

CONNECTICUT BAR JOURNAL

Volume 96 No. 1

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CONNECTICUT BAR JOURNAL

Volume 96 • Number 1

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SUBSCRIPTION: \$52.00 per annum prepaid.

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Subscription, remittances, and changes of address:
Member Service Center, (860)223-4400, msc@ctbar.org

Current numbers, back issues, whole volumes (bound or paperback), complete sets: William S. Hein & Co., Inc. or Dennis & Co., Inc.
1285 Main St, Buffalo, NY 14209

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The CONNECTICUT BAR JOURNAL (ISSN 0010-6070, USPS 129-060) is published four times a year by the CT Bar Institute, Inc., at 538 Preston Avenue, 3rd Floor, Meriden, CT 06450. Periodicals Postage Paid at New Britain, CT and at an additional mailing office. POSTMASTER: Send address changes to the CONNECTICUT BAR JOURNAL, 538 Preston Avenue, 3rd Floor, Meriden, CT 06450. Indexed in INDEX TO LEGAL PERIODICALS and cited in WEST CONN. DIGEST, CONN. GEN. STAT ANNO., and in SHEPARD'S CONN. CITATIONS.

BUSINESS LITIGATION: 2024 IN REVIEW

BY WILLIAM J. O'SULLIVAN*

In 2024, Connecticut's appellate courts decided numerous cases of interest to business litigators. The following is a summary of the year's most noteworthy decisions.

I. REMEDIES AND DEFENSES

A. *Tortious interference and CUTPA claims, as pled, were not barred by the litigation privilege.*

In *Deutsche Bank AG v. Vik*,¹ the Connecticut Supreme Court reversed the Appellate Court's holding² that the litigation privilege barred certain claims under the theories of tortious interference with business expectancy and violations of the Connecticut Unfair Trade Practices Act, General Statutes Section 42-110a *et seq.* (CUTPA).

The plaintiff held a judgment of approximately \$243 million that it had obtained in the courts of England against nonparty Sebastian Holdings, Inc. (SHI), resulting from an unpaid margin call.³ Among SHI's assets were shares in a Norwegian software company, Confrimit AS (Confrimit).

The plaintiff sued Alexander Vik, who allegedly controlled SHI, and his daughter, Caroline Vik, for unlawfully interfering with the plaintiff's execution upon SHI's stock in Confrimit. The plaintiff alleged, among other things, that Alexander fabricated and backdated a document that purported to give Caroline a right of first refusal to acquire the Confrimit shares, as part of a scheme to thwart a liquidation of those shares ordered by a Norwegian court. She used that document as the basis to bring an action in the federal court in Connecticut to enjoin the sale. The court denied her request for a preliminary injunction, after which she withdrew the case and then commenced an action in the Norwegian court.⁴

* Of the Hartford Bar.

¹ 349 Conn. 120, 314 A.3d 583 (2024).

² The Appellate Court's decision is reported at 214 Conn.App. 487, 281 A.3d 12 (2022).

³ *Vik*, 349 Conn. at 123.

⁴ *Id.* at 127, 128.

That action too was unsuccessful, but by the time the Confrimit shares were liquidated, they had dramatically declined in value.

The plaintiff alleged that, by wrongfully interfering with the sale of the Confrimit shares, Alexander and Caroline had tortiously interfered with business expectancies and had violated CUTPA. The defendants moved to dismiss, arguing that “the plaintiff’s claims were barred by the litigation privilege because the claims were based on communications made and actions taken in prior judicial proceedings.”⁵

The trial court denied the defendants’ motion, concluding that the plaintiff’s claims “were not barred by the litigation privilege because the scheme alleged in the complaint did not involve the use of baseless litigation tactics only; it also involved extrajudicial misconduct to which the privilege does not apply... [T]he plaintiff’s claims relating to prior judicial proceedings do not concern how [those] cases were litigated, or the words used in communications by litigants or advocates ... but, rather, they allege improper use of the judicial system for purposes not intended to further the course of justice but rather to pervert the course of justice.”⁶

On the defendants’ interlocutory appeal, the Appellate Court reversed, and granted the defendants’ motion to dismiss. The court concluded that the extrajudicial misconduct alleged in the bank’s complaint was so inextricably intertwined with communications and participation in prior judicial proceedings that the plaintiff’s claims were barred by the litigation privilege.

The Supreme Court disagreed. The court noted that the litigation privilege is a “long-standing [common-law] rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of the controversy.”⁷ But there is “a distinction between attempting to impose liability

⁵ *Id.* at 130.

⁶ *Id.* at 131.

⁷ *Id.* at 137.

[on] a participant in a judicial proceeding for the words used therein and attempting to impose liability [on] a litigant for his improper use of the judicial system itself.”⁸ The litigation privilege applies to the former, but not the latter.

The court reversed the judgment of the Appellate Court, and remanded the case to that court with instructions to affirm the decision of the trial court.

B. Plaintiff in partition action is awarded \$2,000 from house having \$148,000 in equity.

In *D.J. v. F.D.*,⁹ a partition action between joint tenants of a residential property having \$148,000 in equity, the Appellate Court affirmed the trial court’s determination that the plaintiff’s interest was worth \$2,000.

The plaintiff, who at the time was the boyfriend of the defendant, moved into a house that the defendant purchased in 2015. In 2017, the defendant quitclaimed the property to herself and the plaintiff, as joint tenants with rights of survivorship. Two years later, they broke up, and the plaintiff moved out. In 2021, he brought an action to partition the property.

Following a trial, the trial court determined that the plaintiff’s interest in the property was worth \$2,000, equal to the estimated value of his contribution toward its maintenance during the parties’ period of cohabitation. Rather than order the property to be sold, the court ordered the defendant to pay this sum to the plaintiff, and the plaintiff to simultaneously quitclaim his interest in the property to the defendant. This was in accordance with General Statutes Section 52-500(a), which provides, in relevant part, “[i]f the court determines that one or more of the persons owning such real or personal property have only a minimal interest in such property and a sale would not promote the interests of the owners, the court may order such equitable distribution of such property, with payment of just compensation to the owners of such minimal interest, as will better promote the interests of the owners.”

⁸ *Id.* at 138.

⁹ 229 Conn. App. 137, 327 A.3d 405 (2024).

On appeal, the plaintiff claimed that as a joint tenant holding a 50 percent interest in the property, he did not have a “minimal interest” that would allow the court the option of ordering an equitable distribution rather than a sale of the property. The Appellate Court disagreed, finding that for purposes of the statute, “minimal interest ... contemplates consideration of both a property owner’s fee interest and any relevant equitable factors.”¹⁰

Here, the relevant equitable factors included the trial court’s determination that “(1) the parties, who were in a romantic relationship, lived together at the property for approximately four years, (2) the defendant purchased the property and paid the mortgage, taxes, and insurance for the property without financial assistance from the plaintiff, who acquired his interest in the property by way of a quitclaim deed a couple of years after the purchase, (3) the parties’ contributions to the property were far from equal, and (4) there was no evidence of any agreement setting forth the parties’ respective rights and responsibilities concerning the property.” On this basis, the Appellate Court found that the trial court “did not abuse its discretion in determining that the plaintiff had a minimal interest in the property for purposes of § 52-500(a).”

The plaintiff further claimed that the trial court “abused its discretion in awarding him, pursuant to § 52-500(a), \$2000 in just compensation for his interest in the property, which equates to 1.35 percent of the \$148,000 in equity in the property. The plaintiff maintains that the court failed ‘to consider the ownership percentages of the parties.’”¹¹

The Appellate Court noted that it is “not always true that each tenant in common or joint tenant is entitled to equal shares in the real estate. Because a partition action is an equitable action, the court has the authority to determine an unequal award on the basis of the evidence presented, including the value of the property and the equitable interests of the parties.”¹² Here, the trial court found “that the plaintiff did

¹⁰ *Id.* at 152, 153.

¹¹ *Id.* at 155.

¹² *Id.* at 155. (Citation and internal punctuation omitted.)

not contribute financially to the property's purchase, mortgage, taxes, or insurance and that he participated financially only to the extent of (1) \$2000 in maintenance expenses and (2) \$400 per month for groceries and other household expenses during most of the time that he lived with the defendant."¹³

The Appellate Court concluded that the trial court "did not abuse its discretion in its award of just compensation to the plaintiff for his interest in the property,"¹⁴ and affirmed the judgment below.

C. Wrongful denials, as stated in defendants' answer to complaint, may give rise to a vexatious litigation claim.

In *Dorfman v. Liberty Mutual Fire Insurance Company*,¹⁵ a divided panel of the Appellate Court held that a vexatious litigation claim may be based upon the filing of an answer containing denials of allegations known by the defendant to be true.

The plaintiff had suffered injuries in a motor vehicle crash caused by an underinsured driver named Smith, and sued the defendant, her auto insurer, for underinsured motorist benefits. The defendant investigated the crash, and two of its claim specialists concluded that Smith was 100 percent liable for the collision. But the defendant nonetheless denied allegations in the plaintiff's complaint that the collision had been caused by Smith's negligence, and that he had failed to stop at a stop sign.¹⁶ The defendant also denied the plaintiff's allegations that Smith was underinsured, and that the plaintiff had complied with her duties under her insurance contract with the defendant.¹⁷ Following a jury trial, the plaintiff obtained a judgment against the defendant in the amount of \$169,928.00.¹⁸

The plaintiff then brought a second action against the defendant, asserting claims of common law and statutory vexa-

¹³ *Id.* at 156.

¹⁴ *Id.* at 157.

¹⁵ 227 Conn. App. 347, 322 A.3d 331 (2024).

¹⁶ *Id.* at 360.

¹⁷ *Id.*

¹⁸ *Id.* at 355.

tious litigation, as well as violations of the Connecticut Unfair Trade Practices Act (CUTPA)¹⁹ based on violations of the Connecticut Unfair Insurance Practices Act (CUIPA).²⁰ The plaintiff alleged that in the underlying case, the defendant had “refused to admit [various] allegations ... without probable cause and ‘with a malicious intent to unjustly vex and trouble [the plaintiff] and to force her to incur increased litigation costs.’”²¹ The trial court granted the defendant’s motion for summary judgment on all counts.

The Appellate Court reversed in part. The court agreed with the plaintiff that “actions for vexatious litigation in Connecticut, both common-law and statutory, have been and can be based on a party’s conduct in the continuation of a civil or administrative proceeding without probable cause,”²² including situations when a litigant “files an answer in which it falsely denies, or asserts that it lacks sufficient information to deny or admit, allegations it allegedly knows to be true.”²³ Applying that principle here, the court found that the “allegations in this case present the unique circumstances in which a defendant may be liable for vexatious litigation based on its responses to allegations in the complaint.”²⁴

Expounding on the “uniqueness” of the present situation, the court rejected the proposition that its holding would “open floodgates to litigation.”²⁵ The court noted that, to sustain a claim for vexatious litigation, a plaintiff must show that the defendant “denied allegations that were known to be true at the time of the denial,” and that “because discovery in most cases is conducted *after* a party files an answer to a complaint, it typically will be difficult to establish a lack of probable cause at the time of the filing of the answer denying an allegation.”²⁶ That implicitly underscores the duty of defense counsel to periodically review the defendant’s answer

¹⁹ General Statutes §§ 42-110a *et seq.*

²⁰ General Statutes §§ 38a-815 *et seq.*

²¹ *Dorfman*, 227 Conn. App. at 358, 359.

²² *Id.* at 376.

²³ *Id.* at 380.

²⁴ *Id.* at 381.

²⁵ *Id.* at 382, 383.

²⁶ *Id.* at 384, 385.

and special defenses, to ensure their consistency with the record as it develops through the discovery process.

The court also noted that, “without question,” a defendant “need not accept a plaintiff’s allegations regarding causation of injuries.”²⁷ The court acknowledged that “generally, the truth of the allegations pleaded in a negligence action likely will not be within a defendant’s knowledge and that it is typically necessary to substantiate information and facts regarding a party’s claimed injuries. Indeed, it will be a rare case in which a party’s denial of allegations concerning causation of injuries will give rise to a vexatious litigation claim.”²⁸

But the present case was “not a typical negligence action,”²⁹ and the denials at issue here were not of that type. The defendant had denied indisputable allegations that “Smith was responsible for the collision as a result of his failure to stop at a stop sign,” and “concerning the circumstances of the collision, that Smith was underinsured and that the plaintiff had complied with her duties under her insurance contract.”³⁰ Thus, although “ordinarily, to the extent an allegation in a complaint concerns causation or liability but also makes factual assertions, a defendant may, in good faith, deny the portion relating to causation or liability if it intends to controvert such allegations,” the defendant still has a duty to “admit any portion of [the allegations] which it knows to be true.”³¹

The trial court therefore erred in entering summary judgment for the defendant on the plaintiff’s claims of vexatious litigation.

However, the Appellate Court affirmed the judgment below with respect to the plaintiff’s claims under CUIPA and CUTPA. The court held that those claims, also based on the defendant’s litigation conduct, were “barred by the doctrine of absolute immunity under the litigation privilege.”³² While

²⁷ *Id.* at 390.

²⁸ *Id.* at 411.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 391.

³² *Id.* at 420.

CUIPA indeed “prohibits the business practice of misrepresenting facts relating to coverage issues,” the statute “does not impose liability for this conduct by authorizing a private right of action but, instead, limits the remedy under that act to administrative action by the Commissioner of Insurance.”³³

Judge Elgo filed a detailed and scholarly dissent to the majority’s decision with respect to the plaintiff’s vexatious litigation claims. She pointed out that the “expansion of the common-law action for vexatious litigation undoubtedly will result in more, and potentially interminable, litigation,”³⁴ and that “[i]f pleading a denial in response to a civil complaint constitutes a proper basis for a vexatious litigation action,” there will foreseeably be “increased conflict between clients and their attorneys.”³⁵

D. Parol evidence rule bars evidence of unclean hands.

In *Benchmark Municipal Tax Services, Ltd. v. 899 ETG Associates, LLC*,³⁶ a foreclosure case, the Appellate Court agreed with the trial court that the parol evidence rule barred the defendant’s would-be evidence in support of its special defense of unclean hands.

The plaintiff brought suit to foreclose a mortgage securing a \$600,000 note that had an original maturity date of September 18, 2020. By a written modification agreement, the plaintiff agreed, in exchange for a \$55,000 increase in the note principal and \$30,093 in fees, to extend the maturity date by six (6) months. The modification agreement specified that the maturity date “shall not be further extended.”³⁷ When the defendant failed to pay the debt on the new maturity date, the plaintiff declared a default, and brought suit. The defendant asserted a special defense under the doctrine of unclean hands.

The plaintiff moved for summary judgment on the issue

³³ *Id.* at 421.

³⁴ *Id.* at 464.

³⁵ *Id.* at 465.

³⁶ 227 Conn.App. 474, 322 A.3d 1118 (2024).

³⁷ *Id.* at 477.

of liability. In response, the defendant submitted an affidavit by its representative, averring that the plaintiff had “advised [the] [d]efendant ... that the maturity date could be extended up to a year”; that the defendant had entered into the six-month modification agreement “with the understanding that an additional six month extension would be available”; and that the defendant “would not have agreed to pay ... fees and to increase its indebtedness by that amount had it not believed it would receive an additional extension.”³⁸ The trial court rejected the defendant’s “self-serving” affidavit, and declared that purported contract terms “that are part of the negotiation that are not part of the final agreement [are] not enforceable as they are not included in the agreement.”³⁹ The court granted the plaintiff’s motion for summary judgment, and its subsequent motion for judgment of strict foreclosure.

On appeal, the defendant claimed that the trial court had erred in granting summary judgment, on the grounds that its affidavit “evinces misrepresentations by the plaintiff’s representative during negotiations to extend the maturity date” and thus “was sufficient to raise a genuine issue of material fact as to the defendants’ unclean hands defense.”⁴⁰

The Appellate Court disagreed. “[T]he text of the modification agreement conclusively resolves this issue in the plaintiff’s favor. It provides, without caveat, that the maturity date ‘shall not be further extended’ past the initial six month extension....Because the modification agreement is integrated on this point, [the defendant] cannot manufacture a material factual dispute as to the parties’ intent by pointing to parol evidence of negotiations that contradict the express written terms of the modification agreement.”⁴¹ The court affirmed the judgment below.

³⁸ *Id.* at 478.

³⁹ *Id.* at 479.

⁴⁰ *Id.* at 481.

⁴¹ *Id.* at 486.

E. *Contractual cap on amount of attorneys' fees did not limit remedy under fee-shifting statute.*

In *Centrix Management Co., LLC v. Fosberg*,⁴² a residential summary process case, the defendant tenant prevailed, and thereupon moved for an award of attorneys' fees pursuant to General Statutes Section 42-150bb. That statute provides, in relevant part, "[w]henever any contract or lease ... to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease." The statute further provides, "the size of the attorney's fee awarded to the consumer shall be based as far as practicable upon the terms governing the size of the fee for the commercial party."

The subject lease included an attorney's fees clause, "but only up to a maximum cap of \$750, and costs."⁴³ The plaintiff argued that, under the statute, this provision imposes a hard cap on the amount of legal fees that the court could award to the defendant. The trial court disagreed, and awarded the prevailing defendant \$3,500, reasoning that "[i]n light of the equitable purpose of the statute ... the defendant was entitled to reasonable attorney's fees."⁴⁴ The plaintiff appealed.

The Supreme Court agreed with the defendant that the statute does not contemplate a hard cap based on the lease language. Analyzing the statutory language in the light of its purpose, the court determined that the phrase "as far as practicable" suggests some flexibility, and means "feasible under the circumstances, which are circumstances that achieve equity or fairness."⁴⁵

⁴² 349 Conn. 765, 322 A.3d 317 (2024).

⁴³ *Id.* at 769, fn. 4.

⁴⁴ *Id.* at 770.

⁴⁵ *Id.* at 777.

F. *Practice Book deadline of 30 days to file a motion for attorneys' fees applies to fee claims authorized both by statute and by contract.*

In *JPMorgan Chase Bank, N.A. v. Durante*,⁴⁶ the Appellate Court held that section 11-21 of the Practice Book, which requires a motion for an award of attorney's fees to be filed within thirty days following the date on which "the final judgment of the trial court was rendered" or "the Appellate Court or Supreme Court rendered its decision of the underlying appeal," applies not only to fee awards authorized by statute but also those authorized by contract.

The plaintiff obtained a judgment against the defendant as guarantor of an unpaid promissory note, and that judgment was affirmed on appeal. Six weeks after the Appellate Court decision, the plaintiff, for the first time, moved for an award of attorney's fees, based on a fees provision in the loan documents. The defendant argued that the motion was untimely under rule 11-21, but the trial court granted the plaintiff's motion. The defendant appealed from that order.

In attempting to defend the fee award, the plaintiff relied on the final sentence of the rule, which makes the rule inapplicable to "an award of attorney's fees assessed as a component of damages." The plaintiff argued that its claim for contractual attorney's fees was an element of damages, and thus unconstrained by rule 11-21 and its time limit.

The Appellate Court rejected that proposition, seeing no legal theory "that could support a postjudgment award of contractual attorney's fees – incurred entirely in connection with the prosecution of the plaintiff's breach of guarantee claim – as damages."⁴⁷ Accordingly, the "component of damages" exclusion did not apply, making the plaintiff's motion subject to the rule's 30-day deadline.

By way of contrast, the court noted various examples of awards of attorney's fees properly characterized as "damag-

⁴⁶ 227 Conn. App. 617, 323 A.3d 1118 (2024).

⁴⁷ *Id.* at 627.

es” and thus outside the ambit of rule 11-21. Those include attorney’s fees awarded “(1) ...as common-law punitive damages ... (2) as damages pursuant to the trial court’s equitable authority ... (3) ... in connection with a plaintiff’s successful application for the discharge of a mechanic’s lien pursuant to General Statutes § 49-51(a), which ‘clearly contemplates those fees as a component of damages’ ...and (4) ... as compensatory damages for common-law vexatious litigation”⁴⁸

The court also noted that by the rule’s terms, the 30-day clock begins to run when judgment is “rendered,” which is not necessarily the same event as when judgment is formally entered. The court quoted from *Black’s Law Dictionary*, which defines “render judgment” as to “pronounce, state, declare, or announce the judgment of the court in a given case or on a given state of facts; not used with reference to judgments by confession, and *not synonymous with ‘entering,’ ‘docketing,’ or ‘recording’ the judgment.* Judgment is ‘rendered’ when decision is officially announced, either orally in open court or by memorandum filed with clerk.”⁴⁹

The Appellate Court reversed the decision below, and remanded the case with directions to the trial court to deny the plaintiff’s motion for attorney’s fees.

G. Beneficiaries of decedent’s estate lacked standing to sue executor.

In *Martinelli v. Martinelli*,⁵⁰ the Appellate Court affirmed the trial court’s dismissal of a lawsuit, based on lack of standing, by the beneficiaries of a decedent’s estate against the executor of the estate.

The plaintiffs were the children of Kevin Martinelli, deceased, and the sole beneficiaries under his will. They brought an action (first action) against the executor, Martin Martinelli, the decedent’s brother, claiming he had breached his fiduciary duty to them by selling assets of the estate to a third

⁴⁸ *Id.* at 628, 629.

⁴⁹ *Id.* at 632, 633, quoting *Black’s Law Dictionary* (6th Ed. 1990), p 1296 (emphasis added by the court).

⁵⁰ 226 Conn. App. 563, 319 A.3d 198 (2024).

brother for significantly less than their true value. That case proceeded to trial, but was dismissed at the conclusion of the plaintiffs' case due to failure to make out a *prima facie* case.

The plaintiffs then brought a second action against Martin, claiming he had improperly used estate funds to provide his legal defense in the first action. Martin moved to dismiss, claiming the plaintiffs lacked standing to pursue their claims against him. The trial court agreed, and entered a judgment of dismissal.

The Appellate Court agreed. The court noted the general rule that "actions designed to recover personalty belonging to the estate or for its use, conversion, or injury are brought by the fiduciary rather than by the beneficiaries."⁵¹ This principle is codified at General Statutes Section 45a-234(18), which carves out an exception when there has been "fraud, bad faith or gross negligence of the fiduciary."

Here, it was "clear from the allegations of the complaint that the plaintiffs are seeking to recover for injuries to the estate."⁵² Thus, to establish personal standing to pursue their claims, they would have needed to plead that the substitute fiduciary of the estate, who had been appointed shortly before the trial of the first action, had "improperly refused to pursue the claims against the defendants."⁵³

But the complaint contained no allegation that the substitute fiduciary had "committed some type of fraud or bad act against the estate, or ... cannot or has refused to bring an action against the defendants on behalf of the estate improperly."⁵⁴ Indeed, the complaint "makes no mention of the appointment of a new administratrix⁵⁵ of Kevin's estate and consequently does not allege that the administratrix improperly refused to pursue claims against [the defendant]. The

⁵¹ *Id.* at 574. (Citation and internal punctuation omitted.)

⁵² *Id.* at 576.

⁵³ *Id.* at 577.

⁵⁴ *Id.*

⁵⁵ It is unclear why the court referred to the substitute fiduciary as an "administratrix," the term for the fiduciary of an intestate estate, given the opinion's statement that the decedent had died testate, and Martin had been appointed as executor of that testate estate.

absence of such an allegation is fatal to the plaintiffs' claim of standing."⁵⁶

H. Vexatious litigation claim is not assignable.

In *Northeast Building Supply, LLC v. Morrill*,⁵⁷ the Appellate Court ruled that an action for vexatious litigation is not assignable.

In the underlying case, a company called Northeast Building Supply & Home Centers, LLC (Home Centers) obtained a judgment against various defendants, after a courtside trial, for nonpayment for building supplies. Home Centers subsequently reorganized, and assigned its assets, including rights and claims associated with the underlying case, to the similarly named Northeast Building Supply, LLC (Building Supply).

Building Supply, as assignee of Home Centers, then filed an application for prejudgment remedies in support of an action against the defendants in the underlying case, and their attorneys, alleging that the defense of that case constituted vexatious litigation. The application was denied on the grounds of collateral estoppel, based on certain findings in the memorandum of decision of the trial court in the underlying case. The court also found that as to the attorney defendants, the applicant's potential claims were secured by insurance, making prejudgment remedies unnecessary. The applicant appealed from the denial of its PJR application.

On appeal, the respondents raised, for the first time, a jurisdictional argument: that the applicant was an improper plaintiff, and lacked standing. More particularly, the respondents argued that vexatious litigation claims are categorically not assignable, and that the applicant could not proceed on the basis of a void assignment.

The Appellate Court agreed. The court noted that under established Connecticut law, contract claims are assignable, but "tort claims alleging injuries that are personal in nature

⁵⁶ *Id.*

⁵⁷ 224 Conn. App. 137, 312 A.3d 138 (2024).

are not assignable.”⁵⁸ Although certain types of claim cannot be neatly categorized as contract or tort for purposes of assignability, vexatious litigations claims are unambiguously tort claims involving injuries that are “personal in nature,” even when asserted by a business entity rather than a natural person.

II. CREDITORS’ RIGHTS

A. *Amendment to homestead exemption statute, increasing exemption from \$75,000 to \$250,000, applies retroactively.*

In *Ferreira v. Ward*,⁵⁹ the Appellate Court addressed the retroactivity of Public Act 21-161, adopted in 2021 and codified at General Statutes Section 52-352b(21), which increased Connecticut’s homestead exemption from \$75,000 to \$250,000.

In 2015, in an earlier lawsuit, the plaintiff obtained a judgment in the amount of \$123,533.05 against the defendant. That same year, the plaintiff recorded a judgment lien against the defendant’s primary residence. In 2018, the plaintiff commenced an action to foreclose the lien.

In response to the plaintiff’s motion for judgment of foreclosure by sale, the defendant objected, on the grounds that the homestead exemption precluded such a judgment. At the judgment hearing, the defendant argued that the increased exemption prescribed by Public Act 21-161 should apply, given that the statute had been amended before the entry of judgment. The defendant sought to testify at the hearing.

The plaintiff countered that the earlier version of the exemption statute should apply, because that version had been in effect when the foreclosure action began. Plaintiff’s counsel further argued that the “proper procedure is for the sale to happen, the proceeds get deposited with the court, and then the defendant files his exemption, if he has one.”⁶⁰

⁵⁸ *Id.* at 147.

⁵⁹ 224 Conn. App. 571, 312 A.3d 1075 (2024).

⁶⁰ *Id.* at 576.

The trial court declined to hear testimony from the defendant. Finding an unpaid debt of \$123,533.05 and property value of \$255,000.00, the court entered a judgment of foreclosure by sale, from which the defendant appealed.

The Appellate Court reversed, holding that “the expanded homestead exemption applies retroactively to a postjudgment proceeding in which a judgment lien was recorded and the action to foreclose on the judgment lien was commenced at a time when the now repealed statute was in effect, but the judgment of foreclosure was rendered after P.A. 21-161 became effective.”⁶¹

The court also addressed the procedural issue of how to address an exemption claim in this context. The court agreed with the defendant that “when a defendant asserts a homestead exemption claim before a judgment of foreclosure is rendered, the proper procedure is for the court to afford the defendant with the opportunity to present support for their claim by way of an evidentiary hearing.”⁶² At that hearing, “the court should find the value of the property, which is ‘determined as the fair market value of the real property less the amount of any statutory or consensual lien which encumbers it’ and subtract from that value the amount of the exemption. General Statutes § 52-352b (21). The result is the amount to which the judgment lien can attach. If the result is negative, the court may determine to withhold foreclosure or deny the motion for a judgment of foreclosure.”⁶³

B. Mortgage holder was entitled to intervene in summary process action to assert claim to use and occupancy payments paid into court.

The Appellate Court’s decision in *Altavista Investments, LLC v. Makeeva*⁶⁴ concerned the right of a mortgage holder to intervene in a summary process action, for the purpose of laying claim to use and occupancy payments rendered while the case was on appeal.

⁶¹ *Id.* at 583.

⁶² *Id.* at 586.

⁶³ *Id.*

⁶⁴ 226 Conn. App. 175, 317 A.3d 850 (2024).

The would-be intervenor, Baotou Capital, LLC (Baotou), held a \$4.9 million mortgage on a residence in Greenwich. Under both the mortgage deed and a separate assignment of leases and rentals, Baotou held a security interest in all rents and income issuing from the premises.

The plaintiff property owner brought a summary process action against its tenants, and obtained a judgment of possession. The tenants appealed, and, pursuant to General Statutes Section 47a-35a, successfully petitioned the court for leave to deposit use and occupancy payments with the court, in lieu of posting an appeal bond, during the pendency of the appeal. The court set the payments at \$24,000 per month. By the time the landlord ultimately prevailed in the appeal, the tenants had paid \$336,000 into the court.

While the appeal was pending, Baotou, which had commenced a foreclosure of its mortgage on the premises, filed a motion to intervene, “for the limited purpose of asserting its rights with respect to the use and occupancy payments being deposited with the clerk of court and participating in any proceedings to determine the final distribution of those funds.”⁶⁵ The referenced “proceedings” would be pursuant to General Statutes Section 47a-35b, which provides in relevant part, “Upon final disposition of the appeal, the trial court shall hold a hearing to determine the amount due each party from the accrued payments for use and occupancy and order distribution in accordance with such determination.” The trial court deferred considering the motion until after the appeal was completed.

After the trial court’s judgment of possession was affirmed on appeal, the trial court heard Baotou’s motion. The court subsequently issued an order denying the motion, reasoning, “Baotou seeks to assert a money damages claim or a right to money held by the clerk in this eviction action for possession. Baotou is not the owner of the subject property nor able to terminate the possessory interest of the defendants through eviction as authorized in a summary process action. Its claims

⁶⁵ *Id.* at 181.

for the money held by the clerk's office are based on contract principles and privity against the plaintiff. As Baotou does not seek a possessory interest in the subject property, it is not a proper party to this action."⁶⁶

The Appellate Court reversed. In that court's view, the trial court's perspective – Baotou's lack of a possessory interest in the property that was the subject of the eviction action – was "far too narrow of a lens, or perhaps the wrong lens entirely, through which to view Baotou's request for intervention."⁶⁷ The post-judgment hearing that Baotou sought to participate in, pursuant to General Statutes Section 47a-35b, "is unrelated to the determination of the possessory interests in the property in a summary process action. Rather, in the present case, it involves a dispute that falls outside of the merits of the eviction action, one that is between primarily the plaintiff and Baotou over who should receive the benefit of the use and occupancy payments made by the defendants during their unsuccessful appeal."⁶⁸ Baotou's interest in that stage of the proceedings was "apparent on [the] record," and accordingly the trial court had "improperly denied its motion to intervene as a matter of right."⁶⁹

C. High bidder in foreclosure auction is entitled to notice of motion to compel forfeiture of his deposit.

In *Chelsea Groton Bank v. Gates Realty Holdings, LLC*,⁷⁰ the plaintiff in error, Ross Weingarten, tendered the high bid at a foreclosure auction, but was unable to close the purchase within the timeframe prescribed by the Uniform Standing Orders for Foreclosure by Sale. The plaintiff bank – the defendant in error for purposes of the appeal – filed a motion for Weingarten to forfeit the \$367,000 deposit that he had remitted in connection with the auction. The bank did not serve its motion on Weingarten, who had not filed an appearance in the case. The trial court granted the bank's forfeiture motion,

⁶⁶ *Id.* at 182. (Internal punctuation omitted.)

⁶⁷ *Id.* at 189.

⁶⁸ *Id.* at 190.

⁶⁹ *Id.* at 191.

⁷⁰ 227 Conn. App. 583, 323 A.3d 133 (2024).

one day before Weingarten filed an appearance.

Weingarten filed a writ of error, claiming the trial court had improperly granted the forfeiture motion without ensuring that he had received proper notice and an opportunity to be heard. The Appellate Court agreed. Because Weingarten was a nonparty at the time of the relevant events, he “was entitled to assume that ... an order to show cause would be issued, citing him to appear and be heard.”⁷¹ But that did not happen, and “[t]he lack of service of the motion on [him] was ...legally insufficient to render [him] subject to the jurisdiction of the court.”

The court reversed the order below, and remanded the case for further proceedings.

D. Superior Court has jurisdiction over counterclaim asserting violations of the automatic stay in a bankruptcy case.

In *City of New London v. Speer*,⁷² the Appellate Court held that the trial court had jurisdiction to adjudicate the defendant’s counterclaim based on the plaintiff’s alleged violation of the Bankruptcy Code automatic stay. The trial court had granted the plaintiff’s motion to dismiss the counterclaim, on the grounds that the Bankruptcy Court had exclusive jurisdiction, but the Appellate Court disagreed, and reversed the judgment below.

The plaintiff had sued the defendant to recover a balance due for water and sewer services provided to her property. At the time, the defendant was the debtor in an involuntary Chapter 7 bankruptcy case. After the bankruptcy case was closed, she filed a counterclaim in the Superior Court case, alleging that the plaintiff had sued her with knowledge of her then-pending bankruptcy case, in violation of the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362. She sued for actual damages, punitive damages, and attorneys’ fees, under 11 U.S.C. § 362(k)(1).

⁷¹ *Id.* at 591.

⁷² 227 Conn. App. 221, 322 A.3d 407, *cert. denied* 350 Conn. 909, 323 A.3d 1091 (2024).

The plaintiff filed a motion to dismiss the counterclaim, arguing that “the trial court lacked subject matter jurisdiction over the defendant’s counterclaim because her bankruptcy related claims are preempted by the Bankruptcy Code.”⁷³ The trial court agreed, and granted the motion.

The Appellate Court reversed. The court first addressed the threshold issue of “whether 11 U.S.C. § 362(k) provides an independent cause of action for damages that survives the disposition of the underlying bankruptcy case,”⁷⁴ and concluded that it does. As for the jurisdictional issue, the court analyzed conflicting federal court authority, and concluded that a claim under the statute “falls under the broad category of ‘all civil proceedings arising under or related to cases under [the Bankruptcy Code],’ over which the [federal] district courts ... have original but not exclusive jurisdiction” pursuant to 28 U.S.C. § 1334(b).⁷⁵

E. Borrower sufficiently challenged calculation of debt to require lender to present live testimony as to calculation, rather than rely on affidavit of debt.

In *Deutsche Bank National Trust Company v. Bretoux*,⁷⁶ a residential foreclosure case, the Appellate Court provided partial relief to a homeowner who complained of unfair treatment in the process of attempting to negotiate a loan modification with the bank.

Several years into the case, the defendant filed an amended answer and special defenses, in which he alleged that over a four-year period, he had fruitlessly applied for a loan modification to the plaintiff’s loan servicer, Carrington Mortgage Services, twenty-five times. He claimed that after each denial, the servicer “encouraged him to reapply and represented that the loan would be modified,” but no modification was ever consummated, causing him to incur years of additional interest, fees and other costs.⁷⁷ The defendant alleged that this

⁷³ *Id.* at 224.

⁷⁴ *Id.* at 229.

⁷⁵ *Id.* at 240.

⁷⁶ 225 Conn. App. 455, 317 A.3d 152 (2024).

⁷⁷ *Id.* at 459.

conduct gave rise to defenses of unclean hands and estoppel.

The trial court rejected these defenses, and granted the bank's motion for summary judgment on the issue of liability. The bank then moved for a judgment of strict foreclosure, and filed an affidavit of debt in support of that motion. The defendant "objected to the amount of debt described in the plaintiff's affidavit on the basis that the plaintiff wrongfully increased the amount of the debt through its own misconduct."⁷⁸ The trial court overruled the objection, accepted the affidavit of debt, and entered a judgment of foreclosure by sale.

On appeal, the defendant argued that the trial court erred in granting an interlocutory summary judgment notwithstanding his special defense of unclean hands. But the Appellate Court disagreed, holding that the defendant's affidavit, standing alone, did not provide sufficient evidence of wrongdoing by the plaintiff to create a genuine issue of material fact. The defendant's allegations did "not provide a basis to infer that Carrington, as the plaintiff's agent, engaged in wilful misconduct with the purpose of prejudicing the defendant's rights."⁷⁹

But the defendant fared better in his attack on the bank's affidavit of debt. The Appellate Court noted that, pursuant to Section 23-18(a) of the Practice Book, the debt in a foreclosure case may be established by affidavit "where no defense as to the amount of the mortgage debt is interposed." Unlike the procedure that applies to motions for summary judgment, in which the opposing party must present evidence in support of the party's objection, the court has "never required, and the language of Practice Book § 23-18 (a) does not require, a defendant to provide any evidence."⁸⁰

In this case, the defendant had filed an objection to the affidavit in which he "not only objected to the amount of the debt but also specifically objected as to why the amount of

⁷⁸ *Id.* at 461.

⁷⁹ *Id.*

⁸⁰ *Id.* at 474.

the debt is incorrect on the basis of his estoppel based defenses.”⁸¹ He had thus “sufficiently interposed a defense as to the amount of the debt, which prevented the plaintiff from relying on the affidavit of debt to prove the amount of the debt pursuant to Practice Book § 23-18 (a).”

The court reversed the judgment and remanded the case for the limited purpose of an evidentiary hearing on the amount of the debt.

F. Service upon foreclosure defendant, and recordation of lis pendens, shortly before his death was sufficient to bind his widow to the proceedings.

In *Homebridge Financial Services, Inc. v. Jakubiec*,⁸² a residential foreclosure case, the defendant mortgagor died two days after abode service had been made upon him, and after the bank had recorded a lis pendens on the land records. Upon the bank’s motion, the court cited the decedent’s “Widow, Heirs, Beneficiaries, Representatives or Creditors” into the case as parties defendant, and granted the bank’s request to provide notice of the action to those persons via newspaper publication.⁸³

The decedent’s widow then moved to dismiss the case, claiming improper service of process under the circumstances, and that the court therefore lacked personal jurisdiction over her. The bank countered that, because it had both served the decedent and recorded a lis pendens before he died, then under the lis pendens statute, it had had no obligation to make further service upon her. The trial court agreed with the bank, denied the defendant widow’s motion, and granted the bank’s motion for judgment of strict foreclosure.

The Appellate Court affirmed. The court noted that the lis pendens statute, General Statutes Section 52-325, provides in relevant part that the recordation of a lis pendens “shall, from the time of the recording only, be notice to any

⁸¹ *Id.* at 474. (Citation and internal punctuation omitted.)

⁸² 223 Conn. App. 517, 309 A.3d 1223, *cert. denied* 349 Conn. 909, 314 A.3d 602 (2024).

⁸³ *Id.* at 530.

person thereafter acquiring any interest in such property of the pendency of the action; and each person whose ... interest is thereafter obtained, by descent or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the recording of such notice, to the same extent as if he were made a party to the action...”

Given the operative sequence of events, by operation of the *lis pendens* statute, the defendant widow “was bound in this foreclosure action to the same extent as if she had been made a party to the action.”⁸⁴ It followed that the trial court had properly denied her motion to dismiss.

G. Trial court improperly struck defense of unclean hands in foreclosure action.

In *M&T Bank v. Lewis*,⁸⁵ the Connecticut Supreme Court reversed a judgment of foreclosure, finding that the trial court had improperly stricken the defendant’s special defenses.

At about the time that the loan went into payment default, the defendant allowed the flood insurance on his property to lapse. The plaintiff thereupon purchased force-placed insurance, and tacked the cost of the premium onto the defendant’s loan balance, as permitted by section 5 of the mortgage deed.

The defendant raised various special defenses based on this sequence of events. Those defenses centered on the contention that the bank charged the defendant more than its actual “cost” for the insurance, in violation of the applicable mortgage provision. More particularly, the defendant alleged that the bank had an exclusive arrangement with the insurer, which generated various rebates (or more colorfully, as the defendant sometimes characterized them, “kick-backs”) that reduced the true cost to the bank. As alleged by the defendant, the plaintiff bank “does not deduct the value

⁸⁴ *Id.* at 534.

⁸⁵ 349 Conn. 9, 312 A.3d 1040 (2024).

of these alleged kickbacks from the amount it charges borrowers and, instead, charges them the ‘pre-rebate’ amount for the force placed insurance coverage.”⁸⁶

The trial court granted the bank’s motion to strike the defendant’s special defenses, finding the allegations insufficiently related to the making, validity or enforcement of the mortgage, and entered a judgment of foreclosure by sale. But the Supreme Court reversed, finding that the trial court had erred in striking the defenses. The defendant’s allegations about “kickbacks” or “rebates” from the insurer to the bank, the bank’s failure to pass those savings on to the defendant, and the bank’s alleged misrepresentations was “directly related to the plaintiff’s reliance on and enforcement of section 5 of the mortgage agreement.”⁸⁷ Thus, “[w]ithout offering any opinion on the ultimate merits of this theory,” the court concluded that “the defendant has alleged that the plaintiff’s conduct relates to the validity of the mortgage,”⁸⁸ and therefore stated colorable special defenses.

H. *Remand order to set new law days after judgment of strict foreclosure was affirmed did not bar trial court from thereupon ordering judgment of foreclosure by sale.*

In *Wahba v. JPMorgan Chase Bank, N.A.*,⁸⁹ the Connecticut Supreme Court held that an Appellate Court decision affirming a judgment of strict foreclosure, and remanding the case to the trial court “solely for the purpose of setting new law days,”⁹⁰ did not bar the trial court from instead entering a new judgment of foreclosure by sale.

Following the Appellate Court’s remand, the borrower claimed that the value of her property – a waterfront estate in Greenwich – had appreciated dramatically during the course of the appeal. She backed up this assertion with a Zillow value estimate purporting to show \$2 million in equity,

⁸⁶ *Id.* at 15.

⁸⁷ *Id.* at 29.

⁸⁸ *Id.* at 31.

⁸⁹ 349 Conn. 483, 316 A.3d 338 (2024).

⁹⁰ *Id.* at 489.

and asked the trial court to convert the judgment of strict foreclosure to a judgment of foreclosure by sale.

The trial court denied the borrower's request, concluding that under the literal language of the Appellate Court's rescript, it lacked the power to change the form of the judgment. The court granted the bank's request to reset the law days, and the Appellate Court agreed.⁹¹

But the Supreme Court reversed, concluding that the Appellate Court's earlier rescript had not stripped the trial court of discretion to modify the judgment as the borrower requested. Quoting earlier authority, the court noted, "remand orders should not be construed so narrowly as to prohibit a trial court from considering matters relevant to the issues upon which further proceedings are ordered that may not have been envisioned at the time of the remand. ... So long as these matters are not extraneous to the issues and purposes of the remand, they may be brought into the remand hearing."⁹²

I. *Denial of motion to intervene in foreclosure case did not automatically stay the running of the law days.*

In *DXR Finance Parent, LLC v. Theraplant, LLC*,⁹³ a foreclosure action, the Appellate Court determined that it lacked jurisdiction to consider an appeal by a would-be intervenor. After judgment of strict foreclosure had entered, but before the law days had run, nonparty Shareholder Representative Services, LLC (SRS) moved to intervene in the case. That motion was denied, and SRS appealed from the denial order.

The Appellate Court held that no automatic stay applied under the circumstances. For this reason, and because SRS had not moved for a discretionary stay of the trial proceedings, the law days continued to run, and title to the foreclosed premises vested in the mortgage holder. That rendered SRS's

⁹¹ The Appellate Court decision is reported at 216 Conn. App. 236, 283 A.3 1095 (2022).

⁹² *Wahba*, 349 Conn. at 501, quoting *Rizzo Pool Co. v. Del Gross*, 240 Conn. 58, 65, 66, 689 A.2d 1097 (1997).

⁹³ 223 Conn. App. 362, 309 A.3d 347, *cert. denied* 348 Conn. 957, 310 A.3d 380 (2024).

appeal moot, thus depriving the Appellate Court of subject-matter jurisdiction and supporting a judgment of dismissal.

III. BUSINESS TORTS

A. *Connecticut Supreme Court clarifies trade secrets act and confirms that continued employment may provide sufficient consideration for a non-compete.*

In *Dur-A-Flex, Inc. v. Dy*,⁹⁴ the Connecticut Supreme Court resolved a thorny issue under the Connecticut Uniform Trade Secrets Act⁹⁵ (CUTSA): whether a person can be deemed to have “misappropriated” a trade secret if he uses it (i) with knowledge that it had likely been initially misappropriated by someone owing a duty to the owner but (ii) lacking knowledge of the trade secret itself. The court agreed with the defendants that knowledge of the trade secret itself is a necessary element of misappropriation. The court also addressed other significant issues under CUTSA and the law of noncompetes.

The plaintiff was in the business of developing, manufacturing and selling commercial and industrial flooring systems and polymer component materials.⁹⁶ The first-named defendant, Samet Dy, was a research chemist who had worked for the plaintiff for a period of years before resigning. After leaving the company, he set up a laboratory in his garage, and worked on the development of competing products.

Dy eventually formulated a viable floor-coating product called ProKrete, which, as found by the trial court, was facilitated by his misappropriation of the plaintiff’s trade secrets.⁹⁷ He had a ready customer for ProKrete in Steven Lipman, another chemist formerly employed by the plaintiff, and Lipman’s company, Durafloor Industrial Flooring & Coating, Inc. (Durafloor). Dy also transferred to Lipman a company Dy had formed, ultimately bearing the name ProRez Performance Resins and Coatings, LLC (ProRez), and that compa-

⁹⁴ 349 Conn. 513, 321 A.3d 295 (2024).

⁹⁵ General Statutes §§ 35-50 *et seq.*

⁹⁶ *Dur-A-Flex*, 349 Conn. at 525, 526.

⁹⁷ *Id.* at 528.

ny issued payments to Dy.⁹⁸ The plaintiff sued Dy, Lipman and his companies, and others for, among other things, violations of CUTSA. Following trial, the trial court concluded that Dy, Lipman, Durafloor and ProRez had misappropriated the plaintiff's trade secrets, within the meaning of General Statutes Section 35-51(b)(2)(B)(iii). That subsection defines "misappropriation" in relevant part as "use of a trade secret of another without express or implied consent by a person who ... (B) at the time of ... use, knew or had reason to know that his knowledge of the trade secret was ... (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use"

On appeal, the plaintiff and the Lipman defendants differed on the scope of the "knowledge" requirement under the statute. The plaintiff contended, and the trial court agreed, that the plaintiff "was required to prove only that the [Lipman] defendants knew or should have known that [Dy] misappropriated the plaintiff's trade secrets."⁹⁹ The Lipman defendants countered that knowledge of Dy's misappropriation, standing alone, would not satisfy the "knowledge" requirement; they claimed that the plaintiff needed to further prove that "Lipman himself and, through him, Durafloor and ProRez, had knowledge of the plaintiff's trade secrets."¹⁰⁰

The Supreme Court agreed with the defendants. Relying heavily on a decision of the California Court of Appeal, *Silvaco Data Systems v. Intel Corp.*,¹⁰¹ the court concluded that a person cannot be deemed to have wrongly "used" a trade secret for purposes of the statute by only using "something that was made using the [trade] secret."¹⁰² Drawing on a "colorful analogy" in the *Silvaco* decision, the court noted, "[o]ne who bakes a pie from a recipe certainly engages in the use of the latter; but one who eats the pie does not, by virtue of that act alone, make use of the recipe in any ordinary sense, and

⁹⁸ *Id.* at 527.

⁹⁹ *Id.* at 565, 566.

¹⁰⁰ *Id.*

¹⁰¹ 184 Cal.App. 4th 210, 109 Cal.Rptr.3d 27 (Cal.App. 2010).

