# JOSEPH DOMINGUEZ *v.* NEW YORK SPORTS CLUB ET AL.
## (AC 42089)

Alvord, Elgo and Eveleigh, Js.

*Syllabus*

The defendant employer and its workers' compensation insurer appealed to this court from the decision of the Compensation Review Board, which reversed in part the decision of the Workers' Compensation Commissioner granting in part the plaintiff employee's motion to preclude the defendants from contesting the compensability of his injuries pursuant to statute (§ 31-294c (b)). The defendants did not file a form 43 to contest liability for the plaintiff's injuries within the twenty-eight day time period mandated by § 31-294c (b) but, rather, filed that form seventy-five days after they received the plaintiff's form 30C notice of claim. The defendants' form 43 stated that no medical records supporting the plaintiff's claim and no request for medical or indemnity benefits had been presented to them. The commissioner determined that, because the defendants had not timely filed a form 43, they were precluded from contesting the compensability of the plaintiff's claim but that, under the limited exception to the preclusion provision of § 31-294c (b) articulated in *Dubrosky* v. *Boehringer Ingelheim Corp.* (145 Conn. App. 261), the defendants could contest the extent of the plaintiff's injuries due to their inability to pay indemnity benefits or medical payments within the twenty-eight day time period mandated by § 31-294c (b). The board reversed the commissioner's decision in part, concluding that the commissioner improperly applied the *Dubrosky* exception to the preclusion provision of § 31-294c (b) and directed that the defendants were to be precluded from presenting a defense to the plaintiff's claim for benefits. On appeal, the defendants claimed that it had been impossible to comply with the mandate of § 31-294c (b) that they commence payment to the plaintiff on or before the twenty-eighth day after receiving written notice of his claim because he failed to furnish them with medical bills or a separate request for payment within that twenty-eight day period. *Held*:

1. The defendants could not prevail on their claim that the board improperly precluded them from contesting the extent of the plaintiff's injuries: because the plaintiff complied with the notice of claim requirements in § 31-294c (a) and the defendants did not file a responsive answer of any kind within the twenty-eight day period mandated by § 31-294c (b) to indicate their intention to contest liability or to commence payment, the conclusive presumption of compensability in § 31-294c (b) barred them from contesting the extent of the plaintiff's disability or his right to receive compensation, and this court concluded that, although the mechanics of the commence payment predicate in § 31-294c (b) were ambiguous, the initial burden with respect to the commence payment

predicate rested with the employer, which was consistent with the legislative policies and purposes embodied in § 31-294c (b), the broad remedial purposes of the Workers' Compensation Act (§ 31-275 et seq.) and the statutory (§ 31-294d) requirement of an immediate response from employers with respect to medical expenses, and the placing of the initial burden on the employer comported with a primary purpose of § 31-294c (b), which is to keep the process of initiating a claim for compensation simple and accessible for laypersons, as § 31-294c (b) does not require the claimant to furnish medical bills or a separate request for payment within twenty-eight days after commencing a claim; furthermore, it was entirely consonant with the legislative history and policies embodied in § 31-294c (b) that an employer be required to provide notice to a claimant within the twenty-eight day period when the employer seeks to avail itself of the one year safe harbor provision in § 31-294c (b) that permits an employer to make payments on a claim instead of filing a notice that it is contesting the claim.

2. This court declined to extend the limited exception in *Dubrosky* to the preclusion provision of § 31-294c (b) in situations in which employers dispute liability and the extent of a claimant's injuries, and fail to make payments for a claimant's medical care; the defendants did not accept liability for the plaintiff's injuries or make any payments for his medical care, and the complex nature of the workers' compensation scheme required that policy determinations and the creation of exceptions to § 31-294c (b) be left to the legislature.

Argued January 13—officially released July 14, 2020

*Procedural History*

Appeal from the decision of the Workers' Compensation Commissioner for the Seventh District granting in part the plaintiff's motion to preclude the defendants from contesting liability as to his claim for certain workers' compensation benefits, brought to the Compensation Review Board, which reversed the commissioner's decision in part, and the defendants appealed to this court; thereafter, Walter Dominguez, administrator of the plaintiff's estate, was substituted as the plaintiff. *Affirmed.*

*James T. Baldwin*, for the appellants (defendants).

*John J. Morgan*, for the appellee (substitute plaintiff).

*Opinion*

ELGO, J. This case concerns the mandate of General Statutes § 31-294c (b), which obligates an employer presented with proper notice of a workers' compensation claim to respond within twenty-eight days by either filing a notice contesting liability or commencing payment on the claim. The employer in the present case did neither, which led the Compensation Review Board (board) to conclude that the employer was precluded under § 31-294c (b) from contesting both liability for, and the extent of, injuries allegedly sustained by the plaintiff, Joseph Dominguez.[1] On appeal, the defendant New York Sports Club[2] asks us to extend the narrow exception to the preclusion provision of § 31-294c (b) recognized by this court in *Dubrosky* v. *Boehringer Ingelheim Corp.*, 145 Conn. App. 261, 76 A.3d 657, cert. denied, 310 Conn. 935, 78 A.3d 859 (2013), to cases in which an employer (1) provides no response to a properly filed claim for compensation within the twenty-eight day statutory period, (2) makes no payments on the claim, (3) files an untimely notice contesting liability for the claimant's injuries, and (4) alleges in subsequent administrative proceedings before the Workers' Compensation Commission that it was impossible to commence payment due to the claimant's failure to submit medical bills within the twenty-eight day statutory period. We decline to do so and, accordingly, affirm the decision of the board.

The relevant facts were stipulated to by the parties and are not in dispute. On June 29, 2016, the plaintiff

[1] The plaintiff died on May 17, 2018, and his brother, Walter Dominguez, thereafter was appointed administrator of his estate. On January 9, 2019, this court granted a motion to substitute the administrator as the plaintiff in this appeal.

