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SUBSCRIPTION: $42.00 per annum prepaid.

PLEASE DIRECT CORRESPONDENCE TO:
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Advertising: Laurie Nivison, Marketing Specialist, CT Bar Institute, Inc., 30 Bank St., PO Box 350, New Britain, CT 06050-0350.
Subscription, remittances, and changes of address: D. Larkin Chenault, Executive Director/Secretary, CT Bar Institute, Inc., 30 Bank St., PO Box 350, New Britain, CT 06050-0350.

Current numbers, back issues, whole volumes (bound or paperback), complete sets: William S. Hein & Co., Inc. or Dennis & Co., Inc.

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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. (March, June, September, December), at 30 Bank St., PO Box 350, New Britain, CT 06050-0350. Periodicals Postage Paid at New Britain, CT and at an additional mailing office. POSTMASTER: Send address changes to the CONNECTICUT BAR JOURNAL, 30 Bank St., PO Box 350, New Britain, CT 06050-0350. Indexed in INDEX TO LEGAL PERIODICALS and cited in WEST CONN. DIGEST, CONN. GEN. STAT ANNO., and in SHEPARD’S CONN. CITATIONS.
TORT DEVELOPMENTS IN 2010

BY JAMES E. WILDES*

The Connecticut Supreme Court and Appellate Court issued numerous decisions in 2010. Substantive and procedural developments that directly or indirectly relate to tort law are the focus of the article. Premises liability, damages, governmental immunity, professional liability and trial practice figure prominently. Several cases discussed expert witness issues. Some cases could have been reported in more than one area but to avoid redundancy each case was covered under a single topic heading. Unfortunately, some cases had to be overlooked or treated in a more cursory manner due to space restrictions.

I. ANIMAL LIABILITY

Giacalone v. Housing Authority of the Town of Wallingford1 addressed whether a common-law negligence claim for injuries sustained from a dog bite could be brought by a tenant against her landlord where the landlord was not the owner or keeper of the dog. The trial court struck the complaint even though the plaintiff alleged that the defendant landlord knew that another tenant owned the dog and that the defendant knew that the dog was dangerous and aggressive.2 On limited grounds that parallel Auster v. Norwalk United Methodist Church,3 the Appellate Court reversed,

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* Of the New Haven Bar.
1 122 Conn. App. 120, 121, 998 A.2d 222, cert. granted in part, 298 Conn. 906, 3 A.3d 69 (2010).
2 Id. at 121-22.
3 286 Conn. 152, 943 A.2d 391 (2008). The Supreme Court in Auster stated that a nonowner of a dog cannot be held strictly liable for damage done by the dog to another in the absence of evidence that the nonowner was responsible for maintaining and controlling the dog at the time that the damage was done. Id. at 161-62. Generally, such proof will consist of evidence that the nonowner was feeding, giving water to, exercising, sheltering or otherwise caring for the dog when the incident occurred. Id. at 162. A landlord is not a keeper of a dog merely because a landlord acquiesces in the presence of the dog on leased premises, or because a landlord has the authority to require that the dog be removed from the premises, or even because a landlord has the authority to require that certain conditions be placed on the use of the dog by its owner. Id. The Court further stated that evidence of ownership of the premises where the dog lives is not enough to hold a
holding a common-law negligence claim brought against a landlord in a dog bite case should not be stricken as insufficient merely because the landlord was not alleged to be the owner or keeper of the dog.\textsuperscript{4} The Court noted that the Supreme Court in \textit{Auster} remanded the case to allow the plaintiff the opportunity to establish a negligence claim.\textsuperscript{5}

\section*{II. Conversion and Theft}

In \textit{Coster v. Duquette},\textsuperscript{6} the plaintiff, a university student, sued the defendant, another university student, for conversion of his final paper and the defendant filed a counter-claim for conversion of her final paper. After a trial to the court, the court entered judgment for the plaintiff on his conversion claim and also for the plaintiff on the counter-claim.\textsuperscript{7} Before reaching the merits of the defendant’s contentions, the Appellate Court summarized the law of conversion as follows: The tort of conversion occurs when one, without authorization, assumes and exercises ownership over property belonging to another, to the exclusion of the owner’s rights.\textsuperscript{8} The Court stated that to establish a case of conversion, the plaintiff must prove that (1) the material at issue belonged to the plaintiff, (2) the defendant deprived the plaintiff of that material for an indefinite period of time, (3) the defendant’s conduct was unauthorized and (4) the defendant’s conduct harmed the plaintiff.\textsuperscript{9} The Court rejected the defendant’s argument that the trial court erred in finding for the plaintiff.\textsuperscript{10} Applying the clearly erroneous standard of review, the Court concluded that the trial court’s findings were adequately supported by the evidence.\textsuperscript{11}

\textit{Stuart v. Stuart}\textsuperscript{12} determined that the proper standard of

\textsuperscript{4} \textit{Giacalone}, 122 Conn. App. at 121.
\textsuperscript{5} \textit{Id.} at 126.
\textsuperscript{7} \textit{Id.} at 830.
\textsuperscript{8} \textit{Id.} at 831-32.
\textsuperscript{9} \textit{Id.} at 832.
\textsuperscript{10} \textit{Id.} at 831-33.
\textsuperscript{11} \textit{Id.}
\textsuperscript{12} 297 Conn. 26, 28-29, 996 A.2d 259 (2010).
proof in a statutory theft claim brought pursuant to General Statutes Section 52-564\textsuperscript{13} is the preponderance of the evidence, as opposed to the clear and convincing standard of proof.

III. DAMAGES

The Appellate Court in \textit{Rua v. Kirby}\textsuperscript{14} found no error in the trial court’s refusal to charge the jury that it must “take the plaintiff as he is” and that the defendants were responsible for all of the injuries proximately caused by their negligence, even if the plaintiff had a pre-existing condition that would cause the injuries to be more severe. At trial, the plaintiff offered evidence that he had suffered injuries to his back as a result of the accident.\textsuperscript{15} The plaintiff also offered evidence that he had a pre-existing condition, specifically, degenerative disc disease.\textsuperscript{16} The Appellate Court held that the trial court did not err in not giving the requested instruction since there was no evidence that the pre-existing condition was aggravated by the motor vehicle accident or that it had any effect on the claimed injuries.\textsuperscript{17}

In \textit{Silva v. Walgreen Company},\textsuperscript{18} the Appellate Court reversed the trial court for ordering an additur as to noneconomic damages. The jury returned a verdict against the defendant for giving the plaintiff the wrong prescription and awarded $876.13 in economic damages, reduced by ten percent comparative negligence, but no noneconomic damages.\textsuperscript{19} The Court stated that an award of economic damages only is not inadequate, as a matter of law; rather, the jury’s decision on such occasions is best tested in light of the circumstances of the particular case.\textsuperscript{20} The Court noted

\textsuperscript{13} General Statutes § 52-564 provides: “Any person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages.”

\textsuperscript{14} 125 Conn. App. 514, 515-16, 8 A.3d 1123 (2010).

\textsuperscript{15} Id. at 516.

\textsuperscript{16} Id.

\textsuperscript{17} Id. at 517-19.

\textsuperscript{18} 120 Conn. App. 544, 546, 992 A.2d 1190 (2010).

\textsuperscript{19} Id. at 548-49.

\textsuperscript{20} Id. at 551. In \textit{Wichers v. Hatch}, 252 Conn. 174, 188, 745 A.2d 789 (2000), the Supreme Court expressly overruled \textit{Johnson v. Franklin}, 112 Conn. 228, 152 A.64 (1930), and established a case-by-case determination for reviewing whether a verdict is inadequate as a matter of law. The trial court under \textit{Wichers} must examine
that plaintiff’s injuries were contested and that the jury was entitled to accept or reject, in whole or in part, evidence offered by either party.\textsuperscript{21} The Court observed that the defendant’s medical expert opined that the plaintiff did not suffer from post-traumatic stress disorder and that it was not unreasonable for the jury to find that the plaintiff’s treatment was related to pre-existing mental health issues and, therefore, there was evidence to support the jury’s verdict.\textsuperscript{22}

\textit{Deas v. Diaz}\textsuperscript{23} affirmed the trial court’s denial of the defendant’s motions for remittitur and to set aside the verdict in favor of the plaintiff. The jury awarded economic damages of $19,116.50, consisting of $4,116.50 in past medical bills and $15,000 in future medical expenses, as well as $25,500 in noneconomic damages.\textsuperscript{24} After reviewing Connecticut case law and General Statutes Section 52-216a,\textsuperscript{25} the Appellate Court distilled the standard of review as follows: The trial court’s decision to deny or grant a motion for remittitur because it is excessive, as a matter of law, is entitled to plenary review on appeal and the trial court’s decision as to the amount of the remittitur, if ordered, should be analyzed under an abuse of discretion standard.\textsuperscript{26}

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\textsuperscript{21} \textit{Silva}, 120 Conn. App. at 557-59.

\textsuperscript{22} \textit{Id.} at 558-60.


\textsuperscript{24} \textit{Id.} at 829.

\textsuperscript{25} General Statutes § 52-216a provides: “An agreement with any tortfeasor not to bring legal action or a release of a tortfeasor in any cause of action shall not be read to a jury or in any other way introduced in evidence by either party at any time during the trial of the cause of action against any other joint tortfeasors, nor shall any other agreement not to sue or release of claim among any plaintiffs or defendants in the action be read or in any other way introduced to a jury. If the court at the conclusion of the trial concludes that the verdict is excessive as a matter of law, it shall order a remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. If the court concludes that the verdict is inadequate as a matter of law, it shall order an additur, and upon failure of the party so ordered to add the amount ordered by the court, it shall set aside the verdict and order a new trial. This section shall not prohibit the introduction of such agreement or release in a trial to the court.”

\textsuperscript{26} \textit{Deas}, 121 Conn. App. at 830-37.
The Appellate Court rejected the defendant's argument that the awards of economic damages and noneconomic damages were excessive as a matter of law.27

IV. Defamation

The pro se plaintiff in Knize v. Knize28 confused the standards of proof in his defamation case against his former wife. On appeal, the plaintiff maintained that the standard of proof to be used by the jury should have been clear and convincing evidence for it to find criminal drug use by the plaintiff.29 In affirming the denial of the plaintiff's motion to set aside the verdict for the defendant, the Appellate Court noted that the issue was not whether the plaintiff had violated criminal statutes related to drug use but whether the jury by a preponderance of the evidence could find that the defendant had made defamatory statements.30

V. Defective Highway

Nikiel v. Turner31 affirmed the trial court's jury charge in an action brought under General Statutes Section 13a-149,32 Connecticut's municipal highway defect statute. Notwith-
standing an adjacent sidewalk, the plaintiff elected to walk in the street and then tripped and fell.\textsuperscript{33} The court charged the jury on General Statutes Section 14-300c(a);\textsuperscript{34} specifically, the court charged that if it found that there was a sidewalk adjacent to the street where the plaintiff fell and it was practical for the plaintiff to use the sidewalk, then the plaintiff was negligent \textit{per se} and could not prove that the alleged defect was the sole proximate cause of the plaintiff's injuries.\textsuperscript{35} The Appellate Court found that because Section 13a-149 requires the plaintiff to prove freedom from contributory negligence, the trial court correctly instructed the jury that a finding of noncompliance with Section 14-300c(a) precludes recovery under Section 13a-149.\textsuperscript{36}

\textit{Bartlett v. Metropolitan District Commission}\textsuperscript{37} involved a plaintiff who stepped into an allegedly improperly positioned storm drain, causing him to sustain injuries. The central question was whether the plaintiff's claim, as a matter of law, was controlled by General Statutes Section 13a-149 and, accordingly, required the plaintiff to provide notice of his intent to commence suit within ninety days of the alleged injury.\textsuperscript{38} The Appellate Court concluded that the alleged storm drain cover located on the sidewalk was a defect within the meaning of Section 13a-149 since it was reasonable to anticipate that the public would encounter the drain in the ordinary course of travel.\textsuperscript{39} The Court affirmed the trial court's granting of the defendant's motion to dismiss based on a lack of subject matter jurisdiction.\textsuperscript{40}

\textsuperscript{33} \textit{Nikiel}, 119 Conn. App. at 725-26.
\textsuperscript{34} General Statutes § 14-300c(a) provides: “No pedestrian shall walk along and upon a roadway where a sidewalk adjacent to such roadway is provided and the use thereof is practicable. Where a sidewalk is not provided adjacent to a roadway each pedestrian walking along and upon such roadway shall walk only on the shoulder thereof and as far as practicable from the edge of such roadway. Where neither a sidewalk nor a shoulder adjacent to a roadway is provided each pedestrian walking along and upon such roadway shall walk as near as practicable to an outside edge of such roadway and if such roadway carries motor vehicle traffic traveling in opposite directions each pedestrian walking along and upon such roadway shall walk only upon the left side of such roadway.”
\textsuperscript{35} \textit{Nikiel}, 119 Conn. App. at 726.
\textsuperscript{36} \textit{Id.} at 729.
\textsuperscript{37} 125 Conn. App. 149, 151, 7 A.3d 414 (2010).
\textsuperscript{38} \textit{Id.} at 157.
\textsuperscript{39} \textit{Id.} at 160-61.
\textsuperscript{40} \textit{Id.} at 163.
VI. GOVERNMENTAL IMMUNITY

Picco v. Town of Voluntown\(^{41}\) held that General Statutes Section 52-557n(a)(1)(C)\(^{42}\) requires the plaintiff to allege that the defendants by a “positive act” created the claimed nuisance in order for governmental immunity to be waived. The plaintiffs alleged that a portion of a tree fell onto one of the plaintiffs.\(^{43}\) The Supreme Court found the plaintiffs’ allegations legally insufficient; specifically, the plaintiffs alleged that the defendants ordered an evaluation of the tree and that the tree’s defects and dangerous condition were caused by natural tendencies.\(^{44}\)

The Supreme Court in Bonington v. Town of Westport\(^{45}\) affirmed the summary judgment entered in favor of the defendants, the Town of Westport, the town’s planning and zoning department, the department’s director, the town’s zoning enforcement officer, and the town’s zoning enforcement inspector. The plaintiffs alleged that they had been forced to initiate legal action against abutting property owners at great expense because the defendants were negligent in their methods of inspection or lack thereof and their continued failure to enforce or even rule on claimed violations of zoning regulations.\(^{46}\) The defendants argued that they were immune from liability under General Statutes Sections 52-557n(a)(2)(B) and (b)(8).\(^{47}\) The Court reviewed

\(^{41}\) 295 Conn. 141, 142-44, 989 A.2d 593 (2010).
\(^{42}\) General Statutes § 52-557n(a)(1)(C) provides in relevant part: “Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: …(C) acts of the political subdivision which constitute the creation or participation in the creation of a nuisance;…”
\(^{43}\) Id. at 144.
\(^{44}\) Id. at 152. The Court reiterated that under the common-law the plaintiff must prove the following in order to succeed in a nuisance claim: (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. Id. at 146. Moreover, when the alleged tortfeasor is a municipality, the common-law requires that the plaintiff also prove that the defendants, by some positive act, created the condition constituting the nuisance. Id.
\(^{45}\) 297 Conn. 297, 298, 999 A.2d 700 (2010).
\(^{46}\) Id. at 300.
\(^{47}\) Id. at 301. General Statutes § 52-557n(a)(2)(B) and (b)(8) provide in relevant part: “(a)(1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent
the law of governmental immunity: A municipal employee is liable for the misperformance of ministerial acts but has a qualified immunity in the performance of governmental acts which are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature. The plaintiffs raised an exception to the rule of governmental immunity; namely, if the defendants’ acts are deemed by the court to be discretionary, liability may be imposed when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm. The Court concluded that the alleged acts of negligence constituted discretionary acts to which immunity attached. The Court likewise concluded that the claims fell short of the limited circumstances under which imminent harm may be established; specifically, the Court stated that although the plaintiff’s property was a discrete place, a significant rainfall causing excessive surface runoff would occur at an indefinite point in time and was therefore not imminent.

_Benedict v. Town of Norfolk_ held that the identifiable person, imminent harm exception to governmental immunity for discretionary acts applied in an action brought directly against a municipality under General Statutes Section 52-
557n(a). The Supreme Court, based on its recent decision in *Grady v. Somers*,53 agreed with the plaintiff that this exception applies to both municipal employees and municipalities.54

In *Merritt v. Town of Bethel Police Department*,55 the Appellate Court affirmed the granting of the defendants’ motion to strike, holding that the plaintiff’s wrongful death action was barred by the doctrine of governmental immunity. The plaintiff brought the action against the named defendant and two officers, alleging liability against the named defendant under General Statutes Section 52-557n56 and against the officers, individually, for negligence. The plaintiff alleged that her decedent son attended a party, that gang members were present, that a scuffle occurred shortly before her son was fatally shot by a gang member, that the police were aware that prior criminal activity had taken place there, and that the police were monitoring the activities taking place there at the time of the shooting.57 The plaintiff contended that her claim fell within one of the exceptions to the general rule of governmental immunity for employees engaged in discretionary acts; namely, that her son was an identifiable person subject to imminent harm.58

The Court held that the allegations were legally insufficient because the plaintiff did not allege that the defendants knew the decedent or of his presence at the time of the party or that they knew that he would be shot or that the defendants knew that the gang members were armed.59

54 *Benedict*, 296 Conn. at 522. The plaintiff had fallen on ice in a parking lot of a housing complex where he resided. *Id.* at 521. The Supreme Court, in reversing the granting of the defendant’s motion to strike and remanding the case for further proceedings, expressed no opinion as to whether the plaintiff’s allegations were legally sufficient, specifically, whether the plaintiff was a member of a class of persons subject to the identifiable, imminent harm exception to governmental immunity. *Id.* at 523, n. 9.
55 120 Conn. App. 806, 808, 993 A.2d 1006 (2010).
56 CONN. GEN. STAT. § 52-557n.
57 *Merritt*, 120 Conn. App. at 815-16.
58 *Id.* at 811-16.
59 *Id.* at 816. The Appellate Court noted only one Supreme Court case where a specific plaintiff was held potentially to be an identifiable victim subject to imminent harm; namely, *Sestito v. Groton*, 178 Conn. 520, 522-23, 423 A.2d 165 (1979) (facts presented an issue for the trier of fact where the police officer watched and witnessed an ongoing brawl in a bar’s parking lot but did not intervene until after
Kastancuk v. Town of East Haven\textsuperscript{60} held that the trial court properly struck the plaintiff's complaint against the defendant town and several members of its police department based on the doctrine of governmental immunity. The plaintiff’s decedent committed suicide by hanging herself in her holding cell at the defendant police department.\textsuperscript{61} The plaintiff’s wrongful death action alleged that the defendants were negligent in: failing to remove harmful clothing, failing to perform inspections of the decedent, and by failing to maintain adequate lighting.\textsuperscript{62} The Appellate Court found that the acts or omissions claimed by the plaintiff were discretionary and, according, the defendants were immune from liability.\textsuperscript{63}

Haynes v. City of Middletown\textsuperscript{64} arose out an injury to a minor when he was pushed into a broken locker in the men’s locker room at Middletown High School. The minor’s mother, as parent and next friend of her son, and on her own behalf for his medical bills, brought a negligence action against the defendant pursuant to General Statutes Section 52-557n.\textsuperscript{65} The defendant interposed a special defense of governmental immunity, but the plaintiff did not plead a matter of avoidance that the identifiable person, imminent harm exception to governmental immunity applied.\textsuperscript{66} The trial court set aside the verdict in favor of the plaintiffs and the Appellate Court affirmed, holding that the plaintiffs never made the identifiable person, imminent harm exception to discretionary act immunity applicable to the case since it was neither pled in the complaint nor raised in the reply to the defendant’s special defense.\textsuperscript{67}

\textsuperscript{60} 120 Conn. App. 282, 283, 991 A.2d 681 (2010).
\textsuperscript{61} Id. at 284.
\textsuperscript{62} Id. at 287.
\textsuperscript{63} Id. at 286-87.
\textsuperscript{64} 122 Conn. App. 72, 73, 997 A.2d 636, cert. granted, 298 Conn. 907, 3 A.3d 70 (2010).
\textsuperscript{65} CONN. GEN. STAT. § 52-557n.
\textsuperscript{66} Haynes, 122 Conn. App. at 75-76, 80-81.
\textsuperscript{67} Id. at 82.
stressed that without a jury finding that the defendant’s negligence subjected the minor to imminent harm the plaintiffs could not prevail.68

VII. LESSOR LIABILITY

Rodriquez v. Testa69 held that 49 U.S.C. Section 30106,70 also known as the Graves Amendment, preempts state law imposing vicarious liability on the lessor of an uninsured

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68 Id.
69 296 Conn. 1, 3-5, 993 A.2d 955 (2010). Connecticut’s lessor liability statute, General Statutes § 14-154a, provides: “(a) Any person renting or leasing to another any motor vehicle owned by him shall be liable for any damage to any person or property caused by the operation of such motor vehicle while so rented or leased, to the same extent as the operator would have been liable if he had also been the owner. (b) The provisions of subsection (a) of this section shall not apply to: (1) Any person, with respect to the person’s lease to another of a private passenger motor vehicle, if the total lease term is for one year or more and if, at the time damages are incurred, the leased vehicle is insured for bodily injury liability in amounts of not less than one hundred thousand dollars per person and three hundred thousand dollars per occurrence and the vehicle is not subject to subdivision (2) of this subsection. As used in this section, “private passenger motor vehicle” means a: (A) Private passenger type automobile; (B) station-wagon-type automobile; (C) camper-type motor vehicle; (D) truck-type motor vehicle with a gross vehicle weight rating of less than ten thousand pounds, registered as a passenger motor vehicle, as defined in section 14-1, or as a passenger and commercial motor vehicle, as defined in said section, or used for farming purposes; or (E) a vehicle with a commercial registration, as defined in subdivision (12) of said section. Private passenger motor vehicle does not include a motorcycle or motor vehicle used as a public or livery conveyance. (2) Any person, with respect to the person’s lease to another of a truck, tractor trailer or tractor-trailer unit with a gross vehicle weight rating of ten thousand pounds or more if the total lease term is for one year or more, or the applicable contract term is one year or more, and if, at the time damages are incurred, the loss or claim is insured by any combination of coverage through an insurer, as defined in section 38a-363, in an amount of not less than two million dollars.”
70 49 U.S.C. § 30106 provides, in relevant part: “(a) In general.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if— (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner). (b) Financial responsibility laws.—Nothing in this section supersedes the law of any State or political subdivision thereof— (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.”
motor vehicle for damages caused by the negligent acts of
the lessee or an agent thereof. The Supreme Court began its
analysis by stating that the question of preemption is one of
federal law, arising under the supremacy clause of the
United States constitution. The Court went on to agree
with the defendant Daimler Chrysler that General Statutes
Section 14-154a is not the type of financial responsibility
statute or liability insurance law that qualifies for exemp-
tion from preemption under the savings clause of the Graves
Amendment. The Court also agreed with the defendant
that the Graves Amendment was a valid exercise of
Congressional power under the commerce clause of the
United States constitution.