¹⁰² *Dur-A-Flex*, 349 Conn. at 569, quoting *Silvaco*, 184 Cal.App.4th at 224, 109 Cal.Rptr.3d 27.

this is true even if the baker is accused of stealing the recipe from a competitor, and the diner knows of that accusation.”¹⁰³ It follows that “*using* a trade secret necessarily entails having *knowledge* of the trade secret; one cannot happen without the other.”¹⁰⁴ That knowledge may be vicarious, through an agent, and in some circumstances, constructive knowledge may suffice: “[O]ne who knowingly possesses information constituting a trade secret cannot escape liability merely because he lacks the technical expertise to understand it, or does not speak the language in which it was written.”¹⁰⁵

The court summed up, “the defendant’s knowledge of the trade secret is an element of a claim of misappropriation under § 35-51 (b) (2) (B) (iii) and ... a defendant cannot ‘use’ a trade secret for purposes of that statute if the defendant does not have knowledge of the trade secret itself. That is, the defendant must actually or constructively possess the information that constitutes the trade secret, and not merely use or possess a product that embodies the trade secret but does not disclose to the defendant any material aspect of the trade secret itself.”¹⁰⁶

The Supreme Court reversed the trial court’s judgment against the Lipman defendants on the misappropriation claims, and remanded the case for a new trial on that issue. The court noted that if the plaintiff were to prove misappropriation under the correct standard, “monetary and injunctive remedies for misappropriation ‘are appropriate only for the period of time that the information would have remained unavailable to the defendant in the absence of the appropriation.’”¹⁰⁷

In a cross-appeal, the plaintiff challenged the trial court’s determination that “any common-law duty of confidentiality that [Dy] owed to the plaintiff was preempted by CUTSA.”¹⁰⁸

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 569.

¹⁰⁵ *Id.* at 572, quoting *Silvaco*, 184 Cal.App.4th at 225 n. 7, 109 Cal.Rptr.3d 27.

¹⁰⁶ *Id.* at 574, 575.

¹⁰⁷ *Id.* at 587, quoting Restatement (Third) of Unfair Competition, Appropriation of Trade Values § 45, comment (h), p. 519.

¹⁰⁸ *Id.* at 596.

The plaintiff had asserted that “certain proprietary information obtained by [Dy] during his employment falls outside the statutory definition of a trade secret but is nonetheless protected under his common-law duty of confidentiality.” The trial court ruled that any such potential claims under the common law are preempted by General Statutes Section 35-57(a), which provides in relevant part that “the provisions of this chapter supersede any conflicting tort, restitutionary, or other law of this state pertaining to civil liability for misappropriation of a trade secret.”

The Supreme Court agreed with the defendants, and the trial court, that “CUTSA preempts noncontractual civil claims against a former employee based on the acquisition, disclosure, or use of confidential information that does not rise to the level of a trade secret. A noncontractual claim based on the misappropriation of commercial information by a former employee must be brought under CUTSA or not at all.”¹⁰⁹ But the court noted that this limitation applies only to former employees, not current employees. “[F]ormer employees are treated differently under trade secrets law than current employees, who have a duty of loyalty not to compete with the employer that includes the ‘duty to refrain from using *confidential information* acquired through the employment This distinction between current employees and former employees has its roots in the principle ... that “[t] here is a strong public interest in preserving the freedom of [former] employees to market their talents and experience in order to earn a livelihood.”¹¹⁰

The plaintiff also challenged another “preemption” finding by the trial court: that General Statutes Section 35-57(a) also preempted claims against the Lipman defendants for civil conspiracy to misappropriate the plaintiff’s trade secrets. The Supreme Court agreed with the trial court. “The objective of the civil conspiracy alleged by the plaintiff in the present case was the misappropriation of the plaintiff’s

¹⁰⁹ *Id.* at 602, 603.

¹¹⁰ *Id.* at 600, quoting Restatement, *supra*, comment (b), p. 479 and 480.

trade secrets. We conclude, therefore, that its civil conspiracy claims are preempted by § 35-57(a).”¹¹¹

The plaintiff also contended that the trial erred in rendering judgment for Dy on the plaintiff’s claim that Dy had violated the parties’ noncompete agreement. Dy had signed the noncompete several years into his tenure, and the trial court held that that “a party giving nothing more than the status quo of continuing employment ... offers no consideration [in] exchange for his promise, and the promise is, therefore, unenforceable.”¹¹²

The Supreme Court agreed with the plaintiff that “the trial court incorrectly determined that continued employment can *never* be consideration for a noncompete agreement.”¹¹³ Consistent with the Appellate Court’s 2023 decision in *Schimenti Construction Co., LLC v. Schimenti*,¹¹⁴ which in turn relied on the Supreme Court’s 1934 decision in *Roessler v. Burwell*,¹¹⁵ “continued employment for at-will employees can be sufficient to make enforceable a restrictive covenant agreed to by the parties at some point after the commencement of employment.”¹¹⁶ Because the trial court “categorically rejected the notion that continued employment can ever suffice as consideration, it did not evaluate whether the noncompete agreement imposed an obligation on the plaintiff that would make the agreement enforceable.”¹¹⁷ The court therefore remanded the case for further proceedings concerning the adequacy of the consideration provided by the plaintiff.

B. Judgment of fraudulent transfer affirmed, regardless of transferee’s state of mind and “love and affection” as purported consideration for transfer.

In *Cockerham v. Westphalen*,¹¹⁸ the plaintiff sued his investment advisor for misconduct in the management of his

¹¹¹ *Id.* at 609.

¹¹² *Id.* at 591.

¹¹³ *Id.* at 593.

¹¹⁴ 217 Conn. App. 224, 288 A.3d 1038 (2023).

¹¹⁵ 119 Conn. 289, 176 A. 126 (1934).

¹¹⁶ *Id.* at 593, quoting *Schimenti*, 217 Conn.App. at 246.

¹¹⁷ *Id.* at 593, 594.

¹¹⁸ 225 Conn. App. 484, 317 A.3d 166 (2024).

investment accounts, and added claims against the advisor and the advisor's wife for fraudulent transfers from husband to wife. The fraudulent transfer claims arose from the husband's transfer, after he had learned that the state banking department was investigating him, of more than \$200,000 from his personal bank account to an account owned solely by his wife. Following a court-side trial, the trial court entered judgment for the plaintiff.

On appeal, the wife challenged the trial court's determination that the transfers had been made with actual fraudulent intent, establishing a claim under General Statutes Section 52-552e(a)(1), a provision of the Uniform Fraudulent Transfer Act (UFTA). The Appellate Court affirmed the judgment below, holding that the trial court's factual finding of fraudulent intent was not clearly erroneous. The UFTA, at General Statutes Section 52-552e(b), enumerates eleven indicia of fraud that the court may consider when evaluating a claim of actual fraud under the statute, and the Appellate Court agreed with the trial court that numerous of these factors had been established.

The Appellate Court rejected the wife's argument for reversal based on a lack of evidence of fraudulent intent on her part; under the UFTA, her state of mind was irrelevant. "Unlike the common law, the statutory cause of action for a fraudulent transfer based on a transferor's actual intent to defraud a creditor does not require a plaintiff to prove that a transferee shared the transferor's fraudulent intent."¹¹⁹

The wife also challenged the trial court's finding, under both the common law and the UFTA,¹²⁰ that the transfers from husband to wife were constructively fraudulent, as they were given with no exchange of value, and left the husband insolvent. The wife argued that purported consideration in the form of "love and affection" provided "reasonably equivalent value" to support the transfers.

The Appellate Court disagreed. As for the plaintiff's com-

¹¹⁹ *Id.* at 498.

¹²⁰ General Statutes § 52-552d(a)(2).

mon law claim, the court cited an 1868 decision of the Connecticut Supreme Court, *Redfield v. Buck*,¹²¹ for the proposition that “love and affection does not constitute adequate consideration for purposes of defeating a fraudulent conveyance claim under the common law.”¹²² The same was true of the plaintiff’s statutory claim. The Official Comment to UFTA, and numerous decisions of federal courts in and outside of Connecticut, hold that “in order for an exchange to be of reasonably equivalent value under ... the UFTA, it must be something with monetary value capable of satisfying a creditor’s claims.”¹²³

IV. CLOSELY HELD BUSINESSES

A. Appellate Court addresses rules of standing as applied to members of limited liability companies.

In *Rubin v. Brodie*,¹²⁴ members of three manager-managed limited liability companies sued the LLCs’ manager, Barnett Brodie, and entities affiliated with him, claiming he had committed self-dealing and other breaches of his fiduciary duty. The plaintiffs brought derivative claims on behalf of the LLCs (derivative claims), as well as parallel claims in the names of the LLCs, without reference to derivative procedure, based on their collective ownership of majority membership interests in each company (LLC direct claims). The plaintiff members also sued in their own names, claiming harm to their individual membership interests (member claims).

The defendants moved to dismiss all counts, which the trial court granted in full. The Appellate Court reversed in part.

As for the derivative claims, it was undisputed that the plaintiffs had not made a pre-suit demand upon the LLCs’ manager – the main defendant – to bring suit in the name of the companies. Pursuant to General Statutes Section 34-271a, such a demand is a prerequisite to an LLC derivative

¹²¹ 35 Conn. 328 (1868).

¹²² *Cockerham*, 225 Conn.App. at 511.

¹²³ *Id.* at 512.

¹²⁴ 228 Conn. App. 617, 325 A.3d 1096 (2024).

action, unless such a demand would be futile. Section 34-271c, in turn, requires that the complaint “state with particularity ... why the demand should be excused as futile.”

The defendants pointed out that the plaintiffs had not expressly pled futility in their complaint. The plaintiffs countered that the allegations in their complaint were “sufficiently particular to form a basis from which the trial court could have logically inferred futility of demand on ... Brodie.”¹²⁵

The Appellate Court agreed with the plaintiffs, holding that “a sufficiently detailed recitation of facts that support an inference that making a demand would have been futile and that the failure to do so should be excused will satisfy the particularity requirement in § 34-271c.”¹²⁶ Here, the complaint specifically described a series of bad acts by Brodie and associates of his, and there was little reason to believe that he would have authorized a suit by the LLC against himself and them.¹²⁷

The Appellate Court also agreed with the plaintiffs that the trial court had erred in finding, as a requirement of bringing a derivative action, that the members of an LLC obtain “authorization” or “consent” to bring suit for the LLC, consistent with the entity’s operating agreement. The statutes do not require it, and under the circumstances, seeking such an authorization or consent would be futile.¹²⁸

As for the LLC direct claims, the Appellate Court agreed with the defendants that the trial court had properly dismissed them. The LLCs’ operating agreements provided that only the manager, Brodie, had the authority to “commence litigation” or “resort to legal action” in the name of the entities.¹²⁹ The fact that the plaintiffs collectively owned a majority of the membership interests was irrelevant. “Because the individual plaintiffs, and not Brodie, initiated the direct action by the plaintiff LLCs, the plaintiff LLCs lacked stand-

¹²⁵ *Id.* at 638.

¹²⁶ *Id.* at 639.

¹²⁷ *Id.* at 642.

¹²⁸ *Id.* at 644, 647.

¹²⁹ *Id.* at 658.

ing to maintain it.”¹³⁰ This part of the holding illustrates precisely why the availability of derivative practice is necessary.

The Appellate Court also affirmed the trial court’s dismissal of the member claims. “The crux of the plaintiffs’ claims is that the primary defendant, Brodie, with assistance from his codefendant business associates, conveyed and sold all of the real estate assets belonging to the plaintiff LLCs, that these actions forced the plaintiff LLCs into dissolution, and that the plaintiffs were injured as a result. ...[I]f there were injuries to the individual plaintiffs, those injuries were sustained by the plaintiff LLCs in the first instance and by the individual plaintiffs in the second. In other words, their alleged injuries were solely the result of injuries suffered by the plaintiff LLCs, and the individual plaintiffs, therefore, lacked standing to maintain their direct action.”¹³¹

B. Lack of corporate authority to commence suit deprived corporation of standing.

In *Fountain of Youth Church, Inc. v. Fountain*,¹³² the Appellate Court affirmed the trial court’s judgment of dismissal, based on a lack of standing arising from lack of corporate authority to commence suit.

The plaintiff, a religious corporation, brought suit against its former pastor and an entity that he formed, claiming he had diverted church assets to the new entity. The pastor retained the positions of president of the plaintiff and chairman of its board of directors.

The defendants moved to dismiss, asserting that the plaintiff’s leadership did not properly authorize the lawsuit, thereby depriving the plaintiff of standing to sue. The plaintiff claimed that the suit had been authorized by its vice president, but lacked a written authorization by the board of directors empowering him to do so.

The trial court granted the defendants’ motion to dismiss.

¹³⁰ *Id.*

¹³¹ *Id.* at 661. (Citations and internal punctuation omitted.)

¹³² 225 Conn. App. 856, 317 A.3d 106 (2024).

The Appellate Court affirmed, citing a corporate treatise for the proposition that “a vice president does not have power to act on behalf of the corporation in highly important and unusual transactions in the absence of specific authorization in the bylaws or a resolution of the board of directors.”¹³³ The court deemed that principle applicable to commencement of the suit.

V. CONTRACTS

A. *Unsuccessful bidder for stadium redevelopment project lacked standing to sue.*

In *Civic Mind, LLC v. City of Hartford*,¹³⁴ an unsuccessful bidder, which had responded to a request for proposals (RFP) seeking redevelopment concepts for Dillon Stadium in Hartford, sued the city and others for alleged improprieties in the bidding process. The Appellate Court agreed with the trial court that the plaintiff lacked standing to pursue its claims, and affirmed the trial court’s judgment of dismissal.

On behalf of the city, the Capital Region Development Authority (CRDA) had issued a request for proposals “from individuals, firms and/or organizations authorized to do business in the [s]tate of Connecticut who are interested in using, redeveloping and operating [the stadium] and potentially securing a professional sports team for that facility.”¹³⁵ The RFP expressly provided that it did not obligate the CRDA or city to “undertake any action” or “award a contract.”¹³⁶ It also reserved to CRDA “the right to use submissions as a basis for negotiation with one or more respondents and/ or with parties other than those responding to [the] RFP.”¹³⁷ The plaintiff submitted a proposal, but the contract was awarded to another respondent.

The plaintiff sued, alleging that the city “conspired with

¹³³ *Id.* at 874, quoting 1 J. Cox & T. Hazen, *Treatise on the Law of Corporations* (3d Ed. 2023) § 8:8.

¹³⁴ 229 Conn. App. 615, 328 A.3d 225 (2024).

¹³⁵ *Id.* at 619.

¹³⁶ *Id.* at 620.

¹³⁷ *Id.*

other persons to award the contract to remodel [the stadium] to an underqualified and improper bidder that was not in the city's best interests."¹³⁸ The defendants moved to dismiss, arguing that the trial court "lacked subject matter jurisdiction over the present action on the ground that the plaintiff did not have standing to raise claims concerning the award of a contract pursuant to the RFP because it had no legal or equitable right in any such contract."¹³⁹ The trial court granted the motion.

The Appellate Court affirmed. The court noted the general principle that "an unsuccessful bidder on a state or municipal contract has no contractual right that would afford standing to challenge the award of a contract. [A] bid, even the lowest responsible one, submitted in response to an invitation for bids is only an offer which, until accepted ... does not give rise to a contract between the parties.... An unsuccessful bidder, therefore, has no legal or equitable right in the contract."¹⁴⁰

An exception does exist, allowing judicial intervention "where fraud, corruption or favoritism has influenced the conduct of the bidding officials or when the very object and integrity of the competitive bidding process is defeated by the conduct of [the bidding] officials."¹⁴¹ But the exception "contemplates the existence of a *competitive* bidding process, the integrity of which has been compromised."¹⁴² To evaluate whether this exception applies, "the threshold inquiry is whether the RFP was subject to the statutory or municipal competitive bidding requirements at issue."¹⁴³

The pertinent statutory provision, General Statutes Section 4b-91, provides in relevant part that "every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any other public work by the state that is estimated to cost more than one

¹³⁸ *Id.* at 626.

¹³⁹ *Id.* at 629.

¹⁴⁰ *Id.* at 635. (Citation and internal punctuation omitted.)

¹⁴¹ *Id.* (Citation and internal punctuation omitted.)

¹⁴² *Id.* at 636, 637. (Emphasis supplied by the court.)

¹⁴³ *Id.* at 637.

million dollars shall be awarded to the lowest responsible and qualified general bidder...”¹⁴⁴ The trial court held, and the Appellate Court agreed, that the statute was inapplicable to the proposed contract that was the subject of the RFP. The RFP “did not invite respondents to bid on a contract for ‘the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any other public work,’” but rather “invited respondents to submit their own proposed plans, taking into account baseline criteria identified in the RFP, for the redevelopment of the stadium.”¹⁴⁵ Given this “open-ended format, the responses could not be expected to reflect the uniformity required for competitive bidding.”¹⁴⁶

This conclusion was “further bolstered by the RFP’s provisions that (1) the issuance of the RFP “[did] not obligate CRDA or the [c]ity ... to undertake any action” or “commit CRDA or the [c]ity ... to award a contract” and (2) CRDA reserved the right to use RFP submissions in negotiations with other respondents and/or others who did not respond to the RFP, as such provisions are not indicative of a solicitation governed by the competitive bidding requirements of § 4b-91(a).”¹⁴⁷

The court employed a similar analysis with respect to the plaintiff’s claim that the bidding process also violated a provision of Hartford’s municipal code, and reached the same conclusion.

B. Builder’s insurer had no duty to defend against defective workmanship claim.

In *Westchester Modular Homes of Fairfield County, Inc. v. Arbella Protection Insurance Company*,¹⁴⁸ a building contractor sued its commercial general liability insurance carrier for failure to cover a claim of defective workmanship asserted by customers of the plaintiff. The insurance policy obliged the

¹⁴⁴ *Id.* at 638.

¹⁴⁵ *Id.* at 641.

¹⁴⁶ *Id.* at 639.

¹⁴⁷ *Id.* at 641.

¹⁴⁸ 224 Conn. App. 526, 312 A.3d 1118 (2024).

defendant to pay damages arising from claims of “property damage,” which the policy defined in relevant part as “physical injury to tangible property, including all resulting loss of use of that property.”

Following cross motions for summary judgment, the trial court entered judgment for the defendant. The court concluded that the claims asserted by the customers in the underlying action – a counterclaim to the plaintiff’s action to foreclose a mechanic’s lien – did not include allegations of property damage as defined by the policy. The record from the underlying case suggested, at most, “the existence of possible defective work that could lead to future property damage if not remedied but ... did not demonstrate the existence of current property damage.”¹⁴⁹

The Appellate Court affirmed. The court relied on a 2013 decision of the Connecticut Supreme Court called *Capstone Building Corp. v. American Motorists Ins. Co.* In that case, the court determined, based on the policy language, that “‘physical injury to tangible property’ would not include construction deficiencies unless they damage other, nondefective property ... [T]he commercial general liability policy covers claims for property damage caused by defective work, but not claims for repair of the defective work itself.”¹⁵⁰

The defendants argued that “neither the allegations of the [customers’] counterclaim nor the extrinsic documents submitted raised the possibility of existing property damage. ... [A]t most, ... the construction deficiencies could potentially result in water damage to nondefective areas of the property if not fixed.”¹⁵¹ The Appellate Court agreed with the defendants’ characterization of the record in the underlying case, and applying the *Capstone* decision, further agreed that the customers’ claims were not within the scope of the policy.

¹⁴⁹ *Id.* at 536.

¹⁵⁰ *Id.* at 541, quoting *Capstone Building Corp. v. American Motorists Ins. Co.*, 308 Conn. 760, 785, 787, 67 A.3d 961 (2013).

¹⁵¹ *Id.* at 540.

2024 CONNECTICUT APPELLATE REVIEW

BY KENNETH J. BARTSCHI AND KAREN L. DOWD*

I. SUPREME COURT

The COVID-19 drought continued to work its way through the appellate system in 2024, with the Supreme Court issuing only 71 decisions. Nearly 60% of these cases bypassed the Appellate Court, either through transfer or by virtue of being directly appealable to the Supreme Court. The certification grant rate in 2024 was only about 12%, so expect a similar reliance on transferred cases in 2025. The overall reversal rate was 57%. The reversal rate for direct appeals was just under 59%, while the reversal rate for certified appeals came in at approximately 53%. The bottom line is that if you got to the Supreme Court in 2024, a reversal was more likely than not.

Turning to the decisions, it was a slow year for constitutional issues. *Spillane v. Lamont*¹ rejected a claim that school vaccination requirements violated the free exercise and equal protected clauses of the federal and state constitutions as well as free education provision of the state constitution.² The court held, however, that the plaintiffs could proceed with their claim under the state Religious Freedom Restoration Act³ as the act expressly waived sovereign immunity.

In *Markley v. State Elections Enforcement Commission*,⁴ the court held that enforcement of an election provision that precludes publicly funded candidates from using their candidate committee funds to support or oppose candidates in other races violated the plaintiffs' First Amendment rights as applied. The plaintiffs used their funds to criticize Gover-

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¹ 350 Conn. 119, 323 A.3d 1007 (2024).

² See U.S. CONST., AMENDS. I & XIV, CONN. CONST. ART. 1, §§ 1, 3, & 20; CONN. CONST. ART. VIII, § 1.

³ CONN. GEN. STAT. § 52-571b.

⁴ 349 Conn. 67, 313 A.3d 1170 (2024).

nor Dannel Malloy who was running for reelection, but the Supreme Court squinted and viewed the reference as a rhetorical device to criticize his policies, rather than urging opposition to the governor's reelection.

On the topic of elections, *Alves v. Giegler*⁵ held that the town clerk has a ministerial obligation to accept and file with the secretary of the state the list of minor candidates that is facially valid pursuant to General Statutes § 9-452. Both slates of candidates for the Democratic Town Committee in Hartford managed to get themselves disqualified in *Airey v. Feliciano*⁶ for irregularities in their petitions that eliminated the entire sheet of signatures on the pages where the irregularities occurred. Perennial candidate Lee Whitnum Baker missed the deadline to file as a write-in candidate because of erroneous information in the cover letter from the Secretary of the State, but the court exercising original jurisdiction held in *Whitnum Baker v. Secretary of the State*⁷ that extraordinary relief was not available as the correct deadline information was clearly indicated on the registration form itself.

Turning to appellate procedure, in *Benvenuto v. Brookman*,⁸ the court held that an order granting a bill of discovery pertaining to a blogger's laptop and cell phone was not final for appellate purposes where the trial court ordered the parties to attempt to agree on the search protocols and the court retained jurisdiction to resolve any impasses regarding such protocols.

*In re Criminal Complaint & Application for Arrest Warrant*⁹ held that the plaintiffs in error did not have to establish statutory aggrievement pursuant to General Statutes § 9-368 (providing for complaints by electors to the Superior Court claiming election violations) to bring a writ of error as the writ of error serves to afford a nonparty appellate re-

⁵ 348 Conn. 346, 306 A.3d 455 (2024).

⁶ 350 Conn. 162, 323 A.3d 1037 (2024).

⁷ 350 Conn. 753, 326 A.3d 235 (2024).

⁸ 348 Conn. 609, 309 A.3d 292 (2024).

⁹ 350 Conn. 633, 325 A.3d 921 (2024).

view in the absence of statutory authority. Nevertheless, the plaintiffs in error were not classically aggrieved as they did not have a specific interest in the prosecution of another.¹⁰

*O'Sullivan v. Haught*¹¹ held that the Appellate Court improperly dismissed an appeal from the denial of summary judgment where there was a colorable collateral estoppel claim. Exercising its supervisory powers and reaching the merits where the parties briefed the issue, the court held where a probate appeal is held as a trial de novo, there is no preclusive effect for the underlying decree.

As for civil procedure, *Laiuppa v. Moritz*¹² held that the accidental failure of suit statute¹³ requires that the defendant have actual or effective notice within the time for commencing an action in order for the savings statute to apply where service was defective. The receipt of a reservation of rights letter without a copy of the summons and complaint was not effective notice under the facts of this case.¹⁴ Justice Steven Ecker, joined by Justice Gregory D'Auria, dissented because lawyers for the defendant entered an appearance in the original period within 30 days of the marshal's receipt of the summons and complaint, which he viewed as actual or effective notice to the defendant.¹⁵

*Idlibi v. Hartford Courant Co.*¹⁶ concerned the leeway afforded to self-represented parties in determining whether an issue is properly raised. The self-represented plaintiff claimed the defendant defamed him in articles pertaining to his professional discipline as a dentist. He made passing reference to the use of a stock photo showing a dental procedure that he claimed on appeal was misleading. Because the plaintiff alleged five distinct statements were defamatory, his passing reference to the photograph was not distinctly raised. Justices Ecker, again with Justice D'Auria, dissent-

¹⁰ *Id.* at 644.

¹¹ 348 Conn. 625, 309 A.3d 1194 (2024).

¹² 350 Conn. 457, 325 A.3d 151 (2024).

¹³ CONN. GEN. STAT. § 52-592.

¹⁴ 350 Conn. at 471.

¹⁵ *Id.* at 472 (Ecker, J., dissenting).

¹⁶ 350 Conn. 557, 325 A.3d 1048 (2024).

ed, contending, inter alia, that the trial court was obligated to offer the plaintiff the opportunity to replead before granting summary judgment.¹⁷

In *Mercedes-Benz Financial v. 1188 Stratford Avenue, LLC*,¹⁸ the court held that the trial court abused its discretion in denying the defendant's motion to open a default judgment pursuant to General Statutes § 52-212 where the trial court erroneously found that the motion was untimely. Although the trial court also found that there was no basis to open the judgment, it was not clear the court applied the standard set forth in § 52-212 or the standard pursuant to the court's inherent authority to open judgments on the basis of fraud, mutual mistake, etc.

The court further delineated the limits of litigation privilege in *Deutsche Bank AG v. Vik*.¹⁹ The court made it clear that extrajudicial conduct was not protected by the privilege.

In *Epright v. Liberty Mutual Ins. Co.*,²⁰ the court held its nose and concluded that Practice Book § 13-4 does not clearly preclude a party from communicating with an opponent's expert witness, affirming the Appellate Court's reversal of sanctions. The court, however, cautioned against reading its decision too broadly and suggested that the rules committee address the issue.

Some of the court's administrative law decisions descended into the weeds but will nevertheless be important to those practicing the respective areas discussed. *GenConn Energy, LLC v. Public Utilities Regulatory Authority*²¹ held that PURA properly applied general rate-making principles as set forth in General Statutes § 16-29e to peaking generation facilities governed by General Statutes § 16-243u. *Drumm v. Freedom of Information Commission*²² held that in order to show police files are exempt from FOIA requests,

¹⁷ *Id.* at 587 (Ecker, J., dissenting).

¹⁸ 348 Conn. 796, 312 A.3d 16 (2024).

¹⁹ 349 Conn. 120, 314 A.3d 583 (2024).

²⁰ 349 Conn. 679, 321 A.3d 354 (2024).

²¹ 348 Conn. 532, 308 A.3d 1018 (2024).

²² 348 Conn. 565, 308 A.3d 993 (2024).

the records custodian must show that a future law-enforcement action was a reasonable possibility. *Marshall v. Commissioner of Motor Vehicles*²³ held that the failure to comply with the three-day preparation and transmittal of a police report in a DUI matter as required by General Statutes § 14-227b renders the report inadmissible. In *Department of Public Health v. Estrada*,²⁴ the court held that whistleblower protection pursuant to General Statutes § 4-61dd applies to self-reporting error if the employee can establish a causal link between the report and the adverse employment action. In *Woodbridge Newton Neighborhood Environmental Trust v. Connecticut Siting Council*,²⁵ the court concluded that the council was not required to consider the effect on property values when deciding whether to allow a Verizon tower in a residential neighborhood. Finally, the court held in *United Illuminating Co. v. Public Utilities Regulatory Authority*²⁶ that the court could order a vacatur of an administration decision that became moot on appeal.

Just when you think there is a limit to arbitration awards that can be upheld, one comes along that says, “Hold my beer.” In this case it was *State v. Connecticut State University Organization of Administrative Faculty, AFSCME, Council 4, Local 2836, AFL-CIO*.²⁷ There, the court reversed the trial court and reinstated an arbitration award reinstating a public employee who had been fired after being arrested and charged with off-duty conduct, specifically a domestic dispute. While the court assumed there was a public policy against domestic violence, the court observed that no statute required termination, no evidence indicated that the incident impaired the public trust, the matter was not egregious (the charges were dismissed, the spouse was not credited, and the parties’ children slept through the incident), and the employ-

²³ 348 Conn. 778, 311 A.3d 704 (2024).

²⁴ 349 Conn. 223, 315 A.3d 1081 (2024).

²⁵ 349 Conn. 619, 321 A.3d 363 (2024).

²⁶ 350 Conn. 660, 325 A.3d 900 (2024).

²⁷ 349 Conn. 148, 314 A.3d 971 (2024). Is there a rule that cases involving unions must have case names that take up two lines of a running head in the Law Journal?

ee was not incorrigible. Justice Joan Alexander, joined by Chief Justice Richard Robinson, offered a vigorous dissent, contending that reinstating the grievant without a warning or letter of reprimand failed to vindicate public policy.²⁸

The public policy in favor of arbitration appeared again in *Chabad Lubavitch of Western & Southern New England, Inc. v. Shemtov*,²⁹ which held that an agreement to arbitrate a dispute over property before a Jewish Rabbinical court was enforceable. Because the question concerned property and not a matter of religious doctrine, the doctrine of ecclesiastical abstention did not apply.³⁰

Turning to torts, in a medical malpractice action concerning a botched fertility treatment at UConn Health Center that resulted in the death of one fetus and severe injuries to the surviving twin, the court in *Lynch v. State*³¹ held that the failure to attach a proper opinion letter or certificate of good faith to the submission to the claims commissioner must be raised before the commissioner. Following *Lynch*, the court held in *Maryland v. University of Connecticut Health Center*³² that a decision by the claims commissioner to allow a suit against the state cannot be challenged in Superior Court.

*Cooke v. Williams*³³ held that in a legal malpractice action against a criminal defense attorney, the plaintiff must plead and prove they received post-conviction relief in the underlying matter unless the claim does not require findings that would undermine the conviction, such as fraud. This is a pleading issue subject to a motion to strike and does not implicate subject-matter jurisdiction. Justice Andrew McDonald concurred to note that the three-year statute of limitations may run before appellate or habeas proceedings conclude, in which case the plaintiff should file suit and seek

²⁸ *Id.* at 196 (Alexander, J., dissenting). The employee was director of student conduct at Central Connecticut State University whose job included prosecuting violations of intimate-partner violence. *Id.* at 201.

²⁹ 349 Conn. 695, 321 A.3d 1107 (2024).

³⁰ *Id.* at 705-06 & n.12.

³¹ 348 Conn. 478, 308 A.3d 1 (2024).

³² 350 Conn. 830, 326 A.3d 1096 (2024).

³³ 349 Conn. 451, 316 A.3d 278 (2024).

a stay of the action pending the outcome of post-conviction proceedings.³⁴

As for workers' compensation, *Ajdini v. Frank Lill & Sons*³⁵ made clear that an employer's notice that it is contesting a claim must be filed—that is, received—within 28 days of notice of the claim as the mailbox rule does not apply. In *Esposito v. Stamford*,³⁶ the court concluded that a finding of permanent injury pursuant to General Statutes § 31-307(c) does not entitle a claimant to permanency benefits pursuant to General Statutes § 31-308(b) as a matter of law unless there is a permanent partial disability rating or a basis for finding maximum medical improvement. And in *Cochran v. Department of Transportation*,³⁷ the court held that an employee who sustained a compensable injury is eligible to receive total incapacity benefits when the total incapacity occurred after the employee voluntarily retired.

In an employment discrimination case, *O'Reggio v. Commission on Human Rights & Opportunities*,³⁸ the four-justice majority adopted the federal test for determining when an employee is a supervisor for purposes of vicarious liability for creating a hostile work environment. Under that test, the term “supervisor” means an employee who has the power to take tangible employment actions against the alleged victim, such as firing the employee. Chief Justice Robinson, joined by Justices Raheem Mullins and Ecker, dissented arguing that the term “supervisor” should include those authorized to direct the daily work of subordinates.³⁹ The dissent persuasively argues that the authority over day-to-day working conditions aids a harasser in the workplace.

Two contract cases are worth noting. *Stiegler v. Meriden*⁴⁰ concerned whether retired firefighters were entitled to recalculation of pension benefits where an arbitrator awarded retroac-

³⁴ *Id.* at 482 (McDonald, J., concurring).

³⁵ 349 Conn. 1, 312 A.3d 579 (2024).

³⁶ 350 Conn. 209, 323 A.3d 1066 (2024).

³⁷ 350 Conn. 844, 327 A.3d 901 (2024).

³⁸ 350 Conn. 182, 323 A.3d 1048 (2024).

³⁹ *Id.* at 200 (Robinson, C.J., dissenting).

⁴⁰ 348 Conn. 452, 307 A.3d 894 (2024).

tive pay increases prior to their retirement. The parties treated the issue as a pure question of law and submitted no extrinsic evidence. The court determined that the contract was ambiguous and reviewed it anew, concluding that the plaintiffs were not entitled to a retroactive increase in their pensions.

*Centrix Management Co., LLC v. Fosberg*⁴¹ concerned General Statutes § 42-150bb, which provides that when a consumer contract contains a unilateral attorney's fees provision in favor of the commercial party, the court may award counsel fees to a prevailing consumer "based as far as practicable upon the terms governing the size of the fee for the commercial party." Thus, where a consumer contract caps the fees available to the commercial party, the court is limited to that cap unless the consumer can show that the limitation is impractical, i.e., does not accomplish the equitable purpose of the statute.

Turning to insurance, certified questions from the District of Connecticut in *NEMS, PLLC v. Harvard Pilgrim Health Care of Connecticut, Inc.*⁴² concerned Connecticut's surprise billing law.⁴³ The court held that the surprise billing law does not support a claim under the Connecticut Unfair Practices Act as the Connecticut Unfair Insurance Practices Act covers the field, that the act does not require the carrier to pay the bill in full and seek the difference from the insured, and that deductibles for out-of-network providers are based on out-of-network costs. In *Napolitano v. Ace American Ins. Co.*,⁴⁴ the court held that a trial court must consider all relevant communication between parties to a workers' compensation policy, not just the adequacy of the notice pursuant to General Statutes § 31-348 when determining whether a cancellation notice was sufficiently definite and certain.

The court addressed several issues concerning trade secrets in *Dur-A-Flex, Inc. v. Dy*.⁴⁵ The court held that knowledge of trade secrets for purposes of General Statutes § 35-51 of the

⁴¹ 349 Conn. 765, 322 A.3d 317 (2024).

⁴² 350 Conn. 525, 325 A.3d 196 (2024).

⁴³ CONN. GEN. STAT. § 38a-477a.

⁴⁴ 350 Conn. 871, 328 A.3d 635 (2024).

⁴⁵ 349 Conn. 513, 321 A.3d 295 (2024).

Connecticut Uniform Trade Secrets Act means knowledge of trade secrets by the defendants/owners, not the knowledge of an employee. The “head start” concept applies to the calculation of damages, i.e., damages run from the period of misappropriation to when the defendant could have acquired the information through proper means. The court also held that the trial court erroneously concluded that continued employment can never be consideration for a noncompete agreement.

Several land-use matters were on the docket in 2024. In *9 Pettipaug, LLC v. Planning & Zoning Commission*,⁴⁶ the court held that notice in the Middletown Press was sufficient for notice purposes for the Borough of Fenwick because it was readily available for purchase in Old Saybrook and had free online access to legal notices even though none of the fourteen year-round residents were subscribers. In *131 Beach Road, LLC v. Town Plan & Zoning Commission*,⁴⁷ the court concluded that historic preservation is a component of health and public safety to be taken into account when assessing affordable housing projects. *Wihbey v. Zoning Board of Appeals*⁴⁸ held that the regulations which were in effect when the plaintiff bought the property permitted short-term vacation rentals, but the plaintiff failed to establish that it was a pre-existing, nonconforming use once the regulations were amended to preclude short-term rentals. And in *PPC Realty, LLC v. Hartford*,⁴⁹ the court held that the city properly placed a lien on the plaintiff’s property after providing assistance to the plaintiff’s tenants after a fire caused by arson.

Two mortgage foreclosure cases warrant mention. *M&T Bank v. Lewis*⁵⁰ held that allegations of impropriety in a mortgagee’s force placement of flood insurance⁵¹ arise from

⁴⁶ 349 Conn. 268, 316 A.3d 318 (2024).

⁴⁷ 349 Conn. 647, 321 A.3d 382 (2024).

⁴⁸ 350 Conn. 87, 323 A.3d 324 (2024).

⁴⁹ 350 Conn. 347, 324 A.3d 780 (2024). Attorney Dowd filed an amicus brief in support of the plaintiff.

⁵⁰ 349 Conn. 9, 312 A.3d 1040 (2024).

⁵¹ “An insurance policy purchased by a lender upon the lapse of a borrower’s insurance is called a [force placed] insurance policy.” *Id.* at 14 n.2 (quoting *Miller v. Wells Fargo Bank, N.A.*, 994 F. Supp. 2d 542, 548 (S.D.N.Y. 2014) (internal quotation marks omitted)).

the making, validity, or enforcement of a mortgage for purposes of special defenses of unclean hands and the breach of the implied covenant of good faith and fair dealing. In *Wahba v. JPMorgan Chase Bank, N.A.*,⁵² the court held that, where the Appellate Court has affirmed a judgment of strict foreclosure and remanded for setting new law days, the trial court has authority to open the judgment and render a judgment of foreclosure by sale.

A pair of tax appeals are worth noting. *William W. Backus Hospital v. Stonington*⁵³ held that real property acquired by a health-care system subject to tax pursuant to General Statutes § 12-66a includes leased real estate. *FuelCell Energy, Inc. v. Groton*⁵⁴ held that exemptions to personal property tax applied to fuel cell modules.

The court decided three notable family law cases in 2024. In *Hepburn v. Brill*,⁵⁵ the court concluded that the 2012 amendments to General Statutes § 46b-59, which govern third-party visitation of minor children, obviated the need for the judicial gloss of *Roth v. Weston*,⁵⁶ which the court applied to save it from constitutional infirmity. *Roth* imposed specific pleading requirements that were jurisdictional, but in light of the revision to the statute, inadequate pleading no longer implicates jurisdiction but instead pertains to the court's authority to provide relief.

*R. H. v. M. H.*⁵⁷ held that an order permitting a custodial parent to suspend visitation was an improper delegation of judicial authority. Chief Justice Robinson, joined by Justice Mullins concurred but would have held that a trial court could order limited authority for a custodial parent to suspend visitation for specific and limited reasons.

In *K. S. v. R. S.*,⁵⁸ the defendant pledged the marital home, which was only in his name, and other assets in lieu of an ap-

⁵² 349 Conn. 483, 316 A.3d 338 (2024).

⁵³ 349 Conn. 713, 321 A.3d 1117 (2024).

⁵⁴ 350 Conn. 1, 323 A.3d 268 (2024).

⁵⁵ 348 Conn. 827, 312 A.3d 1 (2024).

⁵⁶ 259 Conn. 202, 789 A.2d 431 (2002).

⁵⁷ 350 Conn. 432, 324 A.3d 720 (2024).

⁵⁸ 350 Conn. 692, 326 A.3d 187 (2024).

peal bond in New Jersey and then forfeited the assets. The trial court nevertheless included the assets in the marital estate, thereby failing to give full faith and credit to the New Jersey judgment. The trial court also made what seems to be a frequent error of basing child support on earning capacity without first determining the presumptive amount of support based on income. The Supreme Court further held that while trial courts could consider the parties' liabilities when fashioning financial orders, it was not required to place a value on them.

Turning to criminal and habeas cases, the court found plain error in *State v. Daren Y.*⁵⁹ where the statute of limitations on certain charges had lapsed and the court had not found that the defendant had waived the statute of limitations. The court distinguished the statute of limitations for criminal offenses from other affirmative defenses because the former protects criminal defendants from being prosecuted for stale claims.

The court reversed the Appellate Court and reinstated the defendant's conviction in *State v. Garrison*,⁶⁰ which concerned whether the defendant was in custody when the police questioned him. The defendant and another man engaged in an altercation after several hours of drinking, with the defendant getting punched in the nose, and the defendant stabbing the other man. The defendant went to the hospital where he was hooked up to an IV, dressed in a hospital gown, and had a blood alcohol level above 0.2. Nevertheless, the court held that a reasonable person would feel free to leave. Justices McDonald dissented, joined by Justice Ecker, adopting the Appellate Court's decision.

The court found no due process violation in *State v. Outlaw*⁶¹ where a juror appeared to be sleeping because the judge brought the issue to counsel's attention, defense counsel did not want the juror removed, and the court indicated that the court and counsel should monitor the juror.

⁵⁹ 350 Conn. 393, 324 A.3d 734 (2024).

⁶⁰ 350 Conn. 61, 323 A.3d 279 (2024).

⁶¹ 350 Conn. 251, 324 A.3d 107 (2024).

Exercising its supervisory powers, the court reversed the judgment and remanded for a new trial in *State v. King*,⁶² holding that defendants who waive a jury trial for a three-judge panel must be advised that the panel does not need to be unanimous, unlike a twelve-member jury. In *State v. Honsch*,⁶³ the court adopted the presumption that a murder occurred in the state where the body was found. Justice McDonald concurred but noted that defendants will have a difficult time overcoming the presumption. *State v. Carter*⁶⁴ held as a matter of law that an air gun in which the CO2 cartridge could not be installed was not a deadly weapon for purposes of the burglary and home invasion statutes.⁶⁵ And in *State v. Hurdle*,⁶⁶ the court concluded that General Statutes § 18-98d(c) does not deprive the trial court of authority to direct the commissioner of correction to apply specific presentence confinement dates on a judgment mittimus.

A fractured court held in *State v. Andres C.*⁶⁷ that the journals belonging to the complainant in a sexual assault case were not discoverable on the state's alternate ground for affirmance because the complainant did not adopt or approve of the journals as her statement. A complication was that the journals were in Spanish, and the prosecutor did not personally review them, which the majority declined to require. Justice McDonald concurred. He thought the journals were discoverable pursuant to Practice Book § 40-11 but since the defendant had not relied on that rule before the trial court or the reviewing courts, it could not provide the basis to reverse. Justice D'Auria would have ordered a remand to get an official translation. Justice Ecker also dissented, contending that there needed to be a translation.

*State v. Henderson*⁶⁸ delved into the difference between inconsistent verdicts, that is, when a defendant is acquitted

⁶² 350 Conn. 303, 324 A.3d 81 (2024).

⁶³ 349 Conn. 783, 322 A.3d 1019 (2024).

⁶⁴ 350 Conn. 43, 323 A.3d 297 (2024).

⁶⁵ CONN. GEN. STAT. §§ 53a-100aa & 53a-101(a)(1).

⁶⁶ 350 Conn. 770, 326 A.3d 528 (2024).

⁶⁷ 349 Conn. 300, 315 A.3d 1014 (2024).

⁶⁸ 348 Conn. 648, 309 A.3d 1208 (2024).

of a charge that includes all the elements of another charge for which the defendant was convicted, and contradictory verdicts, which occur when the defendant is convicted on charges that require a mutually inconsistent state of mind. The court declined to overrule an earlier decision holding that legally inconsistent verdicts are not reviewable on appeal.

In *Felder v. Commissioner of Correction*,⁶⁹ the two-year period set forth in General Statutes § 52-470(d), which provides that a successive habeas petition filed more than two years after the prior petition is presumptively without merit absent a showing of good cause for the delay, runs from the last state court petition, not from a subsequent federal petition.

*Tatum v. Commissioner of Correction*⁷⁰ held that the rule that expert testimony as to the reliability of eye-witness testimony applied retroactively. The court continued to apply the rule that watershed procedural decisions apply retroactively, even though the United States Supreme Court has abandoned that rule. The court also held that a watershed rule must apply retroactively on collateral review if it results from scientific developments that persuade the court to reevaluate the fundamental principles underlying the procedure, the rule improves accuracy, and the petitioner advocated for the rule in the direct proceedings or the habeas proceedings.

As for personnel, Chief Justice Robinson retired from the bench in early September 2024. Associate Justice Mullins was elevated to Chief Justice by Governor Ned Lamont, who was sworn in in early 2025. In early 2025, Governor Lamont nominated Appellate Court Chief Judge William Bright to the Supreme Court and Judge Robin Wilson to the Appellate Court. Appellate Judge Melanie Cradle succeeded Justice Bright as Chief Judge of the Appellate Court.

⁶⁹ 348 Conn. 396, 306 A.3d 1061 (2024).

⁷⁰ 349 Conn. 733, 322 A.3d 299 (2024).

II. APPELLATE COURT

The Appellate Court issued 279 published decisions in 2024. This is 49 more published decisions than 2023, though still lower than the average prior to the COVID-19 pandemic. There were 337 cases heard by the Appellate Court in 2024, which certainly worked to get every matter heard.⁷¹ It may be that the practice of law changed during the pandemic to favor mediation or other alternative resolution, which keeps cases from being tried, and therefore from being appealed.

The reversal rate in 2024 was roughly 22%, essentially unchanged from 2023. As with all appeals, the key to saving your judgment, or obtaining a reversal, is the proper preservation and presentation of the appellate issues.

A. Appellate Court Dismissals

The Appellate Court dismissed 8% of the cases which were heard. This is consistent with 2023. Several of those dismissals were because the appeal was rendered moot by actions during the pendency of the appeal. In *A.A.-M. v. M. Z.*,⁷² the appeal focused on child custody issues. During the appeal, the child turned 18, which rendered the appeal moot as the court could no longer order the relief sought.⁷³ In *State v. Pringle*,⁷⁴ the defendant completed his sentence during the appeal of the denial of his motion to correct an illegal sentence, mooted the appeal.⁷⁵ Similarly, a foreclosure matter was dismissed as moot where title vested in the buyer after

⁷¹ The number of cases heard in any given year does not correlate to the number of decisions released in that year as each case can take several months to go from oral argument to published decision. Also, in some cases, the matter settles after oral argument.

⁷² 225 Conn. App. 46, 313 A.3d 1288 (2024).

⁷³ *Id.* at 54-55. See also *S.C. v. J.C.*, 227 Conn. App. 326, 321 A.3d 427 (2024) (appeal challenging award of full legal custody was moot as child had reached age of 18).

⁷⁴ 229 Conn. App. 360, 327 A.3d 434 (2024).

⁷⁵ Similarly, in *State v. Godbout*, 229 Conn. App. 231, 326 A.3d 1142 (2024), the court dismissed as moot the defendant's claim that the court exceeded its authority in imposing terms to his conditional discharge as the term of such discharge had expired before argument. See also *Hodge v. Comm'r of Corr.*, 225 Conn. App. 343, 315 A.3d 438 (2024) (appeal in habeas action dismissed as petitioner completed sentence).

sale during the appeal.⁷⁶ The same rule applies to loss of possession in summary process matters.⁷⁷ The *Samsel* court rejected the collateral consequences exception and the “capable of repetition but evading review” exception. Of special note is *Bank of New York Mellon v. Horsey*,⁷⁸ in which the court held that, pursuant to Practice Book § 61-11, the defendant’s prior filings constituted “motions to open or other similar motion” and so there was no appellate stay. Title therefore vested in the plaintiff and the appeal was dismissed. Finally, where the defendants appealed an order compelling arbitration, the appeal was dismissed as moot as the arbitration commenced during the appeal.⁷⁹

Where the plaintiff’s objections to the defendant’s two motions to amend the answer to add a counterclaim were sustained *prior* to the plaintiff’s unconditional withdrawal of the foreclosure action, the defendant’s appeal on the motions to amend were not moot.⁸⁰

If there are two independent bases for the trial court’s decision and the appeal attacks only one of those bases, the appeal is moot.⁸¹

The Appellate Court sua sponte requested briefing on the standing of guarantors to appeal a judgment of strict foreclosure.⁸² As the guarantors held no interest in the property and were not parties to the note or mortgage, they lacked standing and their appeal was dismissed for lack of subject

⁷⁶ *Retained Realty, Inc. v. Selkeetal*, 229 Conn. App. 47, 325 A.3d 1204 (2024). *See also* *City of Norwich v. Brenton Family Trust*, 229 Conn. App. 129, 326 A.3d 619 (2024) (collateral consequences doctrine was not adequately briefed and therefore not considered).

