(24) respectively.
42 P.A. 10-0017, now codified at CONN. GEN. STAT. § 1-210(b)(25).
43 P.A. 11-0242, now codified at CONN. GEN. STAT. § 1-210(b)(26).

tute an unwarranted invasion of privacy.[44] And records of faulty or failing foundations will be exempt for seven years after they are acquired.[45]

It is apparent that some of the current Section1-210 (a) exceptions predate the Act, such as common law privileges. Certain exceptions raise questions as to what circumstances led to their exclusion as public records. Many are plain on their face, others probably have a story behind them, furnishing an in depth research project themselves.

II. Exceptions External to the Act

It is difficult to list all of the outside Freedom of Information Act public records exceptions and the numerous unsuccessful attempts to add more. Moreover, such an analysis would merely be a snapshot in time, as history has shown attempts to amend the Freedom of Information Act occurred in each legislative session since passage in 1975. In fact, even the Freedom of Information Commission has not recorded outside exceptions since 1999. Nonetheless the many state statutory outside exemptions are included in an Appendix to this article.

The results of drastic FOIC budget cuts are set forth in an article originally appearing in the *Waterbury Republican American*, reprinted in the December 26, 2016 *Journal Inquirer*. Despite these cuts, the FOIC handles a staggering 900 complaints on average yearly.

An exceptional analysis was created in a 1999 research report by Mary M. Janicki, Principal Analyst for the Office of Legislative Research.[46] No more recent such analysis can be found, except in the appendix to this article. Ms. Janicki's report contains three sections: (1) exceptions that appear elsewhere in the statutes (at that time, 217 sections); (2) information that may or must be kept confidential; and (3) information subject to limited disclosure. It is not the pur-

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[44] P.A. 13-0311, now codified at Conn. Gen. Stat. § 1-210(b)(27).

[45] P.A. 16-45, now codified at Conn. Gen. Stat. § 1-210(b)(28).

[46] Mary M. Janicki, Exceptions to the Freedom of Information Act, Office of Legislative Research, 99R-0048 (January 12, 1999) *available at* https://www.cga.ct.gov/PS99/rpt%5Colr%5Chtm/99-R-0048.htm.

pose of this article to discuss confidential or restricted-access records, as they are beyond its scope.

III. Selected Cases

In *Wilson v. Freedom of Information Commission*,[47] students at the University of Connecticut sought to obtain documents from a program review committee appointed by Kenneth Wilson, vice president for academic affairs, to review the operations of various academic departments and make recommendations to improve their efficiency. Some of these were given to the committee under an assurance of confidentiality. Wilson refused to disclose them, claiming among other things that they were preliminary notes and drafts. The Commission disagreed, he appealed to the Court of Common Pleas, which also disagreed, and the Supreme Court, construing the exception for the first time, reversed. It observed that the Act reflects a legislative intention to balance the public's right to know what its agencies are doing with the governmental and private needs for confidentiality, and that the general rule is disclosure.[48] It concluded nevertheless that "predecisional memoranda" were within the exception, and directed judgment for Wilson.

In *Chief of Police, Hartford Police Department v. FOIC*,[49] an attorney contemplating a civil rights action against the City of Hartford sought reports of the police department's internal affairs division. The commission ordered them produced, the trial court dismissed the chief of police's ensuing administrative appeal, and the Appellate Court affirmed, as did the Supreme Court. At issue was the statute's assurance that nothing in the Act was to limit the rights of litigants, and the meaning of "state or federal law." The Supreme Court concluded that the Act was to be construed on its own footing as a statute, regardless of whether it conferred greater or lesser rights than did state or federal rules of discovery. The procedural right to resist disclosure was not

47 181 Conn. 324, 435 A.2d 353 (1980).
48 *Id*. at 329.
49 252 Conn. 377, 380, 746 A.2d 1264 (2000).

among the rights of litigants that the statute protected.