[2] Both the defendant employer, New York Sports Club, and its insurer, Nationwide Mutual Insurance Company, were named as defendants in this matter. For convenience, we refer to New York Sports Club as the defendant.

completed a form 30C,[3] in which he sought compensation for the exacerbation of a preexisting injury to his upper left extremity. The plaintiff allegedly sustained that exacerbation in the course of his employment with the defendant "while moving equipment or other items in the [defendant's] gym" on March 24, 2016. The Workers' Compensation Commission received the plaintiff's notice of that claim for compensation on July 5, 2016; the defendant received it on July 6, 2016. Over the next seven weeks, the defendant did not file any response to that notice.

On August 26, 2016, the plaintiff filed a motion, pursuant to § 31-294c (b), to preclude the defendant from "contesting [his] right to receive compensation on any ground" due to its failure "to file a timely response to [his] form 30C." It is undisputed that the defendant did not file a form 43[4] or provide any other response within the twenty-eight day time period mandated by § 31-294c (b). It also is undisputed that the defendant made no payments on the claim and that the plaintiff's medical bills were processed through his group medical insurance.[5]

[3] "A form 30C is the form prescribed by the [W]orkers' [C]ompensation [C]ommission . . . for use in filing a notice of claim under the [Workers' Compensation Act, General Statutes § 31-275 et seq.]." (Internal quotation marks omitted.) *Carter* v. *Clinton*, 304 Conn. 571, 576 n.4, 41 A.3d 296 (2012).

[4] Entitled "Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits," a form 43 "is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest *liability* to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim. . . . The form 43 generally must be filed within twenty-eight days of receiving written notice of the claim." (Citation omitted; emphasis added; internal quotation marks omitted.) *Wiblyi* v. *McDonald's Corp.*, 168 Conn. App. 77, 79 n.2, 144 A.3d 1075 (2016).

[5] In his December 21, 2016 deposition, which the parties agreed to submit to the commissioner as part of their joint stipulation of facts, the plaintiff indicated that his medical bills were paid by his group medical insurance. The defendant likewise averred, in both its March 22, 2017 memorandum of law in opposition to the motion to preclude and its April 5, 2017 surreply memorandum, that "all medical bills continued to be processed through [the plaintiff's] group medical insurer" following the alleged workplace injury.

The defendant filed a belated form 43 with the Workers' Compensation Commission on September 19, 2016 —seventy-five days after receiving the plaintiff's form 30C. In the portion of the form titled "Reason(s) for Contest," the defendant stated: "Alleged injury did not arise out of or in the course of employment; no medical records supporting compensability presented to employer and no request for medical or indemnity benefits presented to employer for payment to date."

A formal hearing was held before the Workers' Compensation Commissioner (commissioner) on February 6, 2017, at which the sole issue was whether to grant the plaintiff's motion to preclude. In her subsequent decision, the commissioner found that the defendant had not filed a timely form 43 within the twenty-eight day period of § 31-294c (b). At the same time, the commissioner found that the plaintiff had "presented no medical bills, nor did he request payments for indemnity benefits within the twenty-eight (28) day period, thereby preventing the [defendant] from complying with [that statute]." The commissioner then concluded that the exception to the preclusion provision of § 31-294c (b) articulated by this court in *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 261, "applies to this situation" despite the fact that *Dubrosky* "deals with an accepted work injury, and this claim deals with a wholly denied injury . . . ." The commissioner reasoned that the defendant's form 43 "was filed too late to contest the compensability of the [plaintiff's] claim, but due to its inability to pay indemnity benefits or medical payments, the [defendant's] form 43 is not too late to contest the extent of disability . . . ." The commissioner thus granted the motion to preclude in part and ordered that the defendant "must accept the underlying injury but may contest its extent."

The plaintiff filed a petition for review with the board, claiming that the commissioner had improperly applied the *Dubrosky* exception. The board agreed, emphasizing that, unlike the defendant employer in *Dubrosky*,

the defendant here contested its liability for the injury in question.[6] Concluding that "the present matter is distinguishable from *Dubrosky*," the board unanimously reversed the decision of the commissioner in part and directed "that the [defendant] be precluded from presenting a defense in this matter."[7] From that decision, the defendant now appeals.

As a preliminary matter, we note certain well established precepts that govern our review. The workers' compensation system in this state "is derived exclusively from statute"; *Wiblyi* v. *McDonald's Corp.*, 168 Conn. App. 92, 104, 144 A.3d 530 (2016); and is codified in the Workers' Compensation Act (act), General Statutes § 31-275 et seq. "The purpose of the [act] is to compensate the worker for injuries arising out of and in the course of employment, without regard to fault, by imposing a form of strict liability on the employer . . . . [The act] compromise[s] an employee's right to a [common-law] tort action for [work-related] injuries in return for relatively quick and certain compensation. . . . The act indisputably is a remedial statute that should be construed generously to accomplish its purpose." (Internal quotation marks omitted.) *Gill* v. *Brescome Barton, Inc.*, 142 Conn. App. 279, 298, 68 A.3d 88 (2013), aff'd, 317 Conn. 33, 114 A.3d 1210 (2015). For that reason, when interpreting its provisions, "we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act." *Doe* v. *Stamford*, 241 Conn. 692, 698, 699 A.2d 52 (1997); see also *Lucenti* v. *Laviero*, 327 Conn. 764, 774, 176 A.3d 1 (2018) ("[t]he act is to be broadly construed to

[6] In her decision, the commissioner expressly found that the present case involves "a wholly denied injury . . . ." The board likewise noted in its decision that the defendant's form 43 indicated that the defendant was contesting "whether the [plaintiff] had sustained *any* injury in the course of employment, *not* the extent of that injury." (Emphasis in original.)

[7] In reaching their respective conclusions, neither the commissioner nor the board engaged in statutory construction. Rather, their decisions were predicated on existing precedent.

effectuate the purpose of providing compensation for an injury arising out of and in the course of the employment regardless of fault'' (internal quotation marks omitted)).

This appeal does not involve any dispute as to the underlying facts found by the commissioner. Rather, it concerns the proper interpretation of § 31-294c (b) and the proper application of established precedent. Our review over those questions of law is plenary. See *Jones* v. *Redding*, 296 Conn. 352, 364, 995 A.2d 51 (2010); *Russell* v. *Mystic Seaport Museum, Inc.*, 252 Conn. 596, 604, 748 A.2d 278 (2000).