⁷⁷ *Samsel v. Parks*, 228 Conn. App. 583, 325 A.3d 334 (2024).

⁷⁸ 227 Conn. App. 94, 321 A.3d 441, *cert. denied*, 350 Conn. 925, 326 A.3d 247 (2024).

⁷⁹ *Hine Builders, LLC v. Glasscock*, 224 Conn. App. 185, 312 A.3d 81 (2024). In addition, after the trial court granted the plaintiff’s motion to terminate the stay, the defendants failed to file a motion for review of that decision. *Id.* at 191.

⁸⁰ *Deutsche Bank National Trust Co. v. Speer*, 225 Conn. App. 439, 315 A.3d 1154 (2024).

⁸¹ *See In re Zayden J.*, 224 Conn. App. 848, 313 A.3d 532, *cert. denied*, 316 A.3d 357 (2024); *Meineke Bristol, LLC v. Premier Auto, LLC*, 227 Conn. App. 64, 319 A.3d 826 (2024).

⁸² *Benchmark Mun. Tax Services, Ltd. v. 899 ETG Assocs., LLC*, 227 Conn. App. 474, 322 A.3d 1118 (2024).

matter jurisdiction. The Appellate Court dismissed the appeal in *U.S. Bank Trust, N.A. v. Healey*,⁸³ a foreclosure case, as the defendants were not classically aggrieved.

Habeas corpus matters generated several dismissals. The Appellate Court will not review habeas appeals based solely on the habeas court's credibility determinations.⁸⁴ The proper vehicle to obtain review of an order of a motion to withdraw appearance was by motion for review, not appeal.⁸⁵ Where petitioner did not adequately explain his delay in filing his petition for certification to appeal, the habeas court properly dismissed his petition.⁸⁶ The filing of a second habeas action, which included the same claims as those in the appealed action, warranted dismissal of the appeal as moot.⁸⁷ Along the same lines, the knowing and voluntary withdrawal of a prior habeas petition with prejudice precluded a subsequent petition on the same claims.⁸⁸

The state's appeal from the granting of a motion to correct an illegal sentence was premature where the appeal was taken prior to the resentencing in *State v. Sinchak*.⁸⁹

Finally, where a non-attorney, who was not an individual party in the case, sought to represent the interests of a trust in a foreclosure action appeal, that appeal was dismissed.⁹⁰

The Appellate Court rendered three opinions on motions to dismiss the appeal filed before briefing. The publication of decisions on pre-briefing dismissals is a much-appreciated change in how the Appellate Court handles its business, al-

⁸³ 224 Conn. App. 867, 315 A.3d 1112, *cert. denied*, 350 Conn. 910, 324 A.3d 141 (2024).

⁸⁴ See *Martinez v. Comm'r of Corr.*, 229 Conn. App. 49, 324 A.3d 253 (2024).

⁸⁵ *Reynolds v. Comm'r of Corr.*, 229 Conn. App. 228, 325 A.3d 1214 (2024).

⁸⁶ *LaSalle v. Comm'r of Corr.*, 227 Conn. App. 520, 321 A.3d 499, *cert. denied*, 350 Conn. 919, 325 A.3d 217 (2024). See also *Holley v. Comm'r of Corr.*, 225 Conn. App. 477, 315 A.3d 1107 (2024).

⁸⁷ *Best v. Comm'r of Corr.*, 226 Conn. App. 649, 318 A.3d 448, *cert. denied*, 350 Conn. 906, 323 A.3d 344 (2024).

⁸⁸ *Smith v. Comm'r of Corr.*, 225 Conn. App. 822, 317 A.3d 237, *cert. denied*, 350 Conn. 902, 322 A.3d 1058 (2024).

⁸⁹ 229 Conn. App. 38, 326 A.3d 303 (2024), *cert. denied*, 351 Conn. 901, 328 A.3d 158 (2025).

⁹⁰ *Cazenovia Creek Funding I, LLC v. Roman*, 223 Conn. App. 739, 309 A.3d 419 (2024).

lowing practitioners a view into how the Court sees the issues. In *Black Rock Gardens, LLC v. Berry*,⁹¹ the defendant filed a special motion to dismiss the summary process action, claiming that the action should be dismissed pursuant to the anti-SLAPP statute.⁹² The Appellate Court held that the plaintiff's claims were not based on the defendant's exercise of protected rights under the statute, and therefore, there was no immediate right to appeal. In *DXR Finance Parent, LLC v. Theraplant, LLC*,⁹³ the Appellate Court dismissed the appeal from the denial of a motion to intervene in a foreclosure action, as title to the property vested. In *City of Torrington v. Council 4*, the Appellate Court denied the motion to dismiss the appeal as the trial court judgment vacating an arbitration award and remanding for a new arbitration hearing on a municipal collective bargaining agreement was an appealable final judgment.⁹⁴

The Appellate Court also issued a written opinion on a motion for review of a stay ruling in *Rubin v. Brodie*.⁹⁵ In *Rubin*, an application to confirm an arbitration award was filed in conjunction with a civil action, and then the civil action was dismissed. The Appellate Court held that the application to confirm survived the dismissal of the complaint and that the appeal of the dismissal of the civil action did not stay the application to confirm.

B. *Failure to Preserve or Present Appeal Properly*

In addition to the dismissals discussed above, there are other ways to lose the ability to have your appeal decided by the Appellate Court. This is the “properly preserve and present” aspect of appellate practice. Knowing the rules is critical in presenting the appeal, but also in defending against an appeal.

First, generally, the issue must have been raised below at

⁹¹ 224 Conn. App. 379, 387, 312 A.3d 588 (2024).

⁹² CONN. GEN. STAT. § 52-196a.

⁹³ 223 Conn. App. 362, 309 A.3d 347, *cert. denied*, 348 Conn. 957, 310 A.3d 380 (2024).

⁹⁴ 224 Conn. App. 237, 247, 312 A.3d 1112 (2024).

⁹⁵ 225 Conn. App. 108, 314 A.3d 1066 (2024).

trial.⁹⁶ Claims that were not raised in the trial court below will not be considered.⁹⁷ Failure to challenge the legal sufficiency of a defense prior to trial will preclude review of that claim on appeal.⁹⁸ In order to preserve a claim regarding an instruction, there must be a written request to charge or an exception timely taken after the charge is given.⁹⁹ Any claims that a trial court improperly relied on testimony will not be reviewed where there was no objection to that testimony.¹⁰⁰ Indeed, any argument regarding an evidentiary issue must be on the record below or it will not be considered.¹⁰¹ Moreover, there will be no appellate review where the objection in the trial court was on different basis than that claimed on appeal.¹⁰²

In family matters, where one party makes specific requests for orders, the other party must raise an objection to such orders in the trial court in order to preserve any objection on appeal.¹⁰³ Additionally, the Appellate Court will not review factual or legal bases for a motion for modification which were not raised in the trial court.¹⁰⁴ In a criminal matter, a defendant's failure to move to withdraw a guilty plea in the trial court will preclude appellate review unless the defendant satisfies the *Golding* factors.¹⁰⁵

⁹⁶ The exceptions are plain error review, *State v. McClain*, 324 Conn. 802, 155 A.3d 209 (2017), or review under *State v. Golding*, 213 Conn. 233, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 120 A.3d 1188 (2015). Both types of review are available only in extraordinary cases.

⁹⁷ *Forestier v. City of Bridgeport*, 223 Conn. App. 298, 312-13, 308 A.3d 102 (2024). The trial court in *Forestier* expressly stated that the claim was not before it. *See also C.W. v. Warzecha*, 225 Conn. App. 137, 314 A.3d 617 (2024) (failure to contemporaneously object to trial court's questioning of defendant, or to raise issue in post-trial briefing precluded appellate review).

⁹⁸ *Ryder v. JPMorgan Chase Bank, Nat'l Assn.*, 227 Conn. App. 114, 143, 321 A.3d 1132 (2024).

⁹⁹ *Id.* at 144-45; PRACTICE BOOK § 16-20.

¹⁰⁰ *Id.* at 147.

¹⁰¹ *Id.* at 149-50.

¹⁰² *State v. Tahir L.*, 227 Conn. App. 653, 322 A.3d 455, *cert. denied*, 350 Conn. 913, 324 A.3d 141 (2024).

¹⁰³ *Briggs v. Briggs*, 227 Conn. App. 531, 550-52, 322 A.3d 475 (2024). *But see D.S. v. D.S.*, 351 Conn. 1, 3-4 n.3, 328 A.3d 111 (2025) (argument that proposed orders would "crush" plaintiff was sufficient to preserve claim that tying alimony to defendant's employment was an abuse of discretion). The authors represented the defendant in *D. S.*

¹⁰⁴ *Lenczewski v. Lenczewski*, 229 Conn. App. 752, 762, 328 A.3d 718 (2024).

¹⁰⁵ *State v. Abramovich*, 229 Conn. App. 213, 326 A.3d 593 (2024). However, the failure to request *Golding* review "in name or substance" precluded such review. *Id.* at 218.

In an exception to the preservation rule, the Appellate Court refused review of unpreserved claims but nevertheless reversed as the decision was based upon “improper considerations” which included the trial court’s own personal experience.¹⁰⁶

A party may also waive the ability to get appellate review. Filing a substitute complaint following the granting of a motion to strike waives the right to appeal the decision striking the complaint.¹⁰⁷ In addition, a defendant’s unconditional plea of *nolo contendere* waives all non-jurisdictional defects as well as constitutional challenges to pretrial proceedings.¹⁰⁸ Further, *Golding* review of jury instructions is waived where trial counsel was provided with proposed jury instructions, was given the opportunity to make changes, and affirmatively accepted the charges.¹⁰⁹

Even if the issues are preserved at trial, the failure to properly present them on appeal will preclude review. Where a claim requires review of the evidence or testimony given at trial, the failure to order the complete transcript precludes review.¹¹⁰ Inclusion in the appendix of those portions which are helpful to the appeal does not provide an adequate record for review.¹¹¹ Practice Book § 64-1 requires that the trial court provide a written or oral decision of certain rulings. Where the trial court renders an oral decision, the court shall order that portion of the transcript which sets forth its decision, the judge must sign it, and the signed decision must be filed with the clerk. If the judge does not file a written decision or sign a transcript of the oral decision in applicable cases, the appellant must file a notice pursuant to § 64-1(b). Failure to file that notice may leave the court with an inadequate record for review.¹¹²

¹⁰⁶ *Dessa, LLC v. Riddle*, 223 Conn. App. 457, 464, 469-71, 308 A.3d 1051 (2024).

¹⁰⁷ *Glory Chapel Int’l Cathedral v. Philadelphia Indem. Ins. Co.*, 224 Conn. App. 501, 313 A.3d 1273 (2024).

¹⁰⁸ *State v. Godbout*, 229 Conn. App. 231, 234-35, 326 A.3d 1142 (2024).

¹⁰⁹ *State v. Tahir L.*, 227 Conn. App. 653, 669, 322 A.3d 455 (2024).

¹¹⁰ *Meineke Bristol, LLC v. Premier Auto, LLC*, 227 Conn. App. 64, 75, 319 A.3d 826 (2024). *See also* *Park Seymour Associates, LLC v. City of Hartford*, 230 Conn. App. 565, 330 A.3d 640, *cert. denied*, 351 Conn. 918, 332 A.3d 294 (2025).

¹¹¹ *Id.* at 44.

¹¹² *S.C. v. J.C.*, 227 Conn. App. 326, 336-37, 321 A.3d 427 (2024).

There was no review of a claim that the trial judge should have recused itself where the party relied upon conversations held in chambers but not recorded.¹¹³ This case serves as a reminder that any chambers conferences of significance must either be held on the record, or the substance of the conference repeated on the record at a timely point. While an appellant could have filed a motion for rectification pursuant to Practice Book § 66-5 to preserve any chambers conversation, relying on such a motion filed after the passage of time, and the filing of an appeal, is ill-advised.

Any issue worth appealing is worth briefing properly. The corresponding rule is often applied by the Appellate Court: an issue not briefed properly is not worthy of review. The failure to brief an issue may be considered abandonment of the issue,¹¹⁴ or the court may just refuse to review the issue.¹¹⁵ Similarly, where the claim of error, or which ruling is being appealed, is not clear, the Appellate Court will not review.¹¹⁶

When asking that an Appellate Court decision be overruled, one must request review en banc, as a panel of the court will not overrule another.¹¹⁷ In the absence of en banc review, an appellant who hopes to raise the issue to the Supreme Court should brief it to preserve the claim, but note that the briefing is for preservation purposes given that the Appellate Court will not reverse itself unless sitting en banc.

Finally, the Appellate Court will not conduct review of a decision which the appealing party induced the trial court to

¹¹³ *M.C. v. A.W.*, 226 Conn. App. 444, 447-49, 319 A.3d 183 (2024).

¹¹⁴ *State v. Cruz*, 227 Conn. App. 75, *cert. denied*, 350 Conn. 915 (2024). *See also* *Sicignano v. Pearce*, 228 Conn. App. 664, 325 A.3d 1127 (2024), *cert. denied*, 351 Conn. 908, 330 A.3d 881 (2025).

¹¹⁵ *See* *Forestier v. City of Bridgeport*, 223 Conn. App. 298, 308 A.3d 102 (2024); *Mystic Oil Co., Inc. v. Shaukat, LLC*, 228 Conn. App. 147, 323 A.3d 1094 (2024); *City of Middletown v. Wagner*, 228 Conn. App. 265, 325 A.3d 253 (2024); *Thomas v. Cleary*, 229 Conn. App. 15, 326 A.3d 1109 (2024); *State v. Abramovich*, 229 Conn. App. 213, 326 A.3d 593 (2024); *State v. Godbout*, 229 Conn. App. 231, 326 A.3d 1142 (2024); *State ex rel. Dunn v. Burton*, 229 Conn. App. 267, 327 A.3d 982 (2024); *Lenczewski v. Lenczewski*, 229 Conn. App. 752, 328 A.3d 718 (2024).

¹¹⁶ *Speer v. Skaats*, 226 Conn. App. 416, 318 A.3d 1050, *cert. denied*, 350 Conn. 905, 323 A.3d 343 (2024). The Appellate Court, however, reversed on standing in that case.

¹¹⁷ *In re A.H.*, 226 Conn. App. 1, 317 A.3d 197 (2024); *State v. Dayvid J.*, 227 Conn. App. 755, 322 A.3d 1126, *cert. denied*, 350 Conn. 919, 325 A.3d 218 (2024).

enter. In *Lenczewski v. Lenczewski*,¹¹⁸ the defendant argued that the trial court could not enter orders relating to non-compliance with an arbitration award, but then, on appeal, challenged the trial court's decision that it lacked authority. The Appellate Court declined to review that claim given that the appellant had induced the error.¹¹⁹

C. Trial Procedure

There were several cases involving reversals based upon deprivation of due process rights. In *Cameron v. Santiago*,¹²⁰ the Appellate Court held that the sua sponte dismissal of the plaintiff's case without adequate notice violated the plaintiff's procedural due process rights. Once the trial court sua sponte determined that the action might be moot, the court had to give the plaintiff the opportunity to be heard.¹²¹ In *Rodriguez v. City of Hartford*,¹²² the trial court erred in sua sponte raising statute of limitations as to an amended complaint as such claim can be waived by the failure to raise it, which the defendants had not done. Similarly, in *Zakko v. Kasir*,¹²³ as the trial court did not allow the defendant to examine the only witness or present evidence in response to plaintiff's motion to open the judgment, the evidentiary hearing did not comport with procedural due process. The trial court erred in deciding a motion for attorney's fees without holding an evidentiary hearing where the defendant timely objected and requested an evidentiary hearing.¹²⁴

The Appellate Court did not find a violation of due process rights for the procedure which resulted in the disbarment of an attorney for conduct during a disqualification hearing.¹²⁵ The court noted the unusual circumstances in holding that there was adequate notice to the attorney.¹²⁶ The Appellate

¹¹⁸ 229 Conn. App. 752, 763-67, 328 A.3d 718 (2024).

¹¹⁹ *Id.* at 766-67.

¹²⁰ *Cameron v. Santiago*, 223 Conn. App. 836, 843, 310 A.3d 391 (2024).

¹²¹ *Id.* at 846-47.

¹²² 224 Conn. App. 314, 312 A.3d 85, *cert. denied*, 349 Conn. 907, 313 A.3d 512 (2024).

¹²³ 223 Conn. App. 205, 308 A.3d 92 (2024).

¹²⁴ *Mystic Oil Co., Inc. v. Shaukat, LLC*, 228 Conn. App. 147, 162, 323 A.3d 1094 (2024).

¹²⁵ *Ambrose v. Ambrose*, 223 Conn. App. 609, 309 A.3d 305 (2024).

¹²⁶ *Id.* at 619-27.

Court also held that a trial court did not affect the constitutional rights of the mother in a termination of parental rights case by denying a motion for continuance based upon the recent discovery of a putative father.¹²⁷

Remember that an admission in an answer is a judicial admission, unless and until that answer is superseded by an amendment, at which point the original answer is merely an evidentiary admission.¹²⁸ As with any evidentiary claim, always be sure to brief and argue the harmfulness of the error.

The trial court properly refused to consider the plaintiffs' request to amend prior to deciding the motion to dismiss in *Martinelli v. Martinelli*,¹²⁹ as the motion to dismiss addressed subject mat-ter jurisdiction for lack of standing.

D. Torts

A vexatious litigation claim is personal in nature and, therefore, cannot be assigned.¹³⁰ As the claim could not be assigned to the plaintiff, the trial court lacked subject matter jurisdiction over the prejudgment remedy.¹³¹

More is better when it comes to jurisdictional notices; written notice that there was a defect in some portion of a particular roadway without more detail was held to be insufficient as a matter of law under General Statutes § 13a-149.¹³²

In *Marafi v. Hind El Achchabi*,¹³³ the defendant told the plaintiff that he was the father of her two children, despite the fact that she knew the children had been fathered by two other men. Over the years, the plaintiff transferred millions of dollars to the defendant in reliance on her representation

¹²⁷ In re Zayden J., 224 Conn. App. 848, 313 A.3d 532, *cert. denied*, 316 A.3d 357 (2024).

¹²⁸ C.W. v. E.W., 226 Conn. App. 144, 317 A.3d 185 (2024).

¹²⁹ 226 Conn. App. 563, 578-83, 319 A.3d 198 (2024).

¹³⁰ Northeast Bldg. Supply, LLC v. Morrill, 224 Conn. App. 137, 312 A.3d 138 (2024).

¹³¹ *Id.* at 154.

¹³² Cardoza v. City of Waterbury, 224 Conn. App. 813, 314 A.3d 650, *cert. denied*, 349 Conn. 911 (2024).

¹³³ 225 Conn. App. 415, 316 A.3d 798, *cert. denied*, 350 Conn. 901, 322 A.3d 1058 (2024).

of parentage. The defendant was found liable for a multi-million dollar judgment for fraudulent misrepresentation, statutory theft, and unjust enrichment. On appeal, the defendant claimed that the counts were premised on her adultery and were therefore barred by General Statutes § 52-572f, which provides that “No action may be brought upon any cause arising from criminal conversation.” As the issue was not raised below, the Appellate Court applied plain error review and held that it was not so obvious and indisputable that § 52-572f barred the claims.¹³⁴

In *GHP Media, Inc. v. Hughes*,¹³⁵ the plaintiff company claimed that the individual defendants stole confidential business information, which the competitor defendant company used. The defendant company filed a third-party complaint seeking common-law indemnification against officers of the plaintiff company, claiming that they breached their duty to protect the plaintiff company from the actions of the individual defendants. The Appellate Court affirmed the striking of that claim as the duty alleged was different than any duty alleged as to the defendant company.¹³⁶ The Appellate Court also noted that, while undecided by any Connecticut appellate court, the majority of trial courts in Connecticut have held that one cannot seek indemnification for intentional torts.¹³⁷ As the parties had not argued that indemnification should fail because of the nature of the claimed torts, the court decided the case as if indemnification would apply. But the footnote certainly implied that, had this panel been given the opportunity to decide, it would have held that indemnification is not available for intentional torts.

The Appellate Court affirmed the striking of a complaint against a bank for its claimed failure to assess the veracity of an entity prior to allowing that entity to open an account.¹³⁸ The court noted that, since there was no direct relationship

¹³⁴ *Id.* at 438.

¹³⁵ 226 Conn. App. 162, 317 A.3d 799 (2024).

¹³⁶ *Id.* at 175.

¹³⁷ *Id.* at 174 n.10.

¹³⁸ *Haworth Country Club, LLC v. United Bank*, 226 Conn. App. 665, 319 A.3d 146, *cert. denied*, 350 Conn. 914, 324 A.3d 791 (2024).

between the parties, a duty of care could only be imposed upon the defendant as to the plaintiff, a third party non-customer, if it was foreseeable that harm of the general nature of that suffered was likely to result from the challenged conduct.¹³⁹ It was not.

A party's bad faith denial in an answer can constitute the continuation of a civil proceeding for the purposes of a vexatious litigation action.¹⁴⁰ Judge Elgo concurred in part, but dissented as to the above holding as she concluded that general denials in an answer cannot form the basis of a vexatious litigation claim.¹⁴¹ Judge Elgo would hold General Statutes § 52-568 to be ambiguous, and noting the other states which have so held, would hold that common law vexatious litigation should not apply to malicious defense, given that the claims for vexatious litigation and malicious prosecution are designed to free an individual from the institution of frivolous litigation.¹⁴²

Summary judgment properly entered for the city of Bridgeport where there was no genuine issue of material fact that the police officer was off-duty and performing no official duties at the time he allowed another off-duty officer to drive while intoxicated.¹⁴³ The trial court also properly granted summary judgment on the plaintiff's claim of negligent hiring as the statute of limitations had run and the plaintiff failed to establish a later wrongful act related to his hiring.¹⁴⁴

E. *Family and Juvenile Cases*

The trial court's finding that there was no substantial change of circumstances was clearly erroneous where the child had changed residence from the plaintiff's home to the

¹³⁹ *Id.* at 689.

¹⁴⁰ *Dorfman v. Liberty Mut. Fire Ins. Co.*, 227 Conn. App. 347, 376, 322 A.3d 331 (2024), *cert. denied*, 351 Conn. 907, 330 A.3d 882 (2025) (defendant's petition), *cert. denied*, 351 Conn. 907, 330 A.3d 881 (2025) (plaintiff's petition).

¹⁴¹ *Id.* at 380-406.

¹⁴² *Id.* at 386-88.

¹⁴³ *Bucci v. City of Bridgeport*, 227 Conn. App. 593, 323 A.3d 346, *cert. denied*, 350 Conn. 916, 324 A.3d 791 (2024).

¹⁴⁴ *Id.* at 616.

defendant's home.¹⁴⁵ The Appellate Court noted the proper procedure for modifying unallocated alimony and child support requires "unbundling" by determining what portion of the unallocated order constitutes child support.¹⁴⁶

In *Y.H. v. J.B.*, the Appellate Court held the trial court erred in failing to award child support on the ground that no party requested it as the record revealed that the defendant had repeatedly requested child support.¹⁴⁷ Moreover, even without a request, the trial court was obligated to assess whether the minor child was in need of support pursuant to General Statutes § 46b-84(d).¹⁴⁸

The Appellate Court reviewed an adjudication of neglect under the collateral consequences exception to the mootness doctrine even though the period of protective supervision had expired because the court could, at a later date, rely on that adjudication in a petition to terminate parental rights.¹⁴⁹ Compare to *R.G.-R. v. S.R.*, in which the Appellate Court dismissed an appeal of custody and visitation orders as moot, finding that the appellant had not met her burden to demonstrate prejudicial consequences from allowing those orders to stand.¹⁵⁰

Self-help is not allowed unless expressly provided for in any agreement or judgment. In *M.S. v. M.S.*,¹⁵¹ the order contemplated modification of child support at a certain date but did not make it automatic. Where the plaintiff reduced his child support payments without obtaining court approval first and a motion for contempt followed, the trial court,

¹⁴⁵ *De Almeida-Kennedy v. Kennedy*, 224 Conn. App. 19, 312 A.3d 150 (2024).

¹⁴⁶ *Id.* at 34-38.

¹⁴⁷ 224 Conn. App. 793, 800-01, 313 A.3d 1245 (2024).

¹⁴⁸ *Id.* at 801-04. In light of the error, the Appellate Court reversed and remanded for a new trial on all financial orders. *Id.* at 805. This is a change from the days when child support orders were severed from the mosaic of financial orders when a remand was necessary.

¹⁴⁹ *In re P.M.*, 226 Conn. App. 378, 387, 318 A.3d 1085, *cert. denied*, 349 Conn. 919, 320 A.3d 978 (2024). Having reviewed the claim, the court held that the trial court had sufficient evidence for its determination. *Id.* at 390-92.

¹⁵⁰ 226 Conn. App. 547, 557-58, *cert. denied*, 349 Conn. 923, 321 A.3d 1131 (2024). The court also held that the appeal did not satisfy the "capable of repetition but evading review" exception. *Id.* at 559.

¹⁵¹ 226 Conn. App. 482, 319 A.3d 223 (2024).

which modified the child support, improperly failed to find the arrearage for unpaid child support.¹⁵²

In ordering child support, any deviation from the child support guidelines must include specific findings as to deviation criteria.¹⁵³ In *Wald*, the trial court also improperly delayed payment of child support until after the marital home sold.¹⁵⁴ The Appellate Court remanded on all financial orders as the child support order on remand could affect the mosaic.¹⁵⁵ The trial court had the authority to award certain specific assets, a health savings account, brokerage account and draw account to the plaintiff, and to order the plaintiff to use those funds to pay specific expenses from the related fund.¹⁵⁶ Further, where the trial court did not state the valuation method it considered when it assigned a quasi-pension account to the plaintiff and the defendant failed to move for articulation, there was no basis to hold that the assignment of the asset to the plaintiff was error.¹⁵⁷ Similarly, the trial court properly distributed a pension without first valuing it as neither party produced sufficient evidence to allow for a valuation.¹⁵⁸

Where the relocation of the mother and children occurred before judgment, the trial court did not need to consider the factors set forth in General Statutes § 46b-56d in establishing custody orders.¹⁵⁹

The administrator of an estate was statutorily aggrieved and had standing to continue an annulment action following the death of the plaintiff's decedent pursuant to General Statutes § 52-599(a), given the significant financial implications of the annulment, as argued by both parties, the administrator was statutorily aggrieved.¹⁶⁰

¹⁵² *Id.* at 493-94.

¹⁵³ *Wald v. Cortland-Wald*, 226 Conn. App. 752, 766, 319 A.3d 769 (2024).

¹⁵⁴ *Id.* at 772-73.

¹⁵⁵ *Id.* at 775-76.

¹⁵⁶ *Nedder v. Nedder*, 226 Conn. App. 817, 826, 320 A.3d 180 (2024).

¹⁵⁷ *Id.* at 830-31.

¹⁵⁸ *Walton v. Walton*, 227 Conn. App. 251, 267-68, 321 A.3d 1180 (2024).

¹⁵⁹ *N.R. v. M.P.*, 227 Conn. App. 698, 716-17, 323 A.3d 1142 (2024).

¹⁶⁰ *Ciarleglio v. Martin*, 228 Conn. App. 241, 249, 253, 325 A.3d 219, *cert. denied*, 350 Conn. 920, 325 A.3d 218 (2024).

Finally, the Appellate Court held that, under plain error review, the trial court did not err in presiding over a *Matza*¹⁶¹ hearing by defendant's prior attorney and then also presiding over the trial, which involved significant issues of credibility.¹⁶² The Appellate Court held that presiding over both a *Matza* hearing and the trial was not so clearly, obviously, and indisputably improper as to warrant plain error review given that judges often have to disregard information in making rulings.¹⁶³ The Appellate Court, however, held that the trial court violated defendant's due process rights in restricting her case-in-chief presentation on a motion for contempt to fifteen minutes.¹⁶⁴

F. *Criminal*

The trial court improperly held that it did not have jurisdiction to consider a petition pursuant to General Statutes § 54-255(c)(5), limiting dissemination of sexual offender registration status, but the Appellate Court held the petitioner did not meet the criteria for such petition as his confinement in a hospital for psychiatric disabilities as an acquittee by reason of mental disease or defect constituted "jail or prison time" under the statute.¹⁶⁵

In a habeas action, the Appellate Court refused to presume ineffective assistance based upon the prior counsel's failure to put on evidence, and as there was no factual record upon which to review the counsel's decision, there was no *Golding* or plain error review.¹⁶⁶ The Appellate Court reiterated that habeas counsel's failure to advise petitioner of the deadline for filing a new petition after the withdrawal of a petition may constitute good cause to justify a late-filed peti-

¹⁶¹ *Matza v. Matza*, 226 Conn. 166, 168, 627 A.2d 414 (1993).

¹⁶² *Kosar v. Giangrande*, 228 Conn. App. 749, 766, 326 A.3d 266, *cert. denied*, 350 Conn. 930, 326 A.3d 556 (2024). The authors represented the defendant.

¹⁶³ *Id.* at 771.

¹⁶⁴ *Id.* at 760-61.

¹⁶⁵ *State v. Webber*, 225 Conn. App. 16, 315 A.3d 320, *cert. denied*, 349 Conn. 915, 315 A.3d 301 (2024).

¹⁶⁶ *Banks v. Comm'r of Corr.*, 225 Conn. App. 234, 314 A.3d 1052, *cert. denied*, 349 Conn. 922, 321 A.3d 1130 (2024). *See also* *Bosque v. Comm'r of Corr.*, 225 Conn. App. 255, 262, 314 A.3d 638, *cert. denied*, 349 Conn. 922, 321 A.3d 1130 (2024).

tion but noted that such a failure did not require allowing a late petition, but was merely a factor to consider.¹⁶⁷

In a rare exercise of its supervisory authority, the Appellate Court reviewed a habeas petitioner's unpreserved claim that his habeas petition was improperly denied because the trial court wrongly held that the Deadly Weapon Offender Registry¹⁶⁸ applied to his 2002 conviction.¹⁶⁹ Applying statutory interpretation principles, the Court held that General Statutes § 54-280a did not apply.¹⁷⁰

However, the Appellate Court declined to exercise its supervisory authority to prohibit trial courts from providing consciousness of guilt instructions, noting a recent Connecticut Supreme Court case which rejected the same request.¹⁷¹

The trial court properly held that it lacked subject matter jurisdiction and therefore denied a petition for writ of error coram nobis, as the petitioner's claims of ineffective counsel could have been raised by petition for habeas corpus.¹⁷² The difference between subject matter jurisdiction and authority was addressed in *State v. Barnes*.¹⁷³ The Appellate Court agreed that the trial court improperly held that it lacked subject matter jurisdiction to consider the motion to modify sentence, but then held that the trial court did not have authority to modify the sentence under General Statutes § 53a-39 (a) because he had been released on special parole.¹⁷⁴

Changes in Second Amendment law in the United States Supreme Court required remand in *State v. Giannone*.¹⁷⁵ The

¹⁶⁷ *Hankerson v. Comm'r of Corr.*, 223 Conn. App. 562, 570-71, 308 A.3d 1113 (2024) (citing *Rose v. Comm'r of Corr.*, 348 Conn. 333, 304 A.3d 431 (2023)). See also *Michael G. v. Comm'r of Corr.*, 225 Conn. App. 341, 314 A.3d 659 (2024).

¹⁶⁸ CONN. GEN. STAT. § 54-280a.

¹⁶⁹ *Townsend v. Comm'r of Corr.*, 226 Conn. App. 313, 317 A.3d 1147 (2024).

¹⁷⁰ *Id.* at 332-34.

¹⁷¹ *State v. Carlson*, 226 Conn. App. 514, 545, 318 A.3d 283, cert. denied, 350 Conn. 911, 324 A.3d 143 (2024) (citing *State v. Coward*, 292 Conn. 296, 972 A.2d 691 (2009)).

¹⁷² *State v. Dayvid J.*, 227 Conn. App. 755, 322 A.3d 1126, cert. denied, 350 Conn. 919, 325 A.3d 218 (2024).

¹⁷³ 227 Conn. App. 760, 323 A.3d 1166, cert. denied, 350 Conn. 922, 325 A.3d 1093 (2024).

¹⁷⁴ *Id.* at 770.

¹⁷⁵ 228 Conn. App. 11, 323 A.3d 360 (2024).

defendant was convicted following nolo contendere pleas on two counts each of sale of an assault weapon, possession of a silencer, and possession of a large capacity magazine. Prior to sentencing, the United States Supreme Court decided *New York State Rifle & Pistol Assn., Inc. v. Bruen*,¹⁷⁶ which held that the two-step framework applied by the Second Circuit to assess the constitutionality of limitations on firearm possession was not the proper framework. The Appellate Court reversed and remanded for further proceedings on a motion to dismiss and motion to suppress, laying out factors to consider on remand in assessing whether a weapon is in common use today for lawful purposes, the *Bruen* standard.

Two appeals were decided in one opinion as they involved the same issue.¹⁷⁷ In both cases, the defendants were charged with crimes and failed to appear in court. Warrants were signed for each but were not served on either for years. Defendant Lee moved to dismiss the charges based on unreasonable delay of execution of the warrant. The state prosecutor did not object to the dismissal of the failure to appear charge but argued that the remaining charges should not be dismissed because of the delay. The trial court dismissed all of the charges. Labrec similarly moved to dismiss all charges based upon the delay in serving the rearrest warrant, and the trial court, referring to its ruling in the *Lee* matter, dismissed all charges. On appeal, the state did not challenge the dismissals of the failure to appear charges, but argued that the statute of limitations had been satisfied as to the remaining counts. The Appellate Court agreed, noting that the statute of limitations addressed pre-arrest delay, which did not apply to the remaining counts, and the trial court improperly considered all charges inseparable.¹⁷⁸

¹⁷⁶ 597 U.S. 1 (2022).

¹⁷⁷ *State v. Lee*, 229 Conn. App. 195, 326 A.3d 597 which addressed both *State v. Lee* (AC 46751) and *State v. Labrec* (AC 46758). Certification to appeal was denied in both *Lee*, 350 Conn. 935, 327 A.3d 394 (2024), and in *Labrec*, 351 Conn. 901, 328 A.3d 158 (2024).

¹⁷⁸ *Id.* at 207-08, 212. Labrec's cannabis possession charge was also dismissed as the offense had been decriminalized since the date of the charge.

G. *Interpretation of Statutes*

General Statutes § 50a-34 (b)(3) provides that a court may choose not to recognize a foreign judgment if the cause of action upon which it is based is repugnant to Connecticut's public policy. In *National Bank Trust v. Yurov*,¹⁷⁹ appellant argued that the statute should apply to whether the judgment itself was repugnant, not just the underlying cause of action. The plaintiff in that case was primarily owned by the Central Bank of the Russian Federation, which was the subject of an Executive Order prohibiting transactions with that entity. The argument was rejected by the Appellate Court based on the plain language of the statute.

The Appellate Court held that the expanded homestead exemption in General Statutes § 52-352b (21) applied retroactively to a post-judgment proceeding in which the judgment lien had been recorded and an action had commenced to foreclose that lien before the effective date of the statutory expansion, but the decision in the action was not rendered until after the effective date.¹⁸⁰ The Court further held that the trial court had improperly rendered judgment without holding an evidentiary hearing as requested by the defendant and remanded the matter for a new hearing.¹⁸¹

The Appellate Court interpreted General Statutes § 45a-731 and its extensive history in a case in which the plaintiff claimed that the adopted grandnieces of a testator were not beneficiaries under a trust established in 1949.¹⁸² The dispute centered on the interpretation of "distribution" and whether the Probate Court decree which vested the Trust in 1949 satisfied an exception to the statute which presumes that adopted children are included as beneficiaries.¹⁸³ It did not.

As 11 U.S.C. § 362 (k) provides for an independent cause of action for damages arising from an action brought and or

¹⁷⁹ 223 Conn. 637, 640-44 *cert. denied*, 348 Conn. 961, 312 A3d 37 (2024).

¹⁸⁰ *Ferreira v. Ward*, 224 Conn. App. 571, 312 A.3d 1075 (2024).

¹⁸¹ *Id.* at 588.

¹⁸² *Buzzard v. Fass*, 225 Conn. App. 280, 297, 315 A.3d 1119 (2024).

¹⁸³ The decision sets forth a nice history of the statute. *Id.* at 292-95.

litigated in violation of the automatic bankruptcy stay, the Appellate Court reversed the dismissal of a counterclaim pursuant to 11 U.S.C. § 362 (k), holding that the statute provides for a civil proceeding over which the federal courts do not have exclusive jurisdiction.¹⁸⁴

H. *Miscellaneous (AKA Everything Else Presented in no Particular Order)*

1. Attorney's Fees

Practice Book § 11-21 requires filing of a motion for attorney's fees (trial or appellate) within 30 days of when the final judgment was rendered. Two decisions demonstrated when this section applies. Attorney's fees claimed pursuant to contractual terms must be timely claimed under § 11-21 as they are not considered an award of damages.¹⁸⁵ In *JPMorgan Chase Bank*, the Appellate Court reversed the award of attorney's fees as the motion was untimely filed and the trial court did not make express findings of excusable neglect which would permit such a late filing.¹⁸⁶ Conversely, in *Palmieri v. Cirino*,¹⁸⁷ the trial court did not abuse its discretion in awarding attorney's fees despite the five-year delay in filing the affidavit of attorney's fees. As the attorney's fees were awarded as punitive damages, a component of the damages award, the defendant was not required to comply with § 11-21.¹⁸⁸ The Appellate Court reversed the award of attorney's fees for prior litigation.

Where the plaintiff discharged the attorney prior to the settlement of the case, the attorney was entitled to the reasonable value of the services he performed, not expectation damages, consistent with *Cole v. Myers*.¹⁸⁹

¹⁸⁴ *City of New London v. Speer*, 227 Conn. App. 221, 226, 250-51, 322 A.3d 407 (2024).

¹⁸⁵ *JPMorgan Chase Bank, N.A. v. Durante*, 227 Conn. App. 617, 323 A.3d 1118 (2024).

¹⁸⁶ *Id.* at 631.

¹⁸⁷ 226 Conn. App. 431, 318 A.3d 440 (2024).

¹⁸⁸ *Id.* at 440-41. Practice Book § 11-21 specifically provides that "[n]othing in this section shall be deemed to affect an award of attorney's fees assessed as a component of damages."

¹⁸⁹ *Stoor v. Vehs*, 226 Conn. App. 636, 318 A.3d 1059 (2024) (citing *Cole v. Myers*, 128 Conn. 223, 230, 21 A.2d 396 (1941)).

2. Employment

Claims of associational discrimination on the basis of disability are not recognized by the Connecticut Fair Employment Practices Act (CFEPA). The use of the phrase “recent college graduate” in an employment advertisement is not age discrimination per se.¹⁹⁰

3. Litigation Privilege

In *Harvin v. Yale New Haven Health Services Corp.*,¹⁹¹ a former inmate sued the defendant, alleging unlawful disclosure of confidential health information during his criminal prosecution. The information was disclosed to the Office of the Chief State’s Attorney and also in testimony at the criminal trial. On appeal, the plaintiff waived any argument that the litigation privilege did not protect the trial testimony.¹⁹² However, as the complaint alleged that the defendant may have produced more than that required by the subpoena to the Chief State’s Attorney’s Office, that aspect of the case was properly not dismissed.¹⁹³

4. Anti-SLAPP Statute

The trial court properly dismissed a claim on the grounds that the statement at issue was an exercise of the rights in connection with a matter of public concern as set forth in General Statutes § 52-196a (a) (3) (A), the anti-SLAPP statute.¹⁹⁴ The statute does not require that the conduct occur during an official proceeding, as a petitioning communication is “in connection with” an issue under review by a judicial body pursuant to § 52-196a (a) (3) (A) if it relates to the substantive issues in the litigation and is directed to persons

¹⁹⁰ *Comm’n on Human Rights & Opportunities v. Travelers Indem. Co.*, 228 Conn. App. 803, 326 A.3d 557 (2024) (addressing both *Comm’n on Human Rights & Opportunities v. Travelers Indem. Co* (AC 46677) and *Comm’n on Human Rights & Opportunities v. Yale Univ.* (AC 46678)).

¹⁹¹ 225 Conn. App. 171, 315 A.3d 365 (2024).

¹⁹² *Id.* at 188.

¹⁹³ *Id.* at 189-94.

¹⁹⁴ *Sicignano v. Pearce*, 228 Conn. App. 664, 683, 688, 694-95, 325 A.3d 1127, (2024), *cert. denied*, 351 Conn. 908, 330 A.3d 881 (2025). SLAPP is the acronym for “strategic lawsuit against public participation,” the purpose of which is to intimidate citizens who petition state agencies with the intent to chill any such action. *Id.* at 665 n.1.

having an interest in the litigation. The Court also held that, because § 52-196a is not a penal statute, the court's interpretation was not a violation of the ex post facto clause.

In an appeal from the denial of a special motion to dismiss under the anti-SLAPP statute, the Appellate Court considered the litigation privilege for the first time on appeal as the privilege implicates subject matter jurisdiction.¹⁹⁵ The anti-SLAPP statute did not apply to claims regarding the civil protection order, which was a private dispute. But the trial court should have granted the special motion to dismiss as to the grievance proceedings as those implicated the exercise of his right to petition government.

5. Foreclosure

The Appellate Court reversed the denial of a motion to open and vacate judgment of strict foreclosure as the calculation of the redemption amount improperly included amounts other than those expressly permitted in General Statutes § 47-258 (b).¹⁹⁶ In another case, the trial court properly granted summary judgment for the plaintiff as to an unclean hands defense but failed to consider the defendant's sufficiently-raised estoppel defense in calculating the amount of the debt.¹⁹⁷

6. Summary Process

The trial court improperly denied a mortgage-holder's post-judgment motion to intervene as of right in a summary process action based upon its claims to use and occupancy payments made during appeal of that summary process matter.¹⁹⁸ Landlord's actions after service of a notice to quit, including invoices for additional charges beyond use and occupancy, rendered the notice to quit equivocal, warranting dismissal of the action.¹⁹⁹

¹⁹⁵ Robinson v. V.D., 229 Conn. App. 316, 325-26, 340-41, 328 A.3d 198 (2024).

¹⁹⁶ Stonybrook Gardens Coop. Inc. v. Newrez, LLC, 225 Conn. App. 1, 315 A.3d 337 (2024).

¹⁹⁷ Deutsche Bank Nat'l Trust Co. v. Bretoux, 225 Conn. App. 455, 476, 317 A.3d 152 (2024).

¹⁹⁸ Altavista Inv., LLC v. Makeeva, 226 Conn. App. 175, 317 A.3d 850 (2024).

¹⁹⁹ 914 North Colony, LLC v. 99 West LLC, 226 Conn. App. 720, 319 A.3d 815 (2024).

7. Animal Welfare

Disturbingly, there were several animal welfare cases decided by the Appellate Court in 2024. In one case, the Department of Agriculture sought permanent custody of 65 live goats removed from a property in Redding.²⁰⁰ The defendant claimed that the trial court's failure to address her motion to suppress violated her due process rights. As the trial court split the proceeding into two steps, the first being temporary custody, and the second being permanent custody, the defendant would have had an opportunity to be heard on the sufficiency of the warrant, however, she failed to post a bond or voluntarily relinquish ownership of the goats as required by General Statutes § 22-329a(f).

In *City of Middletown v. Wagner*,²⁰¹ the Appellate Court agreed that the animal control officers had reasonable cause to believe that dogs in a barn in hot weather, without ventilation, for over 36 hours, were in imminent harm and neglected, and therefore the officers could enter the barn without a warrant. The Appellate Court reviewed defendant's claim that General Statutes § 53-247 was void for vagueness under *Golding* and held that even if "wholesome air, food and water" could be open to interpretation, no reasonable person could believe that the way the dogs in the barn were kept was proper under any reasonable standard, and as such, the statute was not constitutionally vague as applied. The Court also held that there was sufficient evidence that the dogs were neglected without evidence that the animals suffered actual physical injuries or adverse effects as a result of the conditions in which they were kept.

The Appellate Court held that the exclusionary rule did not apply to an animal welfare proceeding which results in the transfer of ownership of animals pursuant to General Statutes § 22-329a as it was not a civil forfeiture proceeding nor a quasi-criminal proceeding.²⁰² The Appellate Court also

²⁰⁰ State ex rel. Dunn v. Burton, 229 Conn. App. 267, 327 A.3d 982 (2024).

²⁰¹ 228 Conn. App. 265, 278-79, 283-84, 289, 325 A.3d 253 (2024).

²⁰² State ex rel. Dunn v. Connelly, 228 Conn. App. 458, 494, 496-97, 325 A.3d 1159, cert. denied, 350 Conn. 933, 327 A.3d 386 (2024). Defendants filed a petition

noted that any claim about the right to jury trial was waived as the defendant did not request a jury trial and did not object to the hearing before the court.²⁰³

8. Adverse Possession

In another unexpected cluster, there were several adverse possession cases. In *Mulvey v. Palo*, the Appellate Court reiterated the “exacting standard,” and the “demanding burden,” in establishing such a claim by clear and convincing evidence.²⁰⁴ The Appellate Court deferred to the trial court’s credibility determinations in affirming its decision in favor of the plaintiff in *Pirri v. Chen Chung Chow*.²⁰⁵ In a third case, the Appellate Court held that a defendant did not need to specially plead permissive use in defense of an adverse possession claim.²⁰⁶

9. Attorney Discipline

No appellate review covering 2024 would be complete without a mention of the writ of error filed by Attorney Norman Pattis from his suspension in connection with *Lafferty v. Jones*.²⁰⁷ Pattis represented Alex Jones in defending against claims by the families of victims of the Sandy Hook tragedy. The trial court granted motions limiting the use of the plaintiffs’ medical records which were designated as confidential. Confidential information was sent from Pattis’s office on a hard drive to counsel representing Jones in Texas without adequate protection of that information or notification to the various parties who came into contact with the drive that it contained information subject to the protective order.²⁰⁸ Ultimately, Texas counsel for Jones emailed those confidential

for writ of certiorari to the Supreme Court of the United States on May 16, 2025 (No. 24-1275). The petition was denied on October 6, 2025.

²⁰³ *Id.* at 509-10.

²⁰⁴ 226 Conn. App. 495, 501-02, 319 A.3d 211, *cert. denied*, 350 Conn. 902, 322 A.3d 1059 (2024). The plaintiff failed to establish the claim as to all areas of the disputed property or the borders with reasonable certainty.

²⁰⁵ 231 Conn. App. 493, 333 A.3d 833 (2025).