In *Lieberman v. Aronow*[50] the Supreme Court construed an external exception and concluded that it was too narrow to prevent disclosure. The plaintiff, who was a faculty member and department chairman at the defendant state university health center, appealed to the trial court from the decision of the defendant Freedom of Information Commission ordering the disclosure of two reports relating to the resolution of a formal grievance against him. The Commission concluded that the reports did not constitute a "record of the performance and evaluation" within the meaning of Section10a-154a and therefore that the health center was required to disclose them. The Supreme Court agreed, and affirmed the judgment of the trial court dismissing Lieberman's appeal from the commission's decision.[51]

A divided Supreme Court considered the scope and applicability of one exemption within the statute, Section 1-210(b)(2) (medical records), and two external exemptions, Section 52-146e (the psychiatric privilege) and the federal Health Insurance Portability and Accountability Act (HIPAA), 42 United States Code Section 1320d et seq., in *Freedom of Information Officer v. Freedom of Information Commission*.[52] There, an author sought records concerning Amy Archer Gilligan during her involuntary confinement at the Connecticut State Hospital from 1924 to 1962, following her murder conviction for the arsenic poisoning of a resident of her nursing home. Gilligan's life is widely considered to be the basis for the play and movie entitled "Arsenic and Old Lace." The Department of Mental Health and Addiction Services provided some records and withheld others, claiming they were exempt from disclosure as psychiatric records under Section 52-146e. A five-member majority of the Supreme Court construed the psychiatric exemption broadly to include all records created during her involuntary confinement in a state psychiatric hospital, and found that the

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50 319 Conn. 748, 127 A.3d 970 (2015).
51 Lieberman v. Aronow, 319 Conn. 748, 749, 751, 127 A.3d 970 (2015).
52 318 Conn. 769, 122 A.3d 1217 (2015).

department had standing to assert the long-deceased Gilligan's privacy interest both because it had an interest in unimpeded communication between psychiatrist and patient, and because it would be statutorily liable for unauthorized disclosure of the communications. Two justices concurred and dissented, decrying "a needless collision between two competing statutory mandates" that might have been avoided with a narrower construction of the exemption.[53]

In *Peruta v. Freedom of Information Commission*,[54] a newspaper reporter sought the names and resident towns of pending applicants for pistol permits. The Department of Emergency Services and Public Protection provided a list, but with the names and addresses redacted. The trial court agreed that the redaction was proper, in view of the prohibition in General Statutes Section 29-28(d)[55] against the disclosure of the names and addresses of permit holders because the process of investigating the applications that were denied would reveal those that were approved. The Appellate Court affirmed, and the Supreme Court denied certification.

In *Gould v. Freedom of Information Commission*,[56] another divided Supreme Court construed the "open meetings" provisions of the Act[57] to conclude that an arbitration panel formed pursuant to the Teacher Negotiation Act[58] was not a "public agency,"[59] and therefore that the evidentiary portion of a Teacher Negotiation Act arbitration was not a public meeting, with the result that the plaintiff members of the panel were not required to provide a transcript to a newspaper reporter. Although the "pool" of potential arbi-

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53 *Id*. at 794.

54 157 Conn. App. 684, 118 A.3d 75 (per curiam), *cert. denied*, 319 Conn. 904, 122 A.3d 638 (2015).

55 Section 29-28 (d) provides: "Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person issued a permit to sell at retail pistols and revolvers pursuant to subsection (a) of this section or a state or a temporary state permit to carry a pistol or revolver pursuant to subsection (b) of this section, or a local permit to carry pistols and revolvers issued by local authorities prior to October 1, 2001, shall be confidential and shall not be disclosed, except…"

56 314 Conn. 802, 104 A.3d 727 (2014).