VIII. NUISANCE

In *Sinotte v. City of Waterbury*, the plaintiffs, owners of
a home in Waterbury, sued the defendant municipality in,
*inter alia*, nuisance, alleging that sewage backups into their
home were caused by the defendant. The Appellate Court
agreed with the defendant that the plaintiff’s nuisance
claim was barred by General Statutes Section 52-584,
Connecticut’s two year statute of limitations for negligence
claims, rather than General Statutes Section 52-577,
Connecticut’s three year statute of limitations for tort
actions. The Court reiterated the elements of private nui-
sance: In order to recover, the plaintiff needs to demon-
strate that the defendant’s conduct was the proximate cause
of an unreasonable interference with the plaintiff’s use and
enjoyment of his or her property. The Court also noted that
the interference may be either intentional or the result
of the defendant’s negligence. The Court found that the
plaintiffs’ claim was predicated on negligence since it

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71 *Rodriguez*, 296 Conn. at 8.
72 *Id.* at 7-8.
73 *Id.* at 21-22.
74 121 Conn. App. 420, 422-23, 995 A.2d 131, *cert. denied*, 297 Conn. 921, 996
A.2d 1192 (2010).
75 *Id.* at 427-28.
76 *Id.* at 431.
77 *Id.*
alleged negligence in the construction and maintenance of the sewer system and, therefore, it found that the plaintiffs’ private nuisance claim was barred by Section 52-584.78 The plaintiffs also contended at the trial court failed to find that the defendant created a public nuisance.79 The Court restated the elements of an action in public nuisance: A plaintiff must prove that the condition complained of had a natural tendency to create danger and inflict injury upon a person or property; the danger created was a continuing one; the use of the land was unreasonable or unlawful; and the existence of the nuisance was the proximate cause of the plaintiff’s damages.80 The plaintiff must additionally establish that the condition or conduct complained of interferes with a right common to the general public.81 The Court disagreed with the plaintiffs, finding that sewage backups into the plaintiffs’ basement did not produce an injury common to the general public.82

IX. PREMISES LIABILITY

Humphrey v. Great Atlantic and Pacific Tea Company, Inc.83 clarified the applicability of the mode of operation rule adopted in Kelly v. Stop & Shop, Inc.84 In Humphrey, the trial court rendered judgment for the defendant after determining that the plaintiff failed to establish actual or constructive notice of the existence of grapes on the floor of the defendant supermarket.85 The plaintiff had raised the mode of operation rule in the trial court but before Kelly was released.86 Kelly had limited its application to future cases and to a certain class of then pending cases, namely, only those in which the trial had not yet commenced.87 The Supreme Court clarified its decision in Kelly by concluding

78 Id. at 429, 433-34.
79 Id. at 437-38.
80 Id. at 438.
81 Id.
82 Id. at 439.
83 295 Conn. 855, 933 A.2d 449 (2010).
84 281 Conn. 768, 918 A.2d 249 (2007).
85 Humphrey, 295 Conn. at 856.
86 Id. at 857.
87 Id.
that the limitation that it announced in *Kelly* applied only to a category of then-pending cases in which the plaintiff had not yet raised a claim under the mode of operation rule in the trial court.\(^{88}\)

*Fisher v. Big Y Foods*\(^{89}\) offered further definition to the mode of operation rule adopted in *Kelly v. Stop & Shop, Inc.*\(^{90}\) The plaintiff in *Fisher* while shopping at the defendant’s supermarket slipped on a puddle of liquid.\(^{91}\) The evidence also established that the liquid appeared undisturbed and that a porter had swept the area seven minutes prior to the fall.\(^{92}\) The evidence further established that customers removed items from the shelves, placed them in carts and sometimes caused spills.\(^{93}\) The case was submitted to the jury solely on the mode of operation theory.\(^{94}\) The Supreme Court reversed the judgment for the plaintiff and agreed with the defendant that the mode of operation rule “does not apply generally to all accidents caused by transitory hazards in self-service retail establishment, but rather, only to those accidents that result from particular hazards that occur regularly, or are inherently foreseeable, due to some

\(^{88}\) *Id.*

\(^{89}\) 298 Conn. 414, 3 A.3d 919 (2010).

\(^{90}\) *Kelly*, 281 Conn. at 768. The Court explained the application of the mode of operation rule as follows: Although the plaintiff will make out a prima facie case upon the introduction of proof from which the trier of fact reasonably could find that the defendant’s self service mode of operation gave rise to a foreseeable risk of injury to customers and that the plaintiff’s injury was proximately caused by an accident within a zone of risk, the trier is not obligated to conclude that the defendant was negligent. *Id.* at 810. The defendant may rebut the plaintiff’s evidence by producing evidence that it exercised reasonable care. *Id.* at 809. If the defendant produces such evidence, the burden is on the plaintiff to establish that the measures taken by the defendant to address a known hazard were not reasonable. *Id.* at 810-11. Turning to the facts of the subject case, the Court agreed with the plaintiff that evidence that the defendant was aware that customers regularly caused food items to fall from the salad bar and the plaintiff’s testimony that she slipped on a wet piece of lettuce was sufficient to allow a finding that the salad bar created a foreseeable risk of danger. *Id.* at 811. The Court further remarked that a trier of fact could reasonably find that the plaintiff’s fall was due to the defendant’s failure to take adequate precautions since the defendant was unable to produce sweeping logs and photographs in accordance with its own directives. *Id.* at 811-12.

\(^{91}\) *Fisher*, 289 Conn. at 416-17.

\(^{92}\) *Id.* at 417.

\(^{93}\) *Id.* at 417-18.

\(^{94}\) *Id.* at 420.
specific method of operation employed on the premises." The Court stated that the mode of operation exception was meant to be a narrow one and that a plaintiff who slips in a grocery store cannot survive summary judgment by merely raising the inference that the substance causing her fall came from within the store; the plaintiff must show that such spills were foreseeable in the specific area where she fell. The Court noted that a rule that presumptively established that a storekeeper’s negligence simply for having placed packaged items on shelves for customer selection and removal, without requiring any evidence that they were displayed in a particularly dangerous manner, would ignore the modern reality that all retail establishments operate in this way. The Court concluded by noting that when a plaintiff injured by a transitory hazardous condition at a self-service retail business fails to show that a particular mode of operation made the condition occur regularly or rendered it inherently foreseeable, the plaintiff must proceed under traditional premises liability doctrine and prove that the defendant had actual or constructive notice of the particular defect.

*James v. Valley-Shore Y.M.C.A, Inc.* affirmed the granting of the defendant’s motion for summary judgment on the basis of lack of notice of the alleged defect. The evidence submitted to the trial court revealed that the plaintiff while entering the defendant’s pool slipped and fell. The plaintiff was able to see clearly as she entered the pool and observed no substance or residue on the step. After the plaintiff’s fall her husband felt a slimy slippery algae-like

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95 *Id.* at 423. Justice Palmer dissented.
96 *Id.* at 437.
97 *Id.* at 438.
98 *Id.* at 439. The Court explained that in a traditional premises liability case, a business invitee must allege and prove that the defendant either had actual notice of the presence of a specific unsafe condition which caused the injury or constructive notice of it. *Id.* at 418, n. 9. The notice, whether actual or constructive must be of the very defect which caused the injury and not merely of conditions naturally productive of the defect even though subsequently in fact producing it. *Id.*
100 *Id.* at 176.
101 *Id.* at 180.
build-up on a step. The plaintiff confirmed that she did not know if the step that her husband examined was the same step on which she slipped. The plaintiff did not allege actual notice of the alleged unsafe condition but instead relied upon constructive notice. The Appellate Court reiterated that what constitutes a reasonable length of time within which the defendant should have discovered the condition is largely a question of fact to be decided in light of the circumstances of each case. The Court stated that evidence that goes no further than to show the presence of a slippery substance does not warrant an inference of constructive notice to the defendant. The Court further commented that the trier’s consideration must be confined to the defendant’s knowledge, and realization cannot be found to exist from a knowledge of the general or overall conditions obtaining on the premises. The Court stated that the plaintiff’s husband’s attestation that he felt a slippery residue pertained to the general conditions of the area and was insufficient to establish constructive notice. The Court additionally noted that there was no evidence that the allegedly defective condition existed for such a length of time that the defendant’s employees in the exercise of reasonable care should have discovered it in time to remedy it. The Court also rejected the plaintiff’s argument—that the law of notice in premises liability cases should be modified—in light of the decision in Riccio v. Harbour Village Condominium Assn., Inc. where the Supreme Court declined to consider the same argument made by the plaintiff.

*Umsteadt v. G.R. Realty* reversed the trial court for failing to deliver a request to charge in accordance with the

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102 Id. at 181.
103 Id.
104 Id. at 179.
105 Id.
106 Id.
107 Id. at 182.
108 Id. at 182-83.
109 Id. at 183.
111 James, 125 Conn. App. at 184.
112 123 Conn. App. 73, 1 A.3d 243 (2010).
rule set forth in *Kraus v. Newton*.\textsuperscript{113} The defendants appealed from the judgment denying their motion to set aside the jury verdict in favor of the plaintiff.\textsuperscript{114} The Appellate Court noted that inconsistency in the evidence at the time of trial concerning the weather and its effects did not militate against giving the *Kraus* charge.\textsuperscript{115} The Court stated that the evidence concerning the weather preceding and contemporaneous with the plaintiff’s fall provided a foundation for the defendants’ requested instruction based on *Kraus*.\textsuperscript{116}

The Appellate Court in *Leon v. DeJesus*\textsuperscript{117} affirmed the granting of summary judgment in favor of the defendant on the basis that the rule set forth in *Kraus v. Newton*\textsuperscript{118} barred the claim. The evidence presented to the trial court was that when the plaintiff entered and exited the defendant’s premises rain was falling, that when she arrived the steps were clear, and that the temperature was around freezing when she arrived and when she left the premises.\textsuperscript{119} The evidence further indicated that there was no salt or sand on the steps at the time that the plaintiff fell on ice that had formed on the steps.\textsuperscript{120} The Court stated that in order to determine whether a duty existed and the extent of the duty, it had to determine the foreseeability of the plaintiff’s injury.\textsuperscript{121} The Court continued by noting that due care does not require that one guard against eventualities which are too remote to be rea-

\textsuperscript{113} 211 Conn. 191, 558 A.2d 240 (1989). *Kraus* held that in the absence of unusual circumstances, a property owner, in fulfilling its duty owed to invitees upon his property to exercise reasonable care in removing dangerous accumulations of snow and ice, may await the end of a storm and a reasonable time thereafter before removing the ice and snow. *Id.* at 198. The Court continued in stating that its decision did not prevent the submission to the jury, where there is a proper evidentiary foundation, the determination as to whether a storm had ended or whether a plaintiff’s injury was caused by new ice or old ice when the effects of separate storms converge. *Id.* at 197-98. See also *Sinert v. Olympia & York Devt. Co.*, 38 Conn. App. 844, 664 A.2d 791, *cert. denied*, 235 Conn. 927, 667 A.2d 553 (1995).

\textsuperscript{114} *Umsteadt*, 123 Conn. App. at 74.

\textsuperscript{115} *Id.* at 82.

\textsuperscript{116} *Id.* at 81-83.

\textsuperscript{117} 123 Conn. App. 574, 2 A.3d 956 (2010).

\textsuperscript{118} *Kraus*, 211 Conn. at 191. The rule regarding the possessor of land’s duty with respect to ongoing storms in set forth in the above note.

\textsuperscript{119} *Leon*, 123 Conn. App. at 575, 578.

\textsuperscript{120} *Id.* at 575.

\textsuperscript{121} *Id.* at 576-77.
reasonably foreseeable and that due care is always predicated on the existing circumstances. The Court restated the rule that, in the absence of unusual circumstances, the possessor of land may await the end of a storm and a reasonable time thereafter before removing ice and snow to fulfill the duty of reasonable care owed to invitees. The Court concluded that the rule in Kraus applied to the case and that the precipitation was either a continuation of a storm from the previous evening or the onset of a new storm.

The plaintiff faired better in Berlinger v. Kudej in successfully arguing that the trial court erred in granting the defendant’s motion for summary judgment. The Appellate Court found that there was conflicting evidence as to whether the driveway where the plaintiff fell contained an icy accumulation prior to the morning of the accident and, therefore, the trial erred in rendering summary judgment as litigants have a constitutional right to have factual issues resolved by the jury.

Duncan v. Mill Management Company of Greenwich, Inc. reversed the judgment for the plaintiff because the trial court erred in admitting evidence of a subsequent remedial measure taken by the defendants after the plaintiff was injured on a stairway. The plaintiff, who was president of the board of directors for the condominium association, alleged that access to the area she was descending from did not comply with the town building code. The defendants maintained that evidence that they constructed a new stairway was admitted in error since they conceded the issue of feasibility and there was no basis for impeachment with the evidence. The plaintiff argued that the

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122 Id. at 577.
123 Id.
124 Id. at 578.
126 Id. at 436-37.
128 Id. at 417-18.
129 Id. at 418. Connecticut Code of Evidence § 4-7 provides: “(a) General rule. Except as provided in subsection (b), evidence of measures taken after an event, which if taken before the event would have made injury or damage less likely to result, is inadmissible to prove negligence or culpable conduct in connection with
subsequent remedial measure was admissible since the defendant property manager denied that he could have had the construction done without the approval of the defendant’s board of directors and that the evidence was admissible to show the feasibility of construction.\textsuperscript{130} The Appellate Court stated that the plaintiff sought to prove that the defendants had the new stairs built to establish the defendant’s negligence and that the evidence did not go to the feasibility of the construction.\textsuperscript{131} The Court noted that an evidentiary ruling will result in a new trial only where the ruling was wrong and harmful.\textsuperscript{132} The Court found that the ruling was harmful since whether the stairs were properly constructed was a central issue in the case.\textsuperscript{133}

The summary judgment in favor of the defendants was sustained on appeal in \textit{Fiorelli v. Gorsky}.\textsuperscript{134} The defendants argued that they were not responsible for the motor vehicle accident that occurred on premises that they owned but leased to a bank.\textsuperscript{135} The plaintiff maintained that several portions of the ground lease supported a finding that the defendants retained control of the premises; namely, the tenant was to observe rules established by the landlord, the tenant could not make changes to the demised premises except with approval of the landlord, the tenant could not place signs without approval of the landlord, and if the tenant was in default under the lease the landlord agreed to maintain the parking areas.\textsuperscript{136} The Appellate Court stated that unless it is definitely expressed in the lease, the circumstances of

\begin{itemize}
\item \textsuperscript{130}Duncan, 124 Conn. at 422.
\item \textsuperscript{131}Id.
\item \textsuperscript{132}Id. at 423-24. The standard in a civil case for determining whether an erroneous ruling was harmful is whether the ruling likely would have affected the result. Id. In addition, if the improperly admitted evidence is merely cumulative, then reversal is not required. Id. at 424.
\item \textsuperscript{133}Id. at 425.
\item \textsuperscript{134}120 Conn. App. 298, 991 A.2d 1105, \textit{cert. denied}, 298 Conn. 933, 10 A.3d 517 (2010).
\item \textsuperscript{135}Id. at 301.
\item \textsuperscript{136}Id. at 306-08.
\end{itemize}
the particular case determine whether the landlord has reserved control of the premises or whether they were under the control of the tenant.\textsuperscript{137} The Court continued in stating that where the issue of control is expressed in the lease, then control becomes a question of law.\textsuperscript{138} The Court turned to the subject lease which provided that the tenant assumed responsibility for the condition of the demised premises and concluded that the lease, when read as a whole, indicated that the defendants did not retain control.\textsuperscript{139}

\section*{X. Professional Liability}

In \textit{Law Offices of Robert K. Walsh, LLC v. Natarajan},\textsuperscript{140} the plaintiff sued the defendant for nonpayment of legal fees and the defendant counterclaimed, alleging legal malpractice by withdrawing from her dissolution case on the eve of trial. The trial court found for the plaintiff on the complaint and on the counterclaim; specifically, on the counterclaim the court concluded that the defendant failed to prove causation or damages and that the defendant failed to offer expert testimony as to how the lack of legal representation at the dissolution trial harmed her.\textsuperscript{141} The Appellate Court held, as a matter of law, that the defendant’s claims of professional malpractice required expert testimony since the claims did not involve an obvious and gross want of care.\textsuperscript{142}

\textit{Klein v. Norwalk Hospital}\textsuperscript{143} was a medical malpractice case against the defendant hospital for the alleged improper insertion into the plaintiff’s arm of an intravenous line by one of its employees. On appeal, the plaintiff argued that

\begin{itemize}
\item \textsuperscript{137} \textit{Id.} at 308-09.
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.} at 309-10.
\item \textsuperscript{140} 124 Conn. App. 860, 861, 7 A.3d 391 (2010).
\item \textsuperscript{141} \textit{Id.} at 863. The Court stated that in a legal malpractice case a party must offer expert testimony as to the standard of care and to establish that the attorney’s acts or omissions caused the plaintiff’s injuries. \textit{Id.} at 863-64. Typically, the plaintiff proves causation by introducing evidence of what would have happened in the underlying matter had the defendant not been negligent. \textit{Id.} at 864. Expert testimony, however, is not needed where the attorney has essentially done nothing to represent her client’s interests, resulting in an obvious and gross want of care and skill. \textit{Id.}
\item \textsuperscript{142} \textit{Id.}
\item \textsuperscript{143} 299 Conn. 241, 245, 9 A.3d 364 (2010).
\end{itemize}
the trial court erred in precluding the plaintiff’s medical expert from testifying about causation.\textsuperscript{144} The Supreme Court agreed, stating that the plaintiff’s disclosure of his expert adequately complied with Practice Book Section 13-4, that the disclosure made it clear that the expert would testify as to what caused the plaintiff’s alleged injury and that the disclosure implicitly indicated that the expert could be expected to testify about what was not the cause of the plaintiff’s alleged injury.\textsuperscript{145} The Court further found the error to be harmful and that the plaintiff was entitled to a new trial.\textsuperscript{146} In addition, the Court addressed the plaintiff’s argument that the trial court erred in ruling, after a \textit{State v. Porter}\textsuperscript{147} hearing, that the defendant’s medical expert was permitted to testify, based solely on the review of the plaintiff’s medical records and deposition testimony, as to the cause of the plaintiff’s alleged injury.\textsuperscript{148} The Court stated that the defendant made no showing that its expert’s methodology had been subjected to peer review, nor was the expert able to identify a likely rate of error for his chosen methodology.\textsuperscript{149} The Court noted that the defendant’s expert’s extensive experience was insufficient to allow him to testify since the precise methodology employed by the expert—a review of the treating doctor’s records for diag-

\begin{footnotesize} 
144 Id. at 249-52.
145 Id. at 251-52.
146 Id. at 254-59. The Supreme Court stated that the test of whether an evidentiary error in a civil case is harmful is whether the reviewing court has a fair assurance that the ruling did not affect the jury’s verdict. Id. at 254-55.
147 241 Conn. 57, 698 A.2d 739 (1997). In \textit{Porter}, the Connecticut Supreme Court followed the United States Supreme Court’s decision in \textit{Daubert v. Merrell Dow Pharmaceuticals, Inc.}, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and held that scientific evidence should be subjected to a test to determine its reliability. See \textit{Maher v. Quest Diagnostics, Inc.}, 269 Conn. 154, 168, 847 A.2d 978 (2004). Under \textit{Porter}, the proponent of the scientific evidence and any testimony that depends on that evidence bears the burden of showing that the methodology underlying the evidence is reliable and that any testimony reliant on that evidence is in fact based on that methodology. \textit{Klein}, 299 Conn. at 261. The trial court must consider: general acceptance in the relevant scientific community; whether the methodology underlying the scientific evidence has been tested and subjected to peer review; the known or potential rate of error; the prestige and background of the expert witness; the extent to which the technique relies upon subjective judgments made by the expert as opposed to objectively verifiable criteria; whether the expert can present and explain the data and methodology; and whether the technique or methodology was developed solely for purposes of litigation. Id. at 261-62.
148 \textit{Klein}, 299 Conn. at 260.
149 Id. at 262.
\end{footnotesize}
nostic purposes—did not provide a basis that it was itself reliable. The Court stated that an exclusion from the ambit of *Porter* is reserved for scientific evidence, and its underlying methodology, that is considered so reliable within the relevant community that there is little or no real debate as to its validity, such as the laws of thermodynamics. The Court stated that if the defendant’s expert opinion was to be offered again at a new trial, the defendant would need to make a showing of the reliability of the methodology that underlied the testimony.

