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Supreme Deliberations

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seventeen years since *Mendillo*.

The dissenters also argued that the majority had not properly evaluated the societal cost likely to be imposed as a result of its decision. After all, the majority had not just recognized a new cause of action for minor children, but it had expressly acknowledged the possibility that its decision could be extended to cover other family members. "To account for this uncertainty, insurers may raise premiums for *all* insureds," which, according to the dissenters, "would be a rational response to the unpredictability the majority has introduced into this area of law by overruling *Mendillo* . . . ."

Finally, the dissenters lamented the "mere lip service" that the majority had paid to the principle of stare decisis. They noted that the majority never contended that *Mendillo* was "clearly wrong." Nor, in the dissenters' view, could the majority reasonably have made such a claim, in light of the nearly two decades of legislative silence that followed *Mendillo*. The dissenters also argued that the majority's reliance on the Court's 180-degree turn regarding spousal consortium claims was misplaced because at the time the Court recognized that claim, the Court's action was consistent with emerging sister state precedent; here, by contrast, no court had recognized a claim for loss of parental consortium since *Mendillo*.

It's difficult—if not impossible—to disagree with the underlying premise of the majority's decision: that the Court is the final arbiter of the common law and, therefore, can decide to recognize a cause of action. In a sense, then, it fulfilled its role in *Campos*, just like it fulfilled its role in *Mendillo*.

But the quirk in *Campos* is that the Court was not writing on a blank slate. And the majority opinion seemed to give short shrift to the idea that anytime a court overrules precedent, it jeopardizes the public's confidence in the judicial process. Of course, when a court acts to correct a clear mistake (think *Brown v. Board of Education*, 347 U.S. 483 (1959)) or acts in response to different circumstances/information made available to it after its initial ruling (think *Roper v. Simmons*, 543 U.S. 551 (2003)), changing course may, in fact, increase the court's legitimacy in the eyes of the public. But if the Court reverses course without identifying significant flaws in its prior reasoning or convincing the reader that circumstances have changed so drastically so as to require a dramatic change in the law, the diminished predictably of its rulings can't help but lead to diminished confidence in the results. And if, in fact, the Court relies almost entirely on policy considerations to justify reversal, then maybe it starts to edge a little closer to the legislative side of the divide that separates it from the General Assembly. **CL**

Highlights

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transactions subject to substantial government regulation, Conn. Gen. Stat. § 42-110c(a)(1), and because such transactions are not at ordinary market rates and therefore do not occur in "the conduct of any trade or commerce," Conn. Gen. Stat. § 42-110b.

The "continuing course of conduct" doctrine applies to CUTPA's three-year limitation period. *McClancy v. Rotunno Construction, Inc.*, 59 CLR 186 (Tobin, David R., J.T.R.). The opinion declines to follow an Appellate Court holding to the contrary which has been rejected in some federal opinions and questioned in dicta in a Connecticut Supreme Court decision.

The regulatory exception to CUTPA, which excepts from CUTPA liability claims based on "transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under the statutory authority of the state or of the United States," Conn. Gen. Stat. § 42-110c(a)(1), applies only to claims based on conduct which is affirmatively permitted by a regulatory board. The fact that the conduct upon which a CUTPA claim is based occurs in an extensively regulated industry, without proof that the particular conduct is specifically allowed by an agency regulation, is insufficient to avoid liability under CUTPA. *Hansen v. Wells Fargo Bank, N.A.*, 60 CLR 810 (Kamp, Michael P., J.). **CL**