57 CONN. GEN. STAT. § 1-225(a).

58 CONN. GEN. STAT. § 10-153a et seq.

59 CONN. GEN. STAT. § 1-200(1)(A).

trators was maintained "in" the state department of education, neither the pool nor the three-member panels were public agencies or sub-units of the state department of education, which was an agency, since the arbitrators were paid not by the department but by the parties, and they enjoyed complete autonomy in their proceedings. Three justices dissented in three opinions, with one noting the significant fiscal consequences of the panels' work – teachers' pay comprised over 37 percent of the $12.1 billion spent by all municipalities for all governmental functions[60] – and all decrying the loss of governmental transparency resulting from a narrow construction of the statute.

The Commissioner of Public Safety appealed an order by the Commission to disclose printouts or "rap sheets" obtained from the National Crime Information Center (NCIC), in *Commissioner of Public Safety v. Freedom of Information Commission*.[61] The NCIC was created by an interstate compact and is maintained by the FBI. The NCIC's mandate of confidentiality is not inconsistent with the Act's open-records mandate, because it falls under the "except as otherwise provided by any federal law or state statute" exemption in Section 1-210(a).[62]

The plaintiff newspaper in *Commissioner of Public Health v. Freedom of Information Commission*[63] sought information about a sensational case of malpractice by a fertility doctor. The state health department had reports from two federal data banks operating under similar but not identical regulations: a practitioner data bank that limited disclosure, and a health care data bank that did not appear to permit even that. The commission ordered the health department to provide information from its own files that it had provided to the federal data banks, but not information it had received from them. Both parties appealed, and the federal government filed an amicus brief, something it does

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60 314 Conn. at 826.
61 144 Conn. App. 821, 76 A.3d 185 (2013).
62 *Id*. at 832.
63 311 Conn. 262, 86 A.3d 1044 (2014). *But see* Director of Health Affairs Planning v. FOIC, 293 Conn. 164, 977 A.2d 148 (2009).

not do as often as once a year. Relying on a more recent, clarifying amendment to the federal regulations, the Supreme Court held that the records were confidential except for those provided by the state agency from its own files.

In another NCIC case[64] the FOIC held that Rashad El Badrawi was entitled to disclosure of a document that the Commissioner of Correction obtained from NCIC's computerized database. The record in question indicated El Badrawi was listed in NCIC's file as a member of a "violent gang and terrorist organization". After El Badrawi was released from detention he requested all public records obtaining to his incarceration. The Commissioner and United States argued that NCIC printouts are confidential by virtue of 8 C.F.R. Section 236.6, and hence are exempt under General Statutes Section 1-210(a). The issue was whether 8 C.F.R. Section 236.6 applied to former detainees or current detainees, and more specifically, which agency's interpretation of the regulation would govern—that of the Commission, or that of the agency that had promulgated the regulation. The Commission's interpretation was that it only applied to present detainees, whereas the interpretation of the "promulgating agency", i.e., the U.S. Immigration and Naturalization Service, was that it applied to both. The Supreme Court deferred to the latter and held that disclosure of NCIC printouts was barred by 8 C.F.R. Section 263.6, and hence that the documents fell within the "otherwise provided" exemption to the Act set forth in Section 1-210(a).[65]

At issue in *Dept. of Public Safety v. Freedom of Information Commission*[66] was whether the FOIC properly ordered the Department of Public Safety to disclose information contained in its sex offender registry. Section 54-255 authorizes a sentencing judge to restrict dissemination of the "registration information" of sex offenders in certain cir-

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64 Commissioner of Correction v. Freedom of Information Commission, 307 Conn. 53, 52 A.3d 636 (2012).

65 307 Conn. 53, 56, 52 A.3d 636 (2012).