The outcome of *Kairon v. Burnham* also turned on the application of *State v. Porter*. After an evidentiary hearing, the trial court granted the defendant’s motion in limine to preclude the testimony of the plaintiff’s expert. The plaintiff argued that the testimony scientifically established that she had suffered an adverse reaction to the inappropriate sutures that the defendant surgeon had used in performing her face-lift. The Appellate Court rejected the plaintiff’s position since the argument assumed that it was irrelevant whether, in fact, the defendant had used sutures that were inappropriate and because the plaintiff’s expert could offer no independent evidence on this issue. The plaintiff’s expert also admitted that even appropriate sutures occasionally caused patients to suffer adverse reactions. The Court affirmed, remarking that it was improper to assume that one of several possible causes could have produced the injury.

150 *Id.* at 263-64.
151 *Id.*
152 *Id.* at 264-65. It is important that the Supreme Court noted that the diagnosis by an expert based only upon medical records can and frequently does satisfy the mandates of *Porter*. *Id.*, n. 14. The diagnosis on the basis of a record review can be established as reliable even in the absence of a *Porter* hearing when the testimony concerns a common and indisputable medical condition. *Id.* See *Hayes v. Decker*, 263 Conn. 677, 688-89, 822 A.2d 228 (2003) (the effects of the discontinuation of blood pressure medicine).
154 *Porter*, 241 Conn. at 57.
155 *Kairon*, 120 Conn. App. at 293.
156 *Id.* at 296.
157 *Id.*
158 *Id.*
159 *Id.* at 297.
Pin v. Kramer\textsuperscript{160} reversed and remanded a medical malpractice case where the jury had returned a defendants’ verdict. The plaintiffs argued that the trial court erred in denying their motion for a mistrial or for a curative instruction after the defendants’ expert testified that he would have ordered additional radiology tests because of the need to practice defensive medicine in order to protect against malpractice litigation.\textsuperscript{161} The Appellate Court noted that the trial court has wide discretion in ruling on motions for mistrial and the trial court’s decision is reversible on appeal only if there has been an abuse of discretion.\textsuperscript{162} The Court further stated that if a curative instruction can obviate the prejudice, the remedy of a mistrial should be avoided.\textsuperscript{163} The Court found that the trial court’s failure to issue a curative instruction in light of the inflammatory and prejudicial testimony was an abuse of discretion that likely influenced the jury’s deliberations since the testimony introduced a highly controversial and legally improper issue into the case.\textsuperscript{164}

Williams v. Hartford Hospital\textsuperscript{165} affirmed the dismissal of the plaintiff’s medical practice action against the defendants, a board-certified anesthesiologist and his anesthesiology group, because the plaintiff’s opinion letters, authored by a board-certified neurologist and a board-certified internist, were not authored by “a similar health care provider” to satisfy the requirement contained in General Statutes Section 52-190a(a).\textsuperscript{166} The Appellate Court found that neither opinion letter attached to the plaintiff’s com-

\textsuperscript{160} 119 Conn. App. 33, 986 A.2d 1101, cert. granted in part, 295 Conn. 911, 989 A.2d 1074 (2010).
\textsuperscript{161} Id. at 35, 39, 43.
\textsuperscript{162} Id. at 42.
\textsuperscript{163} Id. at 43.
\textsuperscript{164} Id. at 45-46.
\textsuperscript{165} 122 Conn. App. 597, 598-99, 1 A.3d 130 (2010).
\textsuperscript{166} General Statutes § 52-190a(a) sets forth the requirement that a plaintiff’s complaint in a medical malpractice action contain a written and signed opinion by a similar health care provider as defined in General Statutes § 52-184c. See Williams, 122 Conn. App. at 599. General Statutes § 52-184c(c) provides that if the defendant health care provider is certified by the appropriate board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, then a “similar health care provider” is one who is trained and experienced in the same specialty and is certified by the appropriate board in the same specialty. Id. at 600.
plaint was authored by a health care provider who satisfied the statutory criteria.\textsuperscript{167}

\textit{Wilcox v. Schwartz}\textsuperscript{168} reversed the trial court’s dismissal of the plaintiff’s medical malpractice action, holding that the written opinion letter accompanying the complaint pursuant to General Statutes Section 52-190a(a) contained sufficient detail to satisfy the statute.\textsuperscript{169} The Appellate Court noted that the opinion was sufficient since it set forth the standard of care and that the defendant breached the standard of care.\textsuperscript{170}

In an effort to promote early mediation in medical malpractice matters, Section 5 of Public Act 10-122, effective July 1, 2010, was passed. The Act requires mandatory mediation before the presiding judge or another designated judge. If the matter does not settle at that mediation and the parties agree to further mediation, the court shall refer the matter to an attorney who has experience in medical malpractice cases.

XI. SOVEREIGN IMMUNITY

\textit{Hicks v. State}\textsuperscript{171} held that the doctrine of sovereign immunity bars a claim for postjudgment interest pursuant to General Statutes Section 37-3b\textsuperscript{172} against the defendant.

\begin{footnotes}
\item[167] Id.
\item[168] 119 Conn. App. 808, 809-10, 990 A.2d 366, cert. granted, 296 Conn. 908, 993 A.2d 469 (2010).
\item[169] General Statutes § 52-190a(a) provides that the plaintiff’s attorney shall obtain a written and signed opinion, of a similar health care provider, that there appears to be evidence of medical negligence and a detailed basis for the formation of the opinion must be provided.
\item[170] Wilcox, 119 Conn. App. at 815-17.
\item[171] 297 Conn. 798, 799-800, 1 A.3d 39 (2010).
\item[172] General Statutes § 37-3b provides: “(a) For a cause of action arising on or after May 27, 1997, interest at the rate of ten per cent a year, and no more, shall be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date that is twenty days after the date of judgment or the date that is ninety days after the date of verdict, whichever is earlier, upon the amount of the judgment. (b) If any plaintiff in such action files a postverdict or postjudgment motion or an appeal, the recovery of interest by such plaintiff shall be tolled and interest shall not be added to the judgment for the period that such postverdict or postjudgment motion or appeal is pending before the court. The provisions of this subsection shall not apply if the reason for the filing of a postverdict or postjudgment motion or appeal by the plaintiff is to reply to or answer a motion or appeal filed by a defendant.”
\end{footnotes}
state of Connecticut in a motor vehicle negligence action brought pursuant to General Statutes Section 52-556.\footnote{173}{General Statutes § 52-556 provides: “Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury.”}  

In an opinion adopted by the Supreme Court on appeal, the trial court in \textit{Woodruff v. Hemingway}\footnote{174}{51 Conn. Sup. 461, 467, 2 A.3d 1045, aff’d, 297 Conn. 317, 2 A.3d 857 (2010).} granted the defendant’s motion to dismiss for lack of subject matter jurisdiction. The defendant contended that at the time of the motor vehicle accident she had with the plaintiff, she was an employee of the state and was in her course of her employment with the Connecticut National Guard.\footnote{175}{Id. at 462.} The court agreed with the defendant that as a state employee within the scope of her employment she was immune from liability pursuant to General Statutes Section 4-165\footnote{176}{General Statutes § 4-165 provides in part: “No state officer of employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment....”} and that the plaintiff could proceed only against the state to recover damages for personal injuries sustained in a motor vehicle with a state official or employee pursuant to General Statutes Section 52-556.\footnote{177}{Woodruff, 51 Conn. Sup. at 464-66.}

\section*{XII. Statute Of Limitations}

The relation back doctrine was central to the disposition of \textit{Sherman v. Ronco}.\footnote{178}{294 Conn. 548, 985 A.2d 1042 (2010).} The defendant moved for summary judgment as to specific counts of the plaintiff’s amended substitute complaint based on the statute of limitations set forth in General Statutes Section 52-577d.\footnote{179}{Id. at 550-52. General Statutes § 52-577d provides: “Notwithstanding the provisions of section 52-577, no action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation or sexual assault may be brought by such person later than thirty years from the date such person attains the age of majority.”} The Supreme Court, in upholding the granting of the summary judgment, explained that a party may amplify or expand what has
already been alleged in support of a cause of action, provided that the identity of the action remains substantially the same.\textsuperscript{180} The Court continued in stating that if a new cause of action is alleged in an amended complaint, it will speak as of the date it was filed.\textsuperscript{181} The Court stated that if an alternative theory of liability may be supported by the original factual allegations, then the fact that an amendment adds a new theory of liability is not a bar to the application of the relation back doctrine.\textsuperscript{182} However, if the new theory of liability is not supported by the original factual allegations of the earlier complaint and would require the presentation of new and different evidence, the amendment does not relate back.\textsuperscript{183} Turning to the two complaints before it, the Court observed that in contrast to the negligent supervision count in the original complaint, all three of the counts in the amended substitute complaint alleged intentional torts and would rely on different facts than those necessary to prove negligence.\textsuperscript{184}

XIII. Trial Practice

In \textit{Costantino v. Skolnick},\textsuperscript{185} the Supreme Court concluded that the trial court properly denied the plaintiff’s request for a declaratory judgment that the defendant insurer, the medical malpractice insurer for the named defendant, was required to pay the plaintiff offer of judgment interest that exceeded the limits of the policy. The parties had entered into a settlement agreement that required that the defen-

\textsuperscript{180} \textit{Sherman}, 294 Conn. at 555.
\textsuperscript{181} \textit{Id}.
\textsuperscript{182} \textit{Id}. at 563.
\textsuperscript{183} \textit{Id}. In \textit{Gurlacci v. Mayer}, 218 Conn. 531, 590 A.2d 914 (1991), the amendment related back where the initial complaint alleged that the defendant negligently operated a vehicle while intoxicated and the amendment added allegations that the defendant’s behavior was willful, wanton or malicious. \textit{Gurlacci} can be contrasted with \textit{Sharp v. Mitchell}, 209 Conn. 59, 546 A.2d 846 (1988), where the amendment did not relate back because the plaintiffs first claimed that the defendant was liable on the basis of negligent supervision and the subsequent amendment alleged that the defendant negligently designed and constructed the underground storage area where the decedents suffocated.
\textsuperscript{184} \textit{Sherman}, 294 Conn. at 560.
\textsuperscript{185} 294 Conn. 719, 722-24, 988 A.2d. 257 (2010).
dant insurer pay its policy limit to the plaintiff and under which they stipulated that the agreement would be considered a verdict and judgment in favor of plaintiff for purposes of the offer of judgment statute, General Statutes Section 52-192a, and that the plaintiff would have been entitled to offer of judgment interest had the case been tried to conclusion.\(^{186}\) The Supreme Court concluded that the parties’ stipulations did not satisfy the necessary predicate to an award of judgment interest, namely, a judgment in the plaintiff’s favor after a trial.\(^{187}\) The Court looked to the language of Section 52-192a(b) which stated in relevant part: “After trial the court shall examine the record to determine whether the plaintiff made an ‘offer of judgment’ which the defendant failed to accept.”\(^{188}\) The Court stated that this language was clear that the trial court was authorized to award offer of judgment interest only after a trial and a settlement was clearly not a trial.\(^{189}\)

In *Wiseman v. Armstrong*,\(^{190}\) the Supreme Court agreed with the plaintiff that Practice Book Section 16-32\(^{191}\) imposes a mandatory duty in a civil case to poll the jury when requested to do so by a party, but also agreed with the defendants that the failure to do so should be subject to harmless error review. The plaintiff claimed that because

\(^{186}\) *Id.*

\(^{187}\) *Id.* at 723.

\(^{188}\) *Id.* at 733-34. General Statutes § 1-2z provides: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

\(^{189}\) *Costantino*, 294 Conn. at 733-34.

\(^{190}\) 295 Conn. 94, 98, 989 A.2d 1027 (2010). The plaintiff brought a wrongful death action wherein she alleged that the decedent’s death was caused by the defendant’s indifference to the decedent’s medical needs and due to the use of excessive force. The jury returned a defense verdict and the trial court denied the plaintiff’s request to have the jury polled. *Id.* at 96-97.

\(^{191}\) Practice Book § 16-32 provides: “Subject to the provisions of Section 16-17, after a verdict has been returned and before the jury has been discharged, the jury shall be polled at the request of any party or upon the judicial authority’s own motion. The poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror’s verdict. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or it may be discharged.”
Practice Book Section 42-31 has been construed to impose a mandatory duty to poll, Section 16-32 should be similarly construed. As a preliminary matter, the Court stated that the rules of statutory interpretation apply with equal force to the interpretation of the rules of practice and that the interpretation of a Practice Book provision involves a question of law. The Court concluded that the poll is a substantive right established by Section 16-32 and imposed a mandatory duty. The Court next applied the harmless error standard in civil cases; namely, whether the improper ruling would likely affect the result. The Court rejected the per se reversible error rule applied in criminal cases since criminal matters center on the fundamental and constitutional rights of a defendant and such concerns are inapplicable in civil cases. The Court found that there was no evidence of harm to the plaintiff, noting that the jury did not send any notes to the judge indicating a lack of agreement and the jury was able to answer eleven pages of interrogatories without any inconsistencies.

*Ackerman v. Sobol Family Partnership, LLP* addressed a motion to enforce a settlement agreement and although it

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192 Practice Book § 42-31 provides: “After a verdict has been returned and before the jury has been discharged, the jury shall be polled at the request of any party or upon the judicial authority’s own motion. The poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror’s verdict. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or it may be discharged.” This section imposes a mandatory duty on the trial court to poll the jury in a criminal case when requested and the denial of the defendant’s request to poll the jury in a criminal case is *per se* reversible error. See State v. Pare, 253 Conn. 611, 625, 639, 755 A.2d 180 (2000).


194 *Id.* at 99.

195 *Id.* at 101. “The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience....If it is a matter of substance, the statutory provision is mandatory.... If, however, the ... provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory....” (Internal quotation marks omitted.) *Weems v. Citigroup, Inc.*, 289 Conn. 769, 790, 961 A.2d 349 (2008).

196 *Wiseman*, 295 Conn. at 106.

197 *Id.* at 117-18.

198 *Id.* at 120-21. Chief Justice Rogers and Justice Katz dissented from the harmless error analysis.

199 298 Conn. 495, 4 A.3d 288 (2010).
is not a tort case, the issues involving apparent authority and whether there is a right to a jury trial on issues raised in the motion are universal to litigation. The plaintiffs alleged, inter alia, the following theories: breach of contract, breach of fiduciary duty, unjust enrichment, civil conspiracy and violation of the Connecticut Unfair Trade Practices Act. A dispute occurred as to whether a settlement agreement had been reached and the trial court held a hearing on the defendants’ motions to enforce the settlement agreement. On appeal, the plaintiffs contended that the trial court’s enforcement of the agreement, based on a finding of apparent authority on the part of the plaintiff’s attorney to bind the plaintiffs to the agreement, was clearly erroneous. The Supreme Court observed that although it was hornbook law that clients generally are bound by the acts of their attorneys, the mere act of retaining a lawyer in a litigated matter does not, by that act alone, create apparent authority to settle a matter without the client’s assent. The Court further stated that a valid settlement agreement need not be in writing and that oral settlement agreements are enforceable. The Court concluded that the trial court’s finding that the plaintiffs’ attorney had apparent authority was supported by the evidence. The plaintiffs additionally sought review under State v. Golding or the plain error review standard.

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200 Id. at 499.
201 Id. The hearing was held pursuant to Audubon Parking Associates Ltd. Partnership v. Barclay & Stubbs, Inc., 225 Conn. 804, 626 A.2d 729 (1993). The hearing is conducted to determine whether the terms of the settlement agreement are sufficiently clear and unambiguous so as to be enforceable as a matter of law. Id. at 811-12.
202 Ackerman, 298 Conn. at 498. Apparent authority exists where the principal held the agent out as possessing sufficient authority to embrace the act in question and knowingly allowed him to act as possessing such authority, and, in consequence thereof, the person dealing with the agent acting in good faith reasonably believed under all the circumstances that the agent had the required authority. Id. at 504. The Supreme Court set for the standard of review: The nature and extent of an agent’s authority is a question of fact for the trier and, accordingly, the trial court’s findings are reviewed under the clearly erroneous standard. Id. at 507.
203 Id. at 509-12.
204 Id. at 529.
205 Id. at 530.
206 213 Conn. 233, 567 A.2d 823 (1989). The Golding review standard applies in civil and criminal cases. Ackerman, 298 Conn. at 531, n. 18. Under Golding, a claim of constitutional error not preserved for trial can prevail only if all of the fol-
doctrine\textsuperscript{207} of their unpreserved claim that they had a constitutional right to a jury trial on the factual question of whether there was a settlement.\textsuperscript{208} The Court rejected this argument, holding that the plaintiffs had no right to a jury trial in connection with enforcement of the settlement agreement because a claim of specific performance invokes the trial court’s equitable powers and there is no right to a jury trial in an equitable action.\textsuperscript{209}

\textit{Tayco Corporation v. Planning and Zoning Commission}\textsuperscript{210} held that for the purposes of General Statutes Section 52-593a\textsuperscript{211} delivery of process to the marshal must be made within the applicable limitations period and that delivery is not complete until the marshal is given instruction to

\begin{itemize}
  \item the record is adequate to review the claim;
  \item the claim is of constitutional magnitude alleging the violation of a fundamental right;
  \item the alleged constitutional violation clearly exists and deprived the party of a fair trial; and
  \item if subject to harmless error analysis, the state failed to demonstrate harmlessness of the alleged constitutional violation.
\end{itemize}

\textit{Id.} at 531.

\textsuperscript{207} Practice Book § 60-5 provides, in part: “The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court....”

\textsuperscript{208} \textit{Ackerman}, 298 Conn. at 530-31. Connecticut Constitution, Art. I, § 19, as amended by article four of the amendments, provides in part: “The right to a trial by jury shall remain inviolate....”

\textsuperscript{209} \textit{Id.} at 530-37.

\textsuperscript{210} 294 Conn. 673, 688, 986 A.2d 290 (2010).

\textsuperscript{211} General Statutes § 52-593a provided:“(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal authorized to serve the process and the process is served, as provided by law, within thirty days of the delivery.

(b) In any such case, the state marshal making service shall endorse under oath on such state marshal’s return the date of delivery of the process to such state marshal for service in accordance with this section.”

Effective July 1, 2010, Section 52-593a was amended and clarified to require that the process must be delivered to the marshal within the limitation period. P.A. 10-36, § 11 (Reg. Sess.) provides:

“(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal, constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery.