²⁰⁶ *Thoma v. Watson*, 228 Conn. App. 537, 552, 325 A.3d 955 (2024). The court also concluded, on the circumstances of that case, that post-trial inquiries by the court were within its judicial discretion. *Id.* at 553-54.

²⁰⁷ *Lafferty v. Jones*, 225 Conn. App. 552, 316 A.3d 742 (2024).

²⁰⁸ *Id.* at 579.

files by mistake to counsel for the Texas plaintiffs, who notified Connecticut plaintiffs' counsel. The trial court ordered Pattis to appear and show cause as to whether he should be reported to disciplinary counsel for improperly releasing the plaintiffs' medical records to unauthorized people.²⁰⁹ The trial court conducted the disciplinary hearing itself and held that Pattis had violated Rules of Professional Conduct 1.1, 1.15(b), 3.4(3), 5.1(b), 5.1(c) and 8.4(4).²¹⁰ Pattis filed a writ of error.

The Appellate Court rejected Pattis's claims that the sua sponte proceeding violated his procedural due process.²¹¹ The Court affirmed the finding of violations of Rule 1.1 (Competence) (the duty of competence included responsibly handling sensitive matters regardless of who provided it), 5.1(b) and (c) in part (Responsibilities of Partners, Managers, and Supervisory Lawyers) (rule applies even if associate was not charged with ethical violations); and 8.4(4) (Misconduct) (mishandling of confidential records falls within range of conduct covered by Rule 8.4).²¹² The Court reversed the findings as to Rule 1.15(b) (Safekeeping Property) (this rule does not apply to discovery materials); Rule 3.4(3) (Fairness to Opposing Party and Counsel) (there was insufficient evidence to find by clear and convincing evidence that Pattis knowingly authorized the transfer of the confidential material in violation of the protective order); and 5.1(c) (Responsibilities of Partners, Managers, and Supervisory Lawyers) (insufficient evidence that Pattis knew of the disclosure at a time when the consequences could have been avoided or mitigated).²¹³ As the suspension was not based on any particular violation, it was reversed and the matter remanded to a different judge for a hearing on sanctions.²¹⁴

²⁰⁹ *Id.* at 561-62.

²¹⁰ *Id.* at 563.

²¹¹ *Id.* at 569.

²¹² *Id.* at 569, 596, 604-08, 609-10.

²¹³ *Id.* at 598, 604, 607-08.

²¹⁴ *Id.* at 611.

SURVEY OF DEVELOPMENTS IN EMPLOYMENT
LAW JULY 2024 – JUNE 2025

BY JEFFREY J. MIRMAN*

The court decisions discussed in this article are interesting and important not just because of the fact patterns that are discussed but because the decisions offer guidance for how to marshal the facts under the various statutes and other legal principles that are addressed. These decisions set forth the elements of a *prima facie* case under the various statutes, the defenses available, and the tools that each side might make use of to establish a winning approach to cases that attorneys are retained to handle. Among the questions tackled by the decisions in this article are: what evidence establishes a constructive discharge; may a plaintiff rely only on her own testimony to avoid summary judgment; what facts support application of the ministerial exception; what must an employee prove to establish a claim under the Equal Pay Act; and what is the consequence of failing to move for judgment as a matter of law under F.R.C.P. Rule 50(a).

I. U.S. SUPREME COURT CASES

In a rare unanimous ruling authored by Justice Jackson, the Court in *Ames v. Ohio Department of Youth Services*¹ held in favor of a “majority-group” plaintiff in a Title VII reverse discrimination matter. In 2019 the petitioner, a heterosexual woman, applied for a newly created management position in the Ohio Department of Youth Services’ Office of Quality and Improvement. The petitioner had been employed with the agency since 2004, and at the time of her application was serving as a program administrator. The Agency hired a different candidate to fill the new role – a lesbian woman. A few days later Ames was demoted to a secretarial position and

* The author wishes to thank Margaret Sheahan for her patience, careful editing, and helpful suggestions in improving the content of this survey, to Stephanie Steinmetz for her help with the citations, and to Kathleen Albino for her invaluable assistance.

¹ 605 U.S. 303, (June 5, 2025).

replaced in her program administrator job by a newly hired gay man. She brought suit under Title VII, claiming that she was subjected to discriminatory disparate treatment because of her sexual orientation.

The District Court granted the employer summary judgment on the ground that Ames failed to make a showing of disparate treatment “because she had not presented evidence of ‘background circumstances’ suggesting that the agency was the rare employer who discriminates against members of a majority group.”² The Sixth Circuit affirmed, adopting the District Court’s reasoning.

The Supreme Court rejected this additional burden, stating that “the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group.”³ The Court noted that the Sixth Circuit decision would require “majority-group plaintiffs (and only majority-group plaintiffs) to produce certain types of evidence – such as statistical proof or information about the relevant decisionmaker’s protected traits – that would not otherwise be required to make out a *prima facie* case.”⁴ The Court observed that the lower courts had determined that the petitioner was qualified and had been denied a promotion and then demoted in favor of gay candidates, “evidence that would ordinarily satisfy her *prima facie* burden – before it specifically faulted Ames for failing to make the requisite showing of ‘background circumstances.’”⁵ The Court concluded that the “background circumstances” rule was invalid as it is a heightened evidentiary standard not permitted by Title VII.⁶

In a concurring opinion joined by Justice Gorsuch, Justice Thomas wrote that “the [‘background circumstances’] rule is a product of improper judicial lawmaking,” noting of the D.C. Circuit judges who first devised the rule “[a]pplying their own

² *Id.* at 306-7 (internal citation omitted).

³ *Id.* at 310.

⁴ *Id.* at 311.

⁵ *Id.* at 312.

⁶ *Id.* at 313.

‘common sense’, these judges determined that extra evidence is required to prove discrimination when a Title VII plaintiff is white.” Justice Thomas notes that other judges “have described the rule as ‘vague and difficult to apply,’” and noted that it requires judges to determine “whether a particular plaintiff qualifies as a member of the so-called ‘majority.’”⁷ (Justice Thomas also took the opportunity to invite a challenge to the McDonnell Douglas framework itself.)

In *E.M.D. Sales, Inc. v. Carrera*,⁸ another unanimous opinion, authored by Justice Kavanaugh, held that the preponderance of the evidence standard is to be applied to claims that employees were improperly denied overtime compensation under the Fair Labor Standards Act. EMD is a distributor of food products in Washington, D.C. Its sales representatives, who manage inventory and take orders at grocery stores, sued, alleging that the company violated the Act by failing to pay them overtime. The company defended on the basis of a claim that the employees were outside salesmen exempt from the overtime provisions of the Act. During a bench trial the Court found in favor of the employees because the company did not prove that the sales representatives were outside salesmen by clear and convincing evidence. This ruling caused a split among the circuit courts that had decided whether this was the proper standard to be applied.

Justice Kavanaugh wrote that the preponderance of the evidence should have been applied by the trial court, and reversed and remanded. Justice Kavanaugh wrote that in civil litigation the clear and convincing standard had been applied only in three circumstances: (1) when a statute establishes the higher standard of proof; (2) when the Constitution requires one; and (3) in uncommon cases imposing unusual results, such as taking away a person’s citizenship, rather than those involving money damages or conventional relief. None of these exceptions applied. The Court also found unpersuasive an argument that the Fair Labor Standards Act’s (FLSA) realm of employment rights where workers have

⁷ *Id.* at 315.

⁸ 604 U.S. 45 (Jan. 15, 2025).

less control over evidence than employers warrants a higher standard, noting that Title VII and NLRA cases are subject only to the preponderance of the evidence standard. Nor did the Court agree that the fact that FLSA overtime pay rights are not waivable mandates the higher standard of proof.

On June 23, 2025 the Court declined to review a ruling of the Ninth Circuit's decision in *Markel v. Union of Orthodox Jewish Congregations of America*,⁹ which held that an Orthodox Jewish organization is immune from claims of overtime compensation because of the application of the First Amendment's ministerial exception. The "ministerial exception" provides autonomy and precludes the application of "laws governing the employment relationship between a religious institution and certain key employees." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*.¹⁰ Here the defendant qualified as a religious institution because it is a religious organization, provides religious programming to synagogues, was organized to support the Orthodox Jewish community, and is a tax-exempt 501(c)(3) organization.¹¹ The Plaintiff was employed as a "mashgiach," who was "an inspector appointed by a board of Orthodox rabbis to guard against any violation of the Jewish dietary laws."¹² He was responsible for keeping kosher the integrity of the grape products, and only observant Orthodox Jews are permitted to serve as a mashgiach, and are responsible for the religious mission of "ensuring the wide availability of kosher food"; accordingly, the Circuit Court concluded that the Plaintiff qualified as a "minister."¹³ Because he was a minister of a religious institution, the ministerial exception applied.

II. SECOND CIRCUIT COURT OF APPEALS CASES

During the past year the Second Circuit has not been afraid to reverse decisions by District Court judges.

⁹ 124 F. 4th 796 (2024).

¹⁰ 591 U.S. 732, 737, (2020).

¹¹ *Markel* at 804.

¹² *Id.* at 801.

¹³ *Id.* at 807.

*Edelman v. NYU Langone Health System*¹⁴ dealt with claims, inter alia, under the Equal Pay Act,¹⁵ and retaliation under Title VII of the Civil Rights Act and parallel New York State and City legislation. The plaintiff, a female rheumatologist, complained that two male supervisors discriminated against her and uttered abusive statements to her in connection with a dispute about office space, about all of which she lodged complaints with HR. Some time later, her contract was not renewed and her employment was terminated based on information collected by the accused discriminators and never discussed with plaintiff. Her equal pay claim was based on the fact that a male rheumatologist was paid more than she was. The trial court granted judgment for defendants on multiple claims after evidence was presented but before the jury deliberated. The jury found for the employer on the equal pay claim, and for the plaintiff on her retaliation claims against the remaining defendants. The parties moved for judgment notwithstanding the verdict on the claims they had lost. The plaintiff's motion was denied; defendants', granted. The appeal followed.

Addressing the plaintiff's appeal of the Equal Pay Act loss, the Court of Appeals set forth the elements necessary to establish a claim under the Equal Pay Act. A plaintiff must prove:

'i) the employee pays different wages to employees of the opposite sex; ii) the employees perform equal work on jobs requiring equal skill, effort, and responsibility; and iii) the jobs are performed under similar working conditions',¹⁶

quoting *Eisenhauer v. Culinary Inst. Am.*¹⁷ The evidence before the jury included the fact that the male employee had more experience, demonstrated leadership skills, saw more patients, exerted more effort, and produced more revenue. Applying Rule 50(b), the Court noted that to overturn the

¹⁴ 141 F. 4th 28 (2d Cir. June 18, 2025).

¹⁵ 29 U.S.C. Section 206(d).

¹⁶ *Id.* at 641.

¹⁷ 84 F. 4th 507, 523 (2d Cir. 2023).

jury's verdict on appeal, the plaintiff had to demonstrate a manifest injustice, which she could not do. Had she moved prior to the issue being submitted to the jury under Rule 50(a) for judgment as a matter of law, the standard would have been a different, lower standard.¹⁸ The JNOV motion on this issue was properly denied.

The Court reversed the JNOV granted to the defendants on the plaintiff's retaliation claims. Evaluating the evidence under the McDonnell Douglas¹⁹ burden-shifting test,²⁰ the Court concluded that the jury could reasonably have found that the plaintiff established a prima facie case, in that her employment was terminated following her engaging in protected activity of filing three complaints to human resources,²¹ and that the employer's decision makers had a retaliatory intent,²² imputable to the employer.²³ The relationship between the discharge and her complaints about discriminatory treatment justified the jury's determination.²⁴

In *Knox v. CRC Management Co., LLC*,²⁵ the Court vacated the District Court's grant of summary judgment for the employer on the plaintiff's claims of race, national origin and disability discrimination, retaliation, hostile work environment, and FLSA violations. The plaintiff, a black woman of Jamaican descent, was a customer service attendant at several laundromats, starting in December, 2018. Beginning in February, 2019 her supervisor made derogatory comments to her almost daily, saying, among other things, that she was "too hood" and "ghetto." Ms. Knox's complaints to the District Lead about this behavior went unanswered. When that District Lead was shortly replaced, his successor not only ignored her complaints about her supervisor, but himself engaged in derogatory and offensive comments, telling Ms.

¹⁸ *Id.* at 41.

¹⁹ *McDonnell Douglas Corp. v Green*, 411 U.S. 792, 802-803 (1973).

²⁰ *Edelman* at 45.

²¹ *Id.* at 46.

²² *Id.* at 50, 54.

²³ *Id.* at 52.

²⁴ *Id.* at 53.

²⁵ 134 F. 4th 39 (2d Cir. 2025).

Knox that she “looked like Aunt Jemima” and “talk[ed] Jamaican when [she] got upset.”²⁶ The plaintiff also complained that she was not paid for extra shifts she worked at the two locations other than her main assignment, to which she also received no response. Having broken her thumb, the plaintiff got a hand brace from her doctor and instructions not to lift more than 25 lb., which she requested the employer to accommodate. Her supervisor and a Regional Manager she addressed did not grant her request and intimated that she might lose the job if she couldn’t perform all tasks. Then after taking a taxi to work, the plaintiff reimbursed herself for the fare and left a receipt in the cash register, a practice she had been using with the permission of her original supervisor, who had since been replaced. The new supervisor demanded that she return the money. The plaintiff declined, explaining that she was acting in accordance with company policy. Three days later she was fired because of her removal of the cash from the register and her refusal to return the money.²⁷

Knox sued her employer and two individuals, her original supervisor and replacement District Leader, asserting claims of discrimination, retaliation, hostile work environment, failure to accommodate disability, and wage violations. The latter two did not appear. This case is her appeal of the Court of Appeal’s grant of the employer’s motion for summary judgment and sua sponte dismissal of the case against the two, non-appearing individual defendants. The Court of Appeals, applying the standard set forth in *McDonnell Douglas Corp. v Green*,²⁸ concluded that a jury could infer that the plaintiff’s race played a part in her firing, based on the discriminatory comments made to her shortly before her discharge, and the failure of the company to investigate her complaint about racial harassment. The jury also might reject the company’s claim of a legitimate reason for the discharge – her failure to return the money taken from the cash register. The Court held that the plaintiff’s sworn declaration and depo-

²⁶ *Id.* at 46.

²⁷ *Id.* at 47.

²⁸ 411 U.S. 792, 802-803 (1973).

sition testimony that other employees had engaged in the practice of taking the money and leaving a receipt was sufficient to create an issue of material fact to defeat summary judgment. The Court rejected the District Court's conclusion that the "plaintiff's self-serving statement, without direct or circumstantial evidence to support the charge, is insufficient to defeat a motion for summary judgment."²⁹ In rejecting the District Court's conclusion, the Second Circuit held that in opposing summary judgment a plaintiff is entitled to rely on her own sworn testimony to support her claims.³⁰

With respect to the plaintiff's retaliation claim, the Court stated that proof of a *prima facie* case included evidence "(1) that she engaged in activity protected under the relevant statute; (2) that [her employer] knew about this activity; (3) that [her employer] fired her; and (4) 'there was a causal connection between [her] protected activity and [her firing]'"³¹ (internal citation omitted). Again, the Court found that the plaintiff had adduced sufficient evidence to avoid summary judgment. She complained to her managers about racial harassment, her employer knew about it, she was fired, and, given the proximity in time between her complaint and her discharge, the jury could find that the stated reason for her discharge – her refusal to return the money – was a pretext.³²

Finally, the Court concluded that the plaintiff adduced sufficient evidence to defeat summary judgment on her hostile work environment claim under Section 1981, Title VII and parallel New York State and City laws. The elements of such a claim include "evidence that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment"³³ (internal citation omitted). Racially offensive comments by a coworker can create such a hostile environment, and again, the plaintiff's sworn statements reported that the comments "were sufficiently

²⁹ *Id.* at 48.

³⁰ *Id.* at 48.

³¹ *Id.* at 49.

³² *Id.* at 50.

³³ *Id.* at 51 (internal citation omitted).

continuous and concerted” to create such an environment.³⁴ The Court rejected the District Court’s conclusion that the comments were insufficient, although “deplorable,” because they did not last very long (only two months) and involved no physical altercations. Physical alterations are not necessary to find a hostile work environment; racially offensive comments that are frequent, even if not severe, may be sufficient to support a finding of a hostile work environment. *Knox*, 134 F.4th at 52.³⁵

In *Kemp v. Regeneron Pharmaceuticals, Inc.*,³⁶ the Court made clear “that an employer can violate the FMLA merely by interfering with the employee’s benefits under the FMLA [Family and Medical Leave Act] without actually denying the employee’s request for those benefits.”³⁷ Nevertheless, it dismissed the case as time-barred.

The plaintiff, a Senior Quality Assurance Manager, began working remotely when she needed to care for her disabled daughter. In July, 2016, she applied for intermittent FMLA leave to care for her daughter. Her leave was approved; during the leave, her superiors began discussing a possible transition for the plaintiff to a new role which would be of similar status, but less demanding. The plaintiff accepted the new role, which was to start upon her return from leave. Prior to assuming the new role, the plaintiff announced her retirement, effective January, 2017.

The plaintiff filed her complaint in November, 2019, claiming that her employer “had interfered with her rights under the FMLA by prohibiting her from working remotely more than one day per week.”³⁸ On this point, the Court held that the FMLA “does not entitle employees to work remotely or make it unlawful for an employer to punish an employee who works remotely.”³⁹ In the absence of establishing that

³⁴ *Id.* at 51 (internal citation omitted).

³⁵ *Id.* at 52.

³⁶ 117 F. 4th 63 (2d Cir. 2024).

³⁷ *Id.* at 69.

³⁸ *Id.* at 68.

³⁹ *Id.* at 70.

her employer willfully interfered with her leave, the plaintiff was required to file her claim within two years of the wrongful conduct, or January, 2019. Only willful conduct establishes a three-year statute of limitations. Because the plaintiff did not establish that her employer's conduct was willful, her complaint was untimely, and dismissed.⁴⁰

In a case of first impression, the Court held that an employee with a disability may receive a reasonable accommodation under the Americans with Disabilities Act even if the employee is able to perform all of the essential functions of the job with or without an accommodation, and the fact that the plaintiff could perform the essential functions of her job without an accommodation did not bar her claim. In *Tudor v. Whitehall Central School District*,⁴¹ the plaintiff school teacher admitted that she could perform the essential functions of her teaching duties notwithstanding her PTSD disability-related symptoms. The plaintiff suffered PTSD, which affected neurological functions and induced a stutter and caused nightmares, for decades due to sexual harassment and sexual assault in the workplace (occurring before she started work for the defendant). As an accommodation she was permitted to leave the school grounds during morning and afternoon "prep periods" when she was not responsible for overseeing students. However, following a change in administration she was no longer permitted to leave the school grounds during such periods, and she was reprimanded when she did so. She informed the new administration that she had been provided this accommodation, but the new administration refused to continue it. The plaintiff sued, even though she acknowledged that she could perform the essential functions of her job without the accommodation, although "under great duress and harm."⁴²

The District Court granted summary judgment, assuming the plaintiff had a qualifying disability but concluding that because she was able to perform all of the essential functions

⁴⁰ *Id.*

⁴¹ 132 F. 4th 242 (2d Cir. 2025).

⁴² *Id.* at 245.

of her job a jury could not determine that she could establish that with a reasonable accommodation she could perform the essential functions. The Second Circuit reversed, relying on the plain language of the statute, 42 U.S.C. Section 1211(8), which defines a “qualified individual” in relevant part as “an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.”⁴³ Moreover, the Court found that Congress did not require that there be “necessary accommodations,” only “reasonable accommodations.” 42 U.S.C. Section 12112(b).⁴⁴ Thus, applying the plain language of the statute an employee can assert a claim under the Act even when the employee can perform the essential functions of the job without a reasonable accommodation.

III. CONNECTICUT DISTRICT COURT CASES

The District Court was more active in the labor and employment area than the Supreme Court or the Second Circuit, but with the exception of the cases discussed below, the fact patterns and the results were more mundane and commonplace.

In *Falvey v. Ocean Surveys, Inc.*,⁴⁵ the plaintiff alleged that her employer violated federal and state law by discharging her because of her age, disability and sex. The plaintiff worked for the defendant as an office manager beginning in 1985, but the defendant’s day-to-day operations changed dramatically due to technological advances and the COVID-19 pandemic. The defendant ultimately decided that it no longer needed the position of office manager. The plaintiff’s position was eliminated, and her employment terminated in May 2022. The defendant moved for summary judgment on all claims; the plaintiff did not oppose the motion as to her sex discrimination claims. Regarding the plaintiff’s disability claim, the Court utilized the *McDonnell Douglas* framework. The Court assumed that the plaintiff was disabled.

⁴³ *Id.* at 246.

⁴⁴ *Id.* at 247, citing 42 U.S.C. Section 12112(B)(5)(A).

⁴⁵ No. 3:23-CV-01013 (SVN), 2025 WL 754037 (D. Conn. 2025).

She pled multiple back conditions and while no admissible evidence had been submitted, the defendant did not contest that she had a disability. Nor were the issues of the plaintiff's qualification for her position or her having experienced an adverse employment action disputed. The only disputes were whether circumstances inferring discrimination had been demonstrated, and if so, whether the defendant had articulated a non-discriminatory reason for its action and if so, whether the plaintiff had shown it pretextual or unworthy of credence. The plaintiff argued that an inference of disability discrimination arose from the following occurrences: she informed her supervisor of her need to receive a shot in her lumbar spine and to then go home and rest, asked whether she should use a vacation or sick day, and was told by her supervisor to take a vacation day as she was not sick; and her supervisor said that he was tired of her complaining about her back. The Court concluded that this evidence was insufficient to infer discrimination, and so defeated the plaintiff's effort to establish a *prima facie* case.⁴⁶ The Court went on to find that the defendant articulated a legitimate, nondiscriminatory basis for the termination – it no longer required a traditional office manager, it did not replace the plaintiff, and her work was transferred to existing employees who did not need to work any additional time to get the work done.⁴⁷ As the plaintiff offered no evidence to dispute these facts, the Court granted the employer's motion for summary judgment.⁴⁸

With respect to the plaintiff's age discrimination claim, the defendant did not dispute that the plaintiff satisfied three elements of a *prima facie* case of age discrimination: she was within the protected age group – she was 82 years old, she was qualified for the position, and she experienced an adverse employment action by being discharged. The defendant denied that her discharge occurred under circumstances giving rise to an inference of discrimination. The

⁴⁶ *Id.* at *11.

⁴⁷ *Id.* at *12 – *13, *15.

⁴⁸ *Id.* at **15, - *16.

Court concluded that the plaintiff did not come forward with evidence to establish this requirement. She speculated that “as people got older, they got terminated.”⁴⁹ She also admitted that other older employees who were discharged by defendant were let go for reasons other than age.⁵⁰ As it had with the discrimination claim, the Court further analyzed the plaintiff’s evidence as potentially rebutting the defendant’s articulated non-discriminatory reason, and found it lacking, both under the ADEA [Age Discrimination in Employment Act] but-for standard and the CFEPA [Connecticut Fair Employment Practices Act] motivating-factor one.⁵¹ Accordingly, the Court granted the employer’s motion for summary judgment on this count as well.

In *Johnson v. Walgreen Eastern Co., Inc.*,⁵² the issue was whether under Connecticut’s Minimum Wage Act (“CMWA”) Walgreen was required to compensate its employees for the 4-12 minutes they spent walking to and from the time clocks checking in and out. Walgreen moved to dismiss, claiming

(1) the CMWA should be construed consistent with the federal Portal-to-Portal Act, which limits compensation for preliminary and postliminary work activities; (2) time spent walking to and from the time clocks falls outside the definition of compensable time under the CMWA; and (3) even if theoretically compensable, such time is de minimis and would thus be rendered non-compensable.⁵³

The Court denied the motion, concluding that the Connecticut Supreme Court would not construe CMWA to follow the Portal-to-Portal Act, and stating “the plain language of the CMWA largely requires employers to compensate employees whenever employees are on the job.”⁵⁴

Walgreen sought permission to file an interlocutory appeal to the Second Circuit, arguing that it satisfied the three

⁴⁹ *Id.* at *17.

⁵⁰ *Id.*

⁵¹ *Id.* at *19 - *22.

⁵² No. 3:23-CV-00743(JCH), 2024 WL 4023891 (D. Conn. 2024).

⁵³ *Id.* at *2 – *3.

⁵⁴ *Id.* at *3.

criteria required by 28 U.S.C. Section 1292(b): the order

- (1) Involves a controlling question of law as to which (2) there is substantial ground for difference of opinion and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]

The Court did not find that the three criteria were satisfied, because a reversal would not compel an immediate dismissal of the case, and although the Court agreed that a reversal may affect the focus and scope of discovery, and the issue raised is a matter of first impression, it denied the motion. Nevertheless, because an appeal raising similar issues was already pending on appeal in another case, the Court granted a stay of proceedings pending the outcome of that appeal.⁵⁵

So, what happened? The Second Circuit decided to punt, certifying to the Connecticut Supreme Court the question of “whether Connecticut’s wage laws and regulations require employees to be compensated for the time spent going through mandatory security screenings at their place of employment. This is an unsettled question of Connecticut law, which we believe merits certification to the Connecticut Supreme Court.” *Del Rio v. Amazon.com.dedc, LLC*.⁵⁶ The matter was fully briefed before the Connecticut Supreme Court and assigned for argument for September 25, 2025, but has not been decided as of the date of publication of this Survey.

In *Miceli v. Wearable Health Sols., Inc.*,⁵⁷ the plaintiff alleged that the defendant failed to pay wages owed to him under his employment agreement and in violation of Conn. Gen. Stat. Section 31-71 *et seq.* of the General Statutes. The defendant contends that after entering into a written agreement, the parties orally agreed to waive, reduce, or defer wages owed to the plaintiff. The plaintiff moved in limine to exclude evidence of the alleged oral agreement, claiming the written agreement precludes oral modifications and any

⁵⁵ *Id.* at *11.

⁵⁶ 132 F. 4th 172, 176 (2d Cir. March 17, 2025).

⁵⁷ No. 3:23-CV-01294 (JCH), 2025 WL 1111298 (D. Conn. 2025).

such modification is void as against public policy. The plaintiff argued exclusion was warranted by the written agreement's following clause: "No agreements or representations oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement." The Court held "the effect of the merger clause is to exclude parol evidence of the parties' intentions at the time of contracting,"⁵⁸ and so prohibits the admission of evidence of prior or contemporaneous oral agreements; but has no effect on the evidence that the plaintiff sought to preclude of an oral modification made after the employment agreement was executed.⁵⁹

The plaintiff also relied upon other language in the agreement: "No provisions of this Agreement may be amended, modified, waived or discharged unless such amendment, waiver, modification or discharge is agreed to in writing signed by Executive and such officer of the Company as may be specifically designated by the Board." Although such no-oral-modification clauses are common, the Court nevertheless found it to be unenforceable: "the common law rule is that even where the contract specifically states that no non-written modification will be recognized, the parties may yet alter their agreement by parol negotiation,"⁶⁰ citing 2 CORBIN ON CONTRACTS Section 7.14, and Connecticut case law to the same effect, including "It is well settled that despite the presence of . . . a [no-oral-modification] clause in a contract, a modification by subsequent parol agreement will be given effect." *McKenna v. Woods*.⁶¹ See also *Blakeslee v. Bd. Of Water Comm'rs of City of Hartford*;⁶² *Kallas v. Harnen*.^{63, 64}

The plaintiff also argued that the oral modification should be excluded because the public policy expressed by Sections 31-71c and 31-71e of the General Statutes rendered it void.

⁵⁸ *Id.* at *3.

⁵⁹ *Id.* at *4.

⁶⁰ *Id.* at *4 - *5.

⁶¹ 21 Conn. App. 528, 533, 574 A. 2d 836 (1990).

⁶² 121 Conn. 163, 183 A. 887 (1936).

⁶³ No. 30 36 11, 1996 WL 285539, at *5 (Conn. Super. Ct. May 10, 1996).

⁶⁴ *Miceli* at *4 - *5.

Notwithstanding that Section 31-71c requires an employer to pay an employee outstanding wages upon termination and Section 31-71e prohibits withholding wages except under limited circumstances not present in this case, the Court found “it is not unreasonable as a matter of law for a company to defer an employee’s wages” given an employer’s poor financial condition, especially where the employee has agreed to such deferral.⁶⁵

Last, although not raised by the plaintiff, the Court also cited to Conn. Gen. Stat. Section 31-72, which, while providing for a cause of action for employees to seek damages for unpaid wages, “does not embody substantive standards to determine the amount of wages that are payable but provides penalties in order to deter employers from deferring wage payments once they have accrued.”⁶⁶

In *Nadeyah Jones v. Carecentrix Inc.*,⁶⁷ Judge Bolden refused to approve an opposed settlement of a class action lawsuit arising under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201 et seq., notwithstanding that he found the amount of the settlement to be appropriate and the amount of attorney’s fees to be awarded to the plaintiffs’ attorneys to be fair. He found that the releases contained in the settlement as applied to the named plaintiffs were overly broad. In particular he found troubling the requirement that the plaintiffs were required to release all possible claims “arising out of any fact, condition, circumstance, or occurrence whatsoever,” including those beyond wage and hour claims. The Court was also troubled by the fact that there was no mutual release of claims from CareCentrix. On July 16, 2025, Judge Bolden approved a revised settlement that limited the release to claims “related to the alleged failure to pay of wages, including, but not limited to, minimum wages and overtime wages,” and did not limit the rights of the plaintiffs to com-

⁶⁵ *Id.* at *6, citing *Ravetto v. Triton Thalassic Techs., Inc.*, 285 Conn. 716, 724-725, 941 A.2d 309 (2008).

⁶⁶ *Id.* at *7, citing *Geysen v. Securitas Sec. Servs. USA, Inc.*, 322 Conn. 385, 393, 142 A.3d 227 (2016).

⁶⁷ No. 3:23-cv-1071 (VAB) (D. Conn. June 27, 2025).

municate with government agencies or participate in government investigations or proceedings.

IV. CONNECTICUT STATE CASES

A. *Connecticut Supreme Court*

In a 4-3 decision in *O'Reggio v. Commission on Human Rights and Opportunities*,⁶⁸ the Court answered the question of who qualifies as a “supervisor” for purposes of rendering an employer vicariously liable for the creation of a hostile work environment under Section 46a-51 et seq. of the General Statutes. The plaintiff, who is Black, worked for the Department of Labor as an adjudicator in the unemployment unit in Bridgeport, reporting to the unit’s program service coordinator, Diane Krevolin. Although Ms. Krevolin had the authority to assign work, approve requests for leave, set employee schedules and provide training, she did not have the authority to hire, fire or discipline any employee. The plaintiff filed an internal complaint, asserting that Ms. Krevolin made racially discriminatory statements to her. Following an investigation, the Department issued Ms. “Krevolin a one-day suspension without pay and required her to attend diversity training.”⁶⁹

While the investigation was pending the plaintiff filed a complaint with the CHRO, “alleging that the department had subjected her to a hostile work environment based on her race and color.”⁷⁰ Following a hearing, the CHRO issued a final decision, “concluding that, although Krevolin had created a hostile work environment, the department acted promptly and reasonably under the circumstances to remedy the situation and, therefore, was not vicariously liable for Krevolin’s actions.”⁷¹

The issue before the Connecticut Supreme Court turned on whether the legal standard adopted by the United States

⁶⁸ 350 Conn. 182, 323 A.3d 1048 (2024).

⁶⁹ *Id.* at 185.

⁷⁰ *Id.* at 186.

⁷¹ *Id.* at 187.

Supreme Court in *Vance v. Ball State University*⁷² applied to the plaintiff's claim under state law, as the Appellate Court had ruled. In *Vance*, the U.S. Supreme Court defined a "supervisor" as

an employee empowered "to take tangible employment actions against the victim, i.e., to effect a significant change in employment status such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."

Additionally, if the coworker is empowered to take a tangible employment action subject to approval by higher management, that coworker might also qualify as a supervisor.⁷³

The Connecticut Supreme Court concluded that it should adopt the *Vance* definition of "supervisor," because the term is not defined in the Connecticut statute, and because the Connecticut appellate courts have not adopted a definition, it was decided to "look to federal case law interpreting Title VII for guidance."⁷⁴

The Court also explained why it is necessary to adopt a definition of "supervisor." When a supervisor's harassment results "in termination, demotion, or an undesirable reassignment, liability for the supervisor's action is automatically imputed to the employer."⁷⁵ However, if the harassment does not result in such tangible employment action, an employer may assert as an affirmative defense that it "exercised reasonable care to prevent and correct promptly any harassing behavior, or that the victim 'unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.'"⁷⁶

⁷² 570 U.S. 421 (2013).

⁷³ *Id.* at 431, 437 n. 8.

⁷⁴ *O'Reggio* at 191.

⁷⁵ See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 762-65, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1988).

⁷⁶ *O'Reggio* at 193, quoting *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 807 (1998).

On the other hand, if the harassing employee is only a co-worker, then the employer does not have the burden of an affirmative defense; the employer will be liable only if the employee proves that the employer was negligent in failing to prevent the harassment from taking place.⁷⁷

In adopting the *Vance* standard, the majority concluded,

The *Vance* definition strikes a reasonable balance between accomplishing the antidiscrimination purpose of the state act and protecting the legitimate interests of employers. . . . It would upset settled expectations with respect to our jurisprudence interpreting the state act for us to depart from the *Vance* definition of ‘supervisor.’

Relying on the plaintiff’s counsel’s concession in oral argument that Ms. Krevolin’s responsibilities did not satisfy the *Vance* definition of “supervisor,” the majority concluded that the department is not vicariously liable for Ms. Krevolin’s creation of a hostile work environment.⁷⁸

In a unanimous decision in *Gardner v. Department of Mental Health and Addiction Services*,⁷⁹ authored by Justice Dannehy, the Court reversed the decision of the Appellate Court, and concluded, in a case of first impression, that a Worker’s Compensation Commission administrative law judge has “the discretion under section 31-308 to award a claimant, after he or she reaches maximum medical improvement, ongoing temporary partial incapacity benefits under Section 31-308(a) in lieu of permanent partial disability benefits under Section 31-308(b), up to the statutory maximum of 520 weeks.”⁸⁰ In April, 2016, Ms. Gardner sustained a work-related injury to her wrist, while restraining a

⁷⁷ *Id.*, citing *Vance* at 448 – 449.

⁷⁸ *Id.* at 199. In dissent, Chief Justice Robinson wrote, “Consistent with Connecticut’s robust antidiscrimination scheme, I would adopt a broader definition of the term ‘supervisor’ that motivates employers to foster work environments that are free from discrimination. Specifically, I would include within the definition of supervisor not only individuals vested with the authority to make or recommend tangible employment decisions, but also those authorized to direct the daily work activities of subordinate employees.” *Id.*, at 199 – 200.

⁷⁹ 351 Conn. 488, 331 A.3d 1203 (2025).

⁸⁰ *Id.* at 490-491.

patient at the Whiting Forensic Hospital. In June, 2021, an administrative law judge found that she had reached maximum medical improvement.

The Court noted that “[t]he benefits available to a claimant under Section 31-308(a) are commonly referred to as temporary partial incapacity benefits,” which may continue for up to “five hundred twenty weeks”⁸¹ On the other hand, benefits available under Section 31-308(b) are “permanent partial disability benefits,” intended to “compensate the injured employee for the lifetime handicap that results from the permanent loss of, or loss of use of, a scheduled body part.”⁸² The Court, ultimately relying upon Conn. Gen. Section 1-2z, which requires the Court to consider the text of the statute itself,⁸³ held:

[T]he plain and unambiguous language of Section 31-308(b) gives an administrative law judge the discretion to award a claimant, after he or she reaches maximum medical improvement, ongoing temporary incapacity benefits under Section 31-208(a) in lieu of permanent partial disability benefits under Section 31-208(b), up to the statutory maximum of 520 weeks. As this court has explained, . . . there ‘might be, in case of partial loss of function, a great disproportion between the amount of specific compensation provided and the actual effect of the injury, either from the standpoint of the employee’s earning capacity or the physical impairment [she] suffered.’⁸⁴

Quick to respond to the decision in *Gardner*, Public Act 25-12 removed the administrative law judge’s discretion to continue to award temporary partial incapacity benefits, requiring an award of permanent partial disability benefits to a claimant who has reached maximum medical improvement.

In *City of Stamford v. Commission on Human Rights and Opportunities*,⁸⁵ Justice Ecker, writing for a unanimous

⁸¹ *Id.* at 497-498.

⁸² *Id.* at 498, quoting *Churchville v. Bruce R. Daly Mechanical Contractor*, 299 Conn. 185, 193, 8 A3d 507 (2010).

⁸³ *Id.* at 506.

⁸⁴ *Id.* at 509-510, quoting *Osterlund v. State*, 129 Conn. 591, 600, 30 A.2d 393 (1943).

⁸⁵ 351 Conn. 298, 330 A.3d 102 (2025).

court, ruled that a CHRO referee's ruling was not a "final decision" under the Administrative Procedure Act, notwithstanding that the term "final order" encompasses both final decisions under Section 4-183(a) and appealable interlocutory orders under Section 4-183 (b). The CHRO investigated a complaint and concluded that there was reasonable cause to believe that the City violated the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. Section 46a-60(b)(1), and the Americans with Disabilities Act (ADA), 42 U.S.C. Section 12101 et seq., "when it terminated the . . . employment [of the complainant] on the basis of his status as a veteran of the United States Marine Corps and his disability."⁸⁶

After the commencement of the public hearing, the complainant moved the referee for permission to amend his complaint to add a claim of failure to provide a reasonable accommodation. The City objected, arguing that the proposed amendment was not the subject of a reasonable cause finding. The referee overruled the objection and permitted the amendment, finding it was reasonable pursuant to Sections 46a-84(g) of the General Statutes and 46a-54-79a(e) of the Regulations, "because it related back to the complainant's original allegations of disability discrimination and could have been included in the original complaint."⁸⁷

The City filed an interlocutory administrative appeal pursuant to Section 4-183(b), arguing that the CHRO lacked jurisdiction to hold a public hearing because the amendment included a claim that had not been the subject of an investigation or a reasonable cause finding. The trial court concluded that the referee's granting of the motion to amend was a "final decision" under Section 4-183(a), and a "final order" under Section 46a-94a(a), which permits appeals by any party "aggrieved by a final order of a presiding officer," pursuant to Section 4-183.⁸⁸

The Supreme Court concluded that the referee "intended the order to be a preliminary agency action, not a final deci-

⁸⁶ *Id.* at 302.

⁸⁷ *Id.* at 303.

⁸⁸ *Id.* at 306-307.

sion.⁸⁹ The Court then concluded that the ruling permitting the amendment “did not determine any ‘rights or obligations’ or result in any ‘legal consequences’ that would make the ruling final under our precedent.”⁹⁰ The granting of the amendment did not rule on whether the complainant would ultimately prevail on his claims; a final decision did not exist because there was no adjudication on the merits or disposition of the underlying claims for relief.⁹¹ “An agency ruling or order does not automatically transform into an appealable final decision for purposes of Section 4-183(a) merely because it rejects a party’s jurisdictional objection.”⁹²

Finally, the Court rejected the City’s argument that the ruling granting the amendment was not an appealable preliminary agency action or ruling pursuant to Section 4-183(b). The City’s claim was that the CHRO did not have jurisdiction to consider a claim for which no investigation or finding of probable cause occurred. The Court concluded that the City still had an adequate remedy of vindication through the administrative proceeding process.⁹³

In *Dur-A-Flex, Inc. v. Dy*,⁹⁴ and its companion case,⁹⁵ Justice Alexander, writing for the Court held that *Roessler v. Burwell*⁹⁶ remains good law, and that consideration in the form of continued employment for an at-will employee may be grounds for enforcing a non-compete agreement following the termination of the employee’s employment.⁹⁷ The Court further distinguished between the obligations of former employees and current employees. Current employees have a duty of loyalty to refrain from using confidential information acquired during employment as well as duty not to disclose or use trade secrets; former employees have only a duty not to

⁸⁹ *Id.* at 312.

⁹⁰ *Id.* at 313, quoting *Nizzardo v State Traffic Commission*, 259 Conn. 131, 145, 788 A.2d 1158 (2002).

⁹¹ *Id.* at 314.

⁹² *Id.* at 314.

⁹³ *Id.* at 323.

⁹⁴ 349 Conn. 513, 321 A.3d 295 (2024).

⁹⁵ 349 Conn. 612, 321 A.3d 292 (2024).

⁹⁶ 119 Conn. 289, 176 A. 126 (1934).

⁹⁷ *Dur-A-Flex, Inc.* at 593.

use their former employer's trade secrets. The reason behind the distinction is that there is a public interest in enabling former employees to earn a livelihood, to promote competition, and to enable employees to market their talents.⁹⁸ Still, an employer and employee may enter into a contract prohibiting the employee from using confidential information following termination of employment.⁹⁹

B. *The Appellate Court*

In *Marita Tammy Castelino v. Whitman, Breed, Abbott & Morgan, LLC*,¹⁰⁰ the Court affirmed the decision of the Superior Court (Povodator, J.T.R.), granting summary judgment to the defendant law firm on the Plaintiff's claims of disability discrimination, failure to accommodate, and retaliation. The plaintiff was hired in May, 2020, to be an administrative assistant in the law firm's real estate group, reporting to Cynthia Smith. The plaintiff claimed that she was told that her position would be mostly remote, but that she would be expected to go into the office only "once in a while" on an "as needed" basis. Because of the COVID-19 pandemic, most of the firm's practice groups had converted to a mostly remote work model, but the real estate group continued to work primarily in the office.

The plaintiff worked in the firm's office during her first two weeks, organizing files, and she learned that COVID-19 testing was taking place at a medical facility in the same office building where the firm's office was located. Because she had been diagnosed with diabetes and asthma, she was concerned about being exposed to COVID-19 by sharing a bathroom with staff from the medical facility. She informed Attorney Smith of her concerns, and requested that she be permitted to work exclusively remotely. Attorney Smith denied the request, but permitted the plaintiff to work from home occasionally on specific days.

The plaintiff offered evidence that when working in the office she spent up to half of her time performing personal

⁹⁸ *Id.* at 599-600.

⁹⁹ *Id.* at 602-603.

¹⁰⁰ 233 Conn. App. 467 (2025).

errands for Attorney Smith, including finding documents concerning Attorney Smith's personal properties, picking up lunch, and making deposits at the bank for Attorney Smith's personal account. Her remaining work was maintaining physical files, scanning client documents, meeting with clients to obtain signatures, and notarizing documents for real estate closings.

By the beginning of July, 2020, or just over a month into plaintiff's employment, Attorney Smith decided that plaintiff's employment should be terminated, and plaintiff was indeed discharged on July 20, 2020, just two months after she began work. The plaintiff sued, claiming the firm violated Conn. Gen. Stat. Section 46a-60(b)(1) by discriminating against her and discharging her because of her physical disabilities of diabetes and asthma; failing to provide her with a reasonable accommodation; and discharging her in retaliation for requesting a reasonable accommodation.

The Court noted that neither the Connecticut Appellate Court nor the Supreme Court had addressed under what circumstances working remotely could constitute a reasonable accommodation. It therefore looked to federal law for guidance. The Court first noted that it "must give considerable deference to an employer's judgment regarding what functions are essential for service in a particular position."¹⁰¹ The Court ultimately concluded that working in the office was an essential function of the plaintiff's position. The position required some measure of in person work, including "maintaining physical files, scanning client documents, and meeting with clients to obtain 'ink signatures' and notarize documents for real estate closings."¹⁰² Therefore, the plaintiff's request to work entirely from home was not reasonable, because it would have eliminated an essential job function – working in the office. Summary judgment was therefore properly granted.¹⁰³

¹⁰¹ *Id.* at 481, quoting *Tafolla v. Heilig*, 80 F.4th 111, 119 (2d Cir. 2023).

¹⁰² *Id.* at 487.

¹⁰³ *Id.* at 488.

Kimberly Eldridge v. Hospital of Central Connecticut,¹⁰⁴ affirmed the trial court's grant of summary judgment to the defendant hospital, applying the analytical framework set forth in *McDonnell Douglas Corp. v. Green*.¹⁰⁵ The plaintiff, a registered nurse, claimed that she was discriminated against on the basis of disability – alcoholism and bipolar disorder – when she was discharged from her employment and as a result of the employer's failure to accommodate her disability.

She began her employment in March, 2017, but in May, 2018, she began a medical leave of absence pursuant to the Federal Family and Medical Leave Act and the Connecticut Family and Medical Leave Act.

During her leave, plaintiff's nursing license was suspended in August, 2018, by the Connecticut Board of Examiners for Nursing on the Board's finding that her alcoholism affected her ability to work as a nurse. Her license remained suspended until she voluntarily surrendered it in May, 2019. The hospital argued that the plaintiff's employment was terminated because (1) she failed to return to work, and (2) she could not work as a registered nurse because of her suspended license. The Appellate Court (like the trial court) concluded that the plaintiff failed to offer evidence of pretext, and rejected her argument that proof of pretext was not necessary because her employment was terminated on account of her disability.¹⁰⁶

The Appellate Court then rejected the plaintiff's argument that the hospital failed to accommodate her disability. The Court set forth the burden of proof of a *prima facie* case of that claim:

- (1) [she] is disabled within the meaning of the [statute],
- (2) [she] was able to perform the essential functions of the job with or without a reasonable accommodation and (3) [the defendant], despite knowing of [the plaintiff's] disability, did not reasonably accommodate it. . . .¹⁰⁷

¹⁰⁴ 230 Conn. App. 666, 330 A.3d 604 (2025).

¹⁰⁵ 411 U.S. 792 (1973).

¹⁰⁶ *Eldridge* at 673-674.

¹⁰⁷ *Id.* at 675.

The Court then stated that the plaintiff must initiate the interactive process regarding requesting an accommodation and identify the accommodations sought. Here the plaintiff alleged she sought accommodations of a medical leave of absence and a job reassignment. The Court concluded, however that an employer is not required to hold a position open indefinitely, and the plaintiff failed to produce evidence identifying an available position to which she could have been reassigned, establishing that she informed the defendant of the time when she could return to work, or showing that she requested a reassignment accommodation while still employed.¹⁰⁸

In *Commission on Human Rights and Opportunities v. Travelers Indemnity Company*,¹⁰⁹ the Appellate Court addressed claims of age discrimination against Travelers and Yale University for posting job advertisements that included the phrase “recent college graduate.” The Court affirmed the decision of the trial court dismissing the Commission’s administrative appeals of a CHRO referee’s decisions that the job ads were not age discriminatory.

First, the Court concluded that the phrase “recent college graduate” is not per se age discrimination, noting that there is disagreement among the courts but agreeing with those courts concluding that it is not per se age discrimination. The Court found that there was no record evidence as to the age characteristics of recent college graduates.¹¹⁰ The Court then conducted a further analysis of the parties’ claims.

Travelers argued that the case was moot because it had stopped using the phrase “recent college graduates” in its job postings. The Court rejected this argument, because to do so would permit a defendant to resume such postings after the case was dismissed. Indeed, the Court noted, “[n]othing in the record suggests that Travelers would not be free to resume its practice of using similar language in a job posting in

¹⁰⁸ *Id.* at 676-677.

¹⁰⁹ 228 Conn. App. 803, 326 A.3d 557 (2024).

