Highlights | Recent Superior Court Decisions

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Administrative Law

Commissioner of the Department of Correction v. FOIC, 70 CLR 196 (Cordani, John L., J.), holds that public agencies are neither authorized nor required by the FOIA to provide information stored on employee personal cell phones, unless the agency is entitled by law or contract to access such information, because the Act's definition of "public records or files" is limited to "data or information relating to the conduct of the public's business *prepared, owned, used, received, or retained* by a public agency, or to which a public agency is entitled to receive a copy by law or contract.

The Freedom of Information Act exemption for police records "compiled in connection with the detection or investigation of crime" does not apply to investigations of infractions, because "infractions" are not included in the statutory definition of "crimes." *Avon v. FOIC*, 70 CLR 111 (Cordani, John L., J.). The opinion also holds that a public agency may not require that an FOIA requester sign a receipt acknowledging receipt of *copies* of public documents in response to an FOIA request because the FOIA must be strictly construed in favor of disclosure and there is no express requirement for a written acknowledgement for the receipt of copies.

Commissioner of Department of Emergency Services v. FOIC, 70 CLR 203 (Cordani, John L., J.), holds that prompt compliance with FOIA requests is a primary agency duty comparable in importance to other agency primary duties; therefore, the press of other agency work alone ordinarily is not a valid excuse for delayed compliance.

Arbitration Law

Hartford v. Hartford Police Union, 70 CLR 174 (Budzik, Matthew J., J.), holds that a Hartford police officer's violation of a federal consent decree requiring all officers to refrain from the use of racial epithets provides a sufficiently explicit public policy to support the vacating of an arbitration award that reinstated an officer terminated for making such comments, in spite of the officer's otherwise clear disciplinary record. The opinion notes that since 2015 there has been only one other instance in which a Connecticut court has overturned an arbitration award reinstating an employee.

Contracts

Strazza Building & Construction, Inc. v. Harris, 70 CLR 92 (Genuario, Robert L., J.) (*Strazza I*), holds that the Supreme Court's recent recognition of a rebuttable presumption that a construction project subcontractor is in privity with its general contractor for res judicata and collateral estoppel purposes does not apply to the reverse situation: a general contractor is not presumed to be in privity with its subcontractors for res judicata and collateral estoppel purposes. The opinion reasons that the Supreme Court's ruling was based on the fact that a general contractor is likely to have broad knowledge concerning the performance of all subcontractors so that it is reasonable to presume that rulings adverse to the general contractor could reasonably be given res judicata or collateral estoppel effect in later litigation between the general contractor and other subcontractors. On the other hand, each subcontractor is less likely to have knowledge of the services provided by other subcontractors and therefore there is less justification for applying a comparable presumption in favor of the general contractor against subcontractors. This opinion holds that a ruling in an action unsuccessfully prosecuted by a project sponsor against a single subcontractor for the release of a mechanic's lien, that any lienable funds had been exhausted and therefore unavailable to satisfy the subcontractor's claim, is not entitled to res judicata or collateral estoppel in a subsequent action brought by the *general* contractor against the project sponsor.

Criminal Law

A trial court has jurisdiction to hear a habeas corpus petition based on the petitioner's perceived risk of acquiring the covid 19 virus due to claimed adverse prison conditions, even though no challenge to the petitioner's conviction has been raised. *Little v. Commissioner*, 70 CLR 77 (Oliver, Vernon D., J.). The opinion also holds that the court has authority to preliminarily release a habeas petitioner pending resolution of the petition, subject to the posting of bail.

Driving Under the Influence

Marshall v. Commissioner of Motor Vehicles, 70 CLR 194 (Cordani, John L., J.), holds that a DUI arresting officer's failure to comply with the statutory requirement that an A-44 arresting report be delivered to DMV within three days does not render an otherwise compliant report inadmissible as evidence in a license suspension hearing, provided the report eventually reaches DMV within a reasonable period.

Education Law

Dunlop v. Regional School District No. 10, 70 CLR 189 (Taylor, Mark H., J.), holds that the Teacher Assault Indemnification Statute, Conn. Gen. Stat. § 10-236a (requiring that a board of education provide indemnification for financial loss incurred by a teacher as a result of "an assault upon such teacher or other employee while such person was acting in the discharge of his or her duties"), applies to negligent as well as intentional assaults.

Employment Law

Stavridis v. National Spine & Pain Centers, LLC, 70 CLR 23 (D'Andrea, Robert A., J.), holds that a dispute between an employer and employee over a noncompete agreement does not arise in "trade or commerce" and therefore does not give rise to a CUTPA claim, even if the dispute is based on an alleged interference by the employer with the plaintiff's ability to work for another employer.

A Superior Court opinion holds that allegations that an employer violated the Connecticut Fair Employment Practices Act by terminating an employee for the manner in which a chronic medical condition was being treated (the use of a marijuana-based oil to treat a skin disease) state a claim even though the act requires proof that the alleged discriminatory conduct was based on the *existence* rather than the *manner* of treating a disability. *Peck v. Waterbury Board of Education*, 70 CLR 8 (Gordon, Matthew D., J.). The opinion construes the allegation as raising a claim of discrimination based on a perception that the plaintiff was handicapped.

The opinion in *Martin v. United Capital Corp.*, 70 CLR 19 (Moukawsher, Thomas G., J.), presents a useful explanation of the court's decision to award mandatory attorneys fees well in excess of a claimant's recovery on a claim under the Conn. Minimum Wage Statute, Conn. Gen. Stat. § 31-68 (providing that an employer who violates the Minimum Wage Statute "*shall be required to pay* the costs and such reasonable attorney's fees as may be allowed by the court"). The opinion cautions that the traditional rules governing discretionary fee awards are not directly applicable to claims under statutes that impose *mandatory* fee awards.

Insurance Law

A Superior Court opinion holds that a defendant in a motor vehicle accident case may bring an apportionment complaint against a plaintiff's UIM insurer for an apportionment of liability attributable to an unidentified co-tortfeasor, regardless of whether the plaintiff has already brought the insurer into the action. *Ocasio v. Fulton*, 70 CLR 97 (Gordon, Matthew D., J.). The opinion rejects the rule of the majority of the trial court opinions that have ruled on this issue that such an apportionment claim may be asserted only if the plaintiff has already brought the insurer into the action, as was the situation in the Supreme Court's 2001 *Collins* opinion that held that a third-party apportionment complaint may be asserted against a plaintiff's UIM insurer.

An apportionment of liability claim against a UIM insurer based on the negligence of an unidentifiable operator requires proof that both the operator and the owner are unidentifiable, because an owner may be liable under the statute imposing vicarious liability for an operator's negligence. This case involves a rear-end collision brought by a plaintiff whose vehicle was struck from behind by the named defendant while stopping for traffic. The defendant has brought an apportionment complaint against the plaintiff's UIM carrier alleging the negligence of an unidentified third party operating a truck in front of the plaintiff that was identified by the plaintiff as a "Terminix" truck and that left the scene without stopping. The opinion reasons that the allegation of knowledge that the truck was associated with the Terminix company precludes an implied allegation that the *owner* of the truck was unidentifiable. *Sebastian v. Gaddis*, 70 CLR 101 (Gordon, Matthew D., J.). ■