(b) In any such case, the officer making service shall endorse under oath on such officer’s return the date of delivery of the process to such officer for service in accordance with this section.”
effectuate service. The Supreme Court could not determine on the record whether the marshal received instruction to serve process on the defendant so the matter was remanded to the trial court to make such a determination.\textsuperscript{212} The Court stated that if the trial court found that the marshal did not receive instruction to serve process on the defendant within the applicable limitation period, then the motion to dismiss should be granted.\textsuperscript{213} On the other hand, if the trial court found that plaintiff’s counsel instructed the marshal to make service within the limitation period, then the Court retained jurisdiction over the appeal for review of other issues raised by the defendant.\textsuperscript{214}

The Appellate Court in \textit{Vestuti v. Miller}\textsuperscript{215} reversed the trial court’s granting of the defendant’s motion for summary judgment, holding that there was a genuine issue of material fact as to the plaintiff’s ability to bring suit under the accidental failure of suit statute, General Statutes Section 52-592.\textsuperscript{216} In the underlying action, neither the plaintiff’s attorney nor the plaintiff appeared at a pretrial conference and the trial court granted the defendant’s motion for judgment of nonsuit.\textsuperscript{217} In ruling on the defendant’s motion for summary judgment in the subsequent action brought under the accidental failure of suit statute, the trial found, as a matter of law, that the disciplinary nonsuit in the original action was not “for any matter of form.”\textsuperscript{218} The Court noted that disciplinary dismissals were not categorically excluded under the accidental failure of suit statute; rather, whether the plaintiff is entitled to relief depends on the nature and extent of the conduct that led to the dismissal.\textsuperscript{219} The Court

\begin{footnotes}
\begin{enumerate}
\item [212] \textit{Tayco Corp.}, 294 Conn. at 688.
\item [213] \textit{Id.}
\item [214] \textit{Id.}
\item [216] General Statutes § 52-592 provides, in part: “(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits ... for any matter of form ... the plaintiff ... 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....”
\item [217] \textit{Vestuti}, 124 Conn. App. at 139-40.
\item [218] \textit{Id.} at 143.
\item [219] \textit{Id.} at 143-44.
\end{enumerate}
\end{footnotes}
reversed since the trial court failed to consider the plaintiff’s justification for failing to attend the pretrial.220

In *Baranowski v. Safeco Insurance Company of America*,221 the Appellate Court held that the trial court did not abuse its discretion in finding the plaintiff’s proposed expert unqualified and therefore precluding the testimony of the plaintiff’s expert witness. The plaintiff sued the defendant insurance agent in negligence and for violating Connecticut’s Unfair Trade Practices Act, General Statutes Section 42-110a *et seq.*222 The gravamen of the action was that the defendant agent failed to offer underinsured motorist conversion coverage to the plaintiff or to ensure that he knowingly rejected it after being fully and fairly informed.223 The Court reiterated the standard as to whether expert testimony should be admitted: Expert testimony should be admitted when (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues.224 The record supported the trial court’s finding that although the proffered expert could qualify as an expert in some respect, she did not know the applicable standard of care of insurance agents in Connecticut during the relevant time frame.225

Whether expert testimony was necessary was essential to the disposition of *Utica Mutual Insurance Company v. Precision Mechanical Services, Inc.*226 The defendant maintained that the trial court erred in concluding that the plaintiff insurer in a subrogation action established the

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220 Id. at 145-47.
222 Id. at 89.
223 Id.
224 Id. at 94-95. Connecticut Code of Evidence § 7-2 provides: “A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.”
225 Id. at 95-97.
applicable standard of care in the absence of expert testimony.\textsuperscript{227} The plaintiff sued the defendant, a mechanical contractor, for negligent operation of a plumber’s torch resulting in damage to property insured by the plaintiff.\textsuperscript{228} The Appellate Court stated that whether expert testimony is required is a legal determination.\textsuperscript{229} The Court further stated that in a negligence case, expert testimony is required if the determination of the standard of care requires knowledge that is beyond the experience of a normal fact finder.\textsuperscript{230} The Court additionally stated that although expert testimony may be admissible, it is required only when the question goes beyond the field of ordinary knowledge and experience of the trier of fact.\textsuperscript{231} The Court held that whether a reasonable person should operate a torch within the vicinity of combustible materials does not go beyond the field of the ordinary knowledge and experience of the trier of fact and, accordingly, expert testimony was not required to determine if the defendant’s performance complied with the requisite standard of care.\textsuperscript{232} The Court observed that a plaintiff may prove the standard of care through the testimony of a defendant.\textsuperscript{233} The defendant as an expert witness is not required to express an opinion that she breached the standard of care in order for the

\textsuperscript{227} Id. at 449-52.
\textsuperscript{228} Id. at 451-52.
\textsuperscript{229} Id. at 454.
\textsuperscript{230} Id. There is an exception to this rule where there is such an obvious and gross want of care and skill that the neglect is clear even to a layperson. Id., n. 6. Because the Appellate Court concluded that expert testimony was not required—the question did not go beyond the field of ordinary knowledge and experience of the trier of fact—the exception was not applied to the analysis. Id.
\textsuperscript{231} Id. at 455. The Appellate Court provided some examples from prior case law where expert testimony was not required: negligent boat maintenance; detrimental effects of marijuana; effect of operating gasoline station on traffic safety; injuries sustained on the plaintiff’s property were caused by the defendant’s blasting; negligence in failing to erect a porch railing; that a fence erected around an area where blasting occurred was insufficient to guard against injuries; and obscenity of certain materials are obscene as to minors. Id. & n. 9. Another example is found in Kowalewski v. Mutual Loan Co., 159 Conn. 76, 80, 266 A.2d 379 (1970), where it was held that expert testimony was not needed as to whether the maintenance of a porch roof without a gutter and a depression at the end of a walk during freezing weather was reasonably safe for use by a tenant.
\textsuperscript{232} Id. at 456.
\textsuperscript{233} Id. See LePage v. Horne, 262 Conn. 116, 809 A.2d 505 (2002).
plaintiff to prevail. The plaintiff need only have produced sufficient expert testimony to permit the trier of fact to infer on the basis of its findings that the defendant breached the standard of care. The Court concluded by noting that although expert testimony was not required in the case before it, the defendant’s employee—a licensed and experienced plumber—testified that it would be a violation of the standard of care if a torch was used in the immediate vicinity of paper-backed insulation.

DiPietro v. Farmington Sports Arena, LLC reversed the granting of the defendants’ motion for summary judgment, holding that the plaintiff’s claim was governed by the law of premises liability and that plaintiff’s expert’s opinion was admissible for the purposes of the summary judgment proceeding. The plaintiff’s minor daughter was injured while playing soccer at an indoor soccer facility operated by one or more of the defendants. The Appellate Court stated that for the purposes of an expert opinion, the expert’s personal knowledge of facts is comprised of those materials he may properly consider in rendering his opinion, including hearsay. The Court further noted that an expert’s opinion may be based on secondhand sources, such as training, experience and information obtained from others. The Court pointed out that Connecticut Code of Evidence Section 7-4 provides that the facts that form the foundation of the expert’s opinion need not be admissible in evidence if the facts are of the type customarily relied on by experts in

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234 Id. at 456-57.
235 Id. at 457.
236 Id.
238 Id. at 585. Two of the defendants also contended that the plaintiff was not entitled to rely upon General Statutes § 52-593, the so-called “wrong defendant statute” since the plaintiff never made an effort to sue them before the statute of limitations expired. Id. at 592-93. The defendants arguing that this statute was triggered only where the plaintiff made a good faith effort to name the proper party in the earlier action. Id. at 595. The Appellate Court rejected the defendant’s proposed interpretation of this statute and declined to require the plaintiff to dispel an element of fault to avail herself of the statute. Id. at 595.
239 Id. at 613.
240 Id. at 614.
the particular field in forming opinions on the subject.\footnote{Id.} With respect to the plaintiff’s case, the Court stated that the expert’s personal knowledge of how the injury occurred as related by the plaintiff’s counsel as described by the plaintiff’s daughter and the plaintiff’s husband, along with experiments he and his colleagues conducted of the specific shoes being used and the actual carpet, was sufficient for the expert’s opinion to be admissible.\footnote{Id. at 614-15. The Appellate Court also noted that the plaintiff in all negligence cases may show that better, safer and more practical devices than those used were available to the defendant. \textit{Id.} at 615. \textit{See also} Delmore v. Polinsky, 132 Conn. 28, 31, 42 A.2d 349 (1945).} The Court further observed that the fact that the expert had not spoken to the injured person or to her father or to her coach, that he did not have deposition or medical records when he issued his report, that he did not know of the facility’s age or its use, that he had no knowledge regarding the frequency of injuries, all went to the weight and not the admissibility of the testimony.\footnote{Id. at 615. The Appellate Court remarked that a medical doctor may give an expert opinion without having examined or treated the patient. \textit{Id.}} The Court stated that the plaintiff’s claim did not rest on the nature of a particular actor’s specialized conduct, such as softball umpires, as in \textit{Santopietro v. New Haven},\footnote{239 Conn. 207, 682 A.2d 106 (1996).} or day care providers, as in \textit{LePage v. Horne}.\footnote{262 Conn. 116, 809 A.2d 505 (2002).} The Court concluded that the plaintiff’s expert’s opinion that the defendants’ surface was unreasonably dangerous for use as an indoor soccer facility was the type of expert opinion in premises liability cases that courts have deemed sufficient to prove negligence.\footnote{DiPietro, 123 Conn. App. at 620.}

\textit{Spears v. Elder}\footnote{124 Conn. App. 280, 5 A.3d 500, \textit{cert. denied}, 299 Conn. 913, 10 A.3d 528 (2010).} is a reminder that the general verdict rule continues to haunt the trial and appeal of lawsuits. The plaintiff sued the defendant in defamation by way of slander and fraud and at the time of trial neither party submitted interrogatories to the jury.\footnote{Id. at 284.} The defendant

\begin{itemize}
\item \textit{Id.} at 614-15. The Appellate Court also noted that the plaintiff in all negligence cases may show that better, safer and more practical devices than those used were available to the defendant. \textit{Id.} at 615. \textit{See also} Delmore v. Polinsky, 132 Conn. 28, 31, 42 A.2d 349 (1945).
\item \textit{Id.} at 615. The Appellate Court remarked that a medical doctor may give an expert opinion without having examined or treated the patient. \textit{Id.}
\item 239 Conn. 207, 682 A.2d 106 (1996).
\item 262 Conn. 116, 809 A.2d 505 (2002).
\item DiPietro, 123 Conn. App. at 620.
\item 124 Conn. App. 280, 5 A.3d 500, \textit{cert. denied}, 299 Conn. 913, 10 A.3d 528 (2010).
\item \textit{Id.} at 284.
\end{itemize}
appealed from the judgment entered on a general verdict for the plaintiff. The Appellate Court explained that under the general verdict rule, if a jury renders a general verdict for one party and no party requests interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party and if any ground for the verdict is proper, the verdict must stand; only if every ground is improper does the verdict fall. The defendant argued, on appeal, that the trial court failed to give a requested charge on proximate and intervening cause with respect to the defamation claim. Since this argument was not related to the fraud count, the Appellate Court under the general verdict rule did not review it. The defendant also contended that the trial court erred in refusing to admit evidence of a prior arrest of the plaintiff. The Court did review the defendant’s argument that the arrest should have been admitted to impeach the plaintiff’s credibility since this argument applied to both causes of action. The Court found no error in refusing to admit the arrest since there was no evidence of a conviction.

XIV. UNINSURED/ UNDERINSURED MOTORIST

The summary judgment in favor of the defendant was sustained on appeal in Voris v. Middlesex Mutual Assurance Company. The plaintiff contended that although he

249 Id. at 284-85.
250 Id. at 285.
251 Id. at 290.
252 Id.
253 Id. at 290-92.
254 Id.
255 Id. at 292-93. Connecticut Code of Evidence § 6-7 provides, in part: “(a) General rule. For the purpose of impeaching the credibility of a witness, evidence that a witness has been convicted of a crime is admissible if the crime was punishable by imprisonment for more than one year. In determining whether to admit evidence of a conviction, the court shall consider:
(1) the extent of the prejudice likely to arise,
(2) the significance of the particular crime in indicating untruthfulness, and
(3) the remoteness in time of the conviction.....”

It is also noted that arrests are inadmissible in a civil court proceeding. See Lawrence v. Kozlowski, 171 Conn. 705, 711-12, n. 4, 372 A.2d 110 (1976).
256 297 Conn. 589, 999 A.2d 741 (2010). The subject insurance policy contained a provision that required an action against the defendant carrier to be brought within three years of the date of the accident, but also allowed a claim for under-
failed to provide written notice to the defendant underinsured motorist carrier of his intent to seek benefits under the policy, the trial court erred in strictly interpreting the time limitation contained in the policy since compliance should be excused where there is no prejudice pursuant to the rule set forth in *Aetna Casualty & Surety Co. v. Murphy*. In *Murphy*, the Supreme Court held that an insured could recover under an insurance policy despite late notice to the insurer when the insurer was not materially prejudiced by the late notice. The Supreme Court, in the case before it, contrasted the purpose of notice provisions—to safeguard the insurer from prejudice in processing a claim—from the purpose of limitation periods—designed to promote justice by preventing surprises through the revival of stale claims, to protect defendants and courts from handling matters in which the search for truth may be impaired by the loss of evidence, to encourage plaintiffs to use reasonable care and proper diligence in enforcing their rights and to prevent fraud. The Court declined to adopt a rule requiring prejudice to the insurer in cases where the limitation period has not been met since the presence or absence of prejudice is not a factor in determining whether the purpose of the limitation period has been advanced.

Whether an insured with two separate uninsured policies that cover the same vehicle for uninsured motorist benefits is barred from collecting the policy limits of both policies combined was the issue presented on reservation pur-
suant to General Statutes Section 52-235 and Practice Book Section 73-1 in *Lane v. Metropolitan Property and Casualty Insurance Company.* The plaintiff at the time of the accident insured his truck with uninsured and underinsured motorist coverage of $100,000 per person under a policy with the named defendant. The plaintiff had also insured his truck for the same amount of coverage with the defendant Horace Mann Insurance Company. The defendants argued that each of the above policies provided that if the insured was covered under another policy, the total liability was limited to the single coverage of the highest limit of liability. The defendants further argued that the loss must be allocated pro rata between them up to a maximum of $100,000. The defendants cited to General Statutes Section 38a-336(d) in support of their position that the plaintiff was barred from collecting the full limits of both policies. The Appellate Court, in parsing the language of Section 38a-336(d), stated that because the first sentence

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261 General Statutes § 52-235 provides: “(a) The superior court, or any judge of the court, with the consent of all parties of record, may reserve questions of law for the advice of the supreme court or appellate court in all cases in which an appeal could lawfully have been taken to said court had judgment been rendered therein. (b) The court or judge making the reservation shall, in the judgment, decree or decision made or rendered in such cases, conform to the advice of the supreme court or the appellate court.”

263 *Id.* at 427.
264 *Id.* at 427-28.
265 *Id.* at 428.
266 *Id.*
267 General Statutes § 38a-336 (d) provides, in pertinent part: “Regardless of the number of policies issued, vehicles or premiums shown on a policy, premiums paid, persons covered, vehicles involved in an accident, or claims made, in no event shall the limit of liability for uninsured and underinsured motorist coverage applicable to two or more motor vehicles covered under the same or separate policies be added together to determine the limit of liability for such coverage available to an injured person or persons for any one accident. If a person insured for uninsured and underinsured motorist coverage is an occupant of a nonowned vehicle covered by a policy also providing uninsured and underinsured motorist coverage, the coverage of the occupied vehicle shall be primary and any coverage for which such person is a named insured shall be secondary. All other applicable policies shall be excess. The total amount of uninsured and underinsured motorist coverage recoverable is limited to the highest amount recoverable under the primary policy, the secondary policy or any one of the excess policies....”

268 *Lane*, 125 Conn. App. at 430.
specifically applies to uninsured and underinsured coverage for two or more vehicles, the remainder of the subsection also only pertains to situations involving two or more vehicles.269 The Court stated that the plaintiff had two policies identifying and covering his truck for which he paid a separate premium to each defendant and that his claims were not based on coverage provided by two or more vehicles. The Court further commented that Section 38a-336(d) was enacted to bar the judicially approved practice of stacking where the insured purchased uninsured coverage on more than one automobile.270

XV. WORKERS’ COMPENSATION

Thomas v. Department of Development Services271 held that the statutory lien provision contained in General Statutes Section 31-293(a)272 entitles an employer to a credit for unknown, future workers’ compensation benefits that it may become obligated to pay to an injured employee in the amount of the net proceeds that the injured employee receives from a judgment against or settlement with a third party tortfeasor. The plaintiff subsequent to being injured in the course of her employment settled with the third party tortfeasor’s insurance company.273 The defendant employer could not intervene to recover the benefits it paid to the

269 Id. at 431-32.
270 Id. at 434-35. The Court also noted that the plaintiff insured had the rare occurrence for a period of thirty days of owning two policies on his truck for which he paid two separate premiums and of having a serious accident during this time frame. Id. at 433.
271 297 Conn. 391, 392-95, 999 A.2d 682 (2010).
272 General Statutes § 31-293(a) provides in relevant part: “Notwithstanding the provisions of this subsection, when any injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in a person other than an employer who has complied with the requirements of subsection (b) of section 31-284, a legal liability to pay damages for the injury and the injured employee has received compensation for the injury from such employer, its workers’ compensation insurance carrier or the Second Injury Fund pursuant to the provisions of this chapter, the employer, insurance carrier or Second Injury Fund shall have a lien upon any judgment received by the employee against the party or any settlement received by the employee from the party, provided the employer, insurance carrier or Second Injury Fund shall give written notice of the lien to the party prior to such judgment or settlement.”
273 Thomas, 297 Conn. at 396.
plaintiff since the plaintiff never filed suit.\textsuperscript{274} In addition, the defendant did not file its own action against the tortfeasor, but the defendant did issue a lien letter pursuant to Section 31-293(a).\textsuperscript{275} The Supreme Court concluded that its reasoning employed in Enquist v. General Datacom\textsuperscript{276} was equally applicable in the case before it.\textsuperscript{277} The Court stated that its interpretation of the lien provision as providing coextensive rights of recovery with those provided by the vehicles of intervention and direct action, reduces costs and promotes efficiency.\textsuperscript{278} The Court commented that if an employee incurs future compensable expenses that ultimately exceed the net proceeds of the employee's third party recovery, that employee could continue to claim benefits from the employer.\textsuperscript{279} Conversely, if an employee's net proceeds from a third party recovery are greater than the employee's future compensable expenses, then that employee would not be entitled to claim additional workers' compensation benefits.\textsuperscript{280}

In Roy v. Bachman,\textsuperscript{281} the Appellate Court reversed the granting of the defendant's motion for summary judgment on the basis that the plaintiff's action was barred by the exclusivity provisions of Connecticut's Workers' Compensation Act, General Statutes Section 31-275 et seq.\textsuperscript{282} At the time

\textsuperscript{274} Id. at 395.
\textsuperscript{275} Id.
\textsuperscript{276} 218 Conn. 19, 587 A.2d 1029 (1991). Enquist held that an employer's claim under General Statutes § 31-293 (a) includes a credit for unknown, future workers' compensation benefits. Id. at 20-21.
\textsuperscript{277} Thomas, 297 Conn. at 403.
\textsuperscript{278} Id. at 405.
\textsuperscript{279} Id. at 410.
\textsuperscript{280} Id.
\textsuperscript{281} 121 Conn. App. 220, 221-22, 994 A.2d 676 (2010).
\textsuperscript{282} The exclusivity section is found at General Statutes § 31-284(a): “An employer who complies with the requirements of subsection (b) of this section shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury has been caused by the willful and serious misconduct of the injured employee or by his intoxication. All rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter, pro-
of the accident the plaintiff was employed by Dymax Corporation (Dymax). The plaintiff sued the defendants who owned the land where the accident occurred and leased it to Dymax. The defendants were also majority stockholders and officers in Dymax. The Court summarized the exceptions to the exclusivity provision of the workers’ compensation act: where the wrong was willful or malicious, where the action is based on the fellow employee’s negligence in the operation of a motor vehicle as defined by General Statutes Section 14-1 or where a minor has been illegally employed. The Court held that the exclusivity provision of the workers’ compensation act does not shield the owners of a parking lot that they leased to a corporation in which they were majority stockholders and officers.

XVI. MISCELLANEOUS

The principal issue in Sturm v. Harb Development, LLC involved the tort liability of a member of a limited liability company. The plaintiffs had entered into a contract with the named defendant, a limited liability company, for the construction of a new home. The plaintiffs believed that the house had not been built in accordance with the contract and that the workmanship was poor. The plaintiffs pled several causes of action against both the named defendant and a member of the company. The trial court granted the defen-
dant member’s motion to strike all of the counts against him in his individual capacity, holding that in order to establish the defendant’s personal liability the plaintiffs were required to plead facts sufficient to pierce the corporate veil.292 The Supreme Court stated that under Connecticut law an officer or agent of a corporation does not incur personal liability for its torts merely because of his or her official position.293 However, where an agent or officer commits or participates in the commission of a tort, whether or not he or she acts on behalf of his principal or corporation, he or she is liable to third persons injured thereby, even though liability may also attach to the corporation for the tort.294 The Court further stated that General Statutes Sections 34-133 and 34-134295 merely codify Connecticut common-law.296 The Court held that the trial court was in error in requiring the plaintiff to allege facts sufficient to pierce the corporate veil with respect to the counts against the defendant in his individual capacity.297

The enforceability of a hold harmless agreement was central to the disposition of Dow-Westbrook, Inc. v. Candlewood Equine Practice, LLC.298 The plaintiff corporation, an owner

292 Id. at 131.
293 Id. at 132-33. See also Ventres v. Goodspeed Airport, LLC, 275 Conn. 105, 881 A.2d 937 (2005) (sole member of defendant airport company was held personally liable for ordering the clearance of trees and shrubbery belonging to a neighboring land trust, an action that constituted a nuisance); Scribner v. O’Brien, Inc., 169 Conn. 389, 363 A.2d 160 (1975) (president of defendant corporation held personally liable in negligence since he was present during the construction of the plaintiff’s home and he undertook to supervise the construction).
294 Sturm, 298 Conn. at 132-33.
295 General Statutes § 34-133 provides, in relevant part: “(a) Except as provided in subsection (b) of this section, a person who is a member or manager of a limited liability company is not liable, solely by reason of being a member or manager, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company....” General Statutes § 34-134 provides: “A member or manager of a limited liability company is not a proper party to a proceeding by or against a limited liability company solely by reason of being a member or manager of the limited liability company, except where the object of the proceeding is to enforce a member's or manager’s right against or liability to the limited liability company or as otherwise provided in an operating agreement.”
296 Sturm, 298 Conn. at 136-38.
297 Id. at 138.
298 119 Conn. App. 703, 989 A.2d 1075 (2010).
of a horse, sued the defendant, a veterinary clinic, alleging that the defendant was negligent in turning out the plaintiff's horse with another horse, which resulted in injuries to the plaintiff's horse.299 The defendant filed a counterclaim seeking indemnification of its attorney's fees, claiming that the plaintiff breached the hold harmless clause of the boarder agreement by instituting the action.300 After a trial to the court, judgment was entered in favor of the defendant on the plaintiff's complaint and on the counterclaim in the amount of $15,000.301 The Appellate Court observed that although contract interpretation, being a question of the parties' intent, is usually a question of fact, where there is definitive contract language, the determination of the intent of the parties is a question of law.302 The Court further observed that although Connecticut courts generally disfavor hold harmless provisions which relieve a person from his own negligence where there is unequal bargaining power between the parties, where the parties are commercial entities, such provisions may be enforceable.303 The Court noted that the subject hold harmless provision was an agreement to allocate risk between two commercial entities of equal bargaining power and the provision was not an attempt to limit liability for personal injuries.304 The Court rejected the plaintiff's argument that the hold harmless provision violated public