I

On appeal, the defendant claims that the board improperly determined that the defendant was precluded from contesting the extent of the plaintiff's injuries.[8] It argues that the plaintiff's failure to submit medical bills or a request for payment to the defendant within the twenty-eight day statutory period rendered it impossible for the defendant to comply with the predicates of § 31-294c (b). In response, the plaintiff contends that an employer that fails to respond in any manner to a notice of claim for compensation within that statutory period, and then later files a notice that it is contesting liability, is subject to the preclusion provision of § 31-294c (b).

In resolving that issue of statutory construction, we are mindful that ''[w]hen interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . The meaning of a statute shall, in the first instance, be ascertained

[8] In the underlying administrative proceedings, both the commissioner and the board determined that the defendant was precluded from contesting *liability* for the plaintiff's injuries due to its failure to file a form 43 within the twenty-eight day statutory period of § 31-294c (b). That conclusion is consistent with established precedent; see *Woodbury-Correa* v. *Reflexite Corp.*, 190 Conn. App. 623, 638, 212 A.3d 252 (2019); and is not at issue in this appeal.

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. General Statutes § 1-2z. . . . However, [w]hen a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter. . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Ferraro* v. *Ridgefield European Motors, Inc.*, 313 Conn. 735, 747–48, 99 A.3d 1114 (2014).

As its title indicates, § 31-294c sets forth the statutory requirements for both notices of claims for compensation filed by employees; see General Statutes § 31-294c (a); and notices contesting liability filed by employers. See General Statutes § 31-294c (b). It is undisputed that the plaintiff properly filed a notice of his claim for compensation pursuant to § 31-294c (a). Accordingly, the issue in the present case is the defendant's compliance with § 31-294c (b).

We begin with the language of the statute in question. Section 31-294c (b) contains several related provisions that govern an employer's obligation to respond to a properly filed notice of claim for compensation. It provides in relevant part: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim,[9]

[9] Although the phrase "written notice of claim" in § 31-294c (b) does not specifically refer to the phrase, "written notice of claim for compensation," as used in § 31-294c (a), "it is clear that both statutory [sub]sections refer

a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer . . . fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled,

to the same notice." (Internal quotation marks omitted.) *Russell* v. *Mystic Seaport Museum, Inc.*, supra, 252 Conn. 607 n.5; *Pelletier* v. *Caron Pipe Jacking, Inc.*, 13 Conn. App. 276, 280, 535 A.2d 1321, cert. denied, 207 Conn. 805, 540 A.2d 373 (1988).

if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer . . . in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death. . . ." (Footnote added.) General Statutes § 31-294c (b).

It is well established that, "in interpreting [statutory language], we do not write on a clean slate, but are bound by . . . previous judicial interpretations of this language and the purpose of the statute." *New England Road, Inc.* v. *Planning & Zoning Commission*, 308 Conn. 180, 186, 61 A.3d 505 (2013). On several occasions, the appellate courts of this state have construed the various provisions of § 31-294c (b). That precedent informs our analysis of the defendant's claim.

In the seminal case of *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 942 A.2d 396 (2008), our Supreme Court detailed the contours of the preclusion scheme contained in § 31-294c (b). It stated: "The first two sentences of § 31-294c (b) address the procedure that an employer must follow if it wants to 'contest liability to pay compensation . . . .' The statute prescribes therein that, within twenty-eight days of receiving a notice of claim, the employer must file a notice stating that it contests the claimant's right to compensation and setting forth the specific ground on which compensation is contested. The third sentence: (1) provides that an employer who fails to file a timely notice contesting

liability must commence payment of compensation for the alleged injury within that same twenty-eight day period; and (2) grants the employer who timely commences payment a one year period in which to 'contest the employee's right to receive compensation on any grounds *or the extent of his disability*'; but (3) relieves the employer of the obligation to commence payment within the twenty-eight day period if the notice of claim does not, inter alia, include a warning that 'the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day.' . . . General Statutes § 31-294c (b). The fourth sentence provides for reimbursement to an employer who timely pays and thereafter prevails in contesting compensability. Finally, the fifth sentence sets forth the consequences to an employer who neither timely pays nor timely contests liability: 'Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, *shall be conclusively presumed to have accepted the compensability of the alleged injury or death*.' . . . General Statutes § 31-294c (b)." (Emphasis in original.) *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 110–11. The court characterized that preclusion provision as a "conclusive presumption . . . ." Id., 105; see also *Donahue* v. *Veridiem, Inc.*, 291 Conn. 537, 548, 970 A.2d 630 (2009) (noting that court previously had "referred to [§ 31-294c (b)], or its predecessor, as setting forth a conclusive presumption" and explaining that "a conclusive or irrebuttable presumption is [one] that cannot be overcome by any additional evidence or argument" (emphasis omitted; internal quotation marks omitted)).

The issue presented in *Harpaz* was "whether an employer that is deemed 'conclusively presumed to have accepted the compensability of the alleged injury' under . . . § 31-294c (b) because of its failure to contest liability or commence payment of compensation within the time period prescribed is permitted to contest the extent of the claimant's disability from that alleged injury." (Footnote omitted.) *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 104–105. After examining the language of § 31-294c (b), the court concluded that it "[did] not yield a plain meaning" as to that issue. Id., 111. The court thus undertook an exhaustive examination of "the genealogy and legislative history of § 31-294c (b)" to resolve that issue. Id., 112. In light of that history, the court concluded that "under § 31-294c (b), if an employer neither timely pays nor timely contests liability, the conclusive presumption of compensability attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability."[10] Id., 130. This court likewise has explained that a motion to preclude predicated on noncompliance with those statutory requirements is "a statutorily created waiver mechanism that, following an employer's failure to comply with the requirement of § 31-294c (b), bars that employer from contesting the compensability of its employee's claimed injury or the extent of the employee's resulting disability." *Wiblyi* v. *McDonald's Corp.*, supra, 168 Conn. App. 105.