¹¹⁰ *Id.* at 807-808.

the future.”¹¹¹ There was no evidentiary reason to accept the representations of Travelers that it would not resume using the language in the future.¹¹²

The Court then rejected Travelers’ argument that the individual complainant lacked standing to bring his complaint. Travelers argued that the complainant was in fact a recent college graduate who did not meet the other nondiscriminatory criteria set forth in the job posting, and that the complainant abandoned his claim. But the CHRO became a party independent of the complainant, and brought the appeal to vindicate its own interests, and therefore had standing.¹¹³

The Court also rejected Travelers’ argument that the CHRO lacked standing because there was no demonstrated injury to the public. The Court concluded that the “CHRO . . . made a colorable claim that Travelers had engaged in a discriminatory practice that adversely affected the interests of [the complainant] and others.”¹¹⁴ The Court further concluded that the CHRO was statutorily aggrieved pursuant to Conn. Gen. Stat. Section 46a-82(b), as the statute “unambiguously places the CHRO within the zone of interests safeguarded by the statute.”¹¹⁵

Nevertheless, the Court rejected the CHRO’s argument that the trial court committed reversible error. The Court concluded that the trial court properly reviewed and addressed whether the referee applied the *per se* theory to the facts of the case.¹¹⁶

Finally, the Court concluded that the issues raised by Yale and the CHRO in the related case were indistinguishable from those raised in Travelers’ case, and reached the same conclusions and holdings.¹¹⁷

The Appellate Court’s decision in *Michaud v. Travelers*

¹¹¹ *Id.* at 812.

¹¹² *Id.* at 812.

¹¹³ *Id.* at 813-814.

¹¹⁴ *Id.* at 816.

¹¹⁵ *Id.* at 816.

¹¹⁶ *Id.* at 822.

¹¹⁷ *Id.* at 828-830.

Indemnity Company,¹¹⁸ provides instruction on what parties should do in seeking to vacate or to confirm an arbitration award. The plaintiff employee appealed from an arbitrator's granting of summary judgment to the employer after concluding that the employee failed to meet the burden of establishing a prima facie case of age discrimination. The employer opposed the motion to vacate, but did not ask the trial court to confirm the arbitrator's award. Neither party requested the court to render a final judgment. The Appellate Court held that a plaintiff does not have a statutory right to appeal from the denial of an application to vacate an arbitration award where no final judgment has been entered.

C. *The Superior Court*

In *Labrecque v. Michell Bradley, LLC*,¹¹⁹ the plaintiff claimed her employer discriminated against her on the basis of her disability – a shoulder injury – failed to engage in the interactive process and to provide a reasonable accommodation, and retaliated against her for requesting an accommodation.¹²⁰ The plaintiff, a general manager at the defendant's restaurant, informed her employer that she needed shoulder surgery due to an injury sustained at a previous job. Two months following surgery the plaintiff was still not able to return to work, and she requested and was approved for sixteen weeks of leave under the Family and Medical Leave Act. When she was medically released to work 20 hours per week, the defendant agreed but noted she would be ineligible for medical benefits if she did so. After the plaintiff indicated that she did not want to return to work until she was eligible for full benefits, she was terminated from employment effective the last day of her FMLA leave.

The Court denied the defendant's motion for summary judgment. First, the Court concluded that genuine issues of material fact existed as to whether the plaintiff refused to return to work. The defendant had originally offered the

¹¹⁸ 232 Conn. App. 459, 336 A.3d 470 (2025).

¹¹⁹ No. HHD-CV23-6164939-S (Conn. Super. Ct. May 9, 2025), 2025 WL 1379329.

¹²⁰ *Id.* at *1.

plaintiff the choice of a full time return to work or a part time return. The plaintiff chose the former option. Therefore, a finder of fact could reject the defendant's claim that the plaintiff was discharged because she refused to return to work.¹²¹

Next, because the defendant indicated that it terminated the plaintiff's employment because she refused to return to work, the Court concluded that an issue of fact existed as to whether the defendant engaged in the required interactive process. The Court further rejected as irrelevant the defendant's argument that the plaintiff would have been temporarily laid off when the restaurant underwent renovations, because the closure occurred months later.¹²²

Finally, the Court rejected the defendant's arguments that the plaintiff's retaliation claim was invalid. The Court did not accept the argument that the Connecticut Fair Employment Practices Act (CFEPA) does not prohibit retaliation against a reasonable accommodation request. The Court concluded that a finder of fact could find that the plaintiff's choice of one of the options the defendant offered was part of the interactive process of her request for accommodation and the defendant claimed that choice was the reason for her discharge.¹²³

Following a trial before the Court, in *Pinder v. State of Connecticut, Department of Mental Health and Addiction Services*,¹²⁴ the Court found that the plaintiff failed to prove that his employer, the Department of Mental Health and Addiction Services, terminated his employment because of his race or disability, or that he was retaliated against for engaging in protected activity under the Connecticut Fair Employment Practices Act. The plaintiff, who provided direct care to clients, had requested a four-month unpaid leave of absence to address his diagnosis of post-traumatic stress disorder. A few days after

¹²¹ *Id.* at *8-*9.

¹²² *Id.* at *12.

¹²³ *Id.* at *16-*17.

¹²⁴ No. HHD-CV-22-6153388-S (Conn. Super. Ct. May 15, 2025), 2025 Conn. Super. LEXIS 981.

he submitted the leave request, the Department learned that he had been incarcerated under a charge of driving under the influence. The Department wrote to him at his home address, advising him to contact the Department by a date certain to confirm his return to work. When he did not timely respond, the Department terminated his employment.¹²⁵

The Court rejected the plaintiff's claims that he was discriminated against on the basis of his race. Other employees who had been incarcerated, both white and black, were similarly treated. His union pursued his claim through step 2 of the grievance process. Importantly, a Department HR employee worked with the plaintiff over a period of six months to help him obtain a leave of absence from work, well aware of his PTSD and trying to accommodate it, and the Court concluded that the Department, through the HR representative, was not motivated by either the plaintiff's race or disability status when it terminated his employment. The Court also rejected the plaintiff's claims that the Department intentionally discriminated against him when it sent the letter to his home address, knowing he was incarcerated for the DUI charge (his fourth). The plaintiff's wife was at home.¹²⁶ Finally, the Court rejected the plaintiff's retaliation claim and argument that the decision to discharge him was motivated by his request for leave under either the collective bargaining agreement or the FMLA. Acknowledging without deeming it necessary to decide the Department's argument that the plaintiff did not engage in any activity that CFEPa protects from retaliation, the Court found the Department made consistent efforts to help him to explore his options, and discharged him only upon learning that he was to be incarcerated for two years, suspended after 240 days.¹²⁷

Two black community case managers brought suit claiming race discrimination, retaliation, and disparate impact in *Cooley v. Chrysalis Center, Inc.*¹²⁸ Notwithstanding that

¹²⁵ *Id.* at *1.

¹²⁶ *Id.* at *17.

¹²⁷ *Id.* at *32.

¹²⁸ No. HHD-CV-22-6152119-S (Conn. Super. Ct. Oct. 31, 2024), 2024 WL 4678323.

some of the issues and facts applied to both employees, the Court reached somewhat different results in connection with the Defendant's motion for summary judgment.

Travis Cooley complained that predominantly white administrative employees were given a \$700 COVID-19 bonus, but no similar bonus was given to predominantly black and Hispanic case management employees. He complained that minority employees were required to work an additional two hours each day to complete paperwork, but white employees were not. Mr. Cooley was placed on a Performance Improvement Plan when behind on his documentation, but white employees who were behind were not. Further, he was required to use vacation time to attend a disciplinary meeting for a co-worker, but white employees were not so required. He made a complaint of race discrimination to his employer, which was not investigated. After he filed a complaint with the CHRO, and while on leave, he was informed he was placed on administrative leave because of a complaint of hostile and unprofessional behavior. He tried to schedule a meeting with the defendant and his union, but before that could happen he was discharged for failure to return to work.¹²⁹

Ernst Racine made the same complaints regarding the COVID-19 bonus, the additional two hours work each day, and being placed on a Performance Improvement Plan for documentation issues. He additionally alleged that the defendant required him to take off a mask bearing the George-Floyd inspired legend, "I can't breathe."¹³⁰ He resigned from his job, claiming that the discriminatory treatment he experienced forced him to do so, essentially claiming a constructive discharge.¹³¹

The Court denied the defendant summary judgment as to all of Mr. Cooley's counts but granted it as to all of Mr. Racine's, except the one for disparate impact race discrimination. Not surprisingly, the two plaintiffs fared differently

¹²⁹ *Id.* at *1 - *3.

¹³⁰ *Id.* at *4.

¹³¹ *Id.* at ***3 - *4.

largely because Mr. Racine quit and could not meet the high proof requirement to support a constructive discharge. The pre-resignation experiences Mr. Racine asserted did not constitute adverse employment actions supporting a race discrimination claim¹³² and his only protected activity, filing a CHRO complaint, happened after he had ended his employment relationship with the company and so could not have motivated any company action in an actionably retaliatory manner.¹³³ The survival of both plaintiffs' disparate impact claims was due to un rebutted evidence that several minority case managers with documentation delinquency were placed on performance improvement plans while no white colleagues with the same issue were¹³⁴ and the lack of need for a plaintiff to support such claims with statistical evidence.¹³⁵

In *Olear v. Waterbury Board of Education*,¹³⁶ the plaintiff, a retired school teacher, applied for her former position. She "decided to retire for the purpose of immediately reapplying for her position under a state program for districts in need of teachers. Olear's intention was to collect her full pension, plus her full salary, as other teachers had done."¹³⁷ The defendant chose to fill the position by transferring a younger candidate from another school, and considered the plaintiff an external candidate because she had retired.¹³⁸ Following trial, the jury rendered a verdict for the plaintiff and awarded her damages in the amount of \$93,000.

The defendant moved to set aside the verdict for lack of sufficiency of the evidence, which the Court stated requires a determination that "the jury reasonably and legally could not have reached the determination that they did in fact reach. If the jury, without conjecture, could not have found a required element of the cause of action, it cannot withstand a motion to set aside the verdict."¹³⁹ The defendant conceded

¹³² *Id.* at *29.

¹³³ *Id.* at *33.

¹³⁴ *Id.* at *25 - *26, *34.

¹³⁵ *Id.* at *24.

¹³⁶ No. UWY-CV-21-6063279-S (Conn. Super. Ct. Jan. 29, 2025), 2025 WL 384162.

¹³⁷ *Id.* at *1.

¹³⁸ *Id.*

¹³⁹ *Id.* at *5.

that the plaintiff made out a prima facie case – “she is in a protected age class, she was qualified for her former position, she suffered an adverse employment consequence by not being rehired, and the adverse action occurred under circumstances giving rise to an inference of discrimination. . . .”¹⁴⁰ The defendant argued that its evidence that the teachers’ union threatened to file a grievance if it hired an external candidate over an internal candidate, a fact which the plaintiff did not refute, and which the defendant contended was its reason for rejecting her application, compelled a judgment in its favor.¹⁴¹

The Court found that the jury was free to reject this argument, and conclude this explanation of the defendant’s motivation was not credible.¹⁴² The Court pointed to other evidence that could justifiably support the jury’s verdict: the plaintiff’s superior qualifications to the chosen candidate’s,¹⁴³ the defendant’s initial reaction to the plaintiff’s application for rehire by stating a “take it or leave it” lower salary,¹⁴⁴ and that at least one other re-applying retiree was rehired.¹⁴⁵

The motion to set aside the verdict was denied.

In *Fitzsimmons v. Cine Med Inc.*,¹⁴⁶ the Court denied summary judgment motions on claims of retaliation and aiding and abetting age and sex discrimination in connection with the Plaintiff’s termination of employment, finding that although these claims were not made before the CHRO, and although the individual defendant was not named in the CHRO complaint, these claims “were reasonably related to the specific discrimination claims plaintiff made to the CHRO . . . so the exception to administrative exhaustion applied to preserve jurisdiction over those claims.”¹⁴⁷ The Court then

¹⁴⁰ *Id.* at *8.

¹⁴¹ *Id.* at *9-*10.

¹⁴² *Id.* at *10.

¹⁴³ *Id.* at *11.

¹⁴⁴ *Id.* at *12.

¹⁴⁵ *Id.* at *13.

¹⁴⁶ No. FST CV 22-6056205 S (Conn. Super. Ct. Mar. 19, 2025), 2025 WL 901075.

¹⁴⁷ *Id.* at *7.

found that the defendant employer, Cine-Med, employed only twelve persons, below the minimum number of employees to create jurisdiction over claims under the federal Age Discrimination in Employment Act,¹⁴⁸ or under Title VII of the Civil Rights Act,¹⁴⁹ and dismissed those claims.¹⁵⁰ The Court found that the record presented sufficient questions of material fact for the plaintiff's claims made under the Connecticut Fair Employment Practices Act of age and sex discrimination, retaliation and aiding and abetting, to survive the defendants' motions for summary judgment as to those claims.¹⁵¹

The issue in *Alfano v. Mom & Pop Plumbing & Drain Service, LLC*,¹⁵² was whether the plaintiff employee was fired in retaliation for discussing his wages with two other employees. Section 31-40z of the General Statutes "prohibits an employer from discharging or retaliating against any employee who discloses or discusses the amount of his or her wages."¹⁵³

The plaintiff, a technician, was compensated with commissions based on sales. The parties agreed that he (1) discussed his wages with the two dispatchers; (2) showed his paycheck to the dispatchers; (3) stated that he had a 'record-breaking' week; and (4) told them that he had earned \$12,000 in the previous week."¹⁵⁴ After the dispatchers complained that they were uncomfortable about plaintiff's bragging about his earnings, the plaintiff met with the owner, and after a heated discussion about the plaintiff's discussion of his wages and the employer's disclosure of a new pay plan, the plaintiff was discharged for insubordination.¹⁵⁵

The Court, denying the employer's motion for summary judgment, concluded that issues of material fact existed as

¹⁴⁸ 29 U.S.C. Section 621 et seq.

¹⁴⁹ 42 U.S.C. Section 2000e(b).

¹⁵⁰ *Id.* at *6-*8.

¹⁵¹ *Id.* at *7-*11.

¹⁵² No. TTD-CV-23-6027652-S (Conn. Super. Ct. Dec. 20, 2024), 2024 WL 5205956.

¹⁵³ *Id.* at *1.

¹⁵⁴ *Id.* at *2.

¹⁵⁵ *Id.* at *3-*4.

to whether the plaintiff's comments to the dispatchers qualified as protected activity under the statute. The defendant argued that the statute's legislative history made clear that its purpose was to promote pay equity, and that was not the intention of the plaintiff's communication about his pay to his colleagues.¹⁵⁶ The Court reviewed the plain language of the statute and concluded:

The statute simply provides that no employer shall discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who discloses or discusses the amount of his or her wages (or the wages of another employee). The statute does not state that the employee needed to have been discussing his wages for purposes of ensuring pay equity or fairness to be protected by the statute.¹⁵⁷

In a case applying Section 31-51q of the General Statutes, the plaintiff physician claimed her employer violated her free speech rights by discharging her after she spoke "out about an injury to a patient and the defendant's billing practices." *Schlott v. Conn Child.'s Specialty Grp., Inc.*¹⁵⁸ After another physician in the practice informed the plaintiff that a junior surgeon made a surgical error that resulted in injury to a patient, the plaintiff expressed concern about the injury and a disregard of reporting procedures to the defendant's Chief of Surgery. Soon thereafter, the plaintiff and others were told not to report the cause of the injury to the Department of Public Health in a meeting in which the plaintiff again voiced her concerns.¹⁵⁹ Around this same time, the defendant announced a new billing practice, and plaintiff expressed concern that it was too aggressive; her concerns were ignored. A subsequent audit revealed "that 38 percent of the bills were 'overbilled.'"¹⁶⁰ When the billing policy was again pressed on the plaintiff and her colleagues six months

¹⁵⁶ *Id.* at *8.

¹⁵⁷ *Id.* at *9.

¹⁵⁸ No. HHD-CV-24-6183827-S (Conn. Super. Ct. Dec. 26, 2024), 2024 WL 5252329 at *1.

¹⁵⁹ *Id.* at *2.

¹⁶⁰ *Id.* at *3.

after the audit, she again expressed her concerns. She was discharged the following year.

The defendant moved to strike the Complaint, arguing that since the speech the plaintiff recited in the complaint was part of her employment duties, she could not claim the protection of the statute. The Court relied on the Connecticut Supreme Court's decision in *Trusz v. UBS Realty Investors, LLC*,¹⁶¹ in determining whether the plaintiff sufficiently pled a claim under Section 31-51q:

‘ . . . an employee can prevail under Section 31-51q ‘only if [s]he speaks on a matter of unusual importance and satisfies high standards of responsibility in the way [s]he does it.’ Under this standard if an employee’s [job-related] speech reflects a mere policy difference with the employer, it is not protected. It is only when the employee’s speech is on a matter of public concern and implicates an employer’s *official dishonesty . . . other serious wrongdoing, or threats to health and safety* . . . that the speech trumps the employer’s right to control its own employees and policies.’¹⁶²

Applying this test, the Court concluded that the Complaint met the required standard, as the plaintiff alleged she was speaking as a concerned citizen, not solely as an employee, “‘regarding uncovering the hiding of the pediatric cardiac surgery error which led to a [Department of Public Health] investigation, lack of service and sufficient care in the critical care unit, excessive billing when the critical care team was not providing service, [and] *violation of patient safety rules and regulations and dishonest conduct*, which was not within her official employment responsibilities.”¹⁶³ The motion to strike was denied.

In another case concerning the application of Section 31-51q, the plaintiff claimed that he was constructively discharged after reporting to a human resource employee that

¹⁶¹ 319 Conn. 175, 216-217, 123 A.3d 1212, 1228 (2015).

¹⁶² *Schlott* at *5 - *6, quoting *Trusz* at 212 (emphasis and citation omissions in original).

¹⁶³ *Id.* at *8, quoting the Complaint allegations (emphasis added in ruling).

another employee was sexually abusing a female subordinate. *Zane v. State, Dept. of Child. & Fams.*¹⁶⁴ During the same period of time the plaintiff himself “had repeated sexual interactions with at least three women while they were employed by the defendant.”¹⁶⁵ One of the women (in fact, the abuse victim in the plaintiff’s above-mentioned report) submitted a complaint to DCP regarding the plaintiff’s inappropriate relationship with her, and the plaintiff was immediately placed on administrative leave with pay, pending an investigation. The plaintiff then requested leave under the Connecticut Family and Medical Leave Act, as result of “emotional challenges” due to what he claimed were false allegations against him. His request for leave was granted and while on leave he was not interviewed regarding the allegations.¹⁶⁶ Before his leave expired, he submitted a letter of resignation, following which he was informed that the investigation would remain open but inactive, in case he returned to State service.¹⁶⁷ He was not told that he had to resign or be fired.¹⁶⁸

The Court first concluded that on issues regarding Section 31-51q, the state has waived sovereign immunity.¹⁶⁹ The defendant’s summary judgment motion, and therefore the Court’s analysis, did not address whether the plaintiff’s speech – the complaint about the other employee’s sexual abuse of a female subordinate – qualified as a matter of public concern. Rather, the analysis was confined to whether the plaintiff was constructively discharged.¹⁷⁰

“[C]onstructive discharge of an employee occurs when an employer, rather than directly discharging an individual, *intentionally* creates an intolerable work atmosphere that forces an employee to quit involuntarily Thus, to plead a *prima facie* case of constructive discharge, a plaintiff must

¹⁶⁴ No. X10-UWY-CV-22-6068811-S (Conn. Super. Ct. May 27, 2025), 2025 Conn. Super. LEXIS 1072.

¹⁶⁵ *Id.* at *1.

¹⁶⁶ *Id.* at *4.

¹⁶⁷ *Id.* at *5.

¹⁶⁸ *Id.* at *18-*19.

¹⁶⁹ *Id.* at *9.

¹⁷⁰ *Id.* at *10 -*11.

allege that (1) the employer intentionally created the complained of work atmosphere, (2) the work atmosphere was so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign, and (3) the plaintiff in fact resigned."¹⁷¹ The Court concluded that the material evidence not in dispute did not give rise to a claim of constructive discharge, and accordingly granted the motion for summary judgment.

First, the Court held that "the opening of an investigation into an employee's conduct, upon the filing of a complaint against the employee, is insufficient to give rise to a constructive discharge claim."¹⁷² Second, an employee who resigns rather than face disciplinary charges is not constructively discharged.¹⁷³ Here the plaintiff could have defended himself against the complaint.¹⁷⁴ Third, the plaintiff proffered no evidence of intolerable working conditions¹⁷⁵ especially given that there was no evidence that an investigation would have resulted in the termination of plaintiff's employment.¹⁷⁶

In *Parkman v. Booksmart Bookkeeping and Consulting, LLC*,¹⁷⁷ the plaintiff complained that the defendant interfered with her rights under the Connecticut Family and Medical Leave Act and discriminated and retaliated against her by terminating her employment.¹⁷⁸ The defendant moved for summary judgment, arguing that it granted permission to the plaintiff to take leave, she returned to work, and was discharged for poor performance, unrelated to her leave of absence.¹⁷⁹ The plaintiff was discharged two days after her return from an approved one-week FMLA leave.

¹⁷¹ *Id.* at *12, quoting *Karagozian v. USV Optical, Inc.*, 335 Conn. 426, 439-40, 238 A.3d 716.

¹⁷² *Id.* at *16, referencing *Bailey v. Board of Education*, 536 F. Supp. 2d 259, 266 (E.D.N.Y. 2007).

¹⁷³ *Id.* at *17.

¹⁷⁴ *Id.* at *18.

¹⁷⁵ *Id.* at *24.

¹⁷⁶ *Id.* at *19.

¹⁷⁷ No. MMX-CV23-6037090-S (Conn. Super. Ct. Sept. 11, 2024) 2024 Conn. Super LEXIS 1917.

¹⁷⁸ *Id.* at *1.

¹⁷⁹ *Id.* at *3.

The Court held that the burden-shifting analysis of *McDonnell Douglas Corp. v. Green*,¹⁸⁰ (hereafter, “*McDonnell Douglas*”) does not apply to FMLA interference cases.¹⁸¹ Rather, the Court stated that the proper analysis requires the plaintiff to make an initial showing that she has been denied a right under FMLA and that the denial of that right was caused in part by her leave.¹⁸² The Court noted that the plaintiff admitted she took her approved leave and returned to work. The Court rejected the plaintiff’s argument that because she was discharged two days following her return to work it was a “sham reinstatement that constitutes FMLA interference,” noting that reinstatement is not an absolute right, and she was not denied her right to a leave.¹⁸³ Therefore, summary judgment was granted as to her claim of interference.¹⁸⁴

Regarding plaintiff’s claim that she was fired in retaliation for exercising her FMLA rights, the Court did employ the *McDonnell Douglas* burden shifting analysis. The Court found that the plaintiff established the following elements of a prima facie case: (1) she exercised rights protected under the FMLA; (2) she was qualified for her position; and (3) she suffered an adverse employment action in that she was fired; and (4), the “adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent,” given the fact that she was discharged only two days following her return to work.¹⁸⁵

The Court found that the defendant provided clear and specific examples of the plaintiff’s poor performance, including “vendors not being paid, and being paid incorrect amounts”; the plaintiff being offered continuing education courses and certifications, and changes to her workload; and the plaintiff failing to gain the needed skills notwithstand-

¹⁸⁰ 411 U.S. 792 (1973).

¹⁸¹ *Parkman* at *7.

¹⁸² *Id.* at *5, relying *Cendant Corp. v. Commissioner of Labor*, 276 Conn. 16, 28, 883 A.2d 789 (2005).

¹⁸³ *Id.* at *6.

¹⁸⁴ *Id.* at *7.

¹⁸⁵ *Id.* at *8 - *10.

ing substantial training, support and coaching.¹⁸⁶ The Court then found that “[t]he plaintiff has not established that the legitimate nondiscriminatory reason for the termination proffered by the defendant is false, inconsistent, or implausible. The plaintiff has failed to produce evidence from which a reasonable factfinder could conclude that the planned and approved leave was a motivating factor in the termination.” Further, the Court observed, “Temporal proximity alone is insufficient to defeat summary judgment at the pretext stage.”¹⁸⁷ Therefore, summary judgment was awarded on the claim of retaliation.¹⁸⁸

V. NATIONAL LABOR RELATIONS BOARD

A. *Decisions*

For much of 2025 the Board has been without a quorum to issue decisions. Nevertheless, a couple of decisions merit review.

In *Siren Retail Corp. d/b/a Starbucks and Workers United Affiliated with Service Employees International Union*,¹⁸⁹ the Board issued a decision in one of the many Starbucks cases that came before it. The full Board unanimously concluded that Starbucks violated Section 8(a)(1) of the National Labor Relations Act during a union organizing campaign when it threatened employees that voting to unionize would cause the employees to lose certain benefits and the employer would instead prioritize giving new benefits to employees at non-union locations over employees who agreed to join a union. A majority of the Board members also found that Starbucks violated the Act when it threatened employees with a loss of tips on credit card payments. A majority then overruled its prior decision in *Tri-Cast, Inc.*¹⁹⁰ and its progeny, which held that it was lawful for an employer to make

¹⁸⁶ *Id.* at *12 - *13.

¹⁸⁷ *Id.* at *17, quoting, *Kwan v. Andalex Group, LLC.*, 737 F.3d 834, 847 (2d Cir. 2013).

¹⁸⁸ *Id.* at *19.

¹⁸⁹ 373 NLRB No. 135 (Nov. 8, 2024).

¹⁹⁰ 274 NLRB 377 (1985).

statements regarding the impact that unionization would have on the relationship between individual employees and the employer. Such statements “could reasonably be understood to threaten employees with the loss of an established workplace benefit.”

In *Endurance Environmental Solutions, LLC, and Teamsters Local 100*,¹⁹¹ the Board overruled its prior decision in *MV Transportation, Inc.*,¹⁹² and held that an employer violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) “by failing to provide the Union notice and an opportunity to bargain over the [Employer’s] decision to install cameras to monitor unit employees and by refusing the Union’s requests to bargain over the decision.”

B. General Counsel Memoranda

On February 14, 2025, Acting General Counsel William Cowen issued General Counsel Memorandum (“GC Memo”) 25-05, in which he rescinded a large number of earlier issued GC Memos, including many that encouraged specific remedies in Settlement Agreements.

On May 16, 2025, he issued GC Memo 25-06, regarding “Seeking Remedial Relief in Settlement Agreements,” with the stated goal of accomplishing efficiency, because “if we attempt to accomplish everything, we risk accomplishing nothing.” GC Memo 25-06 recommends that previously encouraged nonmonetary remedies “should not automatically be sought but typically limited to cases involving widespread, egregious, or severe misconduct.” GC Memo 25-06 further recommends that “Regions should continue to seek compensation for losses incurred by employees as a result of an unfair labor practice,” but the primary goal should be “a prompt and fair resolution of disputed matters.”

In sum, GC Memo 25-06 emphasizes that the goal should be to settle charges, not to try them; that Settlement Agreements should include, if possible, default language, non-ad-

¹⁹¹ 373 NLRB No. 141 (Dec. 10, 2024).

¹⁹² 368 NLRB No. 66 (2019).

missions clauses, unilateral settlements, and full make-whole relief, but the Region should not generally let a settlement be lost if the parties' agreed terms fall shy of these goals; and "foreseeable 'harms' or 'losses' should be remedied if they 'result from' the unfair labor practices or where the 'causal link' between the loss and the unfair labor practice is 'sufficiently clear'" citing and quoting *What about Thryv, Inc.*?¹⁹³ and admittedly adopting the dissent in that case.

On June 25, 2025, Acting General Counsel Cowen issued GC Memo 25-07, concerning "Surreptitious Recordings of Collective-Bargaining Sessions as a *Per Se* Violation of the NLRA." It states that it is a *per se* violation of Section 8(a)(5) or 8(b)(3) of the NLRA to surreptitiously record collective bargaining sessions. Noting that Board precedent establishes that since recording such sessions is a permissive subject, and therefore one that neither party is permitted to make a condition to agreement, GC Memo 25-07 reasons that it must also be a *per se* refusal to bargain in good faith for either side to secretly record them. Accordingly, "when an investigation shows that a party surreptitiously recorded a bargaining session, Regions are directed to issue a complaint alleging that the party acted in bad faith in violation of Section 8(a)(5) or 8(b)(3) . . . [and] shall allege that it is a *per se* violation of the Act"

VI. U.S. DEPARTMENT OF LABOR

On June 27, 2025, the Department of Labor's Acting Administrator Donald M. Harrison, III issued Field Assistance Bulletin (FAB) No. 2025-3, stating that the Department will no longer seek liquidated damages as part of any administrative investigation or proceeding seeking the payment of unpaid minimum wages or unpaid overtime compensation owing to employees. The Department reasoned that 29 U.S.C. Section 216(c), which governs Department-supervised payments prior to litigation, does not make reference to liquidated damages. On the other hand, Section 216(b) autho-

¹⁹³ 372 NLRB No. 22 (Dec. 13, 2022).

rizes the recovery of unpaid wages or overtime compensation and provides for the discretionary payment of “an additional equal amount as liquidated damages.” In order to avoid exposure to liquidated damages an employer must prove good faith and reasonable grounds for the failure to pay the wages due. A press release announcing the FAB stated, “Ending this practice will foster more effective dispute resolution and ensure more fair, timely outcomes for American workers and businesses.” The Department will continue to seek liquidated damages in litigation.

VII. CONNECTICUT STATE BOARD OF LABOR RELATIONS

In *Town of Cheshire and Cheshire Police Union*,¹⁹⁴ the Union alleged that the Town violated the State Employee Relations Act (Act) by rehiring a retired Town police officer, Robert Regan, who worked as a police officer from 1999 until his retirement on November 27, 2021, and began receiving benefits under the collective bargaining agreement and the Defined Benefit Plan. Prior to 2014 police officers were enrolled in the Town’s Defined Benefit retirement plan; officers hired after January 1, 2014, were enrolled in the Town’s 401(a) Defined Contribution Plan. Since 2011 at least five police officers retired from the Police Department and began collecting benefits under the Defined Benefit Plan and then accepted employment with other departments of the Town. In 2021 the Cheshire Board of Education questioned whether rehiring retired employees constituted a “sham” rehiring prohibited by the Internal Revenue Code,¹⁹⁵ which might result in a disqualification of the retirement plan. Just two days after his retirement, Mr. Regan began employment as a maintainer in the Town’s Department of Public Works and began participating in a Town defined contribution plan. Unhappy with his position in Public Works, Mr. Regan sought reinstatement as a police officer. Over the Union’s objection, which was based

¹⁹⁴ Decision No. 5347 (Jan. 24, 2025).

¹⁹⁵ “The term ‘sham’ retirement describes where an employee retires from employment with an employer, begins to receive payments from a qualified retirement plan, and resumes employment with the employer under certain circumstances described by the IRS.” Decision, p. 3, n. 1.

on concerns that Mr. Regan's circumstances might run afoul of the sham retirement ban and jeopardize the tax status of the defined benefit plan, the Town rehired Mr. Regan as a police officer. The Union charged the Town with, *inter alia*, refusing to bargain in good faith in violation of General Statutes Section 7-470(a)(4),¹⁹⁶ claiming that rehiring Mr. Regan as a police officer was a unilateral change to a mandatory subject of bargaining, that the Town refused to bargain over the impacts of its decision to rehire Mr. Regan, and bargained in bad faith by refusing to consider the Union's concerns.¹⁹⁷

The Town first argued that the Board lacked subject matter over this dispute, claiming the Board has no authority to interpret the IRS Code to determine if the rehiring of Mr. Regan is a sham. The Board rejected this argument, holding that its "task is to determine whether the Union had a statutory right to bargain over the decision to rehire Regan as a police officer, or the impacts of that decision, which questions are squarely within our purview"¹⁹⁸ The Board further concluded that the Act "does not in our view require the Union to rely on the forbearance" of the IRS that it will not conclude the rehiring to be a sham.¹⁹⁹

The Board then found that the Town breached its obligation to bargain in good faith over the impacts of its decision to rehire Mr. Regan. The Board rejected the Town's argument that the Union's complaint should be barred by laches because it waited thirteen years to challenge the right of the Town to hire retired police officers into other positions in Town. The Board held, "[T]he omission of a statute of limitations by the Legislature evinces a public policy disfavoring waiver of a complainant's rights in a prohibited practice dispute."²⁰⁰

¹⁹⁶ General Statutes § 7-470 states, in relevant part: (a) Municipal employers or their representatives or agents are prohibited from: . . . (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit. . .

¹⁹⁷ Decision, p. 8.

¹⁹⁸ Decision, p. 9.

¹⁹⁹ Decision, p. 10.

²⁰⁰ Decision, p. 11, quoting State of Connecticut, Department of Public Safety, Decision No. 2664 p. 5 (1983).

The Board ordered the Town to cease and desist from refusing to bargain with the Union over the impact of the rehiring of Mr. Regan.²⁰¹

In *Town of Old Saybrook and UPSEU, Old Saybrook Emergency Dispatchers Union*,²⁰² the Union charged the town with violating the Act by hiring a bargaining unit member (a public safety dispatcher) to work a security detail at the scene of a crime, which the Union argued constituted a unilateral change to a mandatory subject of bargaining.²⁰³ Dispatchers perform “telecommunications functions for the Town’s police and fire departments,” and have for a number of years “performed non-dispatching functions on a voluntary basis, such as helping with parades, directing traffic at high school graduations, logging evidence at crime scenes, measuring distances at accident scenes, and working at a COVID vaccination clinic.”²⁰⁴ On September 21, 2023, the police department assigned an overnight security detail at a local automobile dealership after three cars and ten key fobs were stolen. The Union’s president volunteered for the assignment; he sat in a police community service vehicle at the site to keep an eye out and advise the police department of suspicious activity.

The Union charged the City with violating General Statutes Section 7-470(a)(4) by making a unilateral change in working conditions when it used a civilian dispatcher to work at a felony crime scene, or alternatively, by taking an action with a secondary impact on employee safety, and refusing to bargain over these issues. The Town argued that using such personnel was not a mandatory subject of bargaining, that the Union could not show a substantial impact on safety, and that the management rights clause in the collective bargaining agreement permitted the Town to engage in this activity.

In a 2-1 decision, one member dissenting, the Board concluded that the Town did not violate the Act. The Majority

²⁰¹ Decision, p. 15.

²⁰² Decision No. 5354 (Feb. 21, 2025).

²⁰³ Decision, p. 1.

²⁰⁴ Decision, p. 3.

concluded that this was not a unilateral change in job duties, but was an assignment of “extra duty work” or unscheduled, non-mandatory overtime, which we have long recognized is not a mandatory subject of bargaining”²⁰⁵ The Majority also rejected the union’s concern that there was a substantial secondary impact on employee safety. “The employees working the detail were instructed not to engage with anyone, and the record does not reveal precisely where the marked vehicle was parked or whether the area was well lit.”²⁰⁶ Thus, the Union failed to meet its burden of persuasion, and the complaint was dismissed.

Member Foley dissented, because the Board has long acknowledged that “police operations are . . . inherently dangerous,”²⁰⁷ “and that danger is only exacerbated when an employer allows a non-police officer to work alone at a crime scene.”²⁰⁸ Here the Town first asked police officers to perform this work, and it was only when no one volunteered that dispatchers were approached to work at this “stake out” without the usual training provided to police officers. Member Foley concluded that the Union established that this situation created “a substantial impact on safety that required bargaining.”²⁰⁹

VIII. STATUTES AND REGULATIONS

Connecticut Legislation

1. Connecticut Paid Sick Leave

Public Act 24-8, HB 5005, expands the paid sick leave provisions in a number of ways. First, effective January 1, 2025, the law covers private sector employers with at least 25 employees. Effective January 1, 2026, the number shrinks to 11 employees, and effective January 1, 2027, all private employers will be subject to the Act. Two categories of private employers are exempt: (1) those that participate in a multi-em-

²⁰⁵ Decision, p. 6, quoting City of Hartford, Decision No. 4905 p. 4 (2016).

²⁰⁶ Decision, p. 7.

²⁰⁷ Decision, p. 10, quoting Town of Wallingford, Decision No. 3658 (1999).

²⁰⁸ Decision, p. 10.

²⁰⁹ Decision, p. 10.

ployer health plan that requires contributions from multiple employers and is maintained under construction trade collective bargaining agreements and (2) self-employed people.

Seasonal employees (those who work 120 days or less in any year) and union members working for the first described exempt employers are not covered by the Paid Leave statute. Service workers, the originally covered group remain covered; previously excluded day or temporary workers are also now covered.

The Act expands the range of family members for whom employees may use paid sick leave, adding siblings, grandparents, grandchildren, and anyone related by blood or affinity who are the equivalent of covered family members, and expanding the previously covered “spouse” to include a domestic partner registered under the laws of any state or political subdivision; “child,” to include those who are not minors or disabled, to whom the employee acts or acted in loco parentis; and “parents,” to include those who stood in loco parentis to the employee.

Reasons for use of leave have been expanded to include when an employer’s place of business or a covered family member’s school or place of care is closed due to a public health emergency, an employee or a family member is under quarantine, is receiving preventative medical care, or is seeking or receiving services, or otherwise reacting to becoming victims of family violence or sexual assault.

The Act increases the rate at which employees accrue leave, from one hour per every forty hours worked to one hour per every thirty hours worked. Employees who are exempt from the overtime requirements of the Federal Fair Labor Standards Act are presumed to work 40 hours per week, unless their normal work week is fewer than 40 hours. The Act also makes clear that employees maintain and may use accrued paid sick leave when they transfer to a separate division, entity, or location, or a different employer succeeds or replaces an existing employer.

Employees may now use paid leave beginning on the

120th calendar day of employment instead of following 680 hours of work.

The Act now prohibits employers from requiring employees taking paid sick leave to look for or find a replacement to cover leave hours that the employee was scheduled to work.

Employees may carry over up to 40 unused accrued hours of paid sick leave to the next year, but not beyond that year, and an employer may give an employee an amount of paid leave that meets or exceeds the Act's requirements immediately available for use at the beginning of the next year, instead of carrying over unused paid sick leave. The statute does not require the employer to permit use of more than the annual accrual maximum in any year.

Employees are no longer required to give advance notice of the need for leave, or to provide documents regarding the reason for the leave. The employer may not require an employee to prove any circumstance entitling the employee to use paid leave under the statute.

Employers must notify employees of the following provisions of the law: (1) upon hire how leave accrues and may be used; (2) a notice via a poster must be displayed in the workplace; (3) if the employer does not maintain a physical workplace or an employee works off-site, the employer must send the information through electronic communications or post it on a website; (4) pay stubs must include the employee's accrued paid sick time and use for the calendar year; and (5) records must be maintained for three years.

2. Family and Medical Leave

Public Act 24-5, effective October 1, 2024, expanded the coverage of the Connecticut Family and Medical Leave Act, General Statutes Section 31-51kk, to include leave benefits for victims of sexual assault, permitting such victims to take paid or unpaid leave to seek medical care or counseling, to obtain services from a victim services organization, to relocate due to family violence or sexual assault, or to participate in civil or criminal proceedings related to the sexual assault.

Victims may receive paid benefits during the leave under the Paid Leave statute.

3. Minimum Wage

Effective January 1, 2025, the minimum wage increased to \$16.35 per hour, a 4.2% rise over the prior year. Minors under eighteen (18) years of age may be paid \$13.90 per hour.²¹⁰

IX. CONCLUSION

This past year fewer cases reached either the U.S. Supreme Court or the Second Circuit. District Court cases in the areas of race, sex, and disability discrimination continued to be brought. Cases that were decided seem to be balanced in terms of whether they favored employees or employers. There were fewer new laws.

²¹⁰ As of January 1, 2026, the Connecticut minimum wage will rise to \$16.94; for minors, \$14.41.

RECENT TORT DEVELOPMENTS

BY JAMES E. WILDES*

Recent significant tort developments are discussed in this article. The decisions are principally from 2024 through 2025. Some cases are reviewed in depth, while others are reviewed only briefly. The number of decisions requires that some cases are not covered at all. The areas of the law represented in this article, among others, include bad faith, defamation, defective highway, governmental immunity, loss of consortium, negligence, premises liability, product liability, professional negligence, statutes of limitation, trial practice, and underinsured motorist.

I. BAD FAITH

*Bouazza v. Geico General Insurance Company*¹ reversed the trial court's decision dismissing the plaintiff's bad faith claim because of the litigation privilege. The plaintiff initially brought an underinsured motorist claim against the defendant and then amended the complaint to add a second count alleging bad faith.² The trial court in granting the defendant's motion to dismiss the bad faith claim, agreed with the defendant that the litigation privilege afforded the defendant absolute immunity.³ The Appellate Court set forth the standard of review applicable to the plaintiff's claim; specifically, that the litigation privilege provides absolute immunity from suit and, therefore, implicates the court's subject matter jurisdiction.⁴ The Court further stated that when a court rules on a jurisdictional question raised by a motion to dismiss, it must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, and construe them in a manner most favorable to the pleader.⁵ The Court next explained that the litigation

* Of the New Haven Bar.

¹ 230 Conn. App. 297, 317, 330 A.3d 209 (2025).

² *Id.* at 298-300.

³ *Id.* at at 300-01.

⁴ *Id.* at 302.

⁵ *Id.*

privilege is a common-law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they relate in some way to the subject of the controversy.⁶ The Court further explained that the privilege extends to every step of the proceeding, including to statements made in pleadings or other documents prepared in connection with the proceeding.⁷ The Court also stated that the privilege bars defamation claims against all participants in judicial proceedings, including judges, attorneys, parties, and witnesses.⁸ The Court additionally stated that the privilege has been expanded to bar a variety of civil claims arising from communications or communicative acts occurring in the course of a proceeding, including, but not limited to, claims for tortious interference, intentional infliction of emotional distress, fraud, and violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.⁹ The Court further explained that the litigation privilege does not bar claims for abuse of process, vexatious litigation, and malicious prosecution because those claims seek to hold a party responsible for an improper use of the judicial process for an illegitimate purpose.¹⁰ With respect to the subject case, the Court agreed with the trial court that some of the plaintiff's allegations related to the defendant's communications and conduct made during a judicial proceeding, such as the claims related to the defendant's refusal to accept the plaintiff's offer of compromise and to make a reasonable settlement offer once litigation began and, therefore, were protected by the litigation privilege.¹¹ However, the plaintiff also argued that her allegations were based on an abuse of process, invidious motive, and actions of the defendant in withholding the plaintiff's funds rightfully due and owing under her insurance policy issued by the defendant.¹² The Court reversed the granting of the motion

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 302-303.

¹⁰ *Id.* at 303.

¹¹ *Id.* at 313.

¹² *Id.* at 316.

to dismiss because some of the allegations of bad faith pertained to conduct that occurred outside of the judicial proceeding and prior to the commencement of the litigation.¹³

II. DEFAMATION

In *Murphy v. Rosen*,¹⁴ the principal issue was whether the characterization of the plaintiff as a “white supremacist” is, standing alone, an actionable fact constituting defamation per se. The Supreme Court stated that the meaning of the terms “white supremacist” or “racist” are inherently subjective and, as a result, it concluded that the terms were not objectively verifiable and do not, without more, imply the existence of defamatory facts.¹⁵ The Court determined that the trial court properly found that the defendant’s statements were not defamatory.¹⁶ The litigation arose out of a statement on a town’s Facebook page regarding the killing of George Floyd.¹⁷ A heated debate ensued among community members in comment sections of the post.¹⁸ The plaintiff and defendant posted exchanges, including a post by the defendant that the plaintiff was a “white supremacist.”¹⁹ The plaintiff brought an action for defamation against the defendant and the defendant in response filed a special motion to dismiss pursuant to General Statutes Section 52-196a.²⁰ The defendant maintained that the plaintiff’s complaint was based on the defendant’s exercise of free speech and association in connection with a matter of public concern.²¹ The parties stipulated that the defendant satisfied her initial burden under Section 52-196a (e) (3) to show, by a preponderance of the evidence, that the opposing party’s complaint was based on the moving party’s exercise of her right of free speech and right of association.²² The sole issue for the trial court was

¹³ *Id.* at 316-17.

¹⁴ 351 Conn. 120, 122, 329 A.3d 913 (2025).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 123.

¹⁸ *Id.*

¹⁹ *Id.* at 124.

²⁰ *Id.*

²¹ *Id.* at 124-25.

²² *Id.* at 125.

whether there was probable cause that the plaintiff, considering all valid defenses, would prevail on the merits of his complaint by proving that the defendant's statements were actionable defamation per se.²³ The Court stated that for a defamatory statement to be actionable, the statement in issue must convey an objective fact because generally a defendant cannot be held liable for expressing a mere opinion.²⁴ The Court further explained that a statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known, and that such statements of fact usually are with respect to a person's conduct or character.²⁵ The Court added that an opinion is a personal comment about another's conduct, qualifications or character that has some basis in fact.²⁶ The Court found that characterizing a person as a "white supremacist," without more, is a matter of personal opinion, as opposed to a fact that can be verified.²⁷ The Court stated that this determination is context and fact specific and if the term was connected to the plaintiff's profession or to specific activities, it may have been actionable.²⁸

III. DEFECTIVE HIGHWAY

Satisfying the notice requirements for actions brought pursuant to General Statutes Section 13a-149²⁹ is often an

²³ *Id.*

²⁴ *Id.* at 131.

²⁵ *Id.* at 131-32.

²⁶ *Id.* at 132.

²⁷ *Id.* at 135.

²⁸ *Id.* at 141.

²⁹ General Statutes § 13a-149 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

issue on appeal. In *Cardoza v. City of Waterbury*,³⁰ the Appellate Court affirmed the granting of the defendant municipality's motion to dismiss because the plaintiff failed to comply with the notice requirements contained in Section 13a-149. The Court stated that the failure to comply with the requirements of Section 13a-149 deprives the Superior Court of subject matter jurisdiction over a plaintiff's action.³¹ The Court further stated that pursuant to Section 13a-149 the plaintiff must provide statutory notice within ninety days of the accident in order for an action to lie for damages caused by a defective highway, and that notice must include certain elements: (1) written notice of the injury; (2) a general description of that injury; (3) the cause; (4) the time and date; and (5) the place.³² The Court also stated that a notice that patently fails to meet this test in describing the place or cause of the injury is defective as a matter of law.³³ The Court found the notice to be insufficient because it failed to describe the cause of the injury beyond the assertion there was a defect in the roadway.³⁴ With respect to the plaintiff's argument that the savings clause of Section 13a-149 saved her action, the Court stated that the notice given by the plaintiff failed to include any description of the cause of the plaintiff's injury and, therefore, it did not fulfill one of the requirements for notice and was deficient as a matter of law.³⁵

*Beger v. City of Bristol*³⁶ affirmed the summary judgment in favor of the defendant municipality. The plaintiff alleged that she fell because of a dangerous and defective condition in the walkway located directly in front of the defendant's transfer station receptacle bin for cardboard and corrugated waste.³⁷ The defendant moved for summary judgment be-

was no intention to mislead or that such town, city, corporation or borough was not in fact misled thereby."

³⁰ 224 Conn. App. 813, 814-15, 314 A.3d 650, *cert. denied*, 349 Conn. 911, 314 A.3d 603 (2024).

³¹ *Id.* at 818.

³² *Id.* at 817.

³³ *Id.* at 818.

³⁴ *Id.* at 823.