66 298 Conn. 703, 6 A.3d 763 (2010).

cumstances and on a case-by-case basis. Section 54-257, on the other hand, makes the sex offender "registry" a public document. The case turned upon whether the term "registration information" as used in Section 54-255 meant that same thing as "registry" in Section 54-258(a)(1). The Commission and the trial court each concluded that they did not, and ordered disclosure relating to 41 convicted sex offenders. The Supreme Court determined that the appropriate standard of review was not "abuse of discretion," which would have deferred to the Commission's interpretation of the statute it enforces, but "plenary," which did not. It was then able to conclude that there was no violation of the Act because it is clear the legislature intended that registry information pursuant to Section 54-255, which includes requested information in this case, not be disclosed except for law enforcement purposes unless the court orders that the restriction be removed. It reversed the judgment of the trial court and remanded the case with the direction to sustain the Department of Public Safety's appeal.

In *Director of Health Affairs Policy Planning v. Freedom of Information Commission*,[67] a former patient sought records of the peer-review proceedings by which his former physician's clinical privileges had been revoked by the plaintiff University of Connecticut Health Center. Section 19a-17b(d) provides that peer review proceedings "shall not be subject to discovery or introduction into evidence in any civil action." The hospital in this case happened to be a public entity, but took the position that this statute operated as an external exemption from the Act. The Commission disagreed, and ordered the records to be disclosed. The director appealed to the Superior Court, which sustained his appeal, and the commission appealed to the Supreme Court, which reversed. Like the Commission, the Supreme Court held that proceedings before the Commission were not "civil actions" within the meaning of Section 19a-17b, and therefore that the records were not exempt and must be disclosed. It is worth pointing out, however, that most hospi-

[67] 293 Conn. 164, 977 A.2d 148 (2009).

tals are not public entities, and even with respect to those that are, the statute still prohibits the introduction of the proceedings into evidence.

Finally, in *Commissioner of Emergency Services and Public Protection v. Freedom of Information Commission*[68] the issue was whether the trial court had improperly held that the search and seizure statutes, Sections 54-33a through 54-36p, satisfied the requirements set forth in Section 1-210(a) which exempts documents from disclosure under FOIA that are "*otherwise provided by any federal law or state statute*…" The Supreme Court held that they do not.

The plaintiffs were the Commissioner and the Department of Emergency Services and Public Protection. They appealed from the decision of the FOIC ordering the disclosure of certain documents relating to the Sandy Hook shooting that had been lawfully seized as part of a criminal investigation to the defendants, the *Hartford Courant* and one of its reporters. The documents sought, among other things, were a spiral bound book written by Adam Lanza, entitled "The Big Book of Granny," a photo of the class of 2002-2003 at Sandy Hook Elementary School, and a spreadsheet ranking mass murders. The Commission ordered disclosure of these documents to the defendants.

On appeal from that decision, the trial court concluded that the documents constituted public records because they related to the conduct of public business. The trial court further held, however, that the search and seizure statutes[69] shielded from disclosure all the seized property not used in a criminal prosecution, and therefore that the exemption set forth in Section 1-210(a) was satisfied under the "otherwise provided" clause. It sustained the appeal, the defendants appealed separately to the Appellate Court, and the Supreme Court transferred the appeals to itself.

In a unanimous decision, the Supreme Court reversed

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[68] Commissioner of Emergency Services and Public Protection v. Freedom of Information Commission, 330 Conn. 372, __ A.3d. __ (2018).

[69] CONN. GEN. STAT. §§ 54-33a through 54-36p.

the judgment of the trial court and remanded with direction to deny the plaintiffs' appeal, effectively sustaining the Commission's order to disclose the materials.

The Supreme Court explained that the purpose of the Act is "to balance the public's right to know what its agencies are doing, with the governmental and private needs for confidentiality."[70] It therefore agreed with the trial court "that documents that are not created by an agency, but come into its possession because there was probable cause to believe that they constitute evidence of an offense, or … evidence that a particular person participated in an offense, relate to the conduct of the public's business."[71]

As to the "otherwise provided" exception, it reiterated that all exceptions from the Act must be construed narrowly to effectuate the purpose of the Act, which favors disclosure. Otherwise, any statute governing an agency's general treatment of records – in this case, the statutes concerning materials seized pursuant to a search warrant – could become a possible restriction on disclosure.[72] Accordingly, and after a review of its previous holdings,[73] it reaffirmed that state and federal statutes that otherwise provided had to provide *by their own terms* for confidentiality.