[10] In so doing, the court recognized that "[s]uch a penalty is harsh, but it reflects a just and rational result. . . . An employer readily can avoid the conclusive presumption by either filing a timely notice of contest or commencing timely payment of compensation with the right to repayment if the employer prevails. Should the employer's timely and reasonable investigation reveal that an issue regarding the extent of disability has not yet manifested, the employer still can preserve its right to contest that issue at some later point in time simply by paying the compensation due under the claim, even if all that is due is payment of medical bills." (Citation omitted.) *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 130–31.

In *Donahue* v. *Veridiem, Inc.*, supra, 291 Conn. 545, our Supreme Court described the requirement that an employer either file a notice contesting liability or commence payment on the claim within the twenty-eight day statutory period as *predicates* to the employer's ability to challenge "both the compensability of the injury and the extent of disability."[11] In the present case, it is undisputed that the defendant failed to comply with the first predicate, as it did not file a timely notice that it was contesting liability. The issue here is the defendant's compliance with the second predicate, which requires it to "commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim . . . ." General Statutes § 31-294c (b).

Our Supreme Court previously has determined that § 31-294c (b) is ambiguous in other contexts.[12] See *Donahue* v. *Veridiem, Inc.*, supra, 291 Conn. 547–48 (§ 31-294c (b) is not plain and unambiguous on issue of employer's role once preclusion has been granted); *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 111 (§ 31-294c (b) does not yield plain meaning on issue of preclusion). We similarly conclude that § 31-294c (b) is ambiguous as applied to the present case.

"The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks

[11] In *Donahue*, the court also clarified that, when the conclusive presumption is implicated, it does not "relieve claimants of their obligation to prove their claim by competent evidence." *Donahue* v. *Veridiem, Inc.*, supra, 291 Conn. 545. Rather, it operates to bar employers from testing "the evidence proffered by the claimant at these proceedings by way of question or argument." Id., 551.

[12] As this court recently noted, "the workers' compensation section of the Connecticut Practice Series has indicated that there is confusion regarding § 31-294c (b) and that the chairman of the board repeatedly has called for legislative guidance on the issue of preclusion. See R. Carter et al., 19 Connecticut Practice Series: Workers' Compensation (Supp. 2018–2019) § 18:11, pp. 448–50." *Woodbury-Correa* v. *Reflexite Corp.*, supra, 190 Conn. App. 633 n.10.

omitted.) *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 46, 213 A.3d 1110 (2019). Because § 31-294c (b) obligates an employer to "commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim," the defendant argues that, under a literal reading of the statutory language, an employer cannot comply with that statutory imperative unless a claimant has furnished medical bills or a separate request for payment within the twenty-eight day statutory period. The defendant claims that the plaintiff's failure to do so prevented it from "commencing payment" as required by § 31-294c (b).

The plaintiff, by contrast, contends that the inherent nature of the form 30C itself, which is the vehicle by which a claimant provides notice of a claim for compensation, communicated to the defendant that he was seeking payment of benefits due under the act, including medical expenses.[13] The plaintiff thus argues that § 31-294c (b) requires an employer seeking to invoke its one year safe harbor provision to provide notice to the claimant within the twenty-eight day statutory period of its intent to commence payment of compensation on the claim in order to preserve its rights under § 31-294c (b). Because he properly filed a notice of his claim for compensation in accordance with § 31-294c (a), the plaintiff submits that the defendant was

[13] In this regard, we note that the act defines the term "compensation," as used therein, as "benefits or payments mandated by the provisions of this chapter, including, but not limited to, indemnity, medical and surgical aid or hospital and nursing service required under section 31-294d and any type of payment for disability, whether for total or partial disability of a permanent or temporary nature, death benefit, funeral expense, payments made under the provisions of section 31-284b, 31-293a or 31-310, or any adjustment in benefits or payments required by this chapter." General Statutes § 31-275 (4). Moreover, as our Supreme Court has observed, the term "compensation" has been long understood "to include all benefits provided under the [act]—indemnity (permanent impairment), disability (incapacity) and medical, surgical and hospital costs." *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 113 n.8.

required to file a response within the statutory period notifying him of its intention to either (1) contest liability or (2) commence payments on the claim.

We conclude that both interpretations of § 31-294c (b) are plausible, rendering the language in question ambiguous. See, e.g., *Williams* v. *New Haven*, 329 Conn. 366, 379, 186 A.3d 1158 (2018). It therefore is necessary to consider the legislative history of § 31-294c to resolve the issue presented in this appeal. That history has been the subject of much scrutiny by our courts.

The notice of claim requirements of § 31-294c date back to the initial adoption of the act in 1913. *Russell* v. *Mystic Seaport Museum, Inc.*, supra, 252 Conn. 608. The preclusion provision contained in § 31-294c (b) originated in Public Acts 1967, No. 842, § 7. See *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 113. In reviewing the legislative history of that enactment, our Supreme Court stated: "Among the defects in previous provisions of the act were the needless, prejudicial delays in the proceedings before the commissioners, delays by employers or insurers in the payment of benefits, lack of knowledge on the part of employees that they were entitled to benefits and the general inequality of resources available to claimants with bona fide claims." *Menzies* v. *Fisher*, 165 Conn. 338, 342, 334 A.2d 452 (1973). The court further observed that "[t]he object which the legislature sought to accomplish is plain. [The precursor to § 31-294c (b)] was amended to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim. These effect[s] would, in turn, diminish delays in the proceedings, discourage arbitrary refusal of bona fide claims and narrow the legal issues which were to be contested." Id., 343. The 1967 amendment "embodies the recognition that it is within the employer's power to supply the answers to such questions in

a simple, forthright manner prior to a hearing. . . . [The procedure contained in § 31-294c (b) is] designed to facilitate a speedy, efficient and inexpensive disposition and to reduce the necessity of legal counsel for the claimant." Id., 345–46. As a result of the 1967 amendment, "an employer could contest the claim [for compensation] from the outset or could contest the extent of disability if it timely paid all the benefits due under the initial claim." *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 116.

The legislature further revised § 31-294c (b) in 1990. See Public Acts 1990, No. 90-116, § 9. That public act was "the genesis of the notice requirement in the third sentence of the current [revision] of § 31-294c (b), under which an employer is relieved of the obligation to commence payment within the twenty-eight day period if the notice of claim is similarly deficient." *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 118. At the same time, the 1990 amendment "simply added a notice requirement regarding the conclusive presumption, leaving intact the existing conclusive presumption and its attendant effects . . . ." Id., 119.