299 Id. at 704-06.
300 Id. at 706.
301 Id.
302 Id. at 711-12.
303 Id. at 712.
304 Id. at 713. In Hanks v. Powder Ridge Restaurant Corp., 276 Conn. 314, 885 A.2d 734 (2005), the Supreme Court addressed the enforceability of an exculpatory agreement. In Hanks, the plaintiff, while snow tubing at a facility operated by the defendants, had his right foot caught between his snowtube and a man-made bank, which resulted in injuries. Id. at 317. Before engaging in snowtubing, the plaintiff read and signed an exculpatory agreement purporting to relieve the defendants of liability, even if the accident was due to the negligence of the defendants. Id. at 326. A divided Court, by a margin of 4-3, found that although the subject agreement referred to the negligence of the defendants and unambiguously released the defendants from prospective liability, it nonetheless was unenforceable as it was violative of public policy. Id. at 326-36. The dissent noted that an overwhelming majority of other jurisdictions allow prospective releases from liability for negligence in the context of recreational activities. Id. at 338.
policy and held that the trial court properly found for the defendant on its counterclaim.305

*Farrell v. Twenty-First Century Insurance Company*306 affirmed the trial court’s granting of the defendant insurer’s motion for summary judgment addressed to the plaintiffs’ complaint seeking a court order to compel arbitration. The Appellate Court agreed with the defendant that no written agreement to arbitrate existed between the parties and rejected the plaintiffs’ submission that fourteen letters between the plaintiffs’ attorney and the defendant’s attorney constituted an enforceable agreement to arbitrate.307 The Court observed that the parties’ correspondence indicated that the parties had an informal agreement to arbitrate, but there was never an agreement on the terms of the agreement, including the parameters of the claims, how the expense should be allocated, when the arbitration would take place or who would preside as the arbitrator.308

In *Phaneuf v. Berselli*,309 the plaintiff appealed from the denial of his motion to set aside the jury verdict in favor of the named defendant. The plaintiff alleged that the defendant caused his truck to strike the bucket that the plaintiff was in while performing overhead electrical work.310 The Appellate Court rejected the plaintiff’s argument that the trial court’s jury charge regarding proximate cause was erroneous since the jury answered “no” to the interrogatory as to whether the defendant was negligent and, therefore, the jury never reached the question of proximate cause.311 The plaintiff also maintained that the trial court failed to instruct the jury that it should consider the special duty

308 *Farrell*, 118 Conn. App., at 761.
310 *Id.* at 333.
311 *Id.* at 334-36.
owed to workers in road construction zones.\textsuperscript{312} The Court found the jury charge legally sufficient, even though it was not identical to the language requested by the plaintiff; namely, the court charged that the defendant owed the plaintiff a duty of care appropriate to the danger inherent in the situation, that the defendant had a duty to warn the plaintiff if it was reasonable to do so, and that the construction zone was a special circumstance that might have required the defendant to lower his speed.\textsuperscript{313}

The Appellate Court in \textit{Lachowitz v. Rugens}\textsuperscript{314} upheld the granting of the defendant’s motion for summary judgment. The plaintiff, a volunteer firefighter, was injured when the defendant, also a volunteer firefighter, turned on the ignition to a fire rescue truck while the plaintiff was boarding the truck.\textsuperscript{315} The evidence submitted to the trial court showed that although the truck vibrated as a result of the engine being turned on, there was no forward movement of the fire truck.\textsuperscript{316} The Court agreed with the trial court that the defendant did not owe the plaintiff a duty, as a matter of law, since it was not foreseeable to the defendant that by the mere act of turning on an engine of a rescue truck he would cause an injury to the plaintiff who had experience and training in getting onto the truck.\textsuperscript{317}

\textit{Nuzzo v. Nathan}\textsuperscript{318} reversed the trial court’s granting of the plaintiff’s motion to set aside a verdict. Although the plaintiff was rear-ended, the jury nonetheless returned a defendant’s verdict.\textsuperscript{319} The trial court found that there was no evidence in support of the verdict, specifically noting that although the defendant introduced the topic of a slippery road surface as an explanation as to how the accident the

\textsuperscript{312} Id. at 338-39.
\textsuperscript{313} Id. at 340.
\textsuperscript{314} 119 Conn. App. 866, 989 A.2d 651, cert. denied, 297 Conn. 901, 994 A.2d 1287 (2010).
\textsuperscript{315} Id. at 867.
\textsuperscript{316} Id.
\textsuperscript{317} Id. at 870.
\textsuperscript{318} 123 Conn. App. 114, 115, 1 A.3d 267 (2010).
\textsuperscript{319} Id. at 116-18.
occurred, there was no evidence of a slippery condition.\textsuperscript{320} The Appellate Court stated that based on the defendant’s testimony that her car skidded on ice or salt and based on a weather report, the jury could reasonably have inferred that the defendant’s car slid on ice or salt.\textsuperscript{321}

\textbf{XVII. CONCLUSION}

Tort litigation continues to make its way into the Connecticut courts in sufficient volume to allow for the development and refinement of the common law. Litigation also allows for, and sometime calls for, the development of the law by way of legislative action and the judicial interpretation of the legislation. The amount of material that requires review and analysis each year suggests tort litigation remains a vibrant area of the law.

\textsuperscript{320} \textit{Id.}
\textsuperscript{321} \textit{Id.} at 120-21.
The Supreme Court justices are probably delighted that no statewide elections are scheduled for 2011. This past year kept them rather busier than usual on that score.

Three election cases forced them on three separate occasions to drop everything else for several days to attend to urgent election business. The first was *Bysiewicz v. Dinardo*, holding that the plaintiff, the sitting Secretary of the State, was not statutorily qualified to run for the office of Attorney General. The second was *Foley v. State Elections Enforcement Commission*, holding that a non-endorsed candidate for Governor could pool his qualifying contributions with those of the endorsed candidate for Lieutenant Governor in order to be eligible for public financing of his primary campaign. The third was *Butts v. Bysiewicz*, holding that neither the Secretary of the State nor the Superior Court has the power to extend a statutory deadline for the filing of a particular election document with the office of the Secretary of the State.

In *Bysiewicz*, the court gave a generous reading of the declaratory judgment rules to allow the plaintiff to litigate her eligibility before she was even nominated by the Democratic Convention in May. The court then gave an expansive reading to the statute requiring the Attorney General to have ten years’ “active practice at the bar of this state.” Five of the seven justices held that the quoted language means a lawyer with some experience litigating cases in court, which would disqualify lawyers with an exclusively office practice. The two concurring justices thought the majority went too far. Since the plaintiff had only eight...
years in private practice before becoming Secretary of the State for twelve years, they would have held only that that role did not qualify her under the statute.

The court also held, unanimously, that the statute was not unconstitutional under Article Sixth, § 10 of the Constitution, which states: “Every elector who has attained the age of eighteen shall be eligible to any office in the state . . . .” The court gave a narrow ruling to that provision, enacted in 1818, holding that it was inapplicable to the office of Attorney General, which did not exist until the 1890s. The plaintiff’s analogy that television did not exist when the First Amendment was enacted failed to impress the court.

In July, it was on to Foley. The plaintiff was endorsed by the Republican Party for Governor in May but Michael Fedele received sufficient votes to challenge him in a primary. Fedele wanted public funding under recently passed legislation, but he did not have enough small contributions to show the sufficient base of support needed to qualify. Fedele claimed he could also use the contributions to the endorsed candidate for Lieutenant Governor (who supported Fedele) in order to qualify. The statute was not clear on that point. The court, 4-1, gave a generous interpretation of the statute to make Fedele eligible. Judge Gruendel, sitting by designation because four justices were disqualified, did not agree, but concurred in the result on a technical ground.

In September, it was time to hear Butts. The plaintiff, endorsed by the Democratic Party for probate judge, failed to file the party’s certificate of endorsement with the Secretary of the State in the prescribed manner (he mailed it by regular rather than certified mail) and there was no evidence that it was timely received. The court gave a very strict reading to the procedural requirements of the election statute.

While the authors can perceive no grand theme running through these dissimilar election cases, they share one thing in common: the Supreme Court’s willingness to set other business aside and move with lightning speed when the occasion warrants.

In Bysiewicz, the appellant appealed on May 11; the plaintiff (the appellee) moved to expedite on May 12; the
Supreme Court immediately granted the motion and ordered simultaneous briefs on May 14; the court heard oral argument on May 18 at 2:00 and decided the appeal on the merits by 4:30, although the written decision was not issued until October. *Foley* moved with the same speed from appeal (July 20) to decision (July 27), although the written decision came out much faster, in early August. *Butts* was a mite slower because the plaintiff moved for articulation. But even there it was only 13 days from appeal (September 2) to oral decision (September 15).

The only minor complaint the authors have about the justices’ result-first-reasoning-later procedure is similar to Grandpapa’s grump to Peter about the wolf: What if you had changed your mind between your oral result and your written decision, what would you have done then?

So much for elections. Other than those cases, the three biggies for 2010 involved educational finance, condemnation law, and capital punishment.

The biggest education finance case since *Horton v. Meskill* is *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell.* (Note to plaintiffs’ lawyers: next time please choose a student as the lead plaintiff.) Article Eighth, § 1 of the Connecticut Constitution states:

**Free public schools.** There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

*Connecticut Coalition* holds that that language entitles that all students to a “suitable” education, that is, an education that is suitable to prepare students to participate as citizens in a democratic society.

*Horton* held that Connecticut’s school finance system violated the rights of students in property-poor towns to an equal educational opportunity, but the education claim was combined with an equal protection claim. Likewise, *Sheff v.*

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5 172 Conn. 615, 376 A.2d 359 (1977). The authors’ office represented the plaintiffs.

O’Neill, a desegregation case, combined an education article claim with an equal protection claim. In Connecticut Coalition, on the other hand, the plaintiffs made no such equal protection claim on the appeal.

Connecticut Coalition has no majority opinion. The vote is really 3-1-1-2. Justices Norcott, Katz, and Schaller agreed with the plaintiffs; Justice Palmer semi-agreed with the plaintiffs; Justice Vertefeuille disagreed with the plaintiffs on the merits; and Justices Zarella and McLachlan disagreed with the plaintiffs on justiciability. Justice Palmer’s is thus the key opinion and it makes the plaintiffs’ burden high: the state need only show that it is providing a “minimally adequate” education, and the judicial branch must give “considerable deference” to the legislative and executive branches as to what that phrase means. Justice Vertefeuille’s view is that Article Eighth only means that students are entitled to “free” and “public” schools. Justices Zarella and McLachlan’s view is that Article Eighth, untethered to a Horton-like equal protection claim, is textually committed to the legislature.

The big condemnation case is New England Estates, LLC v. Branford, holding that a developer’s unrecorded and unexercised option to purchase property is not a property interest under Connecticut law and therefore not protected by the Fifth Amendment of the U.S. Constitution.

The Branford case involves the condemnation of undeveloped property. The owners and the developer claimed in a Section 1983 action that the property was improperly condemned by the Town of Branford and therefore that the condemnation violated the Takings Clause of the Fifth Amendment. While the owners prevailed on appeal, most of the award had been to the developer. The town prevailed.

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7 238 Conn. 1, 678 A.2d 1267 (1996). The authors’ office represented the plaintiffs.
8 Connecticut Coalition, 295 Conn. at 320-21, 990 A.2d at 256-57.
9 Id. at 383.
10 Id. at 399.
11 294 Conn. 817, 988 A.2d 229 (2010). The authors’ office represented the named defendant.
against the developer because of *Patterson v. Farmington Street Railway Co.*,\(^\text{12}\) holding that an option contract conveys no property interest to an optionee.

The last biggie is *State v. Courchesne*.\(^\text{13}\) *Courchesne* holds that the common law “born alive” rule exists in Connecticut. That means that the defendant, who killed a pregnant woman and her fetus, who was arguably born alive before dying, was eligible for the death penalty for killing two persons even though by statute the fetus was not a person at the time of the defendant’s actions.

We say “arguably” because a new trial was unanimously ordered to determine in fact whether the fetus was born alive. But only five of the justices thought the “born alive” rule should have been adopted in Connecticut. Justices Zarella and Norcott dissented.

One of the remarkable events of 2010 in the emergence of Justice Palmer as a frequent dissenter in favor of the defendant in criminal cases. His biggest splash was his lone 153-page dissent in *State v. Skakel*.\(^\text{14}\) Four of the five justices hearing the case rejected Skakel’s petition for new trial based on newly discovered evidence, two justices concluding that the evidence was insufficient, two concluding that the evidence was inadmissible. Justice Palmer roared back with excruciating detail showing why he felt Skakel was entitled to a new trial.

He also disagreed with the majority in three other major criminal cases. In *State v. Outing*,\(^\text{15}\) the 4-3 majority led by Justice Katz refused to reconsider precedent disallowing expert evidence on the unreliability of eyewitness testimony. The majority refused on the ground that it was an inopportune case (which it was). Justice Palmer filed a lengthy concurrence explaining why the precedent is unjust and why the court should not wait for the opportune case to overrule it.

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\(^\text{12}\) 76 Conn. 628, 57 A. 853 (1904).
\(^\text{13}\) 296 Conn. 622, 998 A.2d 1 (2010).
\(^\text{14}\) 295 Conn. 447, 991 A.2d 414 (2010).
\(^\text{15}\) 298 Conn. 94, 88, 3 A.3d 1, 35 (2010).
In State v. Jenkins, Justices Palmer and Katz filed separate dissents from Justice Norcott’s 3-2 decision that Article First, Section 7 of the state constitution does not prohibit the police from (1) inquiring about non-traffic matters during a routine traffic stop even though they have no reasonable suspicion of non-traffic crimes; and (2) conducting a search with consent without informing the defendant that consent can be withheld. Justice Katz dissented from (1), and Justice Palmer dissented from (2).

And in State v. Lockhart, Justice Palmer dissented from Justice McLachlan’s 4-1 decision that Article First, Section 8 (due process) does not require the electronic recording of all custodial interrogations in order for them to be admissible at trial. Justice Palmer’s dissent focused not on the state constitution but on the Supreme Court’s supervisory powers. His theme was: “The value in recording interrogations is so obvious as to require little discussion.”

The most interesting statutory construction case of 2010 is Sikorsky Aircraft Corp. v. Commissioner of Revenue Services, which concerns a very boring subject: the meaning of the 78th exemption to the sales and use tax in General Statutes Section 12-412 (items used in aircraft manufacturing facilities). What is not boring is the court’s analysis of an ambiguous statute in light of the general rule that ambiguities in exemption provisions are construed against the taxpayer. The court concluded, properly in the authors’ opinion, as follows:

These presumptions [i.e., against the taxpayer] do not mean that the mere fact that a statutory exemption is not plain and unambiguous necessitates the conclusion that that exemption does not apply. [Note to Supreme Court: three

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16 298 Conn. 209, 309, 3 A.3d 806, 868 (2010).
17 298 Conn. 537, 587, 4 A.3d 1176, 1205 (2010).
18 Id. at 589, 4 A.3d at 1206. Justice Palmer did join two dissents that favored the prosecution: State v. Rodriguez-Roman, 297 Conn. 66, 95, 3 A.3d 783, 801 (2010) (Rogers, C.J., dissenting from the majority’s restrictive definition of a CORA [RICO-like] violation); State v. Cyrus, 297 Conn. 829, 845, 1 A.3d 59 (2010) (Vertefeuille, J., dissenting from the majority’s conclusion that a chain hanging from a rearview mirror was not an obstruction of the driver’s view).
19 297 Conn. 540, 1 A.3d 1033 (2010).
“norts” in one sentence is not such a great idea.] They are presumptions and function as starting points. Our goal remains, as always, to determine the intent of the legislature.  

The court then turned to extrajudicial – primarily legislative – sources, agreed that the tax commissioner’s reading was plausible, but ultimately concluded after six pages of analysis that his interpretation was not persuasive.

What is remarkable about Sikorsky is that, on an administrative appeal, the Supreme Court rejected the agency’s plausible interpretation of an exemption statute, whose ambiguity is to be construed against the taxpayer. This case reminds lawyers that general rules of statutory construction are “starting points,” in other words, guidelines, not straitjackets.

A presumption concerning another statute did point to the result in Stuart v. Stuart, but only after considerable analysis concerning the persuasiveness of the presumption. The case concerned whether a higher burden than preponderance of evidence applies in civil statutory theft cases. The general presumption, of course, is that the preponderance test applies in civil cases; the court found that general presumption to be persuasive here. As with Sikorsky, lawyers cannot simply take a presumption off the legal shelf and cite it without detailed analysis.

On a separate issue of statutory construction, a footnote is often the most interesting part of a decision, footnote seven of Rodriguez-Roman being a fine example. In that footnote, Justice Zarella has a wonderful disquisition on the meaning of “including” and the use of commas that did not convince Chief Justice Rogers. These are common syntactical problems in statutory interpretation; the majority and dissenting opinions are a syntax gold mine.

Perhaps the potentially most far-reaching statutory construction case of 2010 is Maturo v. Maturo, concerning the

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20 Id. at 562.
21 297 Conn. 26, 996 A.2d 259 (2010).
22 297 Conn. at 76-77.
23 296 Conn. 80, 995 A.2d 1 (2010). The authors’ office represented the plaintiff.
use of child support guidelines when the parents’ combined income exceeds the upper limits of the guidelines. Even the remand order by the Supreme Court is significant. Although the mosaic doctrine means that an error in part of the financial orders requires a new trial on all of them unless the affected order is severable, the plurality read the exception very broadly and limited the remand to child support orders.

As to the merits, unfortunately, like Connecticut Coalition, there is no majority opinion, the opinions breaking down 3-1-3. Unlike Connecticut Coalition, there is no middle-of-the-road fourth vote to guide the lower courts. As will be seen, however, the Supreme Court justices appear to have resolved their dilemma in an odd fashion: by treating the plurality as if it were the majority (unlike the U.S. Supreme Court).

Justice Zarella’s plurality decision for Justices Norcott and McLachlan applies the principles of the guidelines to income over the upper limit, and holds that an order to pay twenty percent of any bonus as additional child support failed to adhere to these principles. Justice Schaller’s fourth vote for reversal states that the statutes in question do not make the guidelines mandatory; they are simply an additional factor for judges to consider. Justice Vertefeuille’s dissent for Justices Katz and Palmer concludes that the guidelines simply do not apply over the upper limit. In short, three justices say the principles of the guidelines bind the trial judge over the upper limit and four say they do not. But three of the latter are in dissent and they have a very different view from Justice Schaller. Justice Schaller says the principles of the guidelines are not binding ever; the dissent says they are not binding because they are inapplicable.

24 Id. at 125.
25 Id. at 143.
26 A further complicating factor is that Justice McLachlan would use gross rather than net income. Id. at 137, 138-43. But since, unlike Justice Schaller, he recognizes the binding force of the guidelines, which use net income, it is difficult to see how he could do that without amending the guidelines (as he says at one point). Justice Schaller, unlike the plurality, also would have reversed on all financial issues under the mosaic principle.
The seven justices in *Maturo* ostensibly left the lower courts at sea with no safe haven until they quickly created one in *Misthopolous v. Misthopolous* by making the following unanimous statement: “Our resolution of this issue is controlled by the plurality opinion in this court’s recent decision, *Maturo v. Maturo*, 296 Conn. 80 (2010).” This resolution thus also has implications for Connecticut Coalition: perhaps that plurality opinion is binding as well.

The Supreme Court has continued its trend in recent years of limiting claims against municipalities. In *Bonington v. Westport*, the plaintiff unsuccessfully claimed that a town’s failure to inspect a neighbor’s property caused water runoff damage. The court held that the imminent harm exception was inapplicable because it requires a discrete time period during which harm will occur. Likewise in *Picco v. Voluntown*, the Supreme Court held that the town is not responsible for inaction concerning a nuisance. When a tree limb fell on an athletic field injuring the plaintiff, the failure to trim the tree was inaction rather than action.

Speaking of tort cases, *Harris v. Bradley Memorial Hospital* refuses to apply the “favorable termination doctrine,” which would have required a medical doctor to test a hospital’s adverse credentialing decision in a mandamus action before suing for damages. A point of more general interest in *Harris* is that it agreed with the trial court that part of the verdict was excessive, and not just because there was a miscalculation of special damages. This is the first time in twenty years that the Supreme Court has so ruled.

We have already discussed the unsuccessful state constitutional claims in *State v. Jenkins* and *State v. Lockhart*.  

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27 297 Conn. 358, 365, 999 A.2d 721, 728 (2010). The authors’ office represented the defendant.
29 Id. at 314.
30 295 Conn. 141, 989 A.2d 593 (2010).
32 Id. at 349-50.
33 298 Conn. 209, 309, 3 A.3d 806, 868 (2010).
34 298 Conn. 537, 587, 4 A.3d 1176, 1205 (2010).
in the context of Justice Palmer’s dissents. Other notable state constitutional claims that failed in 2010 are State v. Tomas D., holding that the state’s release of a witness under subpoena without telling the defendant does not violate a Section 8 right to compulsory process (the defendant should have put out his own subpoena); State v. Wade, denying a Section 8 double jeopardy claim, for allowing a resentencing on all counts, including those affirmed, after a reversal on the main count; and State v. Thomas, also denying a state double jeopardy claim, where the trial court accepted a guilty plea but made the agreed sentence conditional on what the presentence investigation may disclose. When it disclosed adverse information, the trial court unilaterally vacated the guilty plea. The Supreme Court said that was proper.