Lastly, the Supreme Court held that the trial court pointed to nothing in the express terms of the search and seizure statutes that creates confidentiality in the documents or otherwise limits the disclosure, and reversed the judgment of the trial court.

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[70] Commissioner of Emergency Services, *supra* note 67.

[71] *Id*. at 398 (internal quotations omitted).

[72] *Id*. at 392.

[73] *Id*. at 385-89, discussing Chief of Police v. Freedom of Information Commission, 252 Conn. 377, 746 A.2d 1264 (2000); Dept. of Public Safety v. Freedom of Information Commission, 298 Conn. 703, 6 A.3d 763 (2010); Pictometry International Corp. v. Freedom of Information Commission, 307 Conn. 648, 59 A.3d 172 (2013); Commissioner of Correction v. Freedom of Information Commission, 307 Conn. 53, 52 A.3d 636 (2012); Commissioner of Public Safety v. Freedom of Information Commission, 204 Conn. 609, 529 A.2d 692 (1987); Galvin v. Freedom of Information Commission, 201 Conn. 448, 518 A.2d 64 (1986); as well as Groton Police Dept. v. Freedom of Information Commission, 104 Conn. App. 150, 931 A.2d 989 (2007).

IV. CONCLUSION

From the beginning, the history of the Freedom of Information Act has been one of tension between the principle of open government and "those circumstances where superior public interest requires confidentiality." Robert Godfrey, the deputy Speaker of the House, sounded the alarm in a letter to the editor:

> But from the beginning, your right to public records has been under attack. Bureaucrats don't like to spend time with you. Agencies don't want to show you their 'stuff.' Politicians try to hide unpopular, unethical, or embarrassing actions. This year has seen more attacks that need to be firmly repulsed. We must say "no" to the proposal that complaints to the FOIC should require a filing fee, let alone an exorbitant fee. We must say "no" to limits on the number of complaints you can bring to the commission. We must say "no" to the unending and unnecessary carve-outs for select interests and for particular kinds of information (especially those that are already protected). We must also say "no" to continuing the recent spate of FOIC budget cuts, the watchdog of your right to know.[74]

An employee of the Federal Freedom of Information Commission summed it up this way:

> It can feel Sisyphean, pushing a huge legal boulder up a steep legal hill. Only unlike Sisyphus, we sometimes get to the top. Between settlements and successful court decisions, we regularly make a small dent in governmental secrecy. … No matter how well meaning the officers, the default position for any bureaucracy will inevitably be to withhold documents. Nothing good can happen for an agency when documents are released.
>
> If requesters always shrug and walk away at that point, it means we are leaving it to FOIA bureaucrats to decide just how secret our government is going to be. That was never part of democracy's plan."[75]

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74 *Journal Inquirer*, March 25 – 26, 2017.

75 David McCraw, *Think FOIA Is a Paper Tiger? The New York Times Gives It Some Bite*, N.Y. TIMES, June 13, 2017.

Appendix A

Examples Of External Exemptions To The Freedom Of Information Act[76]

The following sections are from the Connecticut General Statutes.

§ 1-82a	Ethics Commission's evaluation of possible violations. Complaint allegations during investigation, complaint and investigation record when no probable cause shown.
§ 2-40	Report to Judiciary Committee on Judicial nominee.
§ 2-40a	Judicial Department performance evaluation of a judge.
§ 2-53g	Identity of a public employee who provides information to the Legislative Program Review and Investigations Committee.
§ 4-61dd	Identity of a whistleblower by the auditors or attorney general.
§ 4-194	Personal data (medical, psychiatric, or psychological) that would be detrimental to a person.
§ 5-169	Records and proceedings of the medical examining board appointed to review application for disability retirement when board files petition on the suitability of a physician.
§ 7-51	Access to and examination and issuance of certified copies of birth and fetal death records restricted.