In 1993, the General Assembly "undertook comprehensive reforms to the . . . [a]ct." Id., 120. Number 93-228, § 8, of the 1993 Public Acts "added the final sentence [to § 31-294c (b)] prescribing the conclusive presumption to address problems that arose as a result of language that appeared to extend the one year period to contest liability—either the right to compensation on any ground or the extent of disability—not only to employers who timely had commenced payment, but also to employers who had failed to comply with the statutory mandates. The legislature's responsive, contemporaneous action strongly suggests that it specifically intended the final sentence of § 31-294c (b) to distinguish between the rights of an employer who timely commenced payment of compensation and the rights of an employer who neither timely paid nor timely contested liability—the former being permitted to contest

both the employee's right to compensation on any ground and the extent of his disability for one year from notice of the claim, and the latter being precluded from asserting such defenses altogether upon the employer's failure to comply with the twenty-eight day period to respond to the notice of claim." *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 126–27. The 1993 amendment to § 31-294c (b) thus "changed the status quo for employers who timely had paid compensation, but would have retained the status quo for employers who had not paid timely."[14] Id., 127.

At the same time, the legislative history of the 1993 amendment sheds little light on the precise question before us, which concerns the mechanics of the "commence payment" predicate of § 31-294c (b). The present scenario is one in which (1) an employee properly filed a notice of claim for compensation but did not submit medical bills or a separate request for payment in the ensuing twenty-eight days, and (2) the employer did not file a timely notice indicating its intent to (a) contest liability or (b) commence payment pursuant to the one year safe harbor provision. Distilled to its essence, the question is whether the initial burden with respect to the "commence payment" predicate belongs to the employee or the employer. In light of the legislative policies and purposes embodied in § 31-294c, as reflected in both its legislative history and the established precedent of this state, we conclude that the initial burden rests with the employer.

The preclusion provision of § 31-294c (b) originated in the 1967 amendment to the act. See *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 113. As our Supreme Court explained, a principal "[defect] in previous provisions of the act" was the "lack of knowledge on the

[14] Representative Michael P. Lawlor summarized the effect of the 1993 amendment on § 31-294c (b) as follows: "Opening the [twenty-eight] day restriction on the time during which an employer can challenge application for [workers'] compensation system. We allow challenges up to one year." 36 H.R. Proc., Pt. 18, 1993 Sess., p. 6143.

part of employees that they were entitled to benefits . . . .'' *Menzies* v. *Fisher*, supra, 165 Conn. 342. The 1967 amendment thus was enacted to require ''*initial affirmative acts from an employer* beyond those normally incident to a court proceeding.'' (Emphasis added.) Id., 345. As Representative Paul Pawlak, Sr., remarked, pursuant to the 1967 amendment, ''employers will now have to investigate claims promptly and act quickly . . . .'' 12 H.R. Proc., Pt. 9, 1967 Sess., p. 4036; see also *Menzies* v. *Fisher*, supra, 343 (noting that purpose of 1967 amendment was to ensure that employers ''would bear the burden'' of investigating claim and responding promptly to claimant). For that reason, our Supreme Court has held that ''[t]he duty to comply with [§ 31-294c (b)] rests on the employer. . . . It is not unjust to require a defending employer or insurance carrier to investigate the case seasonably and *to cause a responsive answer* to be filed.'' (Citation omitted; emphasis added.) *Menzies* v. *Fisher*, supra, 347–48; see also *Russell* v. *Mystic Seaport Museum, Inc.*, supra, 252 Conn. 612 (''[i]f the notice of claim is sufficient to allow the employer to make a timely investigation of the claim, it triggers the employer's obligation to file a disclaimer'' (internal quotation marks omitted)).

Placing the initial burden on the employer is consistent with the larger statutory scheme, and the legislative mandate of General Statutes § 31-294d in particular, which obligates employers to take prompt action on behalf of an injured employee with respect to medical expenses.[15] Although it is undisputed that the plaintiff

[15] General Statutes § 31-294d (a) (1) provides: ''The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician, surgeon or advanced practice registered nurse to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, as the physician, or advanced practice registered nurse surgeon deems reasonable or necessary. The employer, any insurer acting on behalf of the employer, or any other entity acting on behalf of the employer or insurer shall be responsible for paying the cost of such prescription drugs directly to the provider. If the employer utilizes an approved providers list,

here reported his injury to the defendant and submitted a form titled "Confidential Accident Report" on the date of the injury,[16] there is no indication in the record before us that the defendant at that time offered to provide any medical care to the plaintiff in accordance with § 31-294d (a) (1). Had the defendant done so, the plaintiff likely would have been alerted to the defendant's responsibilities with respect to such medical expenses. More importantly, § 31-294d is further evidence of the legislature's intent to require an immediate response from employers in the face of a workplace injury.

Placing the initial burden with the employer also comports with another primary purpose of § 31-294c, which was "to keep the process of initiating a claim [for compensation] simple and accessible to [laypersons]." *Russell* v. *Mystic Seaport Museum, Inc.*, supra, 252 Conn. 610; see also *Menzies* v. *Fisher*, supra, 165 Conn. 345–46 ("employers and insurers have the necessary resources to fulfill [the] mandate [of § 31-294c (b)], whereas the claimant often receives no more assistance than that furnished by the commissioner in filing his claim"). Section

when an employee reports a work-related injury or condition to the employer the employer shall provide the employee with such approved providers list within two business days of such reporting."

We note that although § 31-294d has been amended by the legislature since the events underlying the present appeal; see Public Acts 2019, No. 19-98, § 3; that amendment has no bearing on the merits of this appeal. We therefore refer to the current revision of the statute.

[16] As part of their joint stipulation of facts, the parties agreed to submit that document to the commissioner as an exhibit to the plaintiff's deposition testimony. In his deposition testimony, the plaintiff indicated that he completed that accident report and provided it to the defendant on the date of injury.