Concerning evidence, in two cases the Supreme Court favored admissibility and in two did not. In State v. Hedge, reverse-Section 4-4 evidence was held to be admissible. That is to say, a defendant in a criminal case may offer third-party character evidence to show that the third party may have committed the crime even though the evidence might violate Section 4-4 of the Code of Evidence if offered by the prosecution to show the defendant’s guilt. And in In re Tayler F., the court allowed a young child’s out-of-court statements in a termination case on the ground that the child could be considered not available psychologically to testify.

On the other hand, in State v. Outing, the 4-3 majority refused to reconsider the rule that expert testimony is not permitted to show the unreliability of eyewitness identifications. The majority refused to do so not because they agreed with the current rule but because the record was not an appropriate one to use for reconsideration. And in Klein v. Norwalk Hospital, the court put some more teeth in a Porter

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35 296 Conn. 476, 995 A.2d 583 (2010).
36 297 Conn. 262, 998 A.2d 1114 (2010).
37 296 Conn. 375, 995 A.2d 65 (2010).
38 297 Conn. 621, 1 A.3d 1051 (2010).
39 296 Conn. 524, 995 A.2d 611 (2010).
40 298 Conn. 34, 3 A.3d 1 (2010).
hearing\textsuperscript{42} by disallowing causation testimony concerning an unusual medical syndrome because the expert’s methodology had not been subject to peer review and the expert did not identify a likely rate of error for that methodology.

Now to other events. Justice Vertefeuille took senior status effective June 1, 2010 and was replaced by Superior Court Judge Dennis Eveleigh. If she intended to sit on fewer cases this past fall, it was not to be. In August, Justice Zarella was hospitalized. While he was back to work a few weeks later, he did not start sitting at oral argument until November 30. November 30 was also the date that Justice Katz announced that she would resign in early January to become Commissioner of Children and Families in the Malloy Administration. No justice has ever before resigned to be an executive branch official, although Chief Justice Simeon Baldwin, after he reached the judicial age limit of 70 in early 1910, successfully ran for Governor later that year.

Finally, we have a comment about an issue readily apparent because of the justices’ decision in September 2009 to sit en banc in all cases. (While Mr. Horton thinks sitting en banc in all cases is great, Mr. Bartschi reserves decision.) Because there were no major absences in the court year from September 2009 through May 2010, and because missing oral argument does not bar participation in the decision, we can determine with some confidence from tallying up who voted on each decision how often justices were disqualified. The numbers are dramatic. As of May 17, 2011, 114 cases heard from September 2009 through May 2010 have been decided.\textsuperscript{43} Of these 114, all seven justices sat in 59; six justices and one tie-breaking Appellate Court judge sat in 2; six justices sat in 30; five justices sat in 19; and four justices and one Appellate Court judge sat in 4. While it is true that Justice McLachlan was recently on the Appellate Court and Justice Vertefeuille is married to an Appellate Court judge,


\textsuperscript{43} We exclude Bysiewicz v. Dinardo, 298 Conn. 748, 6 A.3d 726 (2010), which we understand did not involve a disqualification.
it is also true that Justices Palmer and Zarella disqualified themselves only two or three times the whole year.

When at least one justice is disqualified in almost half the cases and two or three are disqualified in twenty percent of the cases, we wonder whether some of the justices should consider whether they disqualify themselves too often. Unlike the disqualification of trial judges, there is a downside to the disqualification of justices on a state's highest court, and that is the potential for increased inconsistency and unpredictability in the law.

II. APPELLATE COURT

The Appellate Court issued 588 published decisions in 2010, including 90 one-line decisions found at the back of the volume. The reversal rate was about average at sixteen percent. The reversal rate on cases submitted on briefs is generally lower than the reversal rate on argued cases, and that was true in 2010, although at eleven percent the reversal rate on briefs-only cases was not as dismal as it usually is. As always, the sheer volume of cases in the Appellate Court requires picking and choosing those to discuss, and without further ado we proceed to that discussion.

A. Procedure

The Appellate Court grants reargument en banc about once a year, and that occurred in State v. Elson,44 which concerned whether the defendant had properly invoked Golding45 review to address his claim that the trial judge impermissibly considered the defendant’s decision to stand trial when imposing the sentence.46 The majority held that while a party need not specifically cite Golding to invoke that form of extraordinary review, the defendant’s brief did not address the reviewability of the claim or that extraordinary review might be necessary, did not mention Golding by name or substance, and failed to address the adequacy of the record.47 In doing so, the majority overruled State v.

46 Elson, 125 Conn. App. at 331.
47 Id. at 356.
Wright. Wright held that a party affirmatively invoked Golding by providing an adequate record for review and demonstrated in the brief that the unpreserved claim is of constitutional magnitude and that the constitutional right was violated. Judge Dupont, who wrote the majority opinion in Wright, concurred with the result in Elson but disagreed with the decision to overrule Wright. In doing so, she noted several times that the Supreme Court has not defined what an “affirmative request for review” pursuant to Golding requires, suggesting not-so-subtly that the Supreme Court resolve the issue. The authors agree with Judge Dupont that addressing the substantive requirements of Golding, that is, providing an adequate record for review and properly briefing the constitutional claim, should suffice. It is not clear how citing Golding or its boiler-plate language adds anything useful to the analysis as the court will not review claims with an inadequate record and will not provide relief if the constitutional claim fails on the merits.

The majority in Elson also rejected the defendant’s claim that the court should invoke its supervisory powers to review the sentencing decision because the trial court’s comments linking the defendant’s lack of remorse to his decision to require the victim to endure a trial punished the defendant for asserting his right to a trial. The majority was unimpressed with the defendant’s claim that it would have been difficult for trial counsel to interrupt the sentencing judge’s remarks to object to the inappropriate comments because counsel have a duty to make timely, good-faith objection and because the judge invited comments at the end. On the merits, the majority concluded that it was ambiguous as to whether the judge actually elongated the sentence because of the defendant’s decision to stand trial.

49 Elson, 125 Conn. App. at 380-87 (Dupont, J., concurring).
50 Id. at 361.
51 Id. at 348.
52 Id. at 367.
Under the totality of the circumstances, the court concluded that the defendant had failed to show that the comments required the exercise of the court’s supervisory powers. Judge Bishop, joined by Judge Lavine, dissented, arguing that the comments sufficiently tainted the process so as to undermine confidence in the judiciary. Judge Robinson concurred with the majority that the judgment should be affirmed on the facts of the case, but wrote separately to underscore that judges should not consider a defendant’s decision to stand trial when making sentencing determinations. In the authors’ opinion, Judge Bishop’s dissent is well-taken.

Turning next to the perennial question of whether the party appealed from a final judgment, the court dismissed two appeals where the lack of a final judgment deprived the court of subject matter jurisdiction. In *Parrotta v. Parrotta* [56], the court held that an order modifying the automatic orders in family relations cases to permit the defendant to use marital assets to pay his criminal lawyer where the amounts would be treated as a draw against the eventual property orders was not final because the funds were in his own name and the plaintiff did not have a present right in the funds. The court held in *State v. Lantz* [58] that disqualification of counsel in a case involving violation of probation was not final because such actions are civil proceedings. On the other hand, in *Ranfone v. Ranfone*, [59] an order clarifying an ambiguous judgment in a family relations matter was final even though the relevant domestic relations order applicable to the asset had not entered.

A trio of cases offers some interesting conclusions on trial procedure. In *Bank of New York v. Bell*, [60] the court held that

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53 Id. at 366.  
54 Id. at 397 (Bishop, J., concurring and dissenting).  
55 Id. at 369 (Robinson, J., concurring).  
56 119 Conn. App. 472, 988 A.2d 383 (2010). The authors represented the plaintiff in *Parrotta*.  
57 PRACTICE BOOK § 25-5.  
58 120 Conn. App. 817, 993 A.2d 1013 (2010).  
60 120 Conn. App. 837, 993 A.2d 1022, cert. dismissed, 298 Conn. 917, 4 A.3d 1226 (2010).
the petitioner had standing to contest an order to seal certain documents in a foreclosure action because he, as a member of the public, had an interest in open court proceedings. The bank claimed unsuccessfully that he was not affected by the sealing order because he was married to the defendant, who had access to the documents. Taylor v. King\(^1\) concerned the application of the 120-day rule set forth in General Statutes Section 51-183b and held that the trial court complied when it decided the merits within the period, even if it deferred deciding punitive damages and attorney’s fees. A decision for purposes of Section 51-183b is not the same thing as a final judgment for appeal. Finally, a trial court properly dismissed a vexatious litigation suit on ripeness grounds where the underlying action was on appeal at the time of the dismissal in Keller v. Beckenstein\(^2\). Because the appeal in the underlying action concluded while the appeal on the vexatious litigation action was pending, the court remanded for further proceedings.

Two arbitration decisions round out the discussion on procedure. The first concerns an arbitration proceeding over an insurance policy that provided for restoration costs after the defendants’ home was destroyed by fire. In Middlesex Mutual Assurance Co. v. Komondy\(^3\), the majority held that the statutory authority to confirm or not to confirm an arbitration award\(^4\) does not include the authority to order progress payments where the defendants had not asked for such relief from the arbitrators. Former Chief Justice McDonald dissented, arguing that because the statute provides that the court may order actions other than the payment of money when the arbitration award requires, the court could order progress payments as they would be necessary for the homeowner to complete the restoration within the time frame contemplated in the arbitration award\(^5\). The case poses a close question, and the majority

\(^3\) 120 Conn. App. 117, 991 A.2d 587 (2010).
\(^4\) CONN. GEN. STAT. § 52-421(b).
\(^5\) 120 Conn. App. at 130 (McDonald, J., dissenting).
is probably right, but it points out the importance of submitting the right questions to the arbitrators.

The second case, *State v. AFSCME, Council 4*,66 concluded that the trial court properly vacated an arbitration award that reinstated an employee who sexually harassed a coworker. Enforcing the award would have violated “an explicit, well-defined, dominant public policy” against sexual harassment as expressed in General Statutes Section 46a-60(a). The court rejected the defendant’s argument that because Section 46a-60(a) did not apply to the specific circumstances, it was irrelevant to a determination of public policy.

**B. General Civil**

The court issued several notable decisions on tort law. In *Pin v. Kramer*,67 the court held that the trial court should have given a curative instruction when the defendant’s expert testified that he would have ordered certain tests to avoid a medical malpractice claim. *Wilcox v. Schwartz*,68 which also concerned medical malpractice, reversed the trial court’s dismissal of the action, holding that a good-faith certificate is sufficiently detailed if it addresses the allegations regarding the defendant’s breach of the standard care.

Although hold harmless provisions have taken a hit in recent years, the court upheld such a provision in *Dow–Westbrook, Inc. v. Candlewood Equine Practice, LLC*,69 which involved two commercial entities engaged in horse breeding, an activity the court deemed not to be essential to modern society, as opposed to recreational activities for humans.70

Governmental immunity is a regularly occurring topic in appellate law, and in *Haynes v. Middletown*,71 the court held

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69 119 Conn. App. 703, 989 A.2d 1075 (2010).
71 122 Conn. App. 72, 997 A.2d 636, cert. granted, 298 Conn. 907, 3 A.3d 70 (2010).
that a plaintiff must plead specifically the identifiable person/imminent harm exception to discretionary act immunity in the complaint or as a reply to a special defense. Municipalities can be responsible for injuries caused by highway defects pursuant to General Statutes Section 13a-148 as long as plaintiffs timely provide notice. The plaintiff in Bartlett v. Metropolitan District Commission\(^{72}\) failed to do so, claiming that the statute did not apply to the Metropolitan District Commission (MDC) under the facts of the case. The trial court and Appellate Court disagreed, noting that the MDC is a municipal corporation and that the plaintiff alleged it controlled the storm drain at issue.

The trial court properly dismissed an action by a would-be minister under the abstention doctrine in Thibodeau v. American Baptist Churches of Connecticut\(^{73}\) because the plaintiff’s various tort claims all required assessment of church doctrine.

Lastly, in DiPietro v. Farmington Sports Arena, LLC\(^{74}\), the court held that expert testimony was not required to prove the standard of care that an owner of an indoor soccer arena owed invitees to show that the carpet in the facility was inherently dangerous despite the lack of visible defects and its wide use in similar facilities.

Two cases explored the interplay between the common law and the Workers Compensation Act. In Roy v. Bachman\(^{75}\), the majority held that the exclusivity provision did not preclude as a matter of law an action for premises liability against landowners who were also majority shareholders in the plaintiff’s employer because whether the defendants were the alter ego of the employer was a factual question not susceptible to summary judgment. Judge West dissented, arguing that there was no question of fact that the defendants controlled the employer.\(^{76}\) In Sapko v.
the court held that the abrogation of the doctrine of superseding cause applied in workers’ compensation cases. The plaintiff’s decedent had overdosed on pain killers, which broke the proximate cause chain, and the court affirmed on that alternate basis.78

A legal malpractice action, Terracino v. Gordon & Hiller,79 provided a foray into contract law, holding that a waiver of common-law defenses by coguarantors trumped the doctrine of equitable contribution among coguarantors. The plaintiffs claimed that if their lawyer had discovered that one of the coguarantors had purchased the note for which enforcement was sought (which he later sold), their exposure on a motion for deficiency judgment would have been limited to their pro rata share of the purchase price their coguarantor paid. The majority, in an opinion by former Chief Justice Peters, held that the contractual waiver trumped and that discovering the evidence would not have aided the plaintiffs in the earlier action. Former Chief Judge Flynn wrote a strong dissent, arguing that the doctrine of equitable contribution was not limited by the contract.80

Finally, a property case worth noting is Alligood v. LaSaracina.81 There, the court adopted the majority rule that the owner of a servient estate may not unilaterally alter an easement.

C. Families and Children

As noted in the Supreme Court discussion, the mosaic doctrine came under attack in 2010. The Appellate Court contributed to this attack in Marshall v. Marshall82 in which the court found error in the personal property orders, but remanded for a hearing limited to those assets. The Supreme Court granted certification on the mosaic question

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77 123 Conn. App. 18, 1 A.3d 250, cert. granted, 298 Conn. 923, 4 A.3d 1229 (2010).
78 Id. at 26-30.
80 Id. at 806, 1 A.3d at 104 (Flynn, J., dissenting).
82 119 Conn. App. 120, 988 A.2d 314, cert. granted, 296 Conn. 908, 993 A.2d 467 (2010). The authors represented the defendant.
one day after *Maturo v. Maturo*\(^{83}\) was officially released. *Marshall* settled, however, leaving resolution of the fate of the mosaic doctrine to another time.\(^{84}\)

Erroneous property orders also required reversal in *Brooks v. Brooks*\(^{85}\) where the court relied on a flawed method for valuing the defendant’s minority interests in various family businesses. There, the court failed to consider any discounts for the defendant’s minority status, the lack of marketability, or restrictions on selling the stock. Although there was other evidence from which the court could have made its valuation, the Appellate Court refused to rely on these unstated reasons when the stated reason was erroneous.

The trial court in *Kovalsick v. Kovalsick*\(^{86}\) erroneously equated education with earning capacity, concluding that because the parties both had bachelor’s degrees and the plaintiff had a work history, no alimony should be awarded. It did not help that the only marital asset, the defendant’s IRA, was awarded to him.

In a case of “Be careful what you wish for,” the defendant in *Schwarz v. Schwarz*\(^{87}\) moved to terminate alimony because his ex-spouse was cohabiting. The ex-spouse responded by seeking an upward modification and succeeded. Judge Flynn dissented because the trial court found that the ex-spouse and her boyfriend had orchestrated their living arrangements once the defendant moved to modify.\(^{88}\)

*McKenna v. Delente*\(^{89}\) held that a party claiming that a separation agreement is unconscionable must plead that claim as a special defense.\(^{90}\) The opinion also held that liti-
gation misconduct, which *Ramin v. Ramin*\(^91\) held could provide the basis of a counsel fees award notwithstanding the moving party’s financial wherewithal, could also be a basis for denying counsel fees.

In another case concerning procedural rules in family cases, *Narayan v. Narayan*\(^92\) applied a new rule for family magistrates retroactively to hold that an appearance in a family support proceeding does not constitute an appearance in a dissolution action. Accordingly, the court should have entertained and granted the defendant’s motion to dismiss a dissolution action where there was no finding that he had been served or had actual notice of the case because the court had no jurisdiction over the dissolution and financial orders.

While parties have less leeway in crafting nonmodifiableity provisions for child support, the court in *Tomlinson v. Tomlinson*\(^93\) upheld such a provision in an unallocated alimony and support order where there was no evidence that the children’s needs were unmet.

An unusual dispute arose between parents in *Okeke v. Commissioner of Public Health*.\(^94\) There, the majority held that the defendant properly denied the father’s request to change the child’s name after the mother unilaterally changed the name. Justice Borden wrote a passionate dissent emphasizing a parent’s right to name a child and arguing that hospital staff lacked the authority to change the paperwork based on the mother’s phone call where the original documents were signed and notarized by both parents.\(^95\) The authors agree with Justice Borden.

Several other cases involving parental rights are worth noting. The court concluded in *Abreu v. Leone*\(^96\) that

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\(^91\) 281 Conn. 324, 915 A.2d 790 (2007).
\(^95\) *Id.* at 381 (Borden, J., dissenting).
because General Statutes Section 17a-28 prohibits disclosure of information about children in foster care and imposes criminal penalties for violating that statute, foster parents cannot be compelled to testify as to the nature of their relationship with foster children or their observations about such children. In In re Lukas K.,\(^97\) the trial court did not violate the due process of the respondent, who was incarcerated in New Hampshire, when it denied his request for video conferencing to attend trial where the respondent could have testified by phone and where his lawyer was present in the courtroom.

Two interesting cases involved neglect findings. The court reversed a judgment terminating parent rights in In re Joseph W.\(^98\) because it was based on a flawed finding of neglect. The children were taken from the mother at birth on the grounds of predictive neglect because of her mental health. The trial court did not permit the father to challenge the neglect finding because he had not shown that he was the custodial parent. The Appellate Court held that the trial court improperly imposed a burden on the father that it did not impose on the mother. In In re Zamora S.,\(^99\) the court held that because a finding of neglect relates to the status of the child, a finding that the child was neglected by the father but not the mother was legally inconsistent.

D. Criminal Law

Many of the criminal cases involve constitutional matters, and the discussion begins with such a case. In State v. DeMarco,\(^100\) the majority held that a warrantless search violated the Fourth Amendment in a case concerning animal cruelty because the accumulating mail, horrible odor, and barking dogs did not objectively indicate an emergency situation where the animal control officer could have obtained the cell phone number for the owner and where the police waited

\(^97\) 120 Conn. App. 465, 992 A.2d 1142, cert. granted, 297 Conn. 914, 995 A.2d 955 (2010).
\(^98\) 121 Conn. App. 605, 997 A.2d 512, cert. granted, 297 Conn. 928, 998 A.2d 1195 (2010).
\(^99\) 123 Conn. App. 103, 998 A.2d 1279 (2010).
\(^100\) 124 Conn. App. 438, 5 A.3d 527 (2010).
for the fire department (which had gas masks) to enter the house. Judge Beach dissented, arguing that the “scrupulous review” the majority applied went too far by emphasizing certain unstated facts at the expense of others. The court rejected a double jeopardy claim in *State v. Bernacki*, holding that while criminal possession of a firearm and violation of a protective order proscribed the same conduct, multiple punishments did not constitute double jeopardy.

Criminal statutes that prohibit harassing phone calls may run up against free speech rights, as occurred in *State v. Moulton*. There, a fractured court reversed the conviction pursuant to General Statutes Section 53a-183(a)(3) for harassment by a disgruntled postal worker who complained in a phone call to a colleague at work about job conditions and referenced a postal worker in California who shot her coworkers, stating, “I could do that, too.” Section 53a-183(a)(3) applies to the act of causing the phone to ring, and not for the speech that ensues. Judge Robinson’s majority opinion held the trial court improperly instructed the jury that “making” the telephone call violated the statute because that instruction allowed the jury to punish the defendant for her speech in violation of her free speech rights. He further held that, although the ensuing conversation may reveal intent to harass by causing the phone to ring, there was insufficient evidence to prove that the defendant intended to harass the victim by making the phone ring at the victim’s place of employment, as the victim was in charge of answering the phones at the post office. Judge Beach concurred that the evidence was inadequate to support a finding of intent.

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101 *Id.* at 458 (Beach, J., dissenting).
104 *Id.* at 333.
105 *Id.* at 338.
106 *Id.* at 344, 352-53. The court also reversed the defendant’s conviction for breach of peace, holding that while a jury may conclude that the conversation may have been intended to cause alarm, the court failed to instruct the jury that the conversation constituted a true threat, which would not be constitutionally protected speech. *Id.* at 350-51.
insufficient to support the harassment conviction, but would not have reached the free speech issue given the insufficiency of evidence. Justice McDonald dissented because he viewed the evidence as sufficient to support a conviction of harassment as speech can be a form of harassment. The authors agree with Judge Beach that is was not necessary to address the constitutional issue in view of the insufficient evidence on the harassment charge.

In *State v. Mann*, the court rejected the defendant’s claim that an instructional error violated the state constitution where the trial court had indicated that the jury could consider the defendant’s interest in the outcome of the trial when assessing his credibility. In *State v. Davis*, the court concluded that a violation of Megan’s Law was serious enough to warrant involuntarily medicating the defendant so that he would be competent to stand trial.