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[76] Janicki, *supra* note 46, at 7 and Connecticut General Statutes, *passim*.

§ 7-314(b)	Records of a volunteer fire department are not subject to the provisions of the Freedom of information Act if the records concern fraternal or social matters.
§ 8-360	Any information regarding the location of a shelter or transitional housing for victims of domestic violence is exempt from disclosure.
§ 9-19h, § 9-20, § 9-23h, § 9-26, and § 9-32	Social Security number (SSN) from voter registration records.
§ 10-10a(e)	In the public school information system, student database is not a public record.
§ 10-151c	Teacher performance and evaluation records, unless a teacher provides written consent for release.
§ 10-233h	School Superintendent's copy of an arrested student's police report.
§ 10-154a	Performance and evaluation records of state higher education faculty and professional staff members.
§ 10-409	The Connecticut Commission on Culture and Tourism may withhold from disclosure to the public the locations of archaeological sites under consideration for listing by the Connecticut Historical Commission if disclosure would create a risk of destruction or harm to the sites.
§ 10a-253	All financial credit and proprietary information submitted to the University of Connecticut Health Center Finance Corporation in connection with a joint venture or shared service agreement is exempt under FOIA.

§ 11-25	Library's personally identifiable circulation records.
§ 12-15	State or Federal tax returns or tax return information shall not be subject to disclosure, except to another state agency and specified others.
§ 12-148	Social security numbers provided to the tax collector shall not be subject to disclosure under FOIA.
§ 14-36(e)	Medical certificate used to establish that an individual can safely operate a motor vehicle.
§ 16a-14	The local distribution patterns of energy resources, inventories of energy resources, and volume of sales of energy resources shall be exempt from FOIA.
§ 17a-28	Department of Children and Families (DCF) records related to children in its care or custody.
§ 17a-101k	Information in child abuse reports.
§ 17a-412	Reports or complaints of abuse of a long-term care resident are not public records.
§ 17a-500	Probate court records of cases of people with psychiatric disabilities, after a hearing and for cause shown.
§ 19a-14	Records obtained by the Department of Public Health in connection with an investigation of a person or facility over which such department has jurisdiction, other than a physician, shall not be subject to disclosure for a period of one year from the initiation of an investigation or until a hearing is convened or the investigation is terminated, whichever is earlier.

§ 19a-216a	Treatment of individuals at communicable disease control clinics.
§ 19a-583	HIV-related information.
§ 19a-592	Treatment of a minor for HIV or AIDS.
§ 20-13e(a)	Fact of an investigation of a physician for 18-month period or permanently, if no probable cause shown.
§ 20-626	No pharmacist or pharmacy shall release any records or information concerning the nature of pharmaceutical services rendered to a patient.
§ 26-25b	Any schedule of stocking or release of fish or animal into the wild is exempt from disclosure until such stocking or release has taken place.
§ 26-67a	No person shall obtain or disclose information derived from reports of birds or animals taken by hunting or trapping.
§ 26-313	The location of any essential habitat or the location of any threatened or endangered species, or species of special concern may be withheld by the Commissioner of Environmental protection.
§ 29-28(b), and § 29-28(e)	Names of those who sell or carry pistols or revolvers or those with a permit to sell or carry retail pistols or revolvers.
§ 31-51v, et seq.	Results of urinalysis drug testing of an employee are confidential.
§ 31-128f	Employee's consent required for disclosure of individually identifiable information contained in the personnel file and medical records of any employee.