In this regard, we note that the act provides that the failure of an employee to promptly notify the employer of a workplace injury may result in a reduction of any award of compensation. See General Statutes § 31-294b (a) ("[i]f the employee fails to report the injury immediately, the commissioner may reduce the award of compensation proportionately to any prejudice that he finds the employer has sustained by reason of the failure").

The defendant in this case has not alleged that the plaintiff failed to promptly report his alleged injury.

31-294c (a) sets forth in plain terms the requirements that a claimant must satisfy in order to provide proper notice to an employer of a claim for compensation.[17] Nowhere does the statute require the claimant to furnish medical bills or a separate request for payment to the employer within twenty-eight days after commencing a claim. If the legislature had intended to place that onus on claimants, it surely would have done so explicitly, particularly in light of its aim to keep the process simple for laypersons and to "facilitate a speedy, efficient and inexpensive disposition" on the claim. *Menzies* v. *Fisher*, supra, 346. As our Supreme Court has observed in a case that, too, involved the notice requirements of § 31-294c, "[i]n the face of a legislative omission, it is not our role to engraft language onto the statute" that imposes additional requirements on a claimant. *McCullough* v. *Swan Engraving, Inc.*, 320 Conn. 299, 310, 130 A.3d 231 (2016).

In addition, our conclusion that the initial burden with respect to the "commence payment" predicate of § 31-294c (b) rests with the employer is consistent with the broad remedial purposes underlying the act. See *Gil* v. *Courthouse One*, 239 Conn. 676, 682, 687 A.2d 146 (1997) ("the [act] is remedial and must be interpreted liberally to achieve its humanitarian purposes"). Were this court to agree with the defendant and impose an additional obligation on claimants pursuant to § 31-294c that was not established by the legislature, we risk "denying the beneficent purposes of the act." *Laliberte* v. *United Security, Inc.*, 261 Conn. 181, 188, 801 A.2d 783 (2002). Moreover, application of the literal interpretation of the "commence payment" predicate of § 31-294c (b) advanced by the defendant would frustrate the

[17] General Statutes § 31-294c (a) provides in relevant part that "[n]otice of [the] claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee

policies that underlie its enactment.[18] See *Lucenti* v. *Laviero*, supra, 327 Conn. 774 ("[t]he act is to be broadly construed to effectuate the purpose of *providing compensation* for an injury arising out of and in the course of the employment regardless of fault" (emphasis added; internal quotation marks omitted)). We, therefore, refuse "to place a technical construction on a procedure designed to be simple" for claimants, as such a construction "runs counter to the spirit" of the act. *Menzies* v. *Fisher*, supra, 165 Conn. 344; cf. *Gil* v. *Courthouse One*, supra, 685 (concluding that literal reading of statute in question "would result in its improper application").

We are mindful that the legislature included a safe harbor provision in § 31-294c (b) that permits an employer to make payments on the claim instead of filing a notice that it is contesting liability. An employer that elects to make such payments pursuant to that provision is afforded a period of one year, during which it "may contest the employee's right to receive compensation on any grounds or the extent of his disability . . . ."[19] General Statutes § 31-294c (b). The requirement that an employer provide notice to the claimant within the twenty-eight day statutory period when it

and of the person in whose interest compensation is claimed. . . ." The statute also specifies the applicable time limitations for filing such notices.

[18] We recognize that, "[i]n areas where the legislature has spoken . . . the primary responsibility for formulating public policy must remain with the legislature." (Internal quotation marks omitted.) *Raspberry Junction Holding, LLC* v. *Southeastern Connecticut Water Authority*, 331 Conn. 364, 378, 203 A.3d 1224 (2019). Given the policy considerations at issue in this appeal, "it remains the prerogative of the legislature to modify or clarify [the relevant statutory provisions] as it sees fit." (Internal quotation marks omitted.) *Mayer* v. *Historic District Commission*, 325 Conn. 765, 780 n.10, 160 A.3d 333 (2017).

[19] Section 31-294c (b) further provides that an employer that exercises its rights under that safe harbor provision and makes payments to the claimant during that time may be entitled to "reimbursement from the claimant of any compensation paid by the employer" in the event that the employer ultimately "prevails" on the claim.

seeks to avail itself of that safe harbor provision is entirely consonant with the legislative history of and policies embodied in § 31-294c.

As with all issues of statutory construction, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.) *Callaghan* v. *Car Parts International, LLC*, 329 Conn. 564, 570, 188 A.3d 691 (2018). Our review of the genealogy and legislative history of § 31-294c indicates that the legislature intended to require employers to provide "a responsive answer" to claimants when a proper notice of claim for compensation is filed, which obligates them to file a response within the statutory period notifying the claimant of its intention to either (1) contest liability or (2) commence payments on the claim.

It is undisputed that the plaintiff in the present case fully complied with the notice of claim for compensation requirements contained in § 31-294c (a). It, therefore, was incumbent on the defendant to file a responsive answer within twenty-eight days indicating its intention to either contest liability or to commence payments on the claim for the purpose of preserving its rights under the safe harbor provision of § 31-294c (b). Because the defendant did neither and failed to file a responsive answer of any kind, "the conclusive presumption of compensability [contained in the preclusion provision of § 31-294c (b)] attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability." *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 130.

II

Despite its failure to file a responsive answer of any kind during the twenty-eight day statutory period, the defendant maintains that the limited exception to the preclusion provision of § 31-294c (b) articulated by

this court in *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 261, should be extended to encompass the present scenario. We do not agree.

*Dubrosky* is factually and procedurally distinguishable from the present case. Although the defendant employer in that case failed to file a responsive answer to the plaintiff employee's form 30C within the statutory period, it subsequently (1) paid all medical bills submitted to it by the plaintiff's physician and (2) affirmatively accepted, at the formal hearing before the commissioner, that an incident involving the plaintiff had occurred. Id., 265–66. At that hearing, the defendant clarified that it only "sought to maintain its ability to contest the extent of the plaintiff's disability" due to the impossibility of complying with the "commence payment" predicate of § 31-294c (b) during the twenty-eight day statutory period. *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 266. Following the hearing, the commissioner concluded that, as a result of the defendant's failure to file a response within the statutory period, the defendant was precluded from contesting both liability for, and the extent of, the plaintiff's disability, which decision the board affirmed. Id., 266–67.