A petitioner had a rare success in a habeas claim in *Ebron v. Commissioner of Correction* where he established that his trial counsel was ineffective in failing to recommend a plea agreement for less time than the minimum sentence he faced. The petitioner established prejudice because it was likely both he and the court would have accepted the deal. The habeas court’s remedy of specific performance was proper and did not violate separation of powers because it restored the situation to the status prior to the ineffective assistance of counsel.

E. Personnel

Chief Judge Flynn took senior status in March and continues to hear cases on that basis. Alexandra DiPentima was elevated by Chief Justice Rogers to serve as Chief

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107 *Id.* at 353, 991 A.2d at 745 (2010) (Beach, J., concurring).
108 *Id.* at 355, 991 A.2d at 746 (2010) (McDonald, J., dissenting and concurring).
Judge, and Stuart Bear was appointed to the Appellate Court to fill the vacancy created by Judge Flynn’s decision to take senior status. More than a dozen referees continue to sit on appellate panels. Those referees play an important role in keeping the Appellate Court docket current. The most active in 2010 are Judges West, Peters, Pellegrino, Borden, and Hennessy.
As in the prior two years, the sluggish economy heavily impacted Connecticut’s tax landscape in 2010. State revenue collections remained stagnant, contributing to a state budget deficit of historic proportions. Apparently paralyzed by the scope of the deficit and the impending gubernatorial transition, the General Assembly limited its contribution to tax policy to the passage of the recommendations of the Majority Leaders’ Job Growth Roundtable1 – a package of tax incentives intended to spur economic development in the state, targeting primarily individual income taxpayers, corporate taxpayers and insurance companies. The bill’s passage represents the first time that the state has offered meaningful tax incentives to individual income taxpayers and offers benefits to both individual investors and companies seeking start-up capital to benefit.

Perhaps the most significant tax development in 2010 was newly-elected Governor Dannel P. Malloy’s nomination of Kevin B. Sullivan as Commissioner of Revenue Services. Known for his distinguished public service as both a state senator and Lieutenant Governor, Commissioner Sullivan has committed the Department of Revenue Services (the “Department”) to be “efficient, effective, honest, transparent and, above all, fair.”2 The Commissioner himself is demonstrating this commitment by continuing a regular dialogue with tax practitioners and business representatives on a variety of issues. It is hoped that this continued communication will result in improved taxpayer interactions with the Department.

1 Spearheaded by then-House Majority Leader Denise Merrill and Senate Majority Leader Martin Looney, the Majority Leaders’ Job Growth Roundtable (herein, the “Roundtable”) consists of members from the General Assembly, policy experts, and members of the business community. The Roundtable’s twelve-page report (the “Roundtable Report”), which laid the framework for the legislation enacted in 2010, is available at <http://www.housedems.ct.gov/JobGrowth/roundtable.pdf>.

I. LEGISLATIVE DEVELOPMENTS

For the first time since 2008, Governor M. Jodi Rell and the General Assembly agreed on the passage of a state budget.\(^3\) While no additional taxes were included in the measure, the $19 billion budget enacted for Fiscal Year 2011 relied heavily upon borrowing and federal stimulus funds to remedy the existing budget shortfall from FY 2010. As a result, the state faces a projected budget deficit in excess of $3 billion for FY 2012, leaving the new Malloy Administration with little choice but to seek tax increases. In all, the General Assembly passed several tax-related measures worthy of note.

A. Corporate and Income Taxes

1. Corporation Business Tax

The most note-worthy legislation provides for incentives recommended by the Roundtable. One such incentive was the Small Business Job Creation Tax Credit. Beginning with income tax years commencing on or after January 1, 2010, this credit is available for qualified small businesses that create new, full-time jobs and that hire state residents as employees.\(^4\) The credit, equal to $200 per month, per employee hired and available for new jobs created up until December 31, 2012, may be used against liabilities arising under the Insurance Premiums Tax, the Corporation Business Tax, and the Individual Income Tax.

Another outgrowth of the Roundtable was the Vocational Rehabilitation Job Creation Tax Credit, which provides businesses with a credit for hiring employees who have a disability, receive vocational rehabilitation services from the state, work at least twenty hours per week, and start employment after January 1, 2010.\(^5\) As with the Small Business Job

\(^3\) In 2009, Governor Rell did not act upon the budget passed by both chambers of the General Assembly, instead allowing the budget to take effect without her signature in September.

\(^4\) P.A 10-75, § 8 (Reg. Sess.). A qualified small business is any entity having fewer than 50 employees in Connecticut. Seasonal or temporary jobs do not count as a newly created job for purposes of the Small Business Job Creation Tax Credit. The credit is not permitted for a new employee who is an owner, member, or partner of the employer. Cf. Roundtable Report, supra note 1, at 5.

\(^5\) P.A. 10-75, § 9 (Reg. Sess.).
Creation Tax Credit, this credit is equal to $200 per month for each employee hired and is available to offset a liability arising under the Insurance Premiums Tax, the Corporation Business Tax, and the Individual Income Tax.

Both the Small Business Job Creation Tax Credit and the Vocational Rehabilitation Job Creation Tax Credit were enacted as part of the General Assembly’s recent focus on targeting tax credits to selected groups of taxpayers, which represents a change in practice in Connecticut. These two credits, along with the Job Incentive Tax Credit enacted in 2006, are collectively capped at $11 million for any one fiscal year.6

Currently, a credit may be taken against the Corporation Business Tax for a manufacturing facility located in a distressed municipality, a targeted investment community, or an enterprise zone.7 The General Assembly expanded the credit to include any manufacturing facility located within the newly created Bradley Airport Development Zone.8 This expansion of the Corporation Business Tax coincides with the Property Tax exemption also available for the Bradley Airport Development Zone, which is discussed below.

Also, as a result of the Roundtable, the General Assembly broadened and narrowed the Film Production Tax Credit9 and the Tax Credit for Infrastructure Projects in the Entertainment Industry10 (the “Film Tax Credits”), making the credits more widely available while also limiting the type of expenses that qualify for the credit.11 The threshold for qualifying for the Film Production Tax Credit has been reduced so that a company can now qualify for the credit by conducting 25% (formerly 50%) of its principal photography days within Connecticut. A company also qualifies for the credit if it expends more than $1 million of post-production costs in Connecticut. With respect to costs qualifying for the

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6 P.A. 10-75, § 10 (Reg. Sess.).
7 CONN. GEN. STAT. § 12-217e. The credit is equal to 25% of the tax attributable to the manufacturing facility and may be taken for a period of ten years.
8 P.A. 10-98, § 1 (Reg. Sess.). The Bradley Airport Development Zone consists of various census tracts in the towns of Windsor Locks, Suffield, East Granby, and Windsor.
9 CONN. GEN. STAT. § 12-217jj.
10 CONN. GEN. STAT. § 12-217kk.
11 P.A. 10-107, § 1 (Reg. Sess.).
credit, the legislation narrows the expenses eligible for the credit by limiting compensation to base salary (i.e., excluding bonuses, stock options, etc.) and by eliminating development costs. With regard to the Tax Credit for Infrastructure Projects in the Entertainment Industry, the legislation tightens the criteria for determining eligible production and infrastructure costs by permitting only buildings, facilities, and installations made pursuant to a capital lease to qualify.\(^\text{12}\)

The General Assembly amended the approval process under the R.E. Van Norstrand Neighborhood Assistance Act, which provides Corporation Business Tax credits to business firms that invest in certain community activities and programs.\(^\text{13}\) The legislation eliminates the municipalities' role in approving a business firm's application, leaving the Commissioner as the sole decision-maker.\(^\text{14}\) The legislation also increases the credit for investments in community-based alcoholism prevention or treatment programs from 40% to 60% of the total cash amount invested.\(^\text{15}\)

Effective for income tax years commencing January 1, 2014, Public Act 10-75 eliminates several Corporation Business Tax credits, including:

- the tax credit (ranging from 30% to 50%) for financial institutions constructing new facilities and creating new jobs,\(^\text{16}\) as well as the additional five-year credit for employing 3,000 qualified employees;\(^\text{17}\)

- the 100% tax credit for certain costs borne by small businesses with respect to obtaining financing from the United States Small Business Administration;\(^\text{18}\) and

\(^\text{12}\) P.A. 10-107, § 2 (Reg. Sess.). A capital lease generally has a longer term, higher lease payments, and provisions for transferring the property to the lessee when the lease term ends. Office of Legislative Research, Summary for Public Act No. 10-107.

\(^\text{13}\) CONN. GEN. STAT. § 12-632(c). The Neighborhood Assistance Act also provides for credits under the Unincorporated Business Tax, Insurance Premiums Tax, Air Carriers Tax, Telecommunications Tax, Utility Companies Tax, or Public Service Companies Tax. Prior to the amendment, the pertinent municipality preliminarily decided whether a business firm's application should be approved or denied. Following the municipality's decision, the Commissioner issued a final determination, taking into consideration compliance issues and the municipality's decision.

\(^\text{14}\) P.A. 10-188, § 9 (Reg. Sess.).

\(^\text{15}\) P.A. 10-188, § 10 (Reg. Sess.).

\(^\text{16}\) P.A. 10-75, § 26 (Reg. Sess.).

\(^\text{17}\) P.A. 10-75, § 27 (Reg. Sess.).

\(^\text{18}\) P.A. 10-75, § 28 (Reg. Sess.).
the 50% tax credit for the donation of new or used computers to a board of education or school.\textsuperscript{19}

Finally, in arriving at net income for purposes of determining income taxable under the Corporation Business Tax, the tax statutes generally allow a deduction for any item that is deductible for U.S. federal income tax purposes, unless otherwise excepted. In 2010, the General Assembly included an additional exception for the recipient of dividends paid from a captive real estate investment trust ("REIT").\textsuperscript{20} As a result, any dividends paid from a captive REIT cannot be deducted and must be included in net income of the recipient, unless the captive REIT itself is taxable in Connecticut.\textsuperscript{21}

2. Individual Income Tax

The General Assembly did not limit the incentives arising from the Roundtable to the Corporation Business Tax. As noted above, the Small Business Job Creation Tax Credit and the Vocational Rehabilitation Job Creation Tax Credit may be used as a credit against an Individual Income Tax liability. In addition, an individual taxpayer who makes a qualifying investment of at least $100,000 in certain Connecticut businesses may qualify for the new Angel Investor Tax Credit, which was designed to spur investment of start-up capital in Connecticut-based initiatives.\textsuperscript{22} The Angel Investor Tax Credit is the only tax credit available exclusively for Individual Income Tax payers and is equal to 25% of the individual's cash investment. The recipients of such investments must be engaged in bioscience, advanced materials, photonics, information technology, clean technology, or any other emerging technology, have a principal place of business in Connecticut, have been approved by Connecticut Innovations, Incorporated, and satisfy other

\textsuperscript{19} P.A. 10-75, § 25 (Reg. Sess.).

\textsuperscript{20} P.A. 10-188, § 2 (Reg. Sess.). Section 1 of the legislation defines a captive REIT as a REIT for purposes of the Code, that is not regularly traded on an established market, is more than 50% owned by an entity subject to taxation as a C corporation, and is not a qualified REIT, as defined under General Statutes § 12-217(a)(3).

\textsuperscript{21} P.A. 10-188, § 3 (Reg. Sess.).

\textsuperscript{22} P.A. 10-75, § 15 (Reg. Sess.). Cf. Roundtable Report, \textsuperscript{supra} note 1, at 4.
revenue- and employee-related criteria. A total of $6 million of Angel Investor credits are available for FY 2011 and FY 2012, with $3 million being allocated to FY 2013. The credit is neither transferable nor refundable and is capped at $250,000 for each investor.23

In response to the outrage that arose from the sizeable bonuses distributed to employees of companies that received federal Troubled Asset Relief Program (also known as “TARP”) funds, the General Assembly passed a new tax for certain payments made by a TARP recipient.24 Governor Rell, however, vetoed the TARP bonus tax, and the General Assembly was unable to override her veto. The 8.97% tax would have been in lieu of the Individual Income Tax and be imposed on any bonus totaling $500,000 or more that was paid in the 2010 and 2011 tax years.25

B. Sales and Use Tax

The General Assembly made only two, relatively minor, changes to the Sales and Use Tax provisions. One was to expand the Sales and Use Tax exemption for the renewable energy and clean energy technology industries to include wind power electric generation systems along with solar energy electricity generating systems, passive or active solar water or space heating systems, and geothermal resource systems already qualifying for the exemption.26 This exemption, adopted as part of the Majority Leaders’ Jobs Growth Roundtable, is available for sales, storage, use, and consumption of tools, materials, supplies, and fuel used directly in the renewable energy and clean energy technology industries.

The other change modified the procedure for cancellation of Sales Tax permits for non-use. Limiting the number of active Sales Tax permits in existence tends to prevent those who hold permits but make no sales from taking advantage of the re-sale exemption. Under the prior law, the

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23 As initially proposed, the Angel Investor Tax Credit was intended to be transferable, but the ability to sell, assign, or otherwise transfer the credit was stripped from the final version of the bill.
24 P.A. 10-45, § 2 (Reg. Sess.).
25 The regular Individual Income Tax rates apply to other taxable income.
26 P.A. 10-75, § 11 (Reg. Sess.).
Commissioner had the power to revoke the permits of any seller who made no sales for four consecutive monthly or quarterly periods.\textsuperscript{27} The new legislation provides for the cancellation of a seller's permit after two successive years without sales and requires thirty days notice for the holder to request a show cause hearing.\textsuperscript{28}

C. Practice, Procedure, and Tax Administration

Under prior law, a taxpayer filing a federal amended return was required to file an amended Connecticut Corporation Business Tax return within ninety days of the federal filing.\textsuperscript{29} Legislation enacted in 2010 extended the time for filing the state amended return to ninety days after a final determination is made on the amended return by the Internal Revenue Service.\textsuperscript{30} The Department must determine that an amended return requesting a refund is filed "in processible form" to trigger the payment of interest if the tax refund is not paid within the later of ninety days of final tax filing deadline or the date that the return was filed.

Similarly, an individual taxpayer who filed an amended return in another state or the District of Columbia and who claimed a credit on his or her Connecticut return for taxes paid to the other jurisdiction must now file an amended return with the Department within 90 days of a final determination by the taxing authority in the other jurisdiction.\textsuperscript{31} The Department must determine that an amended return requesting a refund "contain[s] sufficient required information," in order to trigger the payment of interest if the tax refund is not paid within the later of 90 days of the final tax filing deadline or the date that the return was filed. Furthermore, the legislation requires that a pass-through entity file an amended informational return with the Department if such entity filed an amended U.S. federal income tax return.\textsuperscript{32}

\textsuperscript{27} \textit{Conn. Gen. Stat.} § 12-409.
\textsuperscript{28} P.A. 10-188, § 6 (Reg. Sess.).
\textsuperscript{29} \textit{Conn. Gen. Stat.} § 12-226(b)(1).
\textsuperscript{30} P.A. 10-188, § 5 (Reg. Sess.).
\textsuperscript{31} P.A. 10-188, § 12 (Reg. Sess.).
\textsuperscript{32} P.A. 10-188, § 13 (Reg. Sess.).
The General Assembly has given the Commissioner greater authority to require certain taxpayers to pay their taxes via electronic funds transfer (“EFT”). Taxpayers subject to the EFT requirements include any taxpayer with an annual, quarterly, or monthly liability of more than $4,000, as well as taxpayers with a withholding liability of more than $2,000. The previous thresholds were both $10,000. Also, any taxpayer—except a return preparer—required to file an electronic return, statement, or other document under regulations adopted under General Statutes § 12-690 is also required to pay such liability by EFT.

The General Assembly eliminated two long-dormant commissions resident within the Department of Revenue Services: the Small and Medium-Sized Business Users Committee and the State Tax Review Commission. The purpose of the former was to advise and make recommendations to the Commissioner concerning measures to improve the “user friendliness” of the Department. The latter, originally established in 1991, was tasked to study and evaluate the state and local tax system, its incidence, and its effect upon economic activity within Connecticut and became inactive after submitting its initial report and one subsequent report.

D. Property Tax

Currently, Property Tax exemptions exist for a manufacturing facility, as well as machinery and equipment within such facility, when the facility, machinery, or equipment is located in a distressed municipality, a targeted investment community, or an enterprise zone. The exemptions have

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33 P.A. 10-188, § 11 (Reg. Sess.). This generally includes employers with wage withholding in excess of $2,000 for the year, payers of non-payroll amounts where the withholding liability is $4,000 or more; and taxpayers who file monthly, quarterly, or yearly returns with a liability of $4,000 or more.
34 CONN. GEN. STAT. § 12-686.
35 The Department typically requires taxpayers who remit Sales and Use Tax, Admissions and Dues Tax, Business Use Tax, Room Occupancy Tax, Nursing Home User Fees, Beverage Container Deposits reports, and Withholding Tax to both file and pay electronically. Connecticut Department of Revenue Services, Informational Publication IP 2010(17) (Nov. 24, 2010).
36 P.A. 10-188, § 17 (Reg. Sess.).
37 Id.
38 Office of Legislative Research, Summary for P.A. 10-188.
39 CONN. GEN. STAT. § 12-81(39), (60).
been expanded to include manufacturing facilities, machinery, and equipment located within the newly created Bradley Airport Development Zone (as described above).  

The General Statutes impose special taxing regimes upon certain industries in Connecticut. For instance, certain telecommunications providers may elect to be taxed at a statewide tax rate of 47 mills on a tax base equal to 70% of the depreciated value of their personal property. As a result of legislation enacted in 2010, any prior election made by a mobile telecommunications service provider was deemed null and void. Now, mobile telecommunications service providers that had not fully depreciated their personal property are subject to tax in the municipality in which such property is located at the rate imposed by such municipality. For entities that had depreciated their personal property to the maximum extent permissible under the Corporation Business Tax, the tax will be phased in over a four-year period on the un-depreciated value of the property, with the percentage of tax increasing by 25% in subsequent assessment years until 100% of the property is taxable for assessment years beginning after October 1, 2013.

The existing Property Tax exemption for remediation of contaminated real property was expanded in two ways: first, to increase the instances in which a municipality can forgive all or a portion of the delinquent Property Taxes for the benefit of a prospective purchaser of a brownfield; and second, to allow a municipality to enter into an agreement to fix the assessed value of a property as of the last assessment date prior to the commencement of remediation actions. The fixed assessment freezes the value of the property, allowing the owner to remediate while not paying tax on the value of the improvements. The municipality’s legislative body must first approve the exemption, before providing any of these exemptions codified under General Statutes § 12-81dd. The expansion of the exemption is effective for assessment years beginning on or after October 1, 2010.

40 P.A. 10-98, §§ 2-3 (Reg. Sess.).
41 CONN. GEN. STAT. § 12-80a(b).
42 P.A. 10-171, § 3 (Reg. Sess.).
43 P.A. 10-135, § 3 (Reg. Sess.).
E. **Insurance Premiums Tax**

As discussed above, the Small Business Job Creation Tax Credit and the Vocational Rehabilitation Job Creation Tax Credit may be used as a credit against an Insurance Premiums Tax liability. Legislation enacted as part of the Roundtable also created a New Insurance Reinvestment Fund Tax Credit (the “New Credit”), replacing the prior version of the Insurance Reinvestment Tax Credit. Unlike the prior version of the credit, which was available to offset a liability arising under the Premiums Tax on Insurance Companies, the Corporation Business Tax, and the Individual Income Tax, the New Credit applies only to the Premiums Tax on Insurance Companies.

Under the New Credit, funds are organized, subject to approval by the Department of Economic and Community Development, to make investments in qualifying businesses—entities employing fewer than 250 people, netting no more than $10 million, and having at least 80% of its workers or payroll dedicated to Connecticut. Taxpayers qualify for the credit by investing in designated businesses through the purchase of either debt or equity issued by the fund. At least 25% of the fund’s investments must be made in green technology businesses. An insurance company qualifies for a credit to be taken over a seven-year period in an amount equal to 100% of the cash investment in the insurance reinvestment fund.

Unused credits may be carried forward for five years and may be transferred. The New Insurance Reinvestment Fund Tax Credit is capped at $40 million in any one fiscal year and $200 million in the aggregate.

F. **Miscellaneous Taxes**

In 2008, the General Assembly deferred a reduction in the rate of the Municipal Real Estate Conveyance Tax from 0.25% to 0.11% on a grant, transfer, assignment, or conveyance of real property on or after July 1, 2010. As a

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44 P.A. 10-75, § 14 (Reg. Sess.).
45 CONN. GEN. STAT. § 38a-88a.
46 Credits are distributed based on the following schedule: In the first to third years, 0%; in the fourth to seventh years, 10% per year; and in the eighth to tenth years, 20% per year.
47 CONN. GEN. STAT. §§ 12-494(a)(2).
result of the legislation enacted in 2010, the reduced rate of 0.11% was deferred once again and now is scheduled to take effect on July 1, 2011.\textsuperscript{48} The delay in the reduced municipal rate also affects those eighteen targeted investment communities able to impose an additional 0.25% conveyance tax by allowing those municipalities to impose a 0.5% Municipal Real Estate Conveyance Tax for an extra year, instead of the 0.36% rate that was previously scheduled to go into effect.\textsuperscript{49} Furthermore, the legislation also restores an exemption from the Real Estate Conveyance Tax, which was eliminated in 2009, for transfers made pursuant to a foreclosure by sale.\textsuperscript{50} The legislation also exempts from tax any transfers of a seller’s principal residence when the transfer is in lieu of foreclosure or pursuant to a short sale.