§ 32-11a	Information in application to Connecticut Development Authority for financial assistance and the authority's or Department of Economic and Community Development's information that is financial, credit, or proprietary.
§ 35-51	Trade secrets.
§ 36a-21	Department of Banking records, certain records are confidential.
§ 38a-14(j)	Information obtained by the insurance commissioner in connection with examinations of insurance companies.
§ 38a-913a	Records of a delinquent insurer are not subject to disclosure under FOIA.
§ 42b-10	Records of ownership of or security interest in registered public obligations are not subject to FOIA.
§ 45a-63	Council on Probate Judicial Conduct's probable cause investigation of judicial misconduct.
§ 45a-650	Medical records filed with Probate Court for consideration in any hearing for involuntary representation are not subject to disclosure.
§ 45a-654	Any physician's record filed with the probate court when considering the appointment of a temporary conservator.
§ 45a-751b	Identifying information in termination of parental rights cases without consent is not subject to disclosure.
§ 45a-773	Statement that physicians file with Probate Court after they perform artificial insemi-

	nation and a child is born is not subject to disclosure.
§ 46a-11c	Certain reports regarding intellectually disabled persons and individuals receiving services from the Department of Social Services' Division of Autism Spectrum Disorder Services who have allegedly been abused or neglected are not public records.
§ 46a-13e	Information and identity of a person making a complaint with the office of the Victim Advocate is not subject to the disclosure under FOIA.
§ 46b-38c(c)	Case information to family relations officer in a local family violence intervention unit.
§ 46b-124(b)	Court records of juvenile matters except delinquency hearings.
§ 46b-124(c)	Court records of juvenile matters involving delinquency proceedings.
§ 46b-146	Erased police and court records of a juvenile.
§ 51-44a(j)	Judicial Selection Commission investigations, deliberations, files and records.
§ 51-46a	From statement of financial interest for judges, state's attorneys, public defenders, family support magistrates, and workers' compensation commissioners, the list of names of businesses a spouse or dependent child is associated with, their sources of income, and names of securities they hold.
§ 51-49	Records of Judicial Review Council proceedings on disability retirement of judges, state's attorneys, public defenders, family support magistrates, and workers' compensation commissioners.

§ 51-511(a)	Judicial Review Council's probable cause hearing and investigation into complaint against conduct of a judge, compensation commissioner, or family support magistrate unless respondent requests that it be open.
§ 51-511(b)	Substance of an admonishment issued to a judge, compensation commissioner, or family support magistrate by the Judicial Review Council.
§ 51-511(e)	Identifying information concerning complaints received by the Judicial Review Council.
§ 51-90f	Statewide Grievance Committee's investigation and proceedings related to complaint of misconduct against attorney are not subject to disclosure unless the attorney requests that it be open.
§ 51-232	Contents of completed juror questionnaire are not subject to disclosure.
§ 52-146b	Confidential communications made to clergyman.
§ 52-146c	Privileged communications between psychologist and patient.
§ 52-146d	Privileged communications between psychiatrist and patient.
§ 52-146k(b)	Location of a battered women's center or rape crisis center or identification of counselors.
§ 52-146r	Confidential communications between government attorney and public official or employee of a public agency are not subject to disclosure.

§ 53-202d	Name and address of person issued a certificate of possession of assault weapon.
§ 54-41j	Applications and orders for wiretaps and electronic surveillance.
§ 54-45a	Record of grand jury proceedings.
§ 54-47e	Summary of scope of a grand jury.
§ 54-76h	Youthful offender proceedings.
§ 54-76l	Youthful offender court records.
§ 54-82t	Any record that the chief state's attorney or a state's attorney reasonably believes would disclose the identity or location of a witness participating in the witness protection program.
§ 54-86e	Confidentiality of identifying information pertaining to victims of certain crimes.
§ 54-142a	Existence of an erased criminal record.
§ 54-230	Crime victim's current mailing address.
§ 54-258(a)(4)	Registration information regarding a sexual offender, the dissemination of which has been restricted by court order is not subject to disclosure.
§ 54-142a	Non-conviction or erased criminal records.

Most of the external exemptions were enacted after passage of the Act in 1975 – an example of a backdoor approach to diluting the Act's main purposes: Every governmental record is public except in those instances where the public interest requires confidentiality.

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