On appeal, this court concluded otherwise and recognized a narrow exception to the preclusion provision, as previously construed by *Harpaz* and its progeny. The court concluded "that, *under the facts of this case*, it was not reasonably practical for the board to require the defendant to have complied with § 31-294c (b) . . . ." (Emphasis added.) Id., 267. As we recently explained, "[t]his court held [in *Dubrosky*] that, under such circumstances, when a defendant employer does not challenge the claim of a work-related injury, but *challenges only the extent* of the plaintiff's disability, strict compliance with the twenty-eight day statutory time frame to begin payment of benefits will be excused when it is impossible for the [employer] to comply."

(Emphasis added.) *Woodbury-Correa* v. *Reflexite Corp.*, 190 Conn. App. 623, 638, 212 A.3d 252 (2019), citing *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 273–75; see also *Quinones* v. *R. W. Thompson Co.*, 188 Conn. App. 93, 108, 203 A.3d 1256 (2019) (*Dubrosky* exception applied because defendant employer "did not contest the liability of the plaintiff's injury" and made compensation payments to him). The court in *Dubrosky* further emphasized the "limited applicability" of that exception to the preclusion provision of § 31-294c (b).[20] *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 274.

Unlike the defendant employer in *Dubrosky*, the defendant here has not accepted liability for the plaintiff's injuries. Rather, as both the commissioner and the board emphasized, the defendant filed a belated form 43 in which it denied liability for the plaintiff's injuries. See footnote 6 of this opinion. Moreover, at no time has the defendant made payments for the plaintiff's medical care, as did the defendant employer in *Dubrosky*. Put simply, this case is not *Dubrosky*.

In this appeal, the defendant asks us to extend the limited exception articulated in *Dubrosky* to situations in which employers (1) dispute both liability *and* the extent of a claimant's injuries,[21] and (2) fail to make any payments for the claimant's medical care. We refuse

[20] In the seven years since *Dubrosky* was decided, this court has declined to extend the exception articulated therein; see *Woodbury-Correa* v. *Reflexite Corp.*, supra, 190 Conn. App. 638–39; and our Supreme Court has neither acknowledged that exception nor cited to *Dubrosky* in any manner.

[21] In the present case, the commissioner concluded that the defendant's failure to file a timely response to the claim for compensation precluded it from contesting liability, but not the extent of the plaintiff's injuries. On appeal, the defendant maintains that it should not be precluded from contesting the extent of the plaintiff's injuries. For that reason, this case is not controlled by our recent decision in *Woodbury-Correa* v. *Reflexite Corp.*, supra, 190 Conn. App. 639, which involved a motion to preclude an employer from contesting *liability* for a claimant's injuries.

to do so. As our Supreme Court has observed, "[i]t is not the court's role to acknowledge an exclusion when the legislature painstakingly has created such a complete statute. We consistently have acknowledged that the act is an intricate and comprehensive statutory scheme. . . . The complex nature of the workers' compensation system requires that policy determinations should be left to the legislature, not the judiciary." (Citations omitted; internal quotation marks omitted.) *McCullough* v. *Swan Engraving, Inc.*, supra, 320 Conn. 310; see also footnote 18 of this opinion. For that reason, this court expressly has declined "to carve out another exception" to the statutory scheme embodied in § 31-294c "because we believe that the legislature, rather than this court, is the proper forum through which to create" additional exceptions to that statute. *Izikson* v. *Protein Science Corp.*, 156 Conn. App. 700, 713, 115 A.3d 55 (2015); see also *Wiblyi* v. *McDonald's Corp.*, supra, 168 Conn. App. 107 ("we will not recognize, in the absence of legislative action," new exception to § 31-294c (b)). We likewise decline to do so now. We, therefore, conclude that the board properly determined, in accordance with established precedent; see *Harpaz* v. *Laidlaw Transit, Inc.*, supra, 286 Conn. 130; that the preclusion provision of § 31-294c (b) bars the defendant from contesting either liability for, or the extent of, the plaintiff's injuries.

The decision of the Compensation Review Board is affirmed.

In this opinion the other judges concurred.

# GARY SALERNO *v.* LOWE'S HOME IMPROVEMENT CENTER ET AL.
## (AC 42344)

Alvord, Elgo and Eveleigh, Js.

*Syllabus*

The defendant employer and its workers' compensation insurer appealed to this court from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner granting the plaintiff employee's motion to preclude the defendants from contesting the compensability of his injuries pursuant to statute (§ 31-294c (b)). The defendants received the plaintiff's notice of claim for compensation but did not file any response until eighteen months later, when they filed a form 43 in which they contested liability for his injuries. The commissioner found that the plaintiff properly filed his notice of claim and that the defendants had not paid him for any of his lost time from work or for any of his medical treatment related to his claim for compensation. The defendants appealed to the board, claiming that the exception to the preclusion provision in § 31-294c (b) recognized in *Dubrosky* v. *Boehringer Ingelheim Corp.* (145 Conn. App. 261) was applicable because the plaintiff's failure to present a claim for medical or indemnity benefits within the twenty-eight day time period mandated by § 31-294c (b) made it impossible for the defendants to avail themselves of the one year safe harbor provision of § 31-294c (b), which permits an employer to contest the employee's right to receive compensation on any grounds or the extent of the employee's disability when the employer has failed to contest liability for the plaintiff's injuries within the twenty-eight day time period but commences payment within the twenty-eight day time period. The board rejected the defendants' claim that the exception recognized in *Dubrosky* was applicable and affirmed the commissioner's decision. *Held* that the board properly determined that the defendants were precluded from contesting their liability for the plaintiff's injuries; the defendants did not accept liability for the plaintiff's injuries, they belatedly filed a form 43 in which they denied liability, they did not pay the plaintiff for any of his lost time from work or for his medical treatment, and this court declined to extend the exception to the preclusion provision of § 31-294c (b) for the reasons stated in *Dominguez* v. *New York Sports Club* (198 Conn. App. 854), which this court released today, as the complex nature of the workers' compensation scheme required that policy determinations and the creation of exceptions to § 31-294c (b) be left to the legislature.