³⁵ *Id.* at 825-26.

³⁶ 233 Conn. App. 134, 135-36, 338 A.3d 1251 (2025).

³⁷ *Id.* at 135.

cause the plaintiff's allegations did not fall within the scope of Section 13a-149; specifically, the area where the plaintiff allegedly fell did not constitute a public highway.³⁸ The Appellate Court stated that it was undisputed that the transfer station was accessible only to the municipality's residents who had permits, that it was open only during limited hours, and that when closed its gates were shut and locked.³⁹ Under the circumstances, the Court found that the area where the plaintiff allegedly fell lacked the essential feature that would qualify it as open to public use for purposes of Section 13a-149.⁴⁰

In *Petrocelli v. City of Shelton*,⁴¹ the defendant, the state of Connecticut, appealed from the denial of its motion to dismiss, arguing that the trial court improperly denied its motion because it did not have a duty to maintain and repair the area where the alleged injury occurred and, accordingly, it was entitled to sovereign immunity. The Appellate Court disagreed and affirmed the judgment of the trial court.⁴² The plaintiff claimed that she stepped into an open utility handhole in the sidewalk, causing her to fall and sustain injuries.⁴³ In addition to other defendants, the plaintiff sued the state under General Statutes Section 13a-144.⁴⁴ The state

³⁸ *Id.* at 136.

³⁹ *Id.* at 143.

⁴⁰ *Id.* at 145. The plaintiff argued that the Appellate Court should overrule its earlier decision in *Read v. Plymouth*, 110 Conn. App. 657, 955 A.2d 1255, *cert. denied*, 289 Conn. 955, 961 A.2d 421 (2008). The Court stated that it must follow its precedent unless en banc review is granted. *Beger*, 233 Conn. App. at 143-44.

⁴¹ 230 Conn. App. 639, 640-41, 332 A.3d 325 (2025).

⁴² *Id.* at 641.

⁴³ *Id.* A handhole is a form of a manhole providing access to an underground electrical system. *Id.*, note 4.

⁴⁴ *Id.* at 641-42. General Statutes §13a-144 provides: "Any person injured in person or property through the neglect or default of the state or any of its employees by means of any defective highway, bridge or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair, or by reason of the lack of any railing or fence on the side of such bridge or part of such road which may be raised above the adjoining ground so as to be unsafe for travel or, in case of the death of any person by reason of any such neglect or default, the executor or administrator of such person, may bring a civil action to recover damages sustained thereby against the commissioner in the Superior Court. No such action shall be brought except within two years from the date of such injury, nor unless 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 has been given in writing within ninety days thereafter to the commissioner. Such action shall be tried to the court or jury, and such portion

maintained that it did not owe a duty under Section 13a-144 because the handhole was taken out of service and abandoned.⁴⁵ The trial court concluded that the issue of abandonment was a question of fact for the jury and, therefore, rejected the state's argument that it was not liable as a matter of law.⁴⁶ The Court began its analysis by explaining that the legislature had waived the state's sovereign immunity from suit by the enactment of Section 13a-144, which authorizes civil actions against the state for injuries by means of any defective highway.⁴⁷ The Court explained that the doctrine of sovereign immunity implicates subject matter jurisdiction and is a basis for granting a motion to dismiss.⁴⁸ Because Section 13a-144 is silent as to the manner in which the state may establish that it abandoned a highway, or part thereof, the Court looked to common-law principles governing abandonment for guidance.⁴⁹ The Court noted that most frequently where abandonment has been established, there has been found some affirmative act indicative of an intention to abandon.⁵⁰ The Court stated that the state provided

of the amount of the judgment rendered therein as exceeds any amount paid to the plaintiff prior thereto under insurance liability policies held by the state shall, upon the filing with the Comptroller of a certified copy of such judgment, be paid by the state out of the appropriation for the commissioner for repair of highways; but no costs or judgment fee in any such action shall be taxed against the defendant. This section shall not be construed so as to relieve any contractor or other person, through whose neglect or default any such injury may have occurred, from liability to the state; and, upon payment by the Comptroller of any judgment rendered under the provisions of this section, the state shall be subrogated to the rights of such injured person to recover from any such contractor or other person an amount equal to the judgment it has so paid. The commissioner, with the approval of the Attorney General and the consent of the court before which any such action is pending, may make an offer of judgment in settlement of any such claim. The commissioner and the state shall not be liable in damages for injury to person or property when such injury occurred on any highway or part thereof abandoned by the state or on any portion of a highway not a state highway but connecting with or crossing a state highway, which portion is not within the traveled portion of such state highway. The requirement of notice specified in this section shall be deemed complied with if an action is commenced, by a writ and complaint setting forth the injury and a general description of the same and of the cause thereof and of the time and place of its occurrence, within the time limited for the giving of such notice."

⁴⁵ *Petrocelli*, 230 Conn. App. at 642-43.

⁴⁶ *Id.* at 644.

⁴⁷ *Id.* at 645.

⁴⁸ *Id.*

⁴⁹ *Id.* at 649.

⁵⁰ *Id.* at 650.

no legal support for its argument that its nonuse of the handhole before the plaintiff's injury conclusively established, as a matter of law, that it abandoned the handhole.⁵¹ The Court further found that the factfinder may find, after further factual development, that the state's nonuse of the handhole should have been accompanied by an affirmative act in order to indicate an intent to abandon, or that its failure to remove the handhole, demonstrated that it did not abandon the handhole.⁵² The Court concluded that the trial court had discretion to postpone resolution of the jurisdictional question until after a full trial on the merits had occurred.⁵³

In *Vance v. City of New Haven*,⁵⁴ the Appellate Court agreed with the defendant that the trial court improperly determined that the evidence supported a finding that the plaintiff complied with the notice requirements contained in General Statutes Section 13a-149. At the end of the plaintiff's case in chief, the defendant's attorney moved to dismiss the plaintiff's highway defect claim for lack of subject matter jurisdiction, arguing that the plaintiff failed to prove that she complied with the notice requirements of Section 13a-149.⁵⁵ The Court stated that the notice requirement is a condition precedent to maintaining an action under Section 13a-149, and when a plaintiff fails to comply with the notice requirements, the trial court is without subject matter jurisdiction over the action.⁵⁶ The Court stated that providing notice under Section 13a-149 requires that a plaintiff deliver the notice and assure that it is received by the defendant within the notice period.⁵⁷ The Court stated that the plaintiff has the burden to prove that the notice was delivered and actually received.⁵⁸ With respect to the case before it, the Court found that the plaintiff had not identified any evidence that established that the defendant actually received the no-

⁵¹ *Id.* at 650-51.

⁵² *Id.* at 651.

⁵³ *Id.*

⁵⁴ 236 Conn. App. 724, 726, 349 A.3d 1116 (2025).

⁵⁵ *Id.* at 729.

⁵⁶ *Id.* at 731-32.

⁵⁷ *Id.* at 736.

⁵⁸ *Id.*

tice of claim letter.⁵⁹ The plaintiff contended that the trial court was free to find the defendant's claim that it did not receive the notice not to be credible.⁶⁰ The Court noted that the defendant rested without presenting any witnesses so there was no testimony by the defendant to discredit.⁶¹ The Court further explained that even if the trial court decided to discredit the testimony elicited from the defendant's deputy clerk, who testified that the notice was not received, such a credibility determination would not suffice to establish that the defendant actually received the plaintiff's notice.⁶² The Court concluded that, because the plaintiff did not meet her burden in establishing notice, the trial court improperly denied the defendant's motion to dismiss her highway defect claim.⁶³

IV. GOVERNMENTAL IMMUNITY

*Ready v. Town of New Canaan*⁶⁴ reversed the trial court's granting of the defendant's motion for summary judgment based on governmental immunity, finding that the plaintiffs had alleged a claim for breach of a contractual duty and not a claim in tort. The plaintiffs alleged that the defendant breached its obligation under a right-of-way agreement by failing to use due care in constructing and maintaining a public storm sewer, resulting in flooding that caused damage to their home and property.⁶⁵ The trial court found that the plaintiffs had simply recast their tort claim as a contract claim in order to avoid the defense of governmental immunity afforded to municipalities and their employees for discretionary acts.⁶⁶ The trial court further determined that no

⁵⁹ *Id.* at 738.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* In support of its reasoning, the Appellate Court cited to *Paige v. St. Andrew's Roman Catholic Church Corp.*, 250 Conn. 14, 18, 734 A.2d 85 (1999) (although the finder of fact is entitled to disbelieve any evidence, it may not draw a contrary inference on the basis of that disbelief) and *Novak v. Anderson*, 178 Conn. 506, 508, 423 A.2d 147 (1979) (while a trier of fact may accept or reject testimony, in rejecting such testimony the trier of fact cannot conclude that the opposite is true). *Vance*, 236 Conn. App. at 738-39.

⁶³ *Id.* at 741.

⁶⁴ 232 Conn. App. 487, 501, 336 A.3d 1252 (2025).

⁶⁵ *Id.* at 491.

⁶⁶ *Id.* at 492.

exception to governmental immunity applied.⁶⁷ The Appellate Court stated that the interpretation of pleadings is always a question of law for the court, and that in determining the nature of a pleading filed by a party, it was not bound by the label affixed to the pleading by the party.⁶⁸ The Court explained that in determining whether a claim sounds in tort or in breach of contract the fundamental difference lies in the nature of the interest protected.⁶⁹ The duties of conduct that give rise to a tort action are imposed by law, and are based primarily on social policy, and not necessarily on the will or intention of the parties.⁷⁰ On the other hand, contract actions are created to protect the interest in having promises performed, which arise out of a contract.⁷¹ The Court also stated that tort liability in a negligence claim may arise out of a contract.⁷² The Court stated that in viewing the allegations of the complaint, as a whole and in the light most favorable to the plaintiffs as the nonmoving parties, it was convinced that the plaintiffs had alleged a claim for breach of contractual duty.⁷³ The Court concluded that the trial court erred in construing the plaintiffs' claim as alleging tortious conduct, to which governmental immunity would apply.⁷⁴

Whether the failure of the trial court to instruct the jury

⁶⁷ *Id.* 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. (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."

⁶⁸ *Ready*, 232 Conn. App. at 495-96.

⁶⁹ *Id.* at 494.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 496.

⁷⁴ *Id.* at 501.

on the applicability of General Statutes Section 14-283 and in instructing the jury on common law principles of negligence was plain error was the subject of *Sanchez v. City of Hartford*.⁷⁵ The plaintiff alleged that while operating a motorcycle he was injured when the defendant police officer, who was responding to an emergency in a police cruiser, collided with him at an intersection.⁷⁶ The Appellate Court stated that the plain error doctrine, codified at Practice Book

⁷⁵ 227 Conn. App. 771, 772-73, 322 A.3d 1108, *cert. denied*, 350 Conn. 922, 325 A3d.1093 (2024). The defendants conceded that all of their claims were unpreserved and were made under the plain error doctrine. *Id.* at 773, note 3. General Statutes §14-283 provides, in relevant part: “(a) As used in this section, ‘emergency vehicle’ means (1) any ambulance or vehicle operated by a member of an emergency medical service organization responding to an emergency call or taking a patient to a hospital, (2) any vehicle used by a fire department or by any officer of a fire department while on the way to a fire or while responding to an emergency call but not while returning from a fire or emergency call, [or] (3) any state or local police vehicle operated by a police officer or inspector of the Department of Motor Vehicles answering an emergency call or in the pursuit of fleeing law violators

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

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

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

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

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

⁷⁶ *Sanchez*, 227 Conn. App. at 774.

Section 60-5,⁷⁷ is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved and nonconstitutional in nature, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party.⁷⁸ The Court explained that an appellant cannot prevail under the plain error doctrine unless it demonstrates that the claimed error is both so clear and so harmful that a failure to reverse the judgment would result in manifest injustice.⁷⁹ With respect to whether the trial court committed plain error in instructing the jury, the Court stated that it must examine the jury instructions, mindful that, the instructions are to be read as a whole and that the instructions need not be exhaustive, perfect, or technically accurate, so long as they were correct in law, adapted to the issues and sufficient to guide the jury.⁸⁰ The Court disagreed with the defendants that the jury should have been instructed only in accordance with Section 14-283 once the requirements of the statute were satisfied and not with common law principles of negligence, finding the answer to that issue was unsettled and that it was not plain error for the trial court to instruct the jury on both Section 14-283 and common-law forms of negligence.⁸¹

⁷⁷ Practice Book § 60-5 provides, in part, that “[t]he court may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous in view of the evidence and pleadings in the whole record, or that the decision is otherwise erroneous in law....”

⁷⁸ *Sanchez*, 227 Conn. App. at 777.

⁷⁹ *Id.* at 778.

⁸⁰ *Id.* at 779. The defendants also argued that the trial court improperly failed to charge the jury that driving with due regard for safety under Section 14-283 involved discretion. *Id.* at 773, note 4. The Court did not address this argument because it stated that it was an attempt to apply discretionary act immunity under General Statutes § 52-557n to this case. *Id.* The Court stated that *Adesokan v. Bloomfield*, 347 Conn. 416, 297 A.3d 983 (2023), and *Daley v. Kashmanian*, 344 Conn. 464, 280 A.3d 68 (2022) held that discretionary act immunity under § 52-557n does not apply to driving a motor vehicle in either emergency or nonemergency circumstances. *Id.* The Court further stated that the defendants’ reference to *Borelli v. Renaldi*, 336 Conn. 1, 243 A.3d 1064 (2020) was not persuasive, because *Borelli* held that the decision to initiate a police chase, as distinguished from the manner of driving an emergency vehicle, was protected as a discretionary act under § 52-557n. *Id.* The Court found that it was not plain error for the trial court to fail to charge the jury regarding discretion in the operation of an emergency vehicle. *Id.*

⁸¹ *Id.* at 780-82.

In *Rodriguez v. City of Hartford*,⁸² the Appellate Court disagreed with the plaintiff that the defendant city forester violated her ministerial duty to properly inspect the tree at issue. The city forester inspected the tree at issue and then eleven days later the tree fell onto a basketball court, resulting in injuries to an eleven year old boy.⁸³ The plaintiff argued that the city forester's visual inspection amounted to no inspection at all.⁸⁴ The Court stated that General Statutes Section 52-557n (a) (1) identified two exceptions to the statutory abrogation of governmental immunity including where the negligent acts or omissions require the exercise of judgment or discretion as an official function of authority expressly or impliedly granted by law.⁸⁵ The Court further stated that liability attaches to a municipality for negligently performed ministerial acts, not for negligently performed discretionary acts.⁸⁶ The Court stated that General Statutes Section 23-59⁸⁷ provides that many, although not all, of the duties of a

⁸² 224 Conn. App. 314, 335, 312 A3d 85, *cert. denied*, 349 Conn. 907, 313 A.3d 512 (2024).

⁸³ *Id.* at 317-20. The Appellate Court explained that although the injured minor was named as the plaintiff, the action was brought by his mother as his parent because as a general rule minor children may only sue by way of a parent or next friend. *Id.* at 317, note 1.

⁸⁴ *Id.* at 335.

⁸⁵ *Id.* at 333.

⁸⁶ *Id.*

⁸⁷ General Statutes § 23-59 provides: "Powers and duties of tree wardens. The town or borough tree warden shall have the care and control of all trees and shrubs in whole or in part within the limits of any public road or grounds and within the limits of his town or borough, except those along state highways under the control of the Commissioner of Transportation and except those in public parks or grounds which are under the jurisdiction of park commissioners, and of these the tree warden shall take the care and control if so requested in writing by the park commissioners. Such care and control shall extend to such limbs, roots or parts of trees and shrubs as extend or overhang the limits of any such public road or grounds. The tree warden shall expend all funds appropriated for the setting out, care and maintenance of such trees and shrubs. The tree warden shall enforce all provisions of law for the preservation of such trees and shrubs and of roadside beauty. The tree warden shall remove or cause to be removed all illegally erected signs or advertisements, placed upon poles, trees or other objects within any public road or place under the tree warden's jurisdiction. The tree warden may prescribe such regulations for the care and preservation of such trees and shrubs as the tree warden deems expedient and may provide therein for a reasonable fine for the violation of such regulations; and such regulations, when approved by the selectmen or borough warden and posted on a public signpost in the town or borough, if any, or at some other exterior place near the office of the town or borough clerk, shall have the force and effect of town or borough ordinances. Whenever, in the opinion of the tree warden, the public safety demands the removal or pruning of any tree or shrub

tree warden involve the exercise of discretion.⁸⁸ The Court remarked that the record reflected that the forester's inspection was a matter of routine and that there were no policies or regulations that delineated the manner in which the inspection of the tree was to be conducted.⁸⁹ The Court found that the trial court properly granted the defendants' motion for summary judgment because in the absence of such guidelines the inspection involved judgment and discretion.⁹⁰

V. LOSS OF CONSORTIUM

Whether the scope of liability should be expanded by recognizing a parent's claim for the loss of consortium of an injured minor child was addressed in *L.L. v. Newell Brands, Inc.*⁹¹ As the result of a kitchen fire, the minor plaintiff, who was strapped into a car seat that was placed on a kitchen counter, sustained severe burns.⁹² A lawsuit was brought against numerous defendants in the United States District Court for the District of Connecticut.⁹³ The District Court certified the above question of law to the Connecticut Supreme Court pursuant to General Statutes Section 51-199b (d).⁹⁴ The Court

under the tree warden's control, the tree warden may cause such tree, shrub or group of shrubs to be removed or pruned at the expense of the town or borough and the selectmen or borough warden shall order paid to the person performing such work such reasonable compensation therefor as may be determined and approved in writing by the tree warden. Unless the condition of such tree, shrub or group of shrubs constitutes an immediate public hazard, the tree warden shall, at least ten days before such removal or pruning, post on each tree or shrub and may post on each group of shrubs a suitable notice stating the tree warden's intention to remove or prune such tree, shrub or group of shrubs. If any person, firm or corporation objects to such removal or pruning, such person, firm or corporation may appeal to the tree warden in writing, who shall hold a public hearing at some suitable time and place after giving reasonable notice of such hearing to all persons known to be interested therein and posting a notice thereof on such tree, shrub or group of shrubs. Within three days after such hearing, the tree warden shall render a decision granting or denying the application, and the party aggrieved by such decision may, within ten days, appeal therefrom to the superior court for the judicial district within which such town or borough is located. The tree warden may, with the approval of the selectmen or borough warden, remove any trees or other plants within the limits of public highways or grounds under the tree warden's jurisdiction that are particularly obnoxious as hosts of insect or fungus pests."

⁸⁸ *Rodriguez*, 224 Conn. App. at 335.

⁸⁹ *Id.* at 336.

⁹⁰ *Id.*

⁹¹ 351 Conn. 262, 264, 330 A.3d 53 (2025).

⁹² *Id.*

⁹³ *Id.* at 264-65.

⁹⁴ *Id.* at 265.

had previously recognized a claim for the loss of consortium of an injured spouse in *Hopson v. St. Mary's Hospital*⁹⁵ and a minor child's loss of consortium of an injured parent in *Campos v. Coleman*.⁹⁶ The Court declined to recognize a cause of action for loss of filial consortium, determining that a child's relational interest with a parent is characterized by dependence, whereas a parent's relational interest with a child is not.⁹⁷ The Court concluded that the reasoning relied on in *Hopson* and *Campos* did not warrant recognizing a cause of action for loss of filial consortium.⁹⁸

VI. NEGLIGENCE

Whether an insurance broker had a duty to inform its clients that their homeowners insurance carrier intended not to renew their insurance policy was addressed in *Deer v. National General Insurance Company*.⁹⁹ The plaintiffs appealed from the Appellate Court's judgment affirming the trial court's summary judgments in favor of the defendants, an insurance broker and his insurance brokerage firm.¹⁰⁰ The Supreme Court first set forth the elements of a cause of action for negligence: duty; breach of that duty; causation; and actual injury.¹⁰¹ The Court further stated that with respect to a determination of duty, it is first necessary to determine the existence of a duty, and second, if a duty is found, it is necessary to determine the scope of that duty.¹⁰² The Court also stated that the existence of a legal duty is a question of law over which it exercises plenary review.¹⁰³ Turning to the issue in the case, the Court stated that when procuring insurance for a person, a broker becomes the agent of that person for that purpose and owes a duty to his principal to exercise reasonable skill, care, and diligence in effecting the

⁹⁵ 176 Conn. 485, 408 A.2d 260 (1979).

⁹⁶ 319 Conn. 36, 123 A.3d 854 (2015).

⁹⁷ *Id.* at 264-70.

⁹⁸ *Id.* at 270. Justice Ecker concurred and Justice McDonald dissented.

⁹⁹ 353 Conn. 262, 264, 341 A.3d 936 (2025).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 269.

¹⁰² *Id.*

¹⁰³ *Id.*

insurance, and any negligence on his part that defeats the insurance which he undertakes to secure will render him liable to his principal for the resulting loss.¹⁰⁴ The Court additionally stated that once that purpose is accomplished, and the insurance is secured, the agency relationship between the insured and the broker terminates, and the broker is without any authority to do anything which further affects the insured, unless expressly or impliedly authorized by the insured to do so.¹⁰⁵ The Court stated that it was an established rule that the insurance broker owes no legal duty to his or her insured after the broker has successfully secured the requested insurance policy.¹⁰⁶ The Court noted that an exception to the general rule arises when a broker agrees or give some affirmative insurance that he or she will assist in the renewal of an insurance policy for the insured.¹⁰⁷ The Court agreed with the Appellate Court that the agency relationship between the parties ended after the defendants procured the plaintiffs' insurance policy and that the defendants owed no duty to inform the plaintiffs of the information they had received regarding the renewal because the defendants did not agree to maintain or renew the plaintiffs' insurance coverage.¹⁰⁸ The Court disagreed with the plaintiffs that the defendants undertook a duty by trying, unsuccessfully, to inform them of the insurance company's intention not to renew the policy several days before, and several days after, the expiration of the policy.¹⁰⁹ The Court stated that the attempted notification fell short of the defendants' agreement to ensure continued insurance coverage.¹¹⁰

¹⁰⁴ *Id.* at 270. The Court explained that an insurance agent is a person expressly or impliedly authorized to represent an insurance company in its interactions with third persons; whereas an insurance broker is one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any specific company and who either places an order for insurance with the company selected by the insured, or, in the absence of such selection, with the company the broker chooses. *Id.* at 264, note 2.

¹⁰⁵ *Id.* at 270.

¹⁰⁶ *Id.* at 270-71.

¹⁰⁷ *Id.* at 272-73.

¹⁰⁸ *Id.* at 274-75.

¹⁰⁹ *Id.* at 276.

¹¹⁰ *Id.* Justice McDonald, joined by Justice Ecker, dissented.

In *One Eighty-Five Stagg Associates v. Linwood Avenue III, LLC*,¹¹¹ the plaintiff commenced an action against the defendants, a limited liability company and the sole member of the limited liability company, claiming among other things that the defendants failed to exercise reasonable care in maintaining property and an oil tank which caused the contamination of air, soil and groundwater. The plaintiff appealed from the granting of the defendants' motion for directed verdict.¹¹² The Appellate Court agreed with the plaintiff that the trial court erred in granting the motion for directed verdict on the plaintiff's negligence and nuisance claim, finding there was sufficient evidence to find the defendants liable.¹¹³ The Court also addressed the argument made by the sole member of the defendant limited liability company that he could not be personally liable based on evidence that he was acting in his capacity as the sole member of the company.¹¹⁴ The Court explained that although a member of a limited liability company does not incur personal liability because of his or her official position, a member of a limited liability company may be held liable for his or her own tortious conduct without requiring the piercing of the corporate veil.¹¹⁵ The Court stated that the sole member's liability was not diminished by the fact that he had control of the oil tank in his role as member and manager of the limited liability company.¹¹⁶

VII. NUISANCE

In *Wylie v. APT Foundation, Inc.*,¹¹⁷ the Appellate Court agreed with the trial court that the plaintiff's claim sounding in public nuisance was legally insufficient. The plaintiff, acting in her capacity as the decedent's administratrix, alleged that the defendant operated a center for drug rehabilitation

¹¹¹ 232 Conn. App. 520, 522-41, 337 A.3d 765 (2025). The plaintiff also sued the conservator of the sole member of the limited liability company. *Id.* at 524.

¹¹² *Id.* at 521.

¹¹³ *Id.* at 527-34.

¹¹⁴ *Id.* at 541.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 542.

¹¹⁷ 226 Conn. App. 267, 268, 317 A.3d 1160 (2024).

and that the decedent while at the defendant's premises was involved in a physical altercation, resulting in his being fatally stabbed on the sidewalk in front of the premises.¹¹⁸ The plaintiff alleged that the defendant created a magnet for criminal activity in the immediate vicinity surrounding the premises without providing proper security and safety protocols.¹¹⁹ The Court explained that a plaintiff must prove four elements to prevail in a nuisance cause of action: (1) the condition complained of had a natural tendency to create danger and inflict injury on person or property; (2) the danger created was a continuing one; (3) the use of the land was unreasonable or unlawful; and (4) the existence of the nuisance was the proximate cause of the plaintiffs' injuries and damages.¹²⁰ The Court contrasted the subject case from typical examples of public nuisances including pollution, obstruction of waterways, air and noise pollution, maintenance of fire or explosive hazards, maintenance of a house of prostitution, obstruction of safe travel on a highway, and maintenance of junkyard or dump.¹²¹ The Court found that the defendant's premises did not have a natural tendency to create danger and to inflict injury and, accordingly, failed to set forth a claim of public nuisance.¹²²

VIII. PREMISES LIABILITY

*McGee v. 456 Sackett WDS Associates, LLC*¹²³ affirmed the summary judgment in favor of the defendants because they were not in possession or control of the area of the property where the plaintiff allegedly was injured. The plaintiff alleged that he was a business invitee at a warehouse when he was injured after stepping on a defective wooden floorboard.¹²⁴ The defendants moved for summary judgment, arguing that they were not liable to the plaintiff as a matter of law because

¹¹⁸ *Id.* at 268-69.

¹¹⁹ *Id.* at 270.

¹²⁰ *Id.* at 275.

¹²¹ *Id.* at 277.

¹²² *Id.* at 277-78.

¹²³ 234 Conn. App. 362, 363, 344 A.3d 305, *cert. denied*, 353 Conn. 924, 345 A.3d 812 (2025). The author was counsel for the defendants.

¹²⁴ *Id.*

there was no genuine issue of material fact that they did not have possession or control of the property where the plaintiff allegedly was injured, and, therefore they did not owe a duty of care to the plaintiff.¹²⁵ The Appellate Court stated that in a premises liability case in the landlord-tenant context the landlord owes a duty of reasonable care as to those parts of the premises over which it has retained control, but it generally does not have a duty to keep in repair any portion of the premises leased to and in the exclusive control and possession of the tenant.¹²⁶ The Court further stated that liability for injuries caused by defective premises does not depend on who holds title; rather, it depends on who has possession and control of property.¹²⁷ The Court also stated that retention of control is essentially a matter of intention to be determined in light of all the significant circumstances.¹²⁸ The Court additionally stated that control refers to the power or authority to manage, superintend, direct or oversee the premises.¹²⁹ The Court stated that unless it is definitively expressed in the lease, the circumstances of the particular case determine whether the lessor has reserved control of the premises or whether they were under the exclusive dominion of the lessee.¹³⁰ In determining whether the defendants met their initial burden of demonstrating the lack of any genuine issues of material fact, the Court referred to the lease and stated that in interpreting a written lease, three principles must be considered: (1) the intention of the parties is controlling and must be gleaned from the language of the lease in the light of the circumstances at the execution of the instrument; (2) the language must be given its ordinary meaning unless a technical or special meaning is intended; and (3) the lease must be interpreted, as a whole, and in such a manner as to give effect to every provision, if reasonably possible.¹³¹ The Court also explained that a determination of contractual intent

¹²⁵ *Id.* at 364.

¹²⁶ *Id.* at 368.

¹²⁷ *Id.*

¹²⁸ *Id.* at 369.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 370-71.

is generally a question of fact for the fact finder, although where the language is clear and unambiguous, it becomes a question of law for the court.¹³² The Court stated that the plain language of the lease in question definitively expressed that possession and control of the relevant area was vested in the tenant.¹³³ The Court also rejected the plaintiff's argument that the lease provision regarding the landlord's right of entry to inspect, show and repair, alter and improve created a genuine issue material fact as to possession and control, finding that under *Monarch Accounting Supplies, Inc. v. Prezioso*¹³⁴ the Supreme Court had held under a similar lease provision that the landlord did not reserve control of the leased premises.¹³⁵ The Court stated that the right of entry provision granted the defendants only a reversionary interest in the property.¹³⁶ The Court next determined that the plaintiff's documentary evidence submitted in opposition to the motion for summary judgment did not give rise to a genuine issue of material fact because it did not relate directly to whether the defendants retained possession and control of the relevant area of the premises.¹³⁷

The ongoing storm rule was the central issue in *Carty v. Merchants 99-111 Founders, LLC*.¹³⁸ The plaintiff appealed from the trial court's granting of the defendant's motion for summary judgment, arguing that the trial court erred because (1) the defendant never produced evidence to refute the claim that the plaintiff fell on pre-existing ice and (2) the plaintiff raised genuine issues of material fact as to whether he fell on pre-existing ice.¹³⁹ The Appellate Court reviewed the ongoing storm rule recognized in *Kraus v. Newtown*¹⁴⁰ and what a movant for summary judgment must demon-

¹³² *Id.* at 371.

¹³³ *Id.* at 372.

¹³⁴ 170 Conn. 659, 368 A.2d 6 (1976).

¹³⁵ *McGee*, 234 Conn. at 374-75.

¹³⁶ *Id.* at 375.

¹³⁷ *Id.* at 376.

¹³⁸ 227 Conn. App. 683, 323 A.3d 414 (2024).

¹³⁹ *Id.* at 684-85.

¹⁴⁰ In *Kraus v. Newton*, 211 Conn. 191, 558 A.2d 240 (1989), the Supreme Court held that in the absence of unusual circumstances, a property owner, in fulfilling its duty owed to invitees upon his property to exercise reasonable care in

strate to satisfy its initial burden when relying on the ongoing storm rule in *Belevich v. Renaissance I, LLC*¹⁴¹ before reaching the merits of the plaintiff's argument.¹⁴² The Court found that the trial court properly concluded that the defendant satisfied its initial burden of establishing that it neither created the snow and ice condition nor had actual or constructive notice of the condition.¹⁴³ The Court next found that the trial court properly determined that the plaintiff failed to satisfy his burden of presenting evidence sufficient to create a genuine issue of material fact with respect to whether the ice that caused him to fall was present prior to the advent of the ongoing storm when he fell.¹⁴⁴ The Court stated that neither the plaintiff nor any other witness testified that the

removing dangerous accumulations of snow and ice, may await the end of a storm and a reasonable time thereafter before removing the ice and snow. *Id.* at 198. The Court continued in stating that its decision did not prevent the submission to the jury, where there is a proper evidentiary foundation, the determination as to whether a storm had ended or whether a plaintiff's injury was caused by new ice or old ice when the effects of separate storms converge. *Id.* at 197-98.

¹⁴¹ In *Belevich v. Renaissance I, LLC*, 207 Conn. App. 119, 120, 261 A.3d 1 (2021) the plaintiffs appealed from the summary judgment entered in favor of the defendants. The plaintiff, Belevich, and his employer, Yale University, brought claims against the defendants based in premises liability for injuries sustained by Belevich after he fell on ice. *Id.* at 120-21. The trial court granted the defendants' motion for summary judgment based on the ongoing storm doctrine. *Id.* at 123. On appeal, the plaintiffs contended that the defendants failed to establish the absence of a genuine issue of material fact as to the applicability of the ongoing storm doctrine. *Id.* at 125. The plaintiffs also argued that the trial court improperly shifted the burden to the plaintiffs to negate the applicability of the doctrine because the defendants provided no evidence that the ongoing storm produced the black ice that Belevich allegedly fell on. *Id.* In reviewing whether it was proper for the trial court to grant summary judgment based upon the ongoing storm doctrine, the Appellate Court expressly adopted a burden shifting approach as a matter of Connecticut common law. *Id.* at 126-28. The Court stated that the defendants met their initial burden to demonstrate that there was no genuine issue of material fact that there was an ongoing storm when Belevich fell because the plaintiff testified at his deposition that it was snowing when he fell and that it had been snowing all day. *Id.* at 128-29. The Court next stated that the burden then shifted to the plaintiffs to demonstrate the existence of a genuine issue of fact as to whether Belevich's fall was caused by a slippery condition that existed prior to the ongoing storm and whether the defendants had actual or constructive notice of the allegedly pre-existing condition. *Id.* at 129. The Court noted that Belevich's submission in opposition to the motion for summary judgment failed to create a genuine issue of fact because it contained no evidence to suggest that the allegedly icy condition at the location where he fell existed prior to the ongoing storm or that the defendant had actual or constructive notice of any pre-existing condition. *Id.* at 132. The Court affirmed the summary judgment in favor of the defendants. *Id.* at 133.

¹⁴² *Carty*, 227 Conn. App. at 691-93.

¹⁴³ *Id.* at 693.

¹⁴⁴ *Id.* at 696.

ice that caused him to fall was present prior to the ongoing storm.¹⁴⁵ With respect to the plaintiff's testimony at his deposition that, in the week before he fell, he saw water in the area where he fell and observed ice on the sidewalk near the area where he fell, the Court stated that even evidence that there was ice in the general vicinity of the accident prior to the storm is insufficient to raise a triable issue of fact as to whether the defendant had actual or constructive notice of the condition of the specific area where the plaintiff fell.¹⁴⁶ The Court affirmed the judgment in favor of the defendant.¹⁴⁷

IX. PRODUCT LIABILITY

In *Health Body World Supply, Inc. v. Wang*,¹⁴⁸ the Supreme Court addressed the proper interpretation and operation of General Statutes Section 52-572o,¹⁴⁹ which governs comparative responsibility and actions for contribution under the Connecticut Product Liability Act (CPLA), General Statutes Section 52-572m et seq. The named plaintiff and its insurance company brought an action for contribution against the named defendant pursuant to Section 52-572o¹⁵⁰ after paying \$1.2 million to Judith Kissel in full satisfaction of the judgment in the underlying medical malpractice ac-

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 697.

¹⁴⁷ *Id.* at 698.

¹⁴⁸ 353 Conn. 296, 298-99, 342 A.3d 987 (2025).

¹⁴⁹ General Statutes § 52-572o provides, in part: "(b) In any claim involving comparative responsibility, the court may instruct the jury to give answers to special interrogatories, or if there is no jury, the court may make its own findings, indicating (1) the amount of damages each claimant would receive if comparative responsibility were disregarded, and (2) the percentage of responsibility allocated to each party, including the claimant, as compared with the combined responsibility of all parties to the action. For this purpose, the court may decide that it is appropriate to treat two or more persons as a single party.

(c) In determining the percentage of responsibility, the trier of fact shall consider, on a comparative basis, both the nature and quality of the conduct of the party.

(d) The court shall determine the award for each claimant according to these findings and shall enter judgment against parties liable on the basis of the common law joint and several liability of joint tortfeasors. The judgment shall also specify the proportionate amount of damages allocated against each party liable, according to the percentage of responsibility established for such party."

¹⁵⁰ General Statutes § 52-572o (e), provides, in pertinent part, that, "[i]f a judgment has been rendered, any action for contribution must be brought within one year after the judgment becomes final...."

tion that Kissel brought.¹⁵¹ The jury in the underlying matter assigned 80 percent of the responsibility for Kissel's damages to the named plaintiff and 20 percent of the responsibility to the named defendant.¹⁵² In the subject case, the plaintiffs sought to recover from the named defendant his 20 percent share of the amount paid, along with applicable interest and costs.¹⁵³ In the underlying action against the named defendant and his employer, Kissel claimed she sustained injuries when a heat lamp made contact with her foot during an acupuncture procedure performed by the named defendant.¹⁵⁴ During that action the named defendant filed a third-party complaint under the CPLA against the named plaintiff, the manufacturer of the heat lamp, and Kissel then pled over under the CPLA against the named plaintiff.¹⁵⁵ At the time of trial, the operative claims were Kissel's medical malpractice claim against the named defendant and Kissel's product liability claim against the named plaintiff.¹⁵⁶ The Court, on appeal, rejected the named defendant's argument that he was not subject to apportionment of comparative responsibility under Section 52-572o because he was not a party to a product liability action after he withdrew his product liability claim against the named plaintiff.¹⁵⁷ The Court held that Section 52-572o provides that in an action involving both product liability claims and nonproduct liability claims in which the harm is not divisible, an adjudication of comparative responsibility is appropriate with respect to each party to the action.¹⁵⁸ The Court also disagreed with the named defendant's argument that the plaintiffs' contribution action was barred by the statute of limitations contained in Section 52-572o (e).¹⁵⁹ The Court found that the phrase "after the judgment becomes final" for purposes of triggering the

¹⁵¹ *Id.* at 299-300.

¹⁵² *Id.* at 299.

¹⁵³ *Id.* at 299.

¹⁵⁴ *Id.* at 299-300.

¹⁵⁵ *Id.* at 300. Early in the trial, the named defendant withdrew his third-party complaint against the named plaintiff. *Id.* at 301.

¹⁵⁶ *Id.* at 301.

¹⁵⁷ *Id.* at 307-08.

¹⁵⁸ *Id.* at 307.

¹⁵⁹ *Id.* at 330.

statute of limitations in an independent action for contribution under Section 52-572o (e) refers to the judgment upon termination of appellate proceedings.¹⁶⁰

X. PROFESSIONAL NEGLIGENCE

*Wisniewski v. Palermino*¹⁶¹ addressed the scope of an attorney's liability to third-party beneficiaries of a will. The plaintiffs alleged professional negligence and breach of contract by the defendants in connection with estate planning performed by the defendants for Edward Wisniewski in April 2018.¹⁶² The plaintiffs alleged that Edward retained the defendants to draft a will that would transfer his interest in his TD Ameritrade security account in five equal shares to them.¹⁶³ Edward died the next month and the only designated beneficiary on the account received the entire amount pursuant to the beneficiary designation on file with TD Ameritrade.¹⁶⁴ The Supreme Court stated that it was well-established that generally attorneys are not liable to persons other than their clients for the negligent rendering of services.¹⁶⁵ The Court further stated that Connecticut and most other jurisdictions recognize certain exceptions in the estate planning context.¹⁶⁶ The Court stated that third-party beneficiaries of a will may bring a cause of action sounding in tort or contract against an attorney for errors related to the drafting, preparing or executing a client's will.¹⁶⁷ The Court also stated that in order to bring such an action as a third-party beneficiary of a will, the beneficiary must allege that the attorney intended to assume a duty to the beneficiary.¹⁶⁸ The Court additionally stated that an attorney cannot be held liable to the third-party beneficiaries for any negligence

¹⁶⁰ *Id.* at 338.

¹⁶¹ 351 Conn. 390, 392, 330 A.3d 857 (2025).

¹⁶² *Id.*

¹⁶³ *Id.* at 393.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 400.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* The Supreme Court recognized this exception in *Stowe v. Smith*, 184 Conn. 194, 441 A.2d 81 (1981).

¹⁶⁸ *Wisniewski*, 351 Conn. at 400.

in delaying the execution of his or her client's estate planning documents.¹⁶⁹ Turning to the case in issue, the Court agreed with the plaintiffs they had standing to assert their professional negligence claim, as third-party beneficiaries of an estate planning instrument, as the result of an attorney's negligence in failing to advise the client about the need to change beneficiary designations when the negligent acts or omissions were required to effectuate the client's estate plan.¹⁷⁰ The Court further held that the defendants did not have a duty to ensure that the TD Ameritrade accounts beneficiary designation was actually changed.¹⁷¹ The Court found that the trial court erred in dismissing the plaintiffs' professional negligence claim for lack of standing.¹⁷² With respect to the plaintiff's claim that the trial court erred in dismissing their breach of contract claim, the Court noted that a party may bring a breach of contract claim when it alleges an error in drafting.¹⁷³ However, the Court found that the allegations in the plaintiffs' complaint did not sound in breach of contract; namely, the plaintiffs did not allege that the defendants violated specific provisions of the contract or failed to comply with specific provisions of the contract.¹⁷⁴ On remand, the Court ordered that the case could proceed only with respect to the plaintiffs' professional negligence claim premised on the failure to advise Edward about the effect of the beneficiary designations on the will.¹⁷⁵

*Cooke v. Williams*¹⁷⁶ adopted the exoneration rule in Connecticut. The plaintiff brought a criminal legal malpractice claim against the defendants based on their representation of him in both a federal civil rights action and in his petition for a writ of habeas corpus.¹⁷⁷ The Supreme Court stated that

¹⁶⁹ *Id.* at 401.

¹⁷⁰ *Id.* at 404.

¹⁷¹ *Id.* at 413-15.

¹⁷² *Id.* at 413.

¹⁷³ *Id.* at 417.

¹⁷⁴ *Id.* at 417-18.

¹⁷⁵ *Id.* at 418. Chief Justice Mullins, along with Justices Alexander and D'Auria, concurred in part and dissented in part.

¹⁷⁶ 349 Conn. 451, 455, 316 A.3d 278 (2024).

¹⁷⁷ *Id.* at 457.

appellate or postconviction relief from the underlying criminal conviction is a necessary element of a criminal legal malpractice claim if that claim requires findings that would undermine the validity of the criminal conviction.¹⁷⁸ The Court held that a plaintiff must plead and prove that he or she has obtained a favorable resolution of the underlying criminal case to state a cognizable claim of criminal legal malpractice.¹⁷⁹ The Court also clarified that the failure to plead and prove exoneration is not an issue of justiciability and, thus, does not implicate subject matter jurisdiction.¹⁸⁰ The Court further explained that the failure to state a legally sufficient claim is subject to a motion to strike, rather than a motion to dismiss.¹⁸¹ With respect to the subject case, the Court found that, because the plaintiff's claim of criminal legal malpractice necessarily required findings that would undermine the validity of his underlying conviction and he had not obtained appellate or postconviction relief, he had not alleged a cognizable claim of criminal legal malpractice.¹⁸²

*Abrahams v. Photos*¹⁸³ affirmed a summary judgment in favor of the defendant attorney. The crux of self-represented plaintiff's action was that the defendant promised to represent him regarding a sentence modification and promised to secure a large settlement in a wrongful death action for him, but the defendant did not pursue a sentence modification for him nor did he keep him informed as to the status of the wrongful death action.¹⁸⁴ The plaintiff had been previously convicted, following a jury trial, of various crimes and sentenced to a total effective term of 51 years of incarceration, followed by nine years of special parole.¹⁸⁵ The trial court granted the defendant's motion for summary judgment because of the absence of an attorney-client relationship between the plaintiff and the defendant concerning the wrongful death action and the

¹⁷⁸ *Id.* at 455.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* Justice McDonald concurred in the decision.

¹⁸³ 233 Conn. App. 817, 819, 342 A.3d 1084 (2025).

¹⁸⁴ *Id.* at 820-21.

¹⁸⁵ *Id.* at 819.

sentence modification.¹⁸⁶ The Appellate Court after reviewing the plaintiff's deposition testimony, concluded there was no genuine issue of material fact as to the nonexistence of an attorney-client relationship between the plaintiff and the defendant regarding the wrongful death action and the sentence modification.¹⁸⁷ The Court found that the lack of an attorney-client relationship vitiated the basis of the claim alleged in the plaintiff's complaint.¹⁸⁸ The Court also rejected the plaintiff's argument that the trial court committed error by granting the defendant's second motion for summary judgment in which the defendant litigated the same facts as he had in his first motion for summary judgment, thus violating the doctrines of res judicata and collateral estoppel.¹⁸⁹ The Court explained that res judicata and collateral estoppel depend on the existence of a final judgment and that the denial of the defendant's first motion for summary judgment was not a final judgment.¹⁹⁰ The Court stated that neither the doctrine of res judicata nor the doctrine of collateral estoppel was applicable.¹⁹¹ The Court also explained that there is nothing in the rules of practice or caselaw that prohibits a party from filing more than one motion for summary judgment.¹⁹² The Court stated that it is within the trial court's discretion to consider a second motion for summary judgment where additional or new evidence has been submitted that was not before the court in ruling on the earlier motion for summary judgment.¹⁹³ The Court found that the trial court properly considered the defendant's renewed motion for summary judgment in which new evidence of the plaintiff's deposition was appended.¹⁹⁴

¹⁸⁶ *Id.* at 822.

¹⁸⁷ *Id.* at 823-28.

¹⁸⁸ *Id.* at 827-28.

¹⁸⁹ *Id.* at 828.

¹⁹⁰ *Id.* at 829. The Appellate Court stated that none of the exceptions to the general rule that a denial of a motion for summary judgment is not a final judgment applied; for example: denial of motion for summary judgment is immediately appealable when the motion is based upon a colorable claim of absolute immunity predicated on sovereign immunity and denial of motion for summary judgment is immediately appealable when the denial is due to doctrine of collateral estoppel or res judicata. *Id.* at 829, note 12.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 830.

¹⁹⁴ *Id.*

XI. SOVEREIGN IMMUNITY

*Marland v. University of Connecticut Health Center*¹⁹⁵ held that once the claims commissioner granted permission to sue the state and waived sovereign immunity, the state was prohibited from challenging that decision in the Superior Court. The case arose out of medical malpractice claim against the defendants, the University of Connecticut Health Center, UConn Health Partners, and UConn John Dempsey Hospital (the state).¹⁹⁶ Once the claims commissioner granted permission to sue and the plaintiff brought the claim in the Superior Court, the state moved to dismiss the claim, arguing that the claims commissioner's failure to timely dispose of the plaintiff's claim deprived the commissioner of authority to waive the state's sovereign immunity and to grant the plaintiff's permission to sue.¹⁹⁷ The Supreme Court stated that the doctrine of sovereign immunity implicates subject matter jurisdiction and is, therefore, the basis for granting a motion to dismiss.¹⁹⁸ The Court stated that General Statutes Section 4-160 (b)¹⁹⁹ conveyed the legislative intent to waive sovereign immunity with respect to all medical malpractice claims filed with the claims commissioner that are accompanied by a good faith certificate.²⁰⁰ The Court further stated that once the claims commissioner authorized suit, the state waived all defenses to the commissioner's decision and that if the state questioned the authority of commissioner, the state should have raised that issue before the commissioner.²⁰¹

¹⁹⁵ 350 Conn. 830, 832, 326 A.3d 1096 (2024).

¹⁹⁶ *Id.* at 831.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 835.

¹⁹⁹ General Statutes § 4-160 (b) (Rev. to 2015) provided "[i]n any claim alleging malpractice against the state, a state hospital or a sanatorium or against a physician, surgeon, dentist, podiatrist, chiropractor or 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 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." Importantly, the Supreme Court noted that in 2019 the legislature amended Section 4-160 (b) to permit plaintiffs to bypass the claims commissioner altogether and to file a medical malpractice action directly in the Superior Court in accordance with General Statutes Section 52-190a prior to the expiration of the limitation period. *Marland*, 350 Conn. at 840, note 8.

²⁰⁰ *Marland*, 350 Conn. at 840.

²⁰¹ *Id.* at 843-44.