The Admissions, Cabaret, and Dues Tax under Chapter 225 of the General Statutes no longer applies with respect to any interscholastic event held at Rentschler Field.\textsuperscript{51}

And finally, for the 2010 and 2011 tax years, legislation that passed both chambers of the General Assembly exempted any S corporation, limited liability company, limited liability partnership, and limited partnership from the Business Entity Tax, provided that such entity reported $50,000 or less in net income and employed at least one full-time employee in Connecticut.\textsuperscript{52} Along with the TARP bonus tax, the legislation was ultimately vetoed by Governor Rell.

\section*{II. Litigation and Administrative Developments}

\textbf{A. Corporate and Income Taxes}

There were no judicial decisions during 2010 regarding Corporation Business Tax or Individual Income Tax. However, the Department provided guidance regarding its positions in two important areas.

\begin{itemize}
\item \textsuperscript{48} P.A. 10-1, § 1 (June Spec. Sess.).
\item \textsuperscript{49} Pursuant to General Statutes §§ 32-70 and 32-222, the 18 targeted investment communities are Bloomfield, Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Waterbury, and Windham.
\item \textsuperscript{50} P.A. 10-1, § 2 (June Spec. Sess.).
\item \textsuperscript{51} P.A. 10-146, § 1 (Reg. Sess.).
\item \textsuperscript{52} P.A. 10-45, § 1 (Reg. Sess.). Public Act 10-45 defined a “full-time employee” as an employee or member or partner who is paid to work 35 hours or more per week.
\end{itemize}
First, the enactment in 2009 of an “economic nexus” provision asserting Corporate and Income Tax nexus for businesses on the basis of a corporation’s purposeful direction of business toward the state was addressed by the Department in an informational publication in question-and-answer format. Importantly, the Department adopted a $500,000 gross receipts threshold and declared that income from passive investments would not be considered a basis for asserting economic nexus. It noted that sellers of tangible personal property who are immune from income taxation under Public Law 86-272 will not be affected by the economic nexus legislation, adding that the applicability of the federal statute to passthrough entities will be determined at the entity level. The publication also states that deriving income from the use or licensing of intangible property in Connecticut is a basis for assertion of economic nexus and, with the exception of licensing of intangible property, transactions between related members will be disregarded. However, the term “related member” is not defined.

The publication also addresses the concern of the business community and tax practitioners that, by its terms, the legislation could be applied to non-U.S. corporations that are foreign corporations for federal tax purposes and have no income effectively connected with a U.S. trade or business. That is, it could result in assessment of tax against such corporations when their taxable income is zero. The publication notes that the Department will propose legislation to clarify that the economic nexus provision does not apply in that instance and will adhere to that position in advance of legislative action.

In addition, the Department issued an Informational Publication stating its positions regarding taxation of Real Estate Investment Trusts (“REITs”). The publication indicates that REITs are subject to the Corporation Business Tax on income, but not the alternative tax on capital. Generally,
a REIT must apportion its income based on the three-factor, double-weighted sales formula in General Statutes § 12-218 but may apportion as a financial services company if it qualifies as such under Section 12-218b(a)(6). Because a REIT cannot be part of a federal consolidated group, it also cannot be included in a Connecticut combined return.

B. Sales and Use Taxes

In *Sikorsky Aircraft Corp. v. Commissioner*, the Connecticut Supreme Court rejected the position of the Department that items used in research and development did not qualify for the aircraft manufacturing exemption of General Statutes § 12-412(78) because they had not been installed in an aircraft manufacturing facility and used predominantly for manufacturing qualifying property. The essence of the Department’s position was a restrictive reading of the exemption to require exempt items to be used directly in the production process. The Department also sought a narrow reading of “aircraft manufacturing facility” to encompass only that portion of a plant dedicated to acting directly upon the raw materials.

General Statutes § 12-412(78), the aircraft manufacturing exemption, exempts from tax the purchase “by an aircraft manufacturer operating an aircraft manufacturing facility in this state of materials, tools, fuel, machinery and equipment used in such facility.” The Department's position was that research and development (“R&D”) items did not qualify because they were not used directly in the actual fabrication of property or in the manufacturing production process. The taxpayer’s position was that the statute requires only that items be used in an aircraft manufacturing plant, not that they be used directly in the fabrication or process, and, as a consequence, R&D items do qualify.

In a 2002 Superior Court Tax Session decision, the Commissioner had lost the identical issue against a

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56 297 Conn. 540, 1 A.3d 1033 (2010).
57 Under the traditional manufacturing exemptions of General Statutes § 12 412(18) and (34), R&D items are not exempt because their use in the actual fabrication of property or the manufacturing production process is not direct.
Sikorsky affiliate and had not appealed. Nevertheless, in *Sikorsky*, the Commissioner made a final determination against the taxpayer and, on appeal, Judge Aronson reconsidered his previous decision but again held for the taxpayer. In response to the Commissioner’s appeal, the Supreme Court exercised its authority to take the case directly and affirmed the Superior Court decision, holding:

1. The prior final decision in *Pratt & Whitney* did not preclude the Commissioner’s assessment against Sikorsky because collateral estoppel does not apply to lawsuits by the state; and
2. It was not the intent of the General Assembly to limit the aircraft manufacturing exemption to items used directly in fabrication or the manufacturing production process but to include items used in any part of an aircraft manufacturing facility where activities related to manufacturing are conducted. Consequently, R&D equipment used at such a facility is exempt.

In providing its rationale for the second holding, the court examined the history of the manufacturing exemptions, beginning with the earliest exemptions for manufacturing activity, General Statutes § 12-412(18) and (34). In these exemptions:

1. Machinery, materials, tools and fuel are exempt, but equipment is not;
2. Materials, tools and fuels qualify only if used directly in the fabrication of the finished product or in the manufacturing production process, each of which is closely tied to direct action upon the raw materials themselves; and
3. Machinery qualifies only if used exclusively for such purposes.

The court explained that the passage of the Manufacturing Recovery Act (MRA) in 1992 changed the manufacturing exemption landscape by adding a 50% exemption applicable to manufacturing, fabrication and processing.

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59 See 297 Conn. 540, 543-544.
60 P.A. 92-193 (Reg. Sess.).
Under the MRA, equipment is exempt along with machinery, tools and fuel, and there is no requirement that exempt items be used directly in a manufacturing process or in the actual fabrication of the finished product. The property need only be used in a process related to, or in preparation for, manufacturing, and be used previously, not exclusively in the qualifying process. The Supreme Court looked to the legislative intent of the aircraft manufacturing exemption because the provision contains neither the “used directly” language of General Statutes § 12-412(18) and (34) nor a provision explicitly adopting the standards of the MRA and concluded that the legislature intended the exemption to have the broader scope of the MRA. This conclusion was based on the facts that the adoption of the aircraft manufacturing exemption followed closely on the heels of the enactment of the MRA; the aircraft manufacturing exemption omits any reference to use “directly” in the manufacturing process; and the aircraft manufacturing exemption includes a predominant use requirement as opposed to exclusive use. Any potential ambiguity was dispelled, however, by exchanges on the floor of the Senate, making clear that in adopting the aircraft manufacturing exemption the legislature was expanding the General Statutes §§ 12-412(18) and (34) exemptions.

In short, the court held that the Department's position was incorrect because it ignored the fact that the requirement for direct use is omitted from the statute and because the plain language of the statute makes clear that an item qualifies based on where it is used, not on how it is used. The Commissioner’s alternative position that the aircraft manufacturing facility encompassed only those areas of the plant where activities directly connected to manufacturing occur was also not persuasive because it disregarded both the omission of “directly” and the legislative intent that the aircraft manufacturing exemption take the same approach to manufacturing as the MRA. In administrative developments, the Department addressed in a Special Notice61 the legislation creating an exemption for machinery, equipment, tool, materials, supplies and fuel used in the renew-

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able energy and clean energy technology industries. The notice provides a definition of the types of business included in the renewable energy and clean technology industries and provides that the process to which the exemption applies begins when research activities are performed and ends when the product is ready for delivery or storage, including packing and crating.

C. Practice and Procedure

A new Policy Statement\(^{62}\) represents the first published guidance by DRS on waivers of civil penalties since it promulgated regulations in 1988 and 1989.\(^{63}\) The Policy Statement is a marked improvement over the regulations which provide little guidance to practitioners on DRS procedures and standards of review and provides guidance until the DRS promulgates new regulations. The Policy Statement does not change the requirement that the Commissioner refer to the Penalty Review Committee for approval recommendations for waivers of amounts in excess of §500, but does make substantive changes in the standards for granting waivers.

Under the existing regulations “the commissioner may waive penalties, in whole or in part, when it is proven to his satisfaction that the failure to pay any tax on time was due to reasonable cause and was not intentional or due to neglect.” The regulations identify specific examples that may result in a waiver of penalties, some of which fall under the “reasonable cause” prong and others under the “not intentional or due to neglect” prong. Policy Statement 2010(1) eliminates the existing two-pronged analysis in favor of a single reasonable cause requirement derived from federal income tax jurisprudence. Under this standard, the main consideration in granting penalty relief is said to be whether “the taxpayer could have anticipated or otherwise foreseen the event that caused the noncompliance.” A taxpayer’s ignorance of law, mistake, forgetfulness, or oversight will not, in and of itself, establish reasonable cause.

\(^{63}\) Conn. Agencies Regs. §§ 12-2-11, 12-3a-1.
Furthermore, in a departure from the existing regulations, penalty relief based on the reliance of advice from a tax advisor will be limited to issues “considered technical or complicated” and will not apply to a taxpayer’s responsibility to file, pay, or deposit taxes. The Policy Statement provides a detailed explanation of the procedures followed by the Commissioner and the Penalty Review Committee on approving or denying taxpayer requests for waiver.

A taxpayer who disagrees with the Commissioner’s decision may appeal that decision by filing a timely appeal to the Connecticut Superior Court.64 The Commissioner will not waive certain criminal penalties, penalties for willful violations such as willful failure to pay over sales or fuel taxes collected, or civil penalties assessed at audit. Noncriminal penalties for which waiver is not available may be challenged by filing an administrative appeal with the DRS. This requires that the taxpayer protest the penalty within sixty days of denial, a departure from former procedure which allowed a taxpayer to pay the tax and seek a waiver of penalty with no stated restriction on timing.

A number of cases requesting review of unfavorable penalty waiver decisions are now pending before the Tax Session. In each of these, the Department has taken the position based on the Chatterjee decision that the decision to deny or recommend denial is not reviewable even as an abuse of discretion.65 These cases are expected to be resolved during 2011, but as of this writing, none is scheduled for trial.

D. Property Tax

The Supreme Court addressed in Hartford/Windsor Healthcare Properties, LLC v. Hartford66 the question whether a nursing home is entitled to classification as residential “apartment property,” rather than as commercial

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64 While Policy Statement 2010(1) does not deal with the question of appeal rights in the case of a denial of waiver by the Penalty Review Committee, General Statutes § 12-3a provides for such an appeal.

65 Chatterjee v. Comm’r, 277 Conn. 681, 894 A.2d 919 (2006) (statute authorizing Commissioner to grant relief beyond period of limitations but expressly foreclosing appeal to Superior Court precluded review of decision not to grant such relief).

66 298 Conn. 191, 3 A.3d 56 (2010).
property, in a municipality that has adopted the limitations on increases in property tax resulting from revaluations provided for in General Statutes § 12-62n. Under that statute, residential property is afforded a phase-in after a revaluation while commercial property is not. Apartment property is defined in the statute as “a building containing five or more dwelling units and used for human habitation . . .,” a definition which the court concluded was ambiguous after referring to the dictionary definitions of “apartment” and “dwelling.”

Turning to the legislative history, the court noted that the purpose expressed on the floor of the House of Representatives by the sponsor of the legislation was to encourage homeownership by phasing in tax increases on residential properties. The court did not believe that applying the phase-in to a nursing home would further that purpose first, because nursing home patients do not purchase the properties and second, because the overwhelming majority of the patients would realize no benefit from reduced taxes because their fees are paid for by various entitlement or insurance programs. Further, in numerous statutes the General Assembly makes specific reference to nursing homes and could be expected to do so in this instance if such were intended to be included.

Finally, the court focused on the fact that a nursing home patient does not simply pay rent for occupation of a dwelling space but pays a single fee which includes living space, meals and 24-hour per day health care. The court found persuasive the Appellate Court decision in Connecticut Light & Power Co. v. Overlook Park Health Care, Inc. that such an arrangement did not fall within the ambit of a residential dwelling for purposes of General Statutes § 16-62e(c). For persuasive authority, the court also looked to a decision of the Massachusetts Supreme Judicial Court construing a statute similar to General Statutes § 12-62n and concluding that nursing homes are commercial, not residential properties because patients enter nursing homes to obtain health care and the room and board are merely incidental to that care.

In our review of 2008 tax developments, we recounted the Tax Session’s denial of the effort by the City of Bridgeport to collect a 1993 personal property tax after fourteen years, when the truck that was the subject of the tax had been removed from the jurisdiction before the assessment date. The owner of the vehicle had moved to North Carolina, terminated its Connecticut registration and notified the City of the fact that it was no longer garaged there. The City nevertheless assessed tax on the vehicle and the owner did not receive notice of the assessment. Many years later, the owner moved back to Connecticut. The City began collection action and the owner appealed pro se, ultimately being permitted to amend her complaint to include a count under General Statutes § 12-119. The City pleaded that the taxpayer’s claim under that statute was not timely but the Tax Session held that the City had waived the statute.

The Appellate Court disagreed with the Superior Court’s rationale, holding that the conclusion the City had waived the defense was clearly erroneous as there was no evidence of waiver. However, the court held that the statute was tolled until the plaintiff had notice of the assessment and that the action had been timely commenced on that basis. The court explained that the limitation of Section 12-119 is procedural and personal rather than substantive or jurisdictional, and therefore susceptible to equitable interpretation. Although the taxpayer did not specifically plead equitable tolling, her arguments sounded in that doctrine and a liberal reading of the complaint encompassed it.

Representing Justice — Judith Resnik and Dennis Curtis
Yale University Press 2011. 668 pages.

This is no ordinary book. It is the equivalent of a high-quality university and graduate-school education, minus the $50,000-plus per year financial cost that top-tier colleges and universities currently require. As a self-didactic resource, the book is a bargain! As a resource covering a broad gamut of evolving standards of justice, describing how judicial rites are changed into individual rights, Representing Justice is a treasure to read and to own.

In the preface to Representing Justice, the authors are transparent with their readers. They forthrightly declare that “the relationship between courts and democracy is at the center of the book.”1 It is.

The reader is also told that “the principal claims can be set forth simply.”2 That prefatory assurance is followed and belied by the presentation of a monumental tome consisting of fifteen chapters, 377 pages of double-columned text and 223 pages of endnotes. These are chock full of scholarship, iconography, art and architectural photographic reproductions.

I volunteered to review this book as soon as it made a surprise appearance in the Arts Section of the NY Times, not the Book Review.

That was before I saw the book, which turns out to be an historic text describing the profound impact of the systems of justice on societies and governments. The book demonstrates how, throughout world history, both justice and injustices have been meted out by judges and courts all over the world.

It is also an amazing visual collection of how the female figure of justice, as a symbol, has been represented in both pictorial art work and sculpture. A great deal of meaning is read into how these visual symbols have contributed to the understanding of justice. The architecture, floor plans, even the square footage and ceiling heights of spaces in which the courts have functioned are integrated into the discussion as

2 Id.
to how societies both value and understand the abstract idea of “justice.”

But there is a red thread which runs through the warp and woof of the book’s remarkable fabric. This is the symbol of the blindfolded Justice. It appears early in the study, and the reader cannot help but notice that Professors Resnik and Curtis can’t let it go. Blindfolding Justice and sighting her is a tension, or “contestation” in the authors’ words, throughout the book.

“Blindness as a deficit presumes that sight is requisite to understanding, whereas blindness as an asset assumes that sight can corrupt judgment,” they cogently write.3

And so the debate as between “Eyes and Ostriches” in one chapter is continued in a subsequent one entitled: “Why Eyes? Color, Blindness, and Impartiality.” The authors trace centuries of philosophical disputation from as far back as Albrecht Durer’s 1494 woodcut (“The Fool Blindfolding Justice,” currently located at Yale’s Beinecke Rare Book Library) all the way to mid-twentieth century poet Langston Hughes who wrote:

That Justice is a blind goddess
Is a thing to which we black are wise
Her bandage hides two festering sores
That once perhaps were eyes.4

The logo of the Judicial Council of the National Bar Association shows a woman pulling off her blindfold, echoing Langston Hughes and declaring: “Let us remove the blindfold from the eyes of American justice. Too long has it obscured the unequal treatment accorded poor people and black people under our law.”5

Fast forward to what the authors (who clearly appreciate the art of punning) refer to as “Duck Blinds in 2004.” A lawsuit had been filed by the Sierra Club and Judicial Watch seeking information about a “National Energy Policy Development Group” which met privately with then-Vice

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3 JUDITH RESNIK AND DENNIS CURTIS, REPRESENTING JUSTICE 91 (2011).
4 Id. at 14.
5 Id. at 103.
President Cheney in the White House, allegedly including oil and gas lobbyists. While the case was pending before the U.S. Supreme Court, Mr. Cheney and Justice Antonin Scalia made a date to go duck-hunting together, at the invitation of Justice Scalia.

Mr. Cheney in turn invited the Justice to fly together to their hunting gig aboard “Air Force Two.” The invitation was extended to include Justice Scalia’s son and son-in-law, and the kind offer was accepted. In the face of an application for his recusal in Cheney’s case, Justice Scalia justified his refusal on the grounds that all of these social arrangements antecedent the Court’s agreement to hear the case, and that he and the vice president never shared the same “blind.”

No less impressive than the outcome of the case (Cheney prevailed on separation of powers doctrine, 7-2) is the authors’ choice of Jeff Danziger’s cartoon on the subject, which is right on the money, albeit worlds apart from the art and iconography which is otherwise shown to illustrate the text. In Danziger’s drawing, a blindfolded Justice holds the scales in front of her with Cheney and Scalia perched in each. Justice Scalia assures his friend: “Don’t worry, she’s blind.”

Totally. Certainly in the area of judicial recusal, paraphrasing Chief Justice Hughes, the law is whatever the judges say it is.

The point is made by the authors that Danziger’s use of the blindfold “is paralleled by that of hundreds of other cartoonists over the last century.” And speaking of cartoonists, the humor of such art is not lost upon the book’s authors whose own sense of humor is irrepressible. One of their best reproductions, offered in color as well as black and white, shows Charles Schulz’s Lucy van Pelt on display at the William Mitchell College of Law in St. Paul, Minnesota, a sword in her right hand and the scales of justice in her left. Oh, by the way, she is blindfolded!

Professors Resnik and Curtis had some fun in putting this book together. What could easily have been a dense,

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6 *Id.* at 129.
didactic, dull description of judges, courts and the evolution of their roles both here and abroad, sparkles with their continuous play on words, such as “Courts in and out of Sight, Site and Cite;” “From Rites to Rights,” and so on. And then, there is the authors’ attention to the contemporary artist, Tom Otterness, whose work in federal courthouses includes a delightful satirical sculpture garden (“Quietly Quizzical”) in the Hatfield courthouse in Portland, Oregon; “playful” sculpture, in the artist’s words, intended to offer “relief from the often stressful life of the courts.”

Putting their plays on words and well-placed good humor aside, this book never loses its monumentality, its perfect juxtaposition of text and iconography. The reader is treated to a wonderful journey through world and American history of judges, courts, legal systems and their interconnected roles. Special attention is given to the construction of courts as integral to the growth and expansion of our country. The judicial panorama covers a 400-year canvas from Santa Fe’s “Palace of Governors” in 1610 to Guantanamo’s system developed in the first decade of this century. Tongue in cheek, Professors Resnik and Curtis describe Guantanamo as “Court-Like, Court-Lite: ‘Honor Bound to Defend Freedom’.”

The authors at one point describe their journey in words that are familiar to all of us, e.g. “From California to the New York Island.” The response that immediately suggests itself to this reviewer is: “This book is made for you and me.”

EMANUEL MARGOLIS*

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7 Id. at 185.
* Of the Stamford Bar.
IN MEMORIAM

WILLIAM T. BARRANTE

DECEMBER 1946 - NOVEMBER 11, 2010

The Board of Editors was deeply saddened to learn that William T. Barrante died unexpectedly on November 11, 2010.

William T. Barrante has been a steadfast leader of the Connecticut Bar Journal for decades. Serving as Managing Editor of the Journal from 2000-2010, Editor-in-Chief before that, and starting out as an Editor-at-Large for many years, Bill was utterly committed and exceedingly generous with his time and efforts in keeping the Journal percolating. Bill coordinated with authors and editors, reviewed articles and page proofs, consulted with the printing company, and always found time to write articles and book reviews for the publication that he loved. Without Bill's many hours of dedicated service, the Journal would not be the quality publication that it is today.

In addition to his work on the Journal, Bill loved history, especially the Civil War period, was a reenactor and was writing a novel about the election process. He was keenly committed to the development of the law and the Constitution. He will be remembered for his knowledge and intellect, his great sense of humor and his infectious laugh.

The Bar and the Journal have lost a great legal scholar, writer, editor, teacher and friend. Bill’s absence has left a hole in this publication and in many of our hearts.
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