XII. STATUTES OF LIMITATIONS

*Marks v. GLT Development Corporation*²⁰² addressed the operation of Governor Ned Lamont's Executive pandemic Order No. 7G,²⁰³ suspending the statute of limitations contained in General Statutes Section 52-584,²⁰⁴ and the subsequent Executive Order No. 10A²⁰⁵ by Governor Lamont, lifting the suspension. The plaintiff alleged that as a result of the defendant's negligent failure to restore electrical power to a garage door he injured his fingers on May 24, 2020 when he attempted to manually open the door.²⁰⁶ The trial court granted the defendant's motion to strike, concluding that the plaintiff's action was barred by Section 52-584.²⁰⁷ The Appellate Court began its discussion by stating that the usual principles of statutory construction apply to the interpretation of executive orders.²⁰⁸ With respect to the subject case, the Court stated that, based on the above Executive Orders, the statute of limitations under Section 52-584 began to run

²⁰² 230 Conn. App. 871, 872, 331 A.3d 1261 (2025).

²⁰³ Executive Order No. 7G, dated March 19, 2020, provides, in part: "I hereby suspend, for the duration of this public health and civil preparedness emergency, unless earlier modified or terminated by me, all statutory ... (2) ... statutes of limitation ... including, but not limited to, the following ... e. All statutes of limitations provided in Chapter 926 of the General Statutes Unless otherwise specified herein, this order shall take effect immediately and shall remain in effect for the duration of the public health and civil preparedness emergency, unless earlier modified by me."

²⁰⁴ General Statutes § 52-584 provides: "No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, advanced practice registered nurse, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed."

²⁰⁵ Executive Order No. 10, dated February 8, 2021, provides, in part: "[T]he provisions of Executive Order No. 7G, Section 2, dated March 19, 2020 ... as they relate to the following, shall expire on March 1, 2021 ... b. all statutory time requirements ... including, but not limited to ... iii. All statutes of limitations provided in Chapter 926 of the Connecticut General Statutes"

²⁰⁶ *Marks*, 230 Conn. App. at 872-73.

²⁰⁷ *Id.* at 873-74. The Appellate Court remarked that although a statute of limitations generally is raised as a special defense, where all of the facts relevant to the statute of limitations are pleaded in the complaint and the parties do not dispute that they are true, a motion to strike is permitted. *Id.* at 874, note 6.

²⁰⁸ *Id.* at 874.

on March 1, 2021 and expired on March 1, 2023.²⁰⁹ The Court stated that because the accident happened on May 24, 2020, when Executive Order No. 7G had already become effective, the two year limitations period began to run when the suspension was lifted on March 1, 2021 and that it expired on March 1, 2023.²¹⁰ The Court found that since the action was commenced on March 24, 2023, the trial court properly granted the defendant's motion to strike.²¹¹

XIII. TRIAL PRACTICE

*Johnson v. Superior Court*²¹² addressed the plaintiff in error's challenge to his conviction of three counts of criminal contempt for his behavior during his habeas trial. The plaintiff argued that the trial court violated his due process rights by failing to postpone the summary contempt proceeding to a later date and by failing to order the hearing to be conducted before a different judge.²¹³ During the hearing the plaintiff in error interrupted the judge and used racially charged insults directed at the judge.²¹⁴ The judge held the plaintiff in error in criminal contempt.²¹⁵ The Supreme Court stated that criminal contempt is conduct which is directed against the dignity and authority of the court and that sanctions for criminal contempt are imposed in order to vindicate that authority.²¹⁶ The Court further stated that when contemptuous conduct is committed in the presence of the court, punishment may be announced summarily with no requirement of witnesses.²¹⁷ The Court stated that before summarily holding someone in contempt, the judicial authority must inform the defendant of the charges against him or her and inquire

²⁰⁹ *Id.* at 875.

²¹⁰ *Id.*

²¹¹ *Id.* The trial court found that the defendant received abode service on March 24, 2023. *Id.* at 873, note 5. The Appellate Court stated that an action is commenced not when the writ is returned to court; rather, it is commenced when it is served on the defendant. *Id.*

²¹² 352 Conn. 161, 162, 335 A.3d 827 (2025).

²¹³ *Id.*

²¹⁴ *Id.* at 163-66.

²¹⁵ *Id.* at 165-67.

²¹⁶ *Id.* at 171.

²¹⁷ *Id.*

as to whether the defendant has any cause to show why he or she should not be adjudged guilty of criminal contempt.²¹⁸ The Court added that this procedure includes notice and an opportunity to be heard, two due process requirements that the United States Supreme Court has described as basic to our system of jurisprudence.²¹⁹ The Court agreed with the defendant in error that the trial court substantially complied with the above requirements by warning the plaintiff in error before holding him in contempt, by appointing counsel for the plaintiff in error, and by hearing from his counsel and the plaintiff in error.²²⁰ Lastly, the Court found that the trial court did not violate the plaintiff in error's right to due process by failing to recuse himself because (1) the plaintiff in error's behavior obstructed the orderly administration of justice and (2) the judicial authority did not become personally embroiled.²²¹ The Court dismissed the writ or error.²²²

*Epright v. Liberty Mutual Insurance Company*²²³ held that Practice Book Section 13-4 did not clearly prohibit ex parte communication between an attorney and an opposing party's disclosed expert witness. The Supreme Court stated, because Section 13-4 was not reasonably clear in notifying attorneys that they may not engage in ex parte communication with such an expert, it may not properly serve as a basis for a sanction against an attorney who engages in such an ex parte communication.²²⁴ The Court also stated that it did not approve of the subject firm's conduct and also did not opine

²¹⁸ *Id.* at 172.

²¹⁹ *Id.*

²²⁰ *Id.* at 174-75.

²²¹ *Id.* at 175-83.

²²² *Id.* at 183.

²²³ 349 Conn. 679, 682, 321 A.3d 354 (2024). The Supreme Court encouraged the Rules Committee of the Superior Court to consider the propriety of ex parte communications with an opposing party's disclosed expert and determine whether an amendment to the Practice Book was warranted. *Id.* at 694, note 9. As of the date of this article, the Rules Committee proposed that Section 13-4 be amended to provide: Unless otherwise ordered by the judicial authority for good cause shown, a party shall not contact an expert retained and disclosed by another party under subsection (b) without written consent of the party who retained and disclosed the expert and written notice to all other parties. This provision shall not apply to a court-appointed evaluator or expert.

²²⁴ *Id.* at 693-94.

on whether an ex parte communication should or should not be permissible.²²⁵

In *Jackson v. Prince*,²²⁶ the Appellate Court affirmed the trial court's granting the defendants' motions to dismiss. Two of the defendants moved to dismiss the action for lack of personal jurisdiction due to insufficient service of process, arguing that the plaintiff failed to make proper service because the state marshal attempted to serve them by leaving the summons and complaint at their respective law firms, rather than serving them in person or making abode service as mandated by General Statutes Section 52-57 (a).²²⁷ On appeal, the plaintiff argued that she failed to serve the defendants either in person or at their usual place of abode because the defendants evaded service by withholding their residential addresses, thus compelling her to serve them at their last known professional addresses.²²⁸ The Court stated that General Statutes Section 52-45a governs the commencement of civil actions and provides that civil actions shall be commenced by legal process consisting of a writ of summons or attachment and shall be accompanied by the plaintiff's complaint.²²⁹ The Court further stated that when a specific method of serving process is set forth by statute, that method must be followed or the court to which it is returnable does not acquire jurisdiction.²³⁰ The Court added that it had recognized that if a putative party can be shown to have been evading service of process, notice of a complaint, along with a good faith attempt at service, is sufficient to confer jurisdiction.²³¹ Additionally, the Court stated that whether a defendant has engaged in such evasive maneuvers is a question of fact, but when the defendant submits uncontested evidence

²²⁵ *Id.* at 693.

²²⁶ 231 Conn. App. 568, 570, 334 A.3d 517 (2025).

²²⁷ *Id.* at 571. General Statutes § 52-57 provides, in part: "(a) Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state."

²²⁸ *Jackson*, 231 Conn. App. at 583.

²²⁹ *Id.* at 588.

²³⁰ *Id.*

²³¹ *Id.* at 585.

showing that the plaintiff failed to effectuate service consistent with the statutory requirements, a plaintiff arguing that the defendant evaded service bears the burden of proof.²³² The Court explained that the plaintiff was required to produce evidence that the defendants took affirmative steps to avoid service and that her failure to present any evidence in support of her claim that the defendants evaded service was fatal to her argument.²³³

In *Marciniszyn v. Board of Education of Town of Southington*,²³⁴ the principal issues involved standing. The plaintiff, who was self-represented, and his minor child, by and through the plaintiff as next friend, appealed from the trial court's denial of their bill of discovery.²³⁵ The Appellate Court sua sponte raised the issue of the plaintiff's standing to bring the action.²³⁶ The Court stated that standing implicates subject matter jurisdiction, which required it to raise and decide the issue sua sponte.²³⁷ The Court found that the plaintiff had not established that he had suffered a direct injury traceable to the defendant's conduct because the allegations in the petition were exclusively injuries to the minor child.²³⁸ The Court reversed the judgment of the trial court and remanded the case with direction to dismiss the petition as to the plaintiff in his individual capacity.²³⁹ The Court also dismissed the appeal of the minor because the plaintiff, as a self-represented nonattorney, lacked authority to proceed in a representative capacity.²⁴⁰

Whether the trial court improperly instructed the jury in a medical malpractice case was the subject of *Zhuleku v. Naugatuck Valley Radiology Associates*.²⁴¹ The plaintiffs ar-

²³² *Id.*

²³³ *Id.* at 585-86.

²³⁴ 230 Conn. App. 592, 330 A.3d 883 (2025).

²³⁵ *Id.* at 593.

²³⁶ *Id.* at 597.

²³⁷ *Id.* at 599-600.

²³⁸ *Id.* at 610-12.

²³⁹ *Id.* at 613.

²⁴⁰ *Id.* at 614.

²⁴¹ 232 Conn. App. 143, 336 A.3d 101, *cert. denied*, 352 Conn. 907, 335 A.3d 846 (2025).

gued, on appeal, that the court failed to charge the jury that in a medical malpractice case the plaintiff may prove the standard of care and its breach through the testimony of the defendant.²⁴² The Appellate Court explained that a challenge to a jury charge is a question of law.²⁴³ The Court further explained that the charge must be reviewed in its entirety, read as a whole, and judged by its total effect as opposed to its component parts.²⁴⁴ The Court also explained that as long as the charge is correct in law, adapted to the issues and provides sufficient guidance to the jury, the charge will not be viewed as improper.²⁴⁵ The Court added that the party challenging the propriety of a charge must establish that the error was harmful, meaning it likely affected the verdict, before being entitled to a new trial.²⁴⁶ Turning to the instant case, the Court observed that the plaintiff's principal brief contained one sentence, without supporting authority, stating that the omission of the requested charge did not provide sufficient guidance to the jury.²⁴⁷ The Court stated that such a conclusory statement, without analysis or authority, was insufficient to satisfy the plaintiff's burden in demonstrating that the omission likely affected the verdict.²⁴⁸

In *Matusz v. Wellmore Behavioral Health, Inc.*,²⁴⁹ the plaintiff appealed from a judgment entered in favor of the defendant on his claim that the defendant's negligence caused damage to his rental property, arguing that the trial court erred in granting the defendant's motion in limine precluding testimony of economic damages. The Appellate Court explained that the claim advanced by the plaintiff pertained only to the issue of damages.²⁵⁰ The Court further explained the jury returned a defendant's verdict on liability.²⁵¹ The

²⁴² *Id.* at 156.

²⁴³ *Id.* at 155.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 155-56.

²⁴⁷ *Id.* at 156-57.

²⁴⁸ *Id.* at 157.

²⁴⁹ 234 Conn. App. 581, 582, 594, 344 A.3d 208, *cert. denied*, 353 Conn. 926, 345 A.3d 811 (2025).

²⁵⁰ *Id.* at 599.

²⁵¹ *Id.* at 599-600.

Court stated even if the plaintiff had been able to establish that the trial court improperly granted the defendant's motion in limine, the result on the appeal would be the same because the plaintiff failed to prove that the defendant was negligent.²⁵²

*Dispazio v. Pacapelli*²⁵³ involved the interpretation of a release and a motion for sanctions. The plaintiffs appealed from the trial court's granting of the defendants' motion for summary judgment and the granting of the defendants' motion for sanctions.²⁵⁴ The plaintiffs first argued that the trial court improperly found, in deciding the motion for summary judgment, that the release of liability entered into by the plaintiffs in connection with prior litigation precluded the present suit.²⁵⁵ The Appellate Court stated that a release is a contract and is subject to the rules governing the interpretation of contracts.²⁵⁶ The Court stated that although a release, except in rare circumstances, does not cover claims based on events that have not yet occurred, the release in question clearly precluded subsequent claims.²⁵⁷ The Court found that summary judgment was, therefore, appropriate.²⁵⁸ The plaintiffs fared no better with respect to the motion for sanctions. The Court explained that the trial court's granting of a motion for sanctions and attorney's fees is reviewed under an abuse of discretion standard.²⁵⁹ The Court stated that the trial court, pursuant to Practice Book Section, 1-25²⁶⁰ found that the

²⁵² *Id.* at 600.

²⁵³ 231 Conn. App. 589, 590-91, 333 A.3d 1145, *cert. denied*, 352 Conn. 906, 335 A.3d 845 (2025).

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 591.

²⁵⁶ *Id.* at 596.

²⁵⁷ *Id.* at 598-99.

²⁵⁸ *Id.* at 600.

²⁵⁹ *Id.*

²⁶⁰ Practice Book § 1-25 provides, in pertinent part: "(a) No party or attorney shall bring or defend an action, or assert or oppose a claim or contention, unless there is a basis in law and fact for doing so that is not frivolous.... (b) ... [T]he judicial authority, solely on its own motion and after a hearing, may impose sanctions for actions that include ... [f]iling of pleadings, motions, objections, requests or other documents that violate subsection (a) (c) The judicial authority may impose sanctions including, but not limited to, fines pursuant to General Statutes § 51-84; orders requiring the offending party to pay costs and expenses, including attorney's fees; and orders restricting the filing of papers with the court."

plaintiffs' claims against the defendants were without a basis in law and fact and awarded sanctions.²⁶¹ The Court held that the trial court did not abuse its discretion in granting the motion for sanctions and ordering them to pay attorney's fees to the defendants for filing a frivolous lawsuit.²⁶²

*Mills v. Statewide Grievance Committee*²⁶³ agreed with the trial court's dismissal of the plaintiff's appeal from the decision of the defendant, the Statewide Grievance Committee (committee), reprimanding the plaintiff after finding that he had filed a motion containing statements that violated Professional Conduct Rules 8.2 and 8.4. The matter arose out of a fee dispute that was ultimately settled as the result of settlement conferences.²⁶⁴ The grievance panel found probable cause that the plaintiff had violated the above rules.²⁶⁵ The reviewing committee, after conducting a hearing, found that the plaintiff had violated the above rules and reprimanded

²⁶¹ *Dispazio*, 231 Conn. App. at 601.

²⁶² *Id.* at 602-03. The Appellate Court rejected the plaintiffs' argument that the trial court failed to make a finding that the plaintiffs had acted in bad faith in bringing the present action. *Id.* at 601. The Court noted that where a trial court invokes its inherent authority to impose sanctions it must make specific factual findings with a high degree of specificity that the litigant acted in bad faith. *Id.* at 601-02. The Court stated that because the trial court proceeded under Practice Book Section 1-25 in ordering sanctions it was not required to make a finding of bad faith. *Id.* at 602-03.

²⁶³ 354 Conn. 291, 292-93, 354 A.3d 167 (2026). Rule 8.2 (a) of the Rules of Professional Conduct provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office." Rule 8.4 of the Rules of Professional Conduct provides in relevant part: "It is professional misconduct for a lawyer to ... (4) Engage in conduct that is prejudicial to the administration of justice" The Supreme Court declined to address the plaintiff's challenge to the reviewing committee's determination that he violated Rule 8.4 because during oral argument his counsel stated that the plaintiff was no longer challenging that determination. *Id.* at 292, note 2.

²⁶⁴ *Id.* at 293-94. In a pleading filed in court, the plaintiff stated: "While the undersigned genuinely appreciates the sincere efforts of this court [Judge Bellis] to bring this matter to a close after years of litigation, the plaintiff is nevertheless completely disillusioned and disappointed with the prior judges who have 'heard' this case, and their unwillingness to make any meaningful effort to analyze the facts and the law. Decision after decision was not only legally incorrect, but devoid of *any* meaningful jurisprudence. The plaintiff has opted to resolve this case solely because it has become apparent that, in this instance, for whatever reason, justice is not possible. In thirty years of practice, I have never seen anything like this, where the rules and the law are simply and totally disregarded." After receiving the motion, the court referred the plaintiff to the committee for investigation. *Id.* at 294.

²⁶⁵ *Id.* at 295.

the plaintiff for those violations.²⁶⁶ After the defendant committee affirmed the decision of the reviewing committee, the plaintiff appealed to the Superior Court where the court dismissed the appeal and denied a subsequent motion for reconsideration.²⁶⁷ The Appellate Court affirmed, finding that the reviewing committee applied the proper legal standard, its findings were supported by clear and convincing evidence, and it did not abuse its discretion in issuing the reprimand.²⁶⁸ The Supreme Court, after reviewing the reviewing committee's finding that the statements contained in the plaintiff's motion were made with reckless disregard as to their truth or falsity and that such finding was supported by clear and convincing evidence, found that the findings were not clearly erroneous.²⁶⁹ The Court additionally concluded that the plaintiff failed to satisfy his burden of producing any evidence of an objective reasonable belief that his statements were true.²⁷⁰ *Mills v. Statewide Grievance Committee*²⁷¹ also affirmed the trial court's dismissal of the plaintiff's appeal from the decision of the defendant, the Statewide Grievance Committee (committee), finding that the plaintiff acted incompetently in violation of Professional Conduct Rule 1.1. The committee found that the plaintiff failed to name his client's business as a party to a lawsuit and failed to provide proof of his client's individual damages.²⁷² The Appellate Court noted that the reviewing committee's conclusion that the plaintiff acted incompetently is a factual finding and that factual findings of the reviewing committee are reviewed under the clearly erroneous standard.²⁷³ The Court stated that

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 295-96.

²⁶⁹ *Id.* at 315.

²⁷⁰ *Id.* Justices Ecker and D'Auria dissented.

²⁷¹ 228 Conn. App. 568, 569, 324 A.3d 243, *cert. denied*, 351 Conn. 903, 329 A.3d 240 (2024). Rule 1.1 of the Rules of Professional Conduct provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Commentary to the rule states that "[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation." Rules of Professional Conduct 1.1, commentary.⁷

²⁷² *Mills*, 228 Conn. App. at 569.

²⁷³ *Id.* at 571-72.

the plaintiff had a duty to determine the business' legal status and the implication of that status on his client's ability to recover economic damages.²⁷⁴ Based upon the review of the record, the Court concluded that the record fully supported the reviewing committee's finding that, by clear and convincing evidence, the plaintiff had violated Rule 1.1.²⁷⁵

The submission of interrogatories to a jury was central to the disposition of *Gibson v. Denmo's Original Drive-in, LLC*.²⁷⁶ The plaintiff, on appeal, argued that the trial court abused its discretion by denying her motion to set aside the verdict because the court provided the jury with an incorrect version of the interrogatories.²⁷⁷ Before the court submitted the case to the jury, the court confirmed with the parties that the materials to be provided to the jury including the exhibits, the jury interrogatories and verdict form were ready, and counsel for the plaintiff and counsel for the defendant both advised the clerk they were satisfied.²⁷⁸ When the jury returned with a verdict, the clerk read aloud the completed jury interrogatories and verdict form, at which time it became apparent that the jury had not been given the agreed-upon interrogatories; instead, the defendant's proposed interrogatories had been given to the jury.²⁷⁹ The court accepted the defendant's verdict and discharged the jury.²⁸⁰ The plaintiff filed a motion to set aside the verdict because the jury interrogatories submitted to the jury were not the interrogatories that the parties and the court agreed to.²⁸¹ The Appellate Court stated that in deciding whether a trial court properly granted or denied a motion to set aside a verdict an abuse of discretion standard is used by the reviewing court.²⁸² The Court added that the power of the trial court to submit interrogatories to the jury, does not depend upon the

²⁷⁴ *Id.* at 574-75.

²⁷⁵ *Id.* at 575.

²⁷⁶ 232 Conn. App. 733, 338 A.3d 404 (2025).

²⁷⁷ *Id.* at 734.

²⁷⁸ *Id.* at 737.

²⁷⁹ *Id.* at 736-37.

²⁸⁰ *Id.* at 744.

²⁸¹ *Id.* at 744-45.

²⁸² *Id.* at 748.

consent of the parties and that it is within the reasonable discretion of the judge to require or to refuse to require the jury to answer interrogatories.²⁸³ The Court concluded that although it was undisputed that the interrogatories submitted to the jury were not those agreed upon by counsel, the submission was harmless because the interrogatories submitted followed the evidence adduced at trial and were consistent with the pleadings.²⁸⁴

*Martin v. Todd Authors Company, Inc.*²⁸⁵ discussed whether an enforceable settlement agreement had been reached as a matter of law. The Appellate Court stated that a settlement agreement is a contract between the parties and that in order to form a binding and enforceable contract there must be an offer and acceptance based on a mutual understanding of the parties.²⁸⁶ The Court also stated that there must be a meeting of the minds for there to be an enforceable contract.²⁸⁷ The Court further stated that the requirement that there be a meeting of the minds is consistent with the objective theory of contracts; specifically, that the making of the contract does not depend on the secret intention of a party, but upon the intention manifested by his or words or acts, and on these the other party has a right to proceed.²⁸⁸ The Court stated that the proper inquiry is whether a reasonable person in the defendant's position would have relied on the plaintiff's words and actions.²⁸⁹ Based upon its review of the record, the Court noted that the parties engaged in extensive, ongoing, out-of-court negotiations, in oral and written form, but had not yet reaching a binding contract because the terms of the agreement had not been finalized.²⁹⁰ The Court concluded that

²⁸³ *Id.* at 748-49.

²⁸⁴ *Id.* at 750-53.

²⁸⁵ 225 Conn. App. 844, 845, 317 A.3d 98 (2024). 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).

²⁸⁶ *Martin*, 225 Conn. App. at 851.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 852.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 852-54.

the trial court's determination that a summarily enforceable agreement had been reached was clearly erroneous.²⁹¹

The distinction between a judicial admission and an evidentiary admission was discussed in *C.W. v. E.W.*²⁹² An issue that the plaintiff raised on appeal was whether the trial court erred in rejecting his breach of contract claim because it failed to recognize that the defendants judicially admitted in their answers to the plaintiff's original complaint that they had agreed to sell property to the plaintiff.²⁹³ The Appellate Court explained that an admission in a defendant's answer to an allegation is binding as a judicial admission, is conclusive upon the party making it, and dispenses with the production of evidence by the opposing party.²⁹⁴ The Court further explained that if there is an amendment to the original answer, then the superseded pleading is no longer a conclusive judicial admission and it becomes nothing more than an evidentiary admission to be weighed and considered along with the rest of the evidence by the trier of fact.²⁹⁵ Turning to the case before it, the Court stated that the defendants filed an amended answer after the plaintiff amended his complaint.²⁹⁶ Because the defendants denied the existence of an agreement to sell the property in their amended answer, the Court found that the plaintiff's argument that the defendants' answers in their original answers constituted judicial admissions was without merit.²⁹⁷

The reasonable value of legal services performed by an attorney was the subject of *Stoor v. Vehs*.²⁹⁸ The interven-

²⁹¹ *Id.* at 854.

²⁹² 226 Conn. App. 144, 317 A.3d 185 (2024) The Appellate Court indicated that consistent with federal law; see 18 U.S.C. Section 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, Section 106, 136 Stat. 49, 851; it declined to identify any person protected or sought to be protected under a protection order, or protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be determined. *C.W.*, 226 Conn. App. at 146, note.

²⁹³ 226 Conn. App. at 150.

²⁹⁴ *Id.* at 151-52.

²⁹⁵ *Id.* at 152.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 152-53.

²⁹⁸ 226 Conn App. 636, 318 A.3d 1059 (2024).

ing plaintiff, who previously represented the plaintiff before being discharged, claimed that the trial court improperly awarded him less than the amount provided for in his contingency fee agreement with the plaintiff.²⁹⁹ The intervening plaintiff claimed in his complaint that sounded in breach of contract and unjust enrichment against the plaintiff that he obtained a settlement offer in the amount of \$100,000 from the defendant's insurance company before being discharged and that he was entitled to a fee of 33.33 percent of the plaintiff's recovery up to \$300,000 pursuant to the retainer agreement.³⁰⁰ The trial court found for the intervening plaintiff only on the breach of contract claim and awarded a legal fee of \$9000, not \$33,333.33 as claimed by the intervening plaintiff.³⁰¹ The Appellate Court stated that in his principal appellate brief, the intervening plaintiff argued that he was entitled to damages in accordance with the doctrine of substantial performance because he substantially performed his obligations pursuant to the terms of the contingent fee agreement.³⁰² The Court found the plaintiff's argument inapposite, remarking that the intervening plaintiff provided no authority for the proposition that the doctrine of substantial performance was applicable in litigation seeking enforcement of a contingency fee agreement where the client discharged his or her attorney prior to settlement.³⁰³ The Court conclud-

²⁹⁹ *Id.* at 637-39.

³⁰⁰ *Id.* at 638-39. Subsequent to the discharge of the intervening plaintiff, the plaintiff settled the claim against the defendant for \$1.5 million dollars and pursuant to a stipulated judgment the defendant's insurer agreed to pay \$100,000 and the defendant agreed to pay the remaining \$1.4 million dollars if the defendant had a windfall, such as lottery income, an inheritance or any other financial gain. *Id.* at 639.

³⁰¹ *Id.* at 639-43. In *Cole v. Myers*, 128 Conn. 223, 230, 21 A.2d 396 (1941) the Supreme Court stated that an attorney, as an officer of the court, is entitled to fair compensation for his or her services performed, but the client may discharge his or her attorney, even without just cause, and that the attorney should receive reasonable compensation for the work that he or she has performed up to that point and not the agreed upon fee he or she probably would have earned had he or she been allowed to continue in the employment.

³⁰² *Stoor*, 226 Conn. App. at 645. The Appellate Court stated that pursuant to the doctrine of substantial performance, a technical breach of the terms of the contract is excused, not because compliance with the terms is objectively impossible, but because actual performance is so similar to the required performance that any breach that may have been committed is immaterial. *Id.*

³⁰³ *Id.* at 645-46.

ed that the trial court properly determined the intervening plaintiff's award to be the reasonable value of the services he performed pursuant to Rule 1.5 of the Rules of Professional Conduct.³⁰⁴ Next, the Court addressed the plaintiff's cross appeal that maintained that the trial court improperly determined that he breached the contingency fee agreement by discharging the intervening plaintiff and that quantum meruit was the proper basis of recovery and not damages for breach of contract.³⁰⁵ The Court rejected the cross-appeal, stating the trial court found that the plaintiff and the intervening plaintiff had entered into a valid contingency fee agreement and the appropriate remedy was an award to the intervening plaintiff of the reasonable value of the services he performed.³⁰⁶ The Court concluded that the trial court's findings were supported by evidence in the record and, therefore, were not clearly erroneous.³⁰⁷

Whether the trial court improperly granted the appellees' motion to erase the parties' consolidated actions from the jury docket one month before the trial was scheduled to commence and thereafter proceeded to judgment in both actions with a bench trial was the issue presented in *Barr v. MFI Management, Inc.*³⁰⁸ The appellants argued that the trial court had improperly removed the actions from the jury

³⁰⁴ *Id.* at 646. Rules of Professional Conduct 1.5 provides, in pertinent part, that: "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent. ..."

³⁰⁵ *Stoor*, 226 Conn. App. at 647. The Appellate Court explained that quantum meruit is a theory of contract recovery that does not depend upon the existence of a contract, express or implied in fact; rather, it arises out of the need to avoid unjust enrichment to a party, even in the absence of an actual contract. *Id.* at 648, note 8.

³⁰⁶ *Id.* at 648.

³⁰⁷ *Id.* at 649.

³⁰⁸ 235 Conn. App. 1, 3, 345 A.3d 410, *cert. denied*, 354 Conn. 901, 348 A.3d 813(2025).

docket because they had properly been entered as a jury case upon written consent of all parties.³⁰⁹ In resolving the issue, the Appellate Court first turned to the legal principles governing the placement of civil cases on the jury docket.³¹⁰ The Court stated that General Statutes Section 51-239b provides that a jury shall be deemed waived in a civil action unless requested by a party in accordance with the provisions of General Statutes Section 52-215.³¹¹ The Court stated that Section 52-215 identifies four ways in which a case may be entered on the jury docket: (1) upon the written request of either party made to the clerk within 30 days after the return date; (2) within 10 days after an issue of fact is joined upon the request of either party; (3) at any time upon written consent of all parties; and (4) at any time by order of the court.³¹² The Court stated that the consolidated actions were properly entered on the jury docket after both parties provided written consent to a jury trial through their filings in the cases.³¹³ The Court added that it was not a case in which the appellees simply failed to object to the appellant's jury claim; rather, they took affirmative actions to consent to a jury trial by filing the certificate of closed pleadings in one action and

³⁰⁹ *Id.* at 4.

³¹⁰ *Id.* at 25.

³¹¹ *Id.* General Statutes § 52-215 provides, in pertinent part: "The following-named classes of cases shall be entered in the docket as jury cases upon the written request of either party made to the clerk within thirty days after the return day: Appeals from probate involving the validity of a will or paper purporting to be such, appeals from the actions of commissioners on insolvent estates, and, except as hereinafter provided, civil actions involving such an issue of fact as, prior to January 1, 1880, would not present a question properly cognizable in equity, except that there shall be no right to trial by jury in civil actions in which the amount, legal interest or property in demand does not exceed two hundred fifty dollars or in a summary process case. When, in any of the above-named cases an issue of fact is joined, the case may, within ten days after such issue of fact is joined, be entered in the docket as a jury case upon the request of either party made to the clerk; and any such case may at any time be entered in the docket as a jury case by the clerk, upon written consent of all parties or by order of court. All issues of fact in any such case shall be tried by the jury, provided the issues agreed by the parties to be tried by the court may be so tried. All cases not entered in the docket as jury cases under the foregoing provisions ... shall be entered on the docket as court cases, and shall, with all issues of law and issues of fact, other than those hereinbefore specified, which may be joined in actions entered on the docket as jury cases, be disposed of as court cases."

³¹² *Barr*, 234 Conn. App. at 25.

³¹³ *Id.* at 28.

by filing their own jury claim in the other action.³¹⁴ After concluding that the consolidated actions were properly entered on the docket as a jury case under the third prong of Section 52-215, the Court addressed whether the appellees were entitled to withdraw their consent to a jury trial unilaterally.³¹⁵ The Court stated that the appellees had cited no authority, and it found none, to support the proposition that an action properly entered on the jury docket by written consent of the parties may be removed from the jury docket at the discretion of the court, or upon a party's unilateral withdrawal of consent.³¹⁶ The judgments in favor of the appellees were reversed for two reasons: (1) the case was properly placed on the jury docket upon written consent of the parties and (2) the trial court erred in finding that the appellees retained the right to withdraw their consent unilaterally once the case was properly placed on the jury docket.³¹⁷

In *Kuselias v. Zingaro & Cretella, LLC*,³¹⁸ the Appellate Court disagreed with the plaintiff that the trial court committed an error in granting the defendants' motion for summary judgment with respect to the claims of legal malpractice and negligent misrepresentation because the claims could be saved under General Statutes Section 52-592,³¹⁹ the accidental failure of suit statute. On appeal, the plaintiff relied upon the portion of Section 52-592 (a) applicable to "any matter of form."³²⁰ The Court stated that the accidental fail-

³¹⁴ *Id.* at 37.

³¹⁵ *Id.* at 37-38.

³¹⁶ *Id.* at 38.

³¹⁷ *Id.* at 40.

³¹⁸ 224 Conn. App. 192, 207, 312 A.3d 118, *cert. denied*, 349 Conn. 916, 316 A.3d 357 (2024).

³¹⁹ General Statutes § 52-592 (a) provides: "If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment."

³²⁰ *Kuselias*, 224 Conn. App. at 210.

ure of suit statute does not authorize the reinitiation of all actions not tried on their merits.³²¹ The Court stated that disciplinary dismissals are not excluded categorically from the relief afforded by Section 52-592 and that a plaintiff must be afforded an opportunity to make a factual showing that the prior dismissal was a matter of form in the sense that the plaintiff's noncompliance with a court order occurred due to mistake, inadvertence or excusable neglect.³²² The Court further stated that only egregious conduct will bar recourse to Section 52-592.³²³ With respect to the case before it, the Court stated that the disciplinary dismissal followed the plaintiff's repeated failures to comply with court discovery orders and that to the extent that the failures were based on the strategic decision of the plaintiff's attorney not to disclose an expert to save costs it was purposeful in nature.³²⁴ The Court concluded that the trial court properly entered summary judgment in favor of the defendants because the plaintiff did not demonstrate that she was entitled to the remedial benefit of Section 52-592.³²⁵

The failure to challenge an independent ground that supported the judgment of the trial court in striking counts of the plaintiffs' operative complaint resulted in dismissal of the plaintiffs' appeal in *Ferrua v. Napoli Foods, Inc.*³²⁶ The defendants filed a motion to strike, raising numerous grounds, including that the workers' compensation exclusivity provision barred the plaintiffs' action.³²⁷ The trial court granted the defendants' motion on more than one ground, including that the action was barred by the workers' compensation exclusivity provision.³²⁸ The Appellate Court noted that the plaintiffs in neither their statement of issues nor in their principal brief addressed the exclusivity issue.³²⁹ The

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* at 219.

³²⁵ *Id.* at 219-20.

³²⁶ 237 Conn. App. 23, 24-25, 349 A.3d 620, *cert. denied*, 354 Conn. 932, A.3d (2025).

³²⁷ *Id.* at 26-27.

³²⁸ *Id.* at 27.

³²⁹ *Id.* at 29-30.

Court explained that when an appellant fails to address all bases for a trial court's ruling, even if the Court were to agree with the appellant on the issues raised, it could not afford any relief to the appellant in light of an adverse ruling not addressed on appeal.³³⁰ Under the circumstances, the Court dismissed the appeal as moot.³³¹

The plaintiff's failure to file a motion to open the dismissal of her action for not appearing at a trial management conference was addressed in *Speer v. Brown Jacobson P.C.*³³² After the dismissal of her action, the plaintiff filed a motion for reconsideration, setting forth reasons why she claimed that she was unable to attend.³³³ The trial court, in denying the motion for reconsideration, stated that a motion for consideration is appropriate when the court issues a decision based on the merits.³³⁴ The trial court found that it had not rendered a decision on the merits when it dismissed the case for failure to appear at a trial management conference.³³⁵ The Appellate Court affirmed, stating that a motion for reconsideration pursuant to Practice Book Section 11-12³³⁶ is properly used when the movant argues that there was a misapplication of the law or alleged inconsistencies in the trial court's decision or that there were claims of law not addressed by the trial court.³³⁷ The Court stated that the plaintiff's argument regarding her failure to appear at the trial management conference should have been raised in a motion to open, which she did not file.³³⁸

Whether the plaintiff had a right to oral argument on the

³³⁰ *Id.* at 31.

³³¹ *Id.* at 32.

³³² 233 Conn. App. 833, 842, 342 A.3d 1118 (2025).

³³³ *Id.* at 836-37.

³³⁴ *Id.* at 837.

³³⁵ *Id.*

³³⁶ Practice Book § 11-12 provides, in relevant part: "(a) A party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue setting forth the decision or order which is the subject of the motion, the name of the judge who rendered it, and the specific grounds for reargument upon which the party relies...."

³³⁷ *Speer*, 233 Conn. App. at 840-41.

³³⁸ *Id.* at 842.

defendants' motion to strike was a subject of *770 Blue Hills, LLC v. Kelly*.³³⁹ When the defendants' motion to strike portions of the plaintiff's complaint appeared on the short calendar they marked it "take papers" because the plaintiff had not filed an objection.³⁴⁰ On the day that the motion appeared on the short calendar, the plaintiff filed an objection along with a request for oral argument.³⁴¹ The plaintiff appealed from the trial court's granting of the motion to strike, arguing that the trial court abused its discretion when it granted the motion to strike without affording the plaintiff an opportunity for oral argument.³⁴² The Appellate Court stated that unless a party is entitled to oral argument as a matter of right, the determination whether to permit oral argument is within the trial court's discretion.³⁴³ The Court further stated that although Practice Book Section 11-18 grants oral argument, as of right; the right is not automatic and must be claimed for argument as set forth in Section 11-18.³⁴⁴ The Court further stated that because the defendants did not request oral argument and the plaintiff did not file a notice of its intent to argue the motion, the plaintiff was not entitled to oral argument as of right.³⁴⁵ The Court concluded that the trial court did not abuse its discretion in granting the defendants' motion to strike without giving the plaintiff an opportunity for oral argument.³⁴⁶

A few recent Practice Book rule changes are worth mentioning. Practice Book Section 13-30 allows for remote oath taking and for the court reporter to be physically remote from

³³⁹ 235 Conn. App. 865, 878, 344 A.3d 1223 (2025).

³⁴⁰ *Id.* at 878-79.

³⁴¹ *Id.* at 879.

³⁴² *Id.* at 878.

³⁴³ *Id.*

³⁴⁴ *Id.* at 879-80. Practice Book § 11-18 provides, in pertinent part: "(a) Oral argument is at the discretion of the judicial authority except as to ... motions to strike ... and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided: (1) the motion has been marked ready in accordance with the procedure that appears on the short calendar on which the motion appears, or (2) a nonmoving party files and serves on all other parties ... a written notice stating the party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date"

³⁴⁵ *707 Blue Hills, LLC*, 234 Conn. App. at 880.

³⁴⁶ *Id.* at 882-83.

the deponent. Section 13-30 also permits a party to elect to participate in a deposition by remote means even if the noticing party did not elect to conduct the deposition remotely. Section 13-32 no longer requires a written stipulation and allows the parties to agree as to where and how depositions may be taken and modify the procedures for conducting discovery.

XIV. UNINSURED/UNDERINSURED MOTORIST

*Bouchard v. Wheeler*³⁴⁷ reversed the trial court's denial of the defendant underinsured motorist carrier's motion for summary judgment. After the plaintiffs settled their claims with the tortfeasors' automobile insurance company, the defendant moved for summary judgment on the ground that the plaintiffs were not entitled to underinsured motorist benefits because their underinsured motorist coverage was equal to the tortfeasor's liability coverage.³⁴⁸ The Appellate Court held that the trial court improperly denied the defendant's motion for summary judgment because the tortfeasors' liability coverage was not less than, but rather was identical to, the plaintiffs' underinsured motorist coverage as required by General Statutes Section 38a-336 (e).³⁴⁹

³⁴⁷ 224 Conn. App. 611, 613-15, 314 A.3d 604 (2024).

³⁴⁸ *Id.* at 614-15.

³⁴⁹ *Id.* at 636. General Statutes § 38a-336 (e) provides: "For the purposes of this section, an 'underinsured motor vehicle' means a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made under subsection (b) of this section."

THE STEADY MARCH OF PROGRESS? THE STATUS OF WOMEN IN THE CONNECTICUT LEGAL PROFESSION IN 2025

SHANE A. GLEASON¹

More than 150 years have passed since the Illinois Supreme Court refused Myra Bradwell admission to the Illinois Bar on the basis of her sex and marital status.² Seventy years have elapsed since Justices O'Connor and Ginsburg struggled to find employment despite graduating at the top of their respective classes.³ More specific to Connecticut, it has been more than 140 years since Mary Hall became the first woman admitted to the Connecticut State Bar, nearly 65 years since Margaret Driscoll became the first female Connecticut state jurist. It was less than 50 years ago that Ellen Ash Peters became the first woman appointed to the Connecticut Supreme Court.⁴ These remarkable women are a part of what Laura Moyer and Susan Haire term the “trailblazer generation.”⁵ In many ways they paved the way for the women in the legal profession today. However, while the legal profession is increasingly diverse and women make up a majority of law students, questions remain about how women navigate the legal profession.

Diversity in the legal profession is a normatively laudable goal for many reasons. When an institution is diverse, diverse persons are able to “see themselves” in those roles. To illustrate, Campbell and Wolbrecht⁶ note adolescent women

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² *Bradwell v. State of Illinois*, 83 U.S. 130 (1873).

³ Ruth Bader Ginsburg, *MY OWN WORDS* (2016); Evan Thomas, *FIRST: SANDRA DAY O'CONNOR: AN INTIMATE PORTRAIT OF THE FIRST WOMAN SUPREME COURT JUSTICE* (2019).

⁴ A. Susan Peck, *Upcoming Survey on the Status of Connecticut Women in the Legal Profession 2024*, CT LAWYER, September|October 2024, at 14.

⁵ Laura P. Moyer and Susan B. Haire, *Trailblazers and Those That Followed: Personal Experiences, Gender, and Judicial Empathy*, 49 LAW & SOC. REV. 655 (2015).

⁶ David E. Campbell and Christina Wolbrecht, *See Jane Run: Women Politicians as Role Models for Adolescents*, 68 J. OF POLITICS, 223 (2006).

are more likely to plan to be politically engaged when they are represented by a female governor or U.S. senator. While representation is a cornerstone of the American system of government,⁷ it takes on especial meaning in the courts. The *Federalist Papers* famously note the courts lack the purse and the sword; they rely on a reservoir of good feelings in order to effect their decisions. Moreover, the courts are the branch of government people are most likely to interact with.⁸ Critically too, as the percentage of women in a given legal context changes, judicial outputs change in meaningful ways.⁹

At the same time, the legal profession remains predominantly male. Indeed, it is one of the least gender diverse professions in the United States.¹⁰ Consequently, women have a higher probability of attrition than their male counterparts.¹¹ They are also more likely to experience bias and discrimination either implicitly or explicitly.¹² Given these normative benefits, it is critical to explore not just the extent to which the legal profession diversifies in terms of raw numbers, but also in terms of the culture. The prevailing norms of the legal profession are often male centric¹³ and can lead to women exiting the profession.¹⁴ This was evident to the Connecticut Bar Association (CBA) as early as 1975 when it pub-

⁷ Hanna Pitkin, *THE CONCEPT OF REPRESENTATION* (1967).

⁸ Nicholas O. Alosie, *Selection Methods and the Recruitment of Women to State Courts of Last Resort*, 77 *SOCIAL SCIENCE J.* 110 (1996).

⁹ Paul M. Collins, Kenneth L. Manning and Robert A. Carp, *Gender, Critical Mass, and Judicial Decision Making*, 32 *LAW & POLICY*, 260 (2010); Meghan E. Leonard and Joseph V. Ross, *Gender Diversity, Women's Leadership, and Consensus in State Supreme Courts*, 41 *J. OF WOMEN, POLITICS & POLICY*, 278 (2020).

¹⁰ Barbara L. Graham and Adriano Udani, *Structural and Partisan Effects on the Ascension of Women of Color to State Appellate Courts*, in *RACE, GENDER, SEXUALITY, AND THE POLITICS OF THE AMERICAN JUDICIARY* (Samantha L. Hernandez and Sharon A. Navarro eds., 2019); Deborah L. Rhode, *THE TROUBLE WITH LAWYERS* (2015).

¹¹ Roberta D. Liebenberg and Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, (2019), available at <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>.

¹² Todd A. Collins, Tao L. Dumas, and Laura P. Moyer, *Intersecting Disadvantages: Race, Gender, and Age Discrimination Among Attorneys*, 98 *SOCIAL SCIENCE Q.*, 1642 (2017).

¹³ Shane A. Gleason and EmiLee Smart, *You Think; Therefore I Am: Gender Schemas & Context in Oral Arguments at the Supreme Court, 1979-2016*, 76 *POLITICAL RESEARCH Q.*, 143 (2023).

¹⁴ Liebenberg & Scharf, *supra* note 11.

lished the first survey on Connecticut women in the law.¹⁵ In the years since, a number of surveys have been conducted as well as an oral history project.¹⁶ 30 years have passed since the last survey was published in 1995. In that time, much has changed in the Connecticut legal profession and society writ large. Guided by this most recent survey, I revisit the 1995 survey. I find that many of the same concerns present in the 1995 survey persist to the present day.

I. A HISTORY OF SURVEYS OF WOMEN IN THE CONNECTICUT LEGAL PROFESSION

The first three surveys of Connecticut women in the legal profession were published in rapid succession in 1975, 1979, and 1981.¹⁷ They noted remarkable gains. Women quickly rose to constitute nearly a third of law students and admitted attorneys. While women were present in nearly every level of the legal profession, they tended to cluster on the lower levels of the legal pyramid.¹⁸ The next survey was a part of the Connecticut Task Force on Gender, Justice, and the Courts in 1991. It came at the behest of Chief Justice Peters after a number of other states began to explore gender bias within their respective legal systems. The results were stark.¹⁹

The Task Force report noted, “women are treated differently from men in the justice system and, because of it, many suffer from unfairness, embarrassment, emotional pain, professional deprivation and economic hardship.”²⁰ In the aftermath of the Task Force, the Connecticut Bar Association appointed a committee on Gender Bias in the Profession. It surveyed 1,247 attorneys split close to evenly between men

¹⁵ Shirley Raissi Bysiewicz, Anne Isbister Ballog, and Anne Cleary Dranginis, *Women Lawyers in Connecticut: A Survey*, 69 CONN. BAR J. 123 (1975).

¹⁶ Peck, *supra* note 4, at 15-17.

¹⁷ Bysiewicz, Ballog, & Dranginis, *supra* note 15; Elga R. Wasserman and Barbara S. Miller, *The Changing Status of Women Attorneys in Connecticut*, 56 CONN. BAR J. 344 (1982); Connecticut Bar Association, *Gender Issues in the Legal Profession*, 69 CONN. BAR J. 161 (1995).

¹⁸ Wasserman & Miller, *supra* note 17.

¹⁹ Peck, *supra* note 4.

²⁰ Connecticut Task Force on Gender, Justice and the Courts: Report to the Chief Justice, “Executive Summary,” at 12 (1991). [The full report is available at the Connecticut State Library].

and women. The survey made four key findings. It noted: 1) a persistence of sexual harassment; 2) pay disparity; 3) women's absence from decision/policy-making positions; and 4) an excess of women in part-time positions. Now, 30 years later, it is important to ask if these findings persist in the 2020s.

A. The Connecticut Legal Profession 30 Years Later

In conjunction with the Connecticut Bar Foundation and Judge A. Susan Peck (ret.), I conducted a survey of all attorney-members of the Connecticut Bar Association. While I took the 1995 survey as my guide, I also included questions which captured changes in American life and the legal profession in the past 30 years. For instance, I included questions about the impact of the covid-19 pandemic on attorneys. The survey was prepared in Qualtrics, a popular survey platform used by both academic and commercial research firms. Members were contacted via a short e-mail inviting them to participate. Two subsequent follow-up e-mails were sent before the survey window closed. Potential respondents were incentivized with a random drawing for an Amazon gift card. In total, 5,418 members were contacted. Of this, 643 provided valid usable responses.

I present the results in several parts. First, I provide basic demographics for the respondents of the survey. I subsequently examine the four key findings of the 1995 survey. I then address the covid-19 pandemic, and its gendered elements. I close with an overview of the results, the limitations of the survey, and suggestions for future projects.

II. DEMOGRAPHICS

643 respondents indicated their sex. 332 men and 311 women answered the survey.²¹ These 643 attorneys form the

²¹ An additional four respondents indicated their sex was something other than the male/female binary. While the presence of non-binary respondents indicates growing diversity in Connecticut generally and the Connecticut Bar Association specifically, the low number of these respondents makes it difficult to make any meaningful statistical inferences about non-binary lawyers. Accordingly, though scholarly consensus indicates gender is a continuum rather than a binary,

core of my analysis.²² The respondents represent all career stages. At the extremes, one respondent completed his JD in 1959 and 8 completed their degrees in 2023. Below in Figure 1, I depict a density plot of the year in which respondents finished law school from 1959-2023. Across the *x*-axis across the bottom of each subplot, law school graduation years are listed. The *y*-axis depicts the percentage of attorneys that graduated in that specified time frame. The first panel, depicting men, begins in 1959 and approximates a normal distribution with most attorneys earning their JD in the middle of the series. For female attorneys, conversely, there are few to no attorneys earning their JDs before the mid to late 1970s. By 2000, the average annual percentage of female JDs remains relatively constant. For its part, the total attorneys mirrors male JDs.

Turning now to all attorneys, a quarter finished law school prior to 1983. Another quarter earned their JDs after 2003. As a result, the median respondent completed their degree in 1992. There are, however, differences in graduation year based on attorney sex. The average male attorney earned his degree in 1988. The average female attorney earned hers in 1998. This difference is statistically significant and not due to random chance.²³

I limit analysis below to just respondents indicating either male or female. Given the small number of respondents indicating anything other than male or female, I encourage future oral histories and case studies to focus on the experiences of non-binary attorneys. See Christel Baltes-Löhr, *What are We Speaking About When We Speak About Gender? Gender as a Continuum*, 6 CULTURAL AND RELIGIOUS STUDIES, 1 (2018).

²² For some items, the total may be smaller. This is because respondents may have left a given question blank or they may have been precluded from answering a particular question (for example, if a respondent does not indicate having children (s)he will be precluded from a question about the number of hours each week spent on childcare).

²³ This is based on a *t*-test. This statistical test is commonly used in social science research. Briefly, the *t*-test examines whether differences in a given continuous measure (e.g. age, monetary values, years since a given event) between two discrete subpopulations (e.g. male and female, in-state and out-of-state) could be due to random statistical chance. If not, then the researcher can conclude the difference is statistically meaningful. See Damodar Gujarati, *BASIC ECONOMETRICS*, (4th ed. 2002).

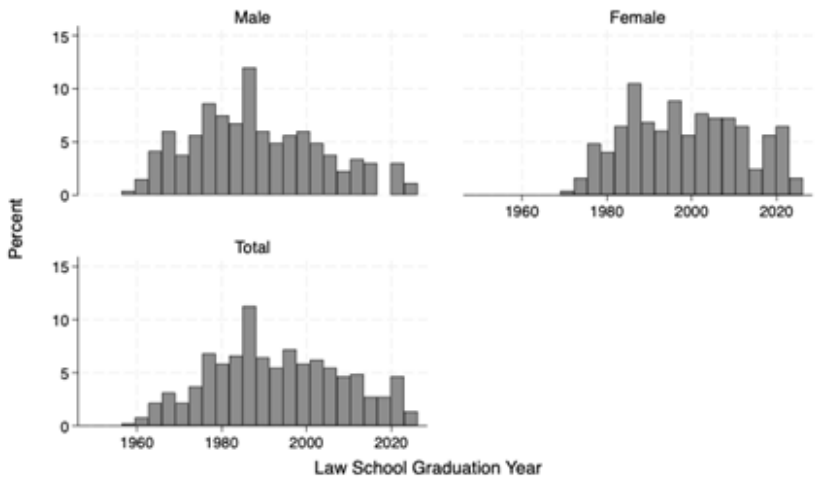


Figure 1: Density Plot of Law School Graduation Year

The attorneys responding to the survey practice in a variety of areas of the law. That said, Table 1 depicts notable differences between the areas of law in which men and women practice. The first column shows the distribution for men. The second column represents women and the third column is for all respondents collectively. Women are more prevalent in administrative law than men. Conversely, men are more likely in business and corporate roles than women. Estates, trusts, or probate have a roughly comparable share of men and women. Consistent with previous work noting family law is a female issue domain, women are more prevalent in family law. While more men are in general practice than women, there is parity in non-criminal litigation.

<i>Practice Area</i>	Male	Female	Total
Administrative Law	8 (2.7%)	20 (7.2%)	28 (4.9%)
Business/Corporate	34 (11.5%)	13 (4.7%)	47 (8.2%)
Criminal	6 (2.0%)	8 (2.9%)	14 (2.4%)
Estates, trusts, or probate	44 (14.9%)	39 (14.0%)	83 (14.4%)
Family Law	15 (5.1%)	31 (11.1%)	46 (8.0%)
General Practice	39 (13.2%)	12 (4.3%)	51 (8.9%)
Litigation (non-criminal)	55 (18.6%)	57 (20.4%)	112 (19.5%)
Personal Injury	29 (9.8%)	15 (5.4%)	44 (7.7%)
Other	66 (22.3%)	84 (30.1%)	150 (26.1%)
Totals	302 (50.8%)	292 (49.1%)	643 (100.0%)

Table 1: Practice Area

It is also important to ask what kinds of legal roles attorneys occupy within their jobs. Table 2 shows legal role. By a large margin, the majority of respondents are in private firms (75%). But it is important to note the marked differences between men and women. While 85% of men are in private firms, just 66% of women are. More women (8%) work in the non-profit sector and government agencies (9%) than men (3% for each). This is consistent with historical accounts stressing women often gravitated to government roles when private firms would not hire them. Interestingly, 4% of female respondents are judges while only 1% of male respondents are.²⁴ These findings, which suggest this trend continues, warrants further exploration by future studies.

²⁴ This may reflect a selection effect amongst female jurists. Briefly, a survey on the status of women in the legal profession may be of more interest to female judges than male judges. See Herbert F. Weisberg, Jon A. Krosnick, and Bruce D. Bowen, AN INTRODUCTION TO SURVEY RESEARCH, POLLING, AND DATA ANALYSIS, (3d ed. 1996).

<i>Current Job Category</i>	Male	Female	Total
Government agency	9 (3.0%)	26 (8.9%)	35 (5.9%)
In-house counsel	7 (2.3%)	18 (6.2%)	25 (4.2%)
Judge or magistrate	3 (1.0%)	11 (3.8%)	14 (2.4%)
Non-profit	9 (3.0%)	24 (8.2%)	33 (5.6%)
Private firm	258 (85.4%)	192 (65.8%)	450 (75.8%)
Other	16 (5.3%)	21 (7.2%)	37 (6.2%)
Totals	302 (50.8%)	292 (49.2%)	594 (100.0%)

Table 2: Legal Role

It is next important to break down the roles that attorneys occupy in each of these roles. Table 3 shows what types of positions attorneys in private practice hold. More men than women are solo practitioners. More women than men are staff attorneys. More women than men are associates and non-equity partners. However, far more men than women are equity partners. This is keeping with recent reports²⁵ noting that while women are increasingly present as associates, they still lag behind their male counterparts for partner roles.²⁶

²⁵ American Bar Association, *Women in the Legal Profession, Profile of the Legal Profession 2024*, (2024), available at <https://www.americanbar.org/news/profile-legal-profession/women/>.

²⁶ I asked a similar question of attorneys working in government agencies. However, there are so few attorneys in the data (34). Moreover, 80% of the respondents answered they were engaged in “other government practice;” just seven respondents answered they were in the attorney general’s office, a prosecutor, or public defender. For these reasons, I exclude this question from the results discussion.

<i>Role in Private Practice</i>	Male	Female	Total
Solo practitioner	94 (37.5%)	41 (21.5%)	135 (30.5%)
Staff attorney	5 (2.0%)	13 (6.8%)	18 (4.1%)
Associate	24 (9.6%)	71 (37.2%)	95 (21.5%)
Non-equity partner	34 (13.5%)	34 (17.8%)	68 (15.4%)
Equity partner	94 (37.5%)	32 (16.8%)	126 (28.5%)
Totals	258 (57.3%)	192 (42.7%)	450 (100.0%)

Table 3: Private Practice Roles

Relatedly, workplace size is critical. Table 4 breaks down office size by numbers of attorneys. Across male and female attorneys, most attorneys work in firms with no more than 10 attorneys. However, I note some variation. Slightly more than a third of all male attorneys are solo practitioners; just a fifth of female attorneys are. At the other end of the spectrum, slightly more women than men work in firms with more than 26 attorneys. However, small sample sizes indicate caution must be taken in generalizing these results.

<i>Current Office Size</i>	Male	Female	Total
Just me	106 (35.6%)	56 (19.9%)	162 (28.0%)
2-10	131 (44.0%)	115 (40.9%)	246 (42.5%)
11-25	28 (9.4%)	66 (23.5%)	94 (16.2%)
26-100	26 (8.7%)	33 (11.7%)	59 (10.2%)
101 or more	7 (2.3%)	11 (3.9%)	18 (3.1%)
Totals	298 (51.5%)	281 (48.5%)	579 (100.0%)

Table 4: Workplace Size

Though women are increasingly present in the legal profession, there may be variable levels of professional satisfaction.²⁷ So, I ask to what extent women (and men) are satisfied in their legal careers. After all, if one is dissatisfied they may be less likely to seek advancement or may select out of the profession entirely. Relatedly, I ask the extent to which attorneys are satisfied with their work/life balance. In doing so, I use a Likert scale.²⁸ Turning first to job satisfaction, more men than women report they are extremely satisfied with their jobs. Men and women are roughly comparable in terms of reporting they are somewhat satisfied. For the lower levels of satisfaction, women tend to report dissatisfaction slightly more frequently than men.

Why might women report dissatisfaction more than men? One possible reason is work life balance. Across a number of studies in a host of disciplines, women are shouldered with a higher level of domestic work, even in egalitarian partnerships. This can lead to struggles with work-life balance.²⁹ This bears out in the survey results. A full quarter of women report dissatisfaction (either extremely or somewhat) with their work-life balance. In comparison, just 16% of men report dissatisfaction. By comparison, just 29% of women are extremely satisfied with their work-life balance. Conversely 33% of men are extremely satisfied.

²⁷ Collins, Dumas, & Moyer, *supra* note 12.

²⁸ Likert scales are a standard tool of social scientific research that ask respondents to rank responses on an ordinal scale. Generically, these often include “strongly disagree, disagree, neither agree nor disagree, agree, strongly agree.” Here, I ask the respondents to express the extent to which they agree with a statement on a scale from ‘extremely dissatisfied’ to ‘extremely satisfied.’ See Larry M. Bartels and Henry E. Brady, *The State of Quantitative Political Methodology*, in *POLITICAL SCIENCE: THE STATE OF THE DISCIPLINE II* (Ada W. Finifter, ed., American Political Science Association) (1993).

²⁹ Carol S. Wharton, *Finding Time for the “Second Shift”: The Impact of Flexible Work Schedules on Women’s Double Days*, 8 *GENDER & SOC.* 189 (1994).

<i>Job Satisfaction</i>	Male	Female	Total
Extremely dissatisfied	4 (1.3%)	7 (2.4%)	11 (1.8%)
Somewhat dissatisfied	17 (5.6%)	22 (7.5%)	39 (6.5%)
Neither satisfied nor dissatisfied	10 (3.3%)	15 (5.1%)	25 (4.2%)
Somewhat satisfied	144 (47.4%)	142 (48.6%)	286 (48.0%)
Extremely satisfied	129 (42.4%)	106 (36.3%)	235 (39.4%)
<i>Work-Life Balance</i>			
Extremely dissatisfied	9 (3.0%)	23 (7.8%)	32 (5.3%)
Somewhat dissatisfied	39 (12.8%)	52 (17.7%)	91 (15.2%)
Neither satisfied nor dissatisfied	18 (5.9%)	13 (4.4%)	31 (5.2%)
Somewhat satisfied	139 (45.6%)	122 (41.5%)	261 (43.6%)
Extremely satisfied	100 (32.8%)	84 (28.6%)	184 (30.7%)
Totals	305 (50.9%)	294 (49.1%)	599 (100.0%)

Table 5: Job and Work-Life Balance Satisfaction

I next turn to the question of whether job satisfaction or concerns over work-life balance would prompt an attorney to consider employment outside of the profession. Nearly 60% of respondents would not consider leaving the legal profession. The figures vary somewhat by respondent sex. Whereas 66% of men would not consider outside employment, only 56% of women feel the same. By the same token, 25% of attorneys would consider outside employment. Here, 20% of men and 32% of women would consider this.

How then might women be retained in the legal profession? One of the key ways to promote continued work and

success in the legal profession is having a mentor.³⁰ To this end, I ask respondents whether or not respondents have had a mentor. If so, I then ask whether mentors have been male, female, or some combination thereof. More than two-thirds of respondents have had a mentor (70% of men and 73% of women). 65% of men had at least one mentor that shared their sex. For women, however, just 43% had a female mentor. This is problematic because female mentors may be better able to speak to the unique challenges faced by women in the legal profession.³¹ Part of the problem may be supply; there were few women in senior roles in the legal profession prior to the late 1970s.³² Particularly, as more women enter the legal profession and advance into more senior roles,³³ it is conceivable this result may be different in the future.³⁴

Finally, job satisfaction cannot be measured without reference to one's life beyond work. To this end, I ask several questions about relationship status and how it impacts their career. The overwhelming majority of respondents are married or in a committed relationship (82%). However, this varies by sex; 90% of men are partnered compared to 73% of women. More women (13%) are divorced or separated than men (3%). Likewise, more women are single (12%) than men (5%). This may bespeak how the demands of the legal profession interplay with domestic expectations in relationships.

³⁰ Fiona M. Kay and Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice*, 79 SOCIOLOGICAL INQUIRY, 418 (2009).

³¹ Rosabeth Moss Kanter, *Some Effects of Proportions of Group Life: Skewed Sex Ratios and Response to Token Women*, 5 AMERICAN J. OF SOCIOLOGY 965 (1977); Deborah L. Rhode, *Gender and Professional Roles*, 63 FORDHAM L. R. 39 (1994).

³² Susan B. Haire and Laura P. Moyer, DIVERSITY MATTERS: JUDICIAL POLICY MAKING IN THE U.S. COURTS OF APPEALS (2015).

³³ American Bar Association, *supra* note 25.

³⁴ This, of course, may be contingent on specialty.

<i>Relationship Status</i>	Male	Female	Total
Divorced or Separated	9 (3.0%)	35 (12.5%)	44 (7.6%)
Married or committed relationship	271 (90.0%)	206 (73.3%)	477 (82.0%)
Single	14 (4.7%)	34 (12.1%)	48 (8.2%)
Widowed	7 (2.3%)	6 (2.1%)	13 (2.2%)
Totals	301 (51.7%)	281 (48.3%)	582 (100.0%)

Table 6: Relationship Status

I then inquire how attorneys’ relationships (or lack thereof) impact their careers. While a plurality of both men (45%) and women (41%) feel their relationship has had no impact on their career, 21% of women feel their relationship status has been detrimental to career progress. By contrast, only 7% of men feel the same. Relatedly, 48% of men feel their relationship status has helped their career; 38% of women feel similarly.

<i>Relationship’s Impact on Career</i>	Male	Female	Total
Definitely hurt	4 (1.3%)	21 (7.5%)	25 (4.3%)
Somewhat hurt	16 (5.3%)	38 (13.5%)	54 (9.3%)
Had no impact	134 (44.7%)	114 (40.6%)	248 (42.7%)
Somewhat helped	56 (18.7%)	58 (20.6%)	114 (19.6%)
Definitely helped	90 (30.0%)	50 (17.8%)	140 (24.1%)
Totals	301 (51.7%)	281 (48.3%)	582 (100.0%)

Table 7: Relationship Impact on Career

It is next important to ask how one’s relationship impacts career activities. 84% of attorneys in the survey have partners not in the legal profession. However, there is some variation across men and women; 77% of women and 89% of men are partnered with non-attorneys. Even if a partner is not in the legal profession, it is still possible for them to participate in one’s career. Namely, does one’s partner join them for professional events? Approximately 50% of attorneys are only sometimes joined by their partners in professional activities. A further third are never joined by partners. Just 16% are often or always joined. This is remarkably consistent across both male and female attorneys.

<i>Partner’s Involvement</i>	Male	Female	Total
Never	92 (34.1%)	71 (34.6%)	163 (34.3%)
Sometimes	136 (50.4%)	100 (48.8%)	236 (49.7%)
Often or Always	42 (15.6%)	34 (16.6%)	76 (16.0%)
Totals	270 (56.8%)	205 (43.2%)	475 (100.0%)

Table 8: Partner’s Involvement in Professional Activities

With basic demographic backgrounds covered, I now turn to stepping through the key findings of the 1995 survey.

III. REVISITING THE 1995 SURVEY

A. *The Prevalence of Sexual Harassment*

I measure the prevalence of sexual harassment with a series of questions asking whether attorneys have observed female attorneys receiving various forms of sexual harassment. These questions range in level of severity. Specifically, I ask whether respondents have observed female attorneys referred to with terms of endearment such as “dear” or “sweetie.” I also ask if respondents observed female attorneys

receiving comments on physical appearance. At the most extreme end, I ask about whether respondents observe female attorneys receiving physical advances. I also ask about the prevalence of sexist jokes and how often respondents observe women interrupted and witness women's contributions ignored.

Across all these questions, the disparity between men and women is stark. While 91% of men report never hearing terms of endearment used toward women, over 66% of women report hearing these terms used at least sometimes. Comments on appearance exhibit an even more stark gender disparity. 60% of men report never hearing comments on women's physical appearance; only 20% of women share this assessment. Likewise, just 1% of men often or always hear comments about women's physical appearance. By contrast, 7% of women often or always hear such comments.

When it comes to verbal advances, 96% of men report never hearing verbal advances. A further 4% report only sometimes witnessing such comments. No male respondents in the data report such comments often or always. For women, on the other hand, 64% report never hearing advances. 30% report sometimes. 7% report often or always. Physical advances, thankfully, are rarely reported in the data. That said, there are sex-based differences. While 99% of men report never witnessing physical advances toward women, only 81% of women report never observing physical advances. A similar pattern is at play for sexist jokes. While all male respondents save for one in the data report never or sometimes hearing sexist jokes, 12% of women report hearing sexist jokes often or always.

Interruptions are fundamentally about control of a conversation, and ultimately power.³⁵ The findings here are in line with the literature on the legal profession broadly, wom-

³⁵ Lyn Kathlene, *Power and Influence in State Legislative Policymaking: The Interaction of Gender and Position in Committee Hearing Debates*, 88 AMERICAN POLITICAL SCIENCE REV. 560 (1994); Malliga Och, *Maninterrupting in the German Bundestag: Gendered Opposition to Female Members of Parliament?*, 6 POLITICS AND GENDER 388 (2020).

en are interrupted more.³⁶ But, perceptions of this vary on the basis of sex. Over 90% of men report witnessing women being interrupted never or sometimes. By contrast, over 50% of women report witnessing women being interrupted often or always. Relatedly, while well over 90% of men feel the contributions of women are never or sometimes routinely ignored, only 73% of women share this sentiment.

	Male	Female	Total
<i>Terms of Endearment</i>			
Never	256 (90.8%)	124 (44.1%)	380 (67.5%)
Sometimes	24 (8.5%)	127 (45.2%)	151 (26.8%)
Often or Always	2 (0.7%)	30 (10.7%)	32 (5.7%)
<i>Comments on Appearance</i>			
Never	168 (59.8%)	57 (20.3%)	225 (40.0%)
Sometimes	110 (39.1%)	150 (53.4%)	260 (46.3%)
Often or Always	3 (1.1%)	74 (26.3%)	77 (13.7%)
<i>Verbal Advances</i>			
Never	270 (96.1%)	180 (64.1%)	450 (80.1%)
Sometimes	11 (3.9%)	81 (28.8%)	92 (16.4%)
Often or Always	0 (0.0%)	20 (7.1%)	20 (3.6%)
<i>Physical Advances</i>			
Never	276 (98.6%)	227 (81.1%)	503 (89.8%)
Sometimes	4 (1.4%)	48 (17.1%)	52 (9.3%)
Often or Always	0 (0.0%)	5 (1.8%)	5 (0.9%)

³⁶ Shane A. Gleason, *Since You Put It That Way... Gender Norms and Interruptions at Supreme Court Oral Arguments*, 105 SOCIAL SCIENCE Q., 582 (2024); Dana Patton and Joseph L. Smith, *Gender, Ideology, and Dominance in Supreme Court Oral Arguments*, 41 J. OF WOMEN, POLITICS, AND POLICY, 393 (2020).

	Male	Female	Total
<i>Sexist Jokes</i>			
Never	206 (73.6%)	149 (53.0%)	355 (63.3%)
Sometimes	73 (26.1%)	98 (34.9%)	171 (30.5%)
Often or Always	1 (0.4%)	34 (12.1%)	35 (6.2%)
<i>Interruptions</i>			
Never	150 (53.4%)	37 (13.2%)	187 (33.3%)
Sometimes	115 (40.9%)	92 (32.7%)	207 (36.8%)
Often or Always	16 (5.7%)	152 (54.1%)	168 (29.9%)
<i>Contributions ignored</i>			
Never	229 (81.2%)	81 (28.8%)	310 (55.1%)
Sometimes	50 (17.7%)	124 (44.1%)	174 (30.9%)
Often or Always	3 (1.1%)	76 (27.0%)	79 (14.0%)
Totals	282 (50.1%)	281 (49.9%)	563 (100.0%)

Table 9: Perceptions of Various Forms of Sexual Harassment

What might explain the gulf between men and women in perceiving sexist behavior towards women? One possible avenue is respondents’ own perceptions of negative treatment on the basis of their own sex. In order to assess this, I ask respondents to report how often they feel uncomfortable because of their sex in the legal profession. 91% of men never feel uncomfortable. Only 50% of women share this sentiment. Just 1% of male respondents report feeling uncomfortable on the basis of sex often or always. By contrast, over 8% of women feel uncomfortable often or always.

	Male	Female	Total
<i>Experiencing Discomfort</i>			
Never	257 (90.8%)	142 (50.4%)	399 (70.6%)
Sometimes	24 (8.5%)	117 (41.5%)	141 (25.0%)
Often or Always	2 (0.7%)	23 (8.2%)	25 (4.4%)
Totals	283 (50.1%)	282 (49.9%)	565 (100.0%)

Table 10: Frequency of Experiencing Discomfort on the Basis of Sex

B. *Disparities in Compensation*

When it comes to compensation, studies across a number of fields note that women are routinely paid less than similarly situated men.³⁷ The survey results bear this out. Respondents were asked to classify their compensation into a series of ordinal categories.³⁸ While a similar percentage of men and women earn less than \$100,000, disparities begin to emerge in the \$100,000 to \$149,999 range. 28% of women earn in this range as opposed to 18% of men. Indeed, the percentage of women in each ordinal band decreases as one moves to progressively higher levels of compensation. Men, for their part, steadily increase in percentage from \$250,000 to the maximal ordinal category (Over \$350,000). At that highest level, 15% of men earn over \$400,000; just 5% of women do. This demonstrates that the pay gap observed in the 1995 survey persists.

³⁷ Sebawit G. Bishu and Mohamad G. Alkadry, *A Systemic Review of the Gender Pay Gap and the Factors That Predict It*, 49 ADMINISTRATION AND SOC. 65 (2017).

³⁸ Since respondents often have a difficult time accurately reporting exact levels of compensation, I ask this question with ordinal categories ranging from under \$50,000 to over \$500,000. See John Micklewright and Sylke V. Schnepf, *How Reliable are Income Data Collected with a Single Question?* 173 STATISTICS IN SOCIETY SERIES A 409 (2010).

<i>Compensation</i>	Male	Female	Total
Under \$100,000	56 (20.3%)	57 (21.0%)	113 (20.7%)
\$100,000 to \$149,999	50 (18.1%)	76 (28.0%)	126 (23.0%)
\$150,000 to \$199,999	40 (14.5%)	58 (21.4%)	98 (17.9%)
\$200,000 to \$249,999	35 (12.7%)	37 (13.7%)	72 (13.2%)
\$250,000 to \$299,999	29 (10.5%)	16 (5.9%)	45 (8.2%)
\$300,000 to \$349,999	26 (9.4%)	14 (5.2%)	40 (7.3%)
Over \$350,000	40 (14.5%)	13 (4.8%)	53 (9.7%)
Totals	276 (50.5%)	271 (49.5%)	547 (100.0%)

Table 11: Total Compensation

C. Exclusion From Decision-Making and Policy-Making Roles

I ask respondents a series of questions about the tasks they routinely engage in during their practice. I ask for example whether an attorney has primary control over the client file, engages in document preparation, research, plans litigation strategy, takes on pretrial or settlement negotiations, participates in trial or hearings, or takes on a managerial role. I measure these on a Likert scale which ranges from “Never” to “Always.”

Looking first to primarily handling client files, 9% of women never undertake this task, compared to just 3% of men. At the other end, 82% of women often or always undertake this task. By contrast, 95% of men handle the primary client file. Document preparation is more equitable, but fewer women (78%) than men (81%) often or always are involved in this task. Litigation planning privileges men. While a relatively even percentage of men and women sometimes participate, more men (64%) are often or always involved in litigation planning than women (55%). Fewer women (55%) than men (63%) are often or always involved in pretrial or settlement

talks. While an equitable number of women (51%) and men (52%) are often or always engaged in trials or hearings, a greater portion of women (24%) than men (16%) are never engaged in trials or hearings.

	Male	Female	Total
<i>Primary File</i>			
Never	8 (2.7%)	24 (8.7%)	32 (5.6%)
Sometimes	7 (2.4%)	27 (9.7%)	34 (6.0%)
Often or Always	278 (94.9%)	226 (81.6%)	504 (88.4%)
<i>Document Preparation</i>			
Never	8 (2.7%)	5 (1.8%)	13 (2.3%)
Sometimes	47 (16.1%)	55 (19.9%)	102 (17.9%)
Often or Always	237 (81.2%)	217 (78.3%)	454 (79.8%)
<i>Litigation Planning</i>			
Never	48 (16.4%)	67 (24.2%)	115 (20.2%)
Sometimes	56 (19.2%)	57 (20.6%)	113 (19.9%)
Often or Always	188 (64.4%)	153 (55.2%)	341 (59.9%)
<i>Pretrial/Settlement</i>			
Never	48 (16.5%)	70 (25.3%)	118 (20.8%)
Sometimes	60 (20.6%)	54 (19.5%)	114 (20.1%)
Often or Always	183 (62.9%)	153 (55.2%)	336 (59.2%)
<i>Trial/Hearings</i>			
Never	48 (16.4%)	67 (24.2%)	115 (20.2%)
Sometimes	92 (31.4%)	69 (24.9%)	161 (28.2%)
Often or Always	153 (52.2%)	141 (50.9%)	294 (51.6%)
Totals	293 (51.4%)	277 (48.6%)	570 (100.0%)

Table 12: Frequency Engaging in Various Legal Tasks

Another key aspect of achieving parity in the legal profession does not involve legal tasks at all. Rather, as women move into managerial roles they may be able to better effect gender parity in the workplace. Accordingly, I ask respondents how often they engage in management practices. There is considerable parity between men and women. This provides some measure of optimism that greater representation at the upper levels of the legal profession may ultimately have an impact on the broader legal culture. This must, however, be tempered by work in management and organizational psychology which notes senior women in an organization often internalize dominant professional norms and enforce them more vigorously than their male counterparts.³⁹ Particularly, as professional and gender norms are often misaligned with each other in male dominated professions (including the legal profession), this may actually be a hinderance to future gender parity.⁴⁰

	Male	Female	Total
<i>Management Freq.</i>			
Never	146 (49.2%)	126 (45.2%)	272 (47.2%)
Sometimes	94 (31.6%)	102 (36.6%)	196 (34.0%)
Often or Always	57 (19.2%)	51 (18.3%)	108 (18.8%)
Totals	297 (51.6%)	279 (48.4%)	576 (100.0%)

Table 13: Management Frequency

In a similar vein, it is important to ask whether attorneys perceive men or women to be advantaged in various legal roles. Specifically, I ask about productivity, job security, judicial selection, hiring & promotion, compensation,

³⁹ Belle Derks, Colette Van Laar, and Naomi Ellemers, *The Queen Bee Phenomenon: Why Women Leaders Distance Themselves From Junior Women*, 27 THE LEADERSHIP QUARTERLY, 456 (2016).

⁴⁰ Shane A. Gleason and Krystoff Kissoon, *Well Said!: Professional Norms and Female Justices' Evaluation of Lower Court Opinion Text*, 47 LAW & POLICY, 1 (2025).

assignments, advancement, support staff access, client contact access, and social access to colleagues. Across all of these items, I find marked differences in perceptions across men and women. In terms of productivity, just 14% of men believe men are advantaged. By contrast, 65% of women believe men are advantaged. By contrast, 12% of men believe women are advantaged. Only 9% of women share this sentiment. A similar pattern emerges for job security. 13% of men feel men are advantaged. 63% of women feel men are advantaged.

Just 7% of male respondents believe men are advantaged in judicial selection. By contrast, 53% of women feel men are advantaged. Likewise, 48% of men and 13% of women feel women are advantaged in judicial selection. A similar pattern is at play in feelings about hiring and promotion. 14% of men believe men are advantaged. By contrast, 69% of women believe men are advantaged. In terms of compensation, 21% of men feel men are advantaged. 78% of women believe men are advantaged. This item is unique in that I can compare it to the reported compensation above. Based on that, men are actually advantaged. In terms of assignments, 8% of men feel men are advantaged. 64% of women feel men are advantaged.

With respect to advancement, 14% of men feel men are advantaged. 74% of women believe men are advantaged. The picture is less stark with respect to access to support staff. Just 5% of men believe men are advantaged. 39% of women believe men are advantaged. With respect to client contact access, 8% of men feel men are advantaged. 49% of women feel men are advantaged. Finally, when it comes to social access to colleagues, 15% of men feel men are advantaged. 55% of women feel men are advantaged in social access to colleagues.

Looking at the items in Table 14, an interesting macro-level pattern begins to emerge. In all items, save for judicial selection, the most frequently selected category for men is that men and women are treated equally. This indicates men do not believe they are disadvantaged relative to women. Rather they perceive gender equality in the legal profession. By contrast the most frequently selected category for women in all

items, save for support staff access, is that men are advantaged. Taken collectively, this indicates that men and women perceive two very different realities when it comes to whether men or women are advantaged in the legal profession.

	Male	Female	Total
<i>Productivity</i>			
Men are advantaged	42 (14.4%)	176 (64.5%)	218 (38.7%)
Men and women are treated equally	214 (73.5%)	75 (27.5%)	289 (51.2%)
Women are advantaged	35 (12.0%)	22 (8.1%)	57 (10.1%)
<i>Job Security</i>			
Men are advantaged	39 (13.4%)	170 (62.5%)	209 (37.2%)
Men and women are treated equally	210 (72.4%)	89 (32.7%)	299 (53.2%)
Women are advantaged	41 (14.1%)	13 (4.8%)	54 (9.6%)
<i>Judicial Selection</i>			
Men are advantaged	19 (6.6%)	143 (53.4%)	162 (29.0%)
Men and women are treated equally	133 (45.9%)	89 (33.2%)	222 (39.8%)
Women are advantaged	138 (47.6%)	36 (13.4%)	174 (31.2%)
<i>Hiring & Promotion</i>			
Men are advantaged	41 (14.2%)	186 (68.6%)	227 (40.6%)
Men and women are treated equally	170 (59.0%)	73 (26.9%)	243 (43.5%)
Women are advantaged	77 (26.7%)	12 (4.4%)	89 (15.9%)
<i>Compensation</i>			
Men are advantaged	61 (21.1%)	214 (78.4%)	275 (48.9%)
Men and women are treated equally	210 (72.7%)	55 (20.1%)	265 (47.2%)
Women are advantaged	18 (6.2%)	4 (1.5%)	22 (3.9%)

	Male	Female	Total
<i>Assignments</i>			
Men are advantaged	24 (8.3%)	175 (64.1%)	199 (35.5%)
Men and women are treated equally	242 (84.0%)	93 (34.1%)	335 (59.7%)
Women are advantaged	22 (7.6%)	5 (1.8%)	27 (4.8%)
<i>Advancement</i>			
Men are advantaged	41 (14.1%)	201 (73.6%)	242 (43.0%)
Men and women are treated equally	179 (61.7%)	65 (23.8%)	244 (43.3%)
Women are advantaged	70 (24.1%)	7 (2.6%)	77 (13.7%)
<i>Support Staff Access</i>			
Men are advantaged	14 (4.8%)	132 (48.7%)	146 (26.1%)
Men and women are treated equally	249 (86.2%)	128 (47.2%)	377 (67.3%)
Women are advantaged	26 (9.0%)	11 (4.1%)	37 (6.6%)
<i>Client Contact</i>			
Men are advantaged	24 (8.2%)	127 (46.5%)	151 (26.8%)
Men and women are treated equally	247 (84.9%)	135 (49.5%)	382 (67.7%)
Women are advantaged	20 (6.9%)	11 (4.0%)	31 (5.5%)
<i>Social Access to Colleagues</i>			
Men are advantaged	42 (14.5%)	149 (54.6%)	191 (33.9%)
Men and women are treated equally	229 (79.0%)	115 (42.1%)	344 (61.1%)
Women are advantaged	19 (6.6%)	9 (3.3%)	28 (5.0%)
Totals	291 (51.6%)	273 (48.4%)	564 (100.0%)

Table 14: Perceptions of Sex Based Advantages

D. Part-time Work & Balancing Obligations

The overwhelming majority of respondents (78%) work full time in the legal profession. In contrast to earlier surveys, I find a greater portion of women than men (84% to 73%) work full time. What then might be the reason for part-time work across men and women? The disparity in full and part-time status may be explained by the fact that men in the sample obtained their JDs, on average, earlier than their female counterparts.⁴¹ To this end, 94% of part-time men are transitioning to retirement. Conversely, 64% of part-time women are transitioning to retirement. A further 32% of part-time women cite child or family care as their primary reason for part-time work. It is important to note the reasons for part-time work discussed in this paragraph are based on just 53 part-time men and 28 part-time women. Therefore, while these findings deviate markedly from the 1995 survey, any conclusions drawn here should be done with caution.

While I find women are more likely to work full time than men, it is still possible that women are balancing professional and domestic duties. To this end, I ask respondents whether they have childcare responsibilities. If so, I then follow-up with a question about how much time they spend per week on childcare. Overall, 23% of respondents have childcare responsibilities. Broken down by sex, 17% of men and 30% of women report childcare responsibilities. Before proceeding, it is important again to urge caution in extrapolating these results: Just 54 men and 92 women report childcare responsibilities. Moreover, as noted above, since women answering the survey tend to have obtained their JDs at a later date than their male counterparts, the greater propensity for childcare responsibilities may at least in part be a function of age and the presence of younger children.

Slightly more than a third of respondents report spending 10 or less hours a week on childcare. However, when broken down by sex, 44% of men and 33% of women report less than 10 hours a week spent on childcare. At the other end,

⁴¹ 4% of women and 7% of men are retired.

25% of respondents spend 41 hours or more on childcare each week. Differences emerge when examining this by sex; 29% of women and just 17% of men spend more than 41 hours on childcare each week.

	Male	Female	Total
<i>Hours/Week</i>			
0-10	24 (44.4%)	30 (32.6%)	54 (37.0%)
11-20	13 (24.1%)	17 (18.5%)	30 (20.5%)
21-30	4 (7.4%)	11 (12.0%)	15 (10.3%)
31-40	4 (7.4%)	7 (7.6%)	11 (7.5%)
41 or more	9 (16.7%)	27 (29.3%)	36 (24.7%)
Totals	54 (37.0%)	92 (63.0%)	146 (100.0%)

Table 15: Hours Per Week Spent on Childcare

It is also critical to explore how childcare responsibilities are distributed within a relationship. Accordingly, I asked respondents who reported childcare responsibilities *and* being either married or in a committed relationship how they distribute childcare with their partner. Across all respondents, a slight majority (51%) of respondents report equitable splits in childcare responsibilities. This roughly holds true for men (55%) and women (48%). However, there are still notable variations based on sex. 42% of women mostly or exclusively handle care as opposed to 4% of men. At the same time, 9% of women report their partners mostly or exclusively handle care. However, 41% of men report their partners mostly or exclusively handle care.

<i>Childcare Distribution</i>	Male	Female	Total
R exclusively/mostly handles	2 (4.1%)	32 (42.7%)	34 (27.4%)
R & partner split	27 (55.1%)	36 (48.0%)	63 (50.8%)
Partner exclusively/ mostly handles	20 (40.8%)	7 (9.3%)	27 (21.8%)
Total	49 (39.5%)	75 (60.5%)	124 (100.0%)

Table 16: Childcare Distribution in Relationship

Though any findings on the role of childcare in part-time status must be taken with a grain of salt, it is still possible to explore the impact of family and childcare on women more broadly in the legal profession. Respondents who reported childcare responsibilities were asked how these obligations impacted their choice of a specialty, the cases taken, and hours worked. For both specialty and case choices, the most frequent response item for both men and women is “not at all.” However, when viewed by respondent sex, 77% of men report childcare responsibilities had no bearing on specialty choice compared to 53% of women.⁴² When it comes to case choices, not at all is again the modal category. In this item, however, men (69%) and women (62%) are relatively similarly situated. With respect to hours worked, a similar portion of men and women report childcare responsibilities have no bearing on hours worked. However, 38% of women (compared to 8% of men) report childcare responsibilities impacts work hours a great deal.

⁴² This finding should be qualified. Since women are more likely to report childcare impacts their specialty choice, it follows that they may already select out of areas with cases that are time consuming or unpleasant for someone with childcare responsibilities. This should be explored in greater depth by future scholars.

	Male	Female	Total
<i>Specialty Choice</i>			
Not at all	40 (76.9%)	48 (53.3%)	88 (62.0%)
A little	9 (17.3%)	13 (14.4%)	22 (15.5%)
A moderate amount	2 (3.8%)	12 (13.3%)	14 (9.9%)
A great deal	1 (1.9%)	17 (18.9%)	18 (12.7%)
<i>Case Choice</i>			
Not at all	36 (69.2%)	56 (62.2%)	92 (64.8%)
A little	8 (15.4%)	16 (17.8%)	24 (16.9%)
A moderate amount	7 (13.5%)	11 (12.2%)	18 (12.7%)
A great deal	1 (1.9%)	7 (7.8%)	8 (5.6%)
<i>Hours Worked</i>			
Not at all	7 (13.5%)	12 (13.3%)	19 (13.4%)
A little	27 (51.9%)	22 (24.4%)	49 (34.5%)
A moderate amount	14 (26.9%)	22 (24.4%)	36 (25.4%)
A great deal	4 (7.7%)	34 (37.8%)	38 (26.8%)
Totals	52 (36.6%)	90 (63.4%)	142 (100.0%)

Table 17: Impact of Childcare Responsibilities of Specialty Choice, Case Choice, and Hours Worked

It is worth noting that in order to have childcare obligations, one must first have or adopt children. However, work considerations can factor into one’s decision to have a child. I asked respondents if their current workplace offers maternity or family benefits either formally or on an ad hoc basis. The majority of both men and women report that their firms offer maternity and family benefits. While this is undoubtedly progress from a time when women in the legal profession felt compelled to hide their pregnancies in order to preserve their employment,⁴³ it is

⁴³ Moyer & Haire, *supra* note 5.

worth noting the gap between men and women in the no category. While 27% of men report their firms do not offer maternity benefits, just 16% of women make a similar report.⁴⁴ This raises two possibilities for future research. One, it is possible that men and women segregate into firms offering benefits that more closely align with their needs. The other, and more likely, explanation is that men and women are attuned to such benefits at different rates and may have different understandings of the benefits available.

	Male	Female	Total
<i>Maternity</i>			
No	75 (26.9%)	44 (16.4%)	119 (21.7%)
Unsure	47 (16.8%)	45 (16.7%)	92 (16.8%)
Yes	157 (56.3%)	180 (66.9%)	337 (61.5%)
<i>Family</i>			
No	68 (24.4%)	43 (16.0%)	111 (20.3%)
Unsure	43 (15.4%)	44 (16.4%)	87 (15.9%)
Yes	168 (60.2%)	182 (67.7%)	350 (63.9%)
Totals	279 (50.9%)	279 (49.1%)	548 (100.0%)

Table 18: Perception of Maternity and Family Benefits Availability

Having access to benefits is only half the battle. If utilizing benefits will be negatively received, the intended recipient may be less likely to make use of it. To this end, I asked respondents if they would be disadvantaged for using maternity or family benefits.⁴⁵ Across both men and women, the most frequent answer in each item is that an attorney would definitely not be disadvantaged for using leave ben-

⁴⁴ For family benefits, the finding is similar. 24% of men report their firms do not offer family benefits compared to 16% of women.

⁴⁵ This is only asked of respondents responding that their firm offers maternity/family leave benefits.

efits. However, there are marked differences between men and women. A combined 21% of female respondents feel they would probably or definitely be disadvantaged for using maternity leave. By contrast, just 9% of men answered in the same way. Relatively similar patterns are present in the family benefits item. Much like the above item exploring the presence of leave policies, this suggests men and women have fundamentally different understandings of available leave.⁴⁶

	Male	Female	Total
<i>Maternity Benefits</i>			
Definitely not	89 (58.9%)	71 (44.7%)	160 (51.6%)
Probably not	30 (19.9%)	29 (18.2%)	59 (19.0%)
Might or might not	19 (12.6%)	26 (16.4%)	45 (14.5%)
Probably yes	9 (6.0%)	27 (17.0%)	36 (11.6%)
Definitely yes	4 (2.6%)	6 (3.8%)	10 (3.2%)
<i>Family Benefits</i>			
Definitely not	92 (55.1%)	77 (42.3%)	169 (48.4%)
Probably not	32 (19.2%)	37 (20.3%)	69 (19.8%)
Might or might not	24 (14.4%)	32 (17.6%)	56 (16.0%)
Probably yes	13 (7.8%)	27 (14.8%)	40 (11.5%)
Definitely yes	6 (3.6%)	9 (4.9%)	15 (4.3%)
Totals	167 (47.9%)	182 (52.1%)	349 (100.0%)

Table 19: Consequences of Taking Maternity/Family Leave

⁴⁶ This item has a relatively low number of respondents and just a handful answered in the two ‘yes’ categories. As such, any extrapolation should be qualified.

IV. THE ROLE OF COVID-19

While there is undeniable value in examining how the findings from previous surveys of the Connecticut legal profession hold up in the 2020s, it is also important to acknowledge the world has changed in many ways since the 1990s. Perhaps one of the most shocking and jarring changes to the world generally and the legal profession specifically is the covid-19 pandemic. The pandemic forced courts to radically alter their normal proceedings and shift much of their work online. The pandemic exasperated existing gender disparities and often merged professional and care giving responsibilities.

To measure how covid-19 impacted Connecticut attorneys generally and men and women specifically, I designed a battery of questions asking whether the pandemic reduced hours or compensation and whether covid interrupted an attorney's career path. Just over half of attorneys report covid did not reduce hours or pay. However, when examining the results for men and women separately, an interesting pattern emerges. While 61% of women report covid did not reduce hours or compensation, only 46% of men reported covid had no impact on their hours or compensation. Conversely, 14% of women report covid impacted their hours or compensation compared to 16% of men. A similar pattern is evident when examining covid's impact on career path. 84% of all attorneys report no or little impact on career path. Broken down by sex, 80% of women and 89% of men report no or little impact. Conversely, 9% of women and 4% of men report a lot or a great deal of impact.

	Male	Female	Total
<i>Hours/Compensation</i>			
Not at all	128 (46.4%)	169 (61.2%)	297 (53.8%)
A little	56 (20.3%)	33 (12.0%)	89 (16.1%)
A moderate amount	46 (16.7%)	34 (12.3%)	80 (14.5%)
A lot	25 (9.1%)	15 (5.4%)	40 (7.2%)
A great deal	21 (7.6%)	25 (9.1%)	46 (8.3%)
<i>Career Path</i>			
Not at all	226 (81.0%)	189 (67.5%)	415 (74.2%)
A little	21 (7.5%)	35 (12.5%)	56 (10.0%)
A moderate amount	22 (7.9%)	30 (10.7%)	52 (9.3%)
A lot	7 (2.5%)	14 (5.0%)	21 (3.8%)
A great deal	3 (1.1%)	12 (4.3%)	15 (2.7%)
Totals	279 (49.9%)	280 (50.1%)	559 (100.0%)

Table 20: Covid’s Impact on Career

Ultimately, the covid pandemic has had a mixed impact on attorneys on the basis of sex. In general, attorneys report no to little impact in either compensation or in terms of career path. If anything, women fared better with respect to hours and compensation. When it comes to career path, women were more likely to be impacted a lot or a great deal. It is important to note though that this is a relatively small (N=26) number which makes statistical generalizations difficult. Moreover, this may be a function of career stage.

V. DISCUSSION

The legal profession nationally, and in Connecticut specifically, has made tremendous strides in terms of diversity. Yet much remains to be done. Following the lead of the 1995 study, I examine attitudes on the prevalence of sexual ha-

rassment, pay disparity, women's absence from policy-making and decision-making positions, and the unique challenges of part-time work. I note both continuity and departures from the 1990s. Thus, while there is cause to celebrate, there are also opportunities for growth.

In terms of sexual harassment, men largely perceive the problems gone. Women, however, generally recognize several microaggressions still present in the day-to-day practice of law. Pay disparities in the legal profession, as in the workplace generally, largely remain. Women are increasingly present in decision-making roles in levels approximating their male counterparts. However, men and women differ in their perceptions of which sex is advantaged in a host of legal activities. When it comes to part-time work, most attorneys work full time. While this suggests women have broken the part-time loop present in 1995, I find women still handle the brunt of childcare responsibilities. This forces female attorneys to balance their work with more domestic responsibilities than their male counterparts.

While this survey provides a valuable update to the 1995 study, and hopefully lays the foundation for a future follow-up, there are a number of limitations which future studies should address. Perhaps the biggest limitation is that the CBA is a voluntary bar association. Thus, I am only able to survey attorneys who have maintained their memberships. Thus, I cannot draw on a survey sample fully representative of Connecticut lawyers- rather it is properly understood as a survey of current attorney-members of the CBA and my results can only be generalized to that population.

It is also important to note that, while the sample and response rate are well within the range of normal for survey research, there were a relatively low number of respondents for some of the more nuanced questions dependent on other answers. For example, I had asked a question about how covid impacted the decision to retire. However, I had so few retired attorneys respond to the survey that I could not make any meaningful inferences. In a similar manner, respondents were overwhelmingly from private practice. Ac-

cordingly, I cannot make inferences about attorneys working for the State. One possible solution to this survey's limitations in generalizability is to conduct in-depth case studies in the same vein as the oral history project the CBF has pursued.⁴⁷ In depth interviews with key legal actors⁴⁸ can also increase the utility for generalization.

VI. CONCLUSION

Women are increasingly present in the Connecticut legal profession, yet sex-based disparities persist. While I identify several markers of progress, there is clearly more work that needs to be done to fully incorporate women into the profession.

⁴⁷ Peck, *supra* note 4.

⁴⁸ Alyx Mark, *COURTS UNMASKED: CIVIL LEGAL SYSTEM REFORM AND COVID-19* (2025).



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