Argued January 13—officially released July 14, 2020

*Procedural History*

Appeal from the decision of the Workers' Compensation Commissioner for the Sixth District granting the plaintiff's motion to preclude the defendants from contesting liability as to his claim for certain workers' compensation benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the defendants appealed to this court. *Affirmed.*

*Paul M. Shearer*, for the appellants (defendants).

*Robert C. Lubus, Jr.*, with whom, on the brief, were *Richard O. LaBrecque* and *Donald J. Trella*, for the appellee (plaintiff).

*Opinion*

ELGO, J. The defendant employer, Lowe's Home Improvement Center,[1] appeals from the decision of the Compensation Review Board (board) affirming the decision of the Workers' Compensation Commissioner (commissioner), who concluded that the defendant was precluded under General Statutes § 31-294c (b) from contesting both liability for, and the extent of, repetitive trauma injuries allegedly sustained by the plaintiff, Gary Salerno. On appeal, the defendant claims that the board improperly concluded that the present case did not fall within the narrow exception to the preclusion provision of § 31-294c (b) recognized by this court in *Dubrosky* v. *Boehringer Ingelheim Corp.*, 145 Conn. App. 261, 76 A.3d 657, cert. denied, 310 Conn. 935, 78 A.3d 859 (2013). We disagree and, accordingly, affirm the decision of the board.

[1] Both the defendant employer, Lowe's Home Improvement Center, and its insurer, Sedgwick CMS, Inc., were named as defendants in this matter. For convenience, we refer to Lowe's Home Improvement Center as the defendant.

Relevant to this appeal are the following facts found by the commissioner. From March 3, 2006 to December 19, 2012, the plaintiff was employed by the defendant as a sales specialist in its plumbing department, which required him to lift heavy objects.[2] On November 27, 2013, the plaintiff completed a form 30C,[3] in which he sought compensation for a repetitive trauma injury to his lumbar spine that he allegedly sustained as a result of "lifting" items in the course of his employment with the defendant. The Workers' Compensation Commission received the plaintiff's notice of his claim for compensation on November 29, 2013; the defendant received it prior to December 3, 2013. Over the next eighteen months, the defendant did not file any response to the plaintiff's notice. In addition, the commissioner expressly found that the defendant "did not pay the [plaintiff] for any of his lost time from work or for any of the medical treatment related to the repetitive trauma claim [for compensation]."

On June 18, 2015, the defendant filed a belated form 43,[4] in which it contested liability for the plaintiff's injur-

[2] As the board recounted in its decision, the plaintiff's "job required the repetitive lifting of heavy plumbing fixtures, some of which weighed over 100 pounds. The [plaintiff] experienced increasing difficulty lifting heavy objects until he was ultimately unable to do his job in December, 2012. He reported worsening sciatic pain down his right leg and eventually reached a point where he could no longer walk for more than ten or fifteen minutes without having to stop and rest. In December, 2012, he stopped working and consulted his family physician . . . who, in January, 2013, prescribed physical therapy. When this treatment did not result in long-term relief, [the physician] referred the [plaintiff] to [a neurosurgeon who] ordered [a magnetic resonance imaging scan] and suggested pain management and an injection, neither of which provided any relief. [The neurosurgeon] then recommended an L4–5 lumbar fusion, which he performed on June 17, 2013."

[3] "A form 30C is the form prescribed by the [W]orkers' [C]ompensation [C]ommission . . . for use in filing a notice of claim under the [Workers' Compensation Act, General Statutes § 31-275 et seq.]." (Internal quotation marks omitted.) *Carter* v. *Clinton*, 304 Conn. 571, 576 n.4, 41 A.3d 296 (2012).

[4] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest *liability* to pay compensation. If an employer fails timely to file a form 43, a claimant may

ies.[5] In response, the plaintiff filed a motion to preclude pursuant to § 31-294c (b) on July 13, 2015. A formal hearing was held before the commissioner on February 11, 2016. In his subsequent decision, the commissioner found that the plaintiff properly had filed a notice of his claim for compensation. The commissioner further found that the defendant "neither timely disclaimed nor paid the [plaintiff's] indemnity or medical costs in order to avail itself of the safe harbor provision [of] § 31-294c."[6] On that basis, the commissioner granted the plaintiff's motion to preclude.

The defendant then filed a petition for review with the board, claiming that the present case fell within the narrow exception to the preclusion provision of § 31-294c (b) articulated by this court in *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 261.[7] The board disagreed and affirmed the decision of the commissioner, and this appeal followed.

On appeal, the defendant challenges the board's conclusion that the *Dubrosky* exception does not apply in

file a motion to preclude the employer from contesting the compensability of his claim. . . . The form 43 generally must be filed within twenty-eight days of receiving written notice of the claim." (Citation omitted; emphasis added; internal quotation marks omitted.) *Wiblyi* v. *McDonald's Corp.*, 168 Conn. App. 77, 79 n.2, 144 A.3d 1075 (2016).

[5] In the portion of the form titled "Reason(s) for Contest," the defendant stated: "Alleged injury/disability for both body parts, does not arise out of or in the course of employment. Claim is also time barred."

[6] Under the one year safe harbor provision embodied in § 31-294c (b), an employer that fails to timely contest liability for the plaintiff's injuries within the twenty-eight day time period in § 31-294c (b) but that commences payment within that twenty-eight day time period is granted a one year period in which to contest the employee's right to receive compensation on any grounds or to contest the extent of the employee's disability. See *Dominguez* v. *New York Sports Club*, 198 Conn. App. 854, 874, A.3d (2020); see also General Statutes § 31-294c (b).

[7] The defendant also argued that the plaintiff's claim for compensation, as memorialized in his form 30C, was "too vague to support preclusion." The board rejected that contention, and the defendant does not contest the propriety of the board's determination in this appeal.

the present case. Specifically, it claims that "[t]he plaintiff's failure to present a claim for medical or indemnity benefits within the twenty-eight day statutory period following the filing of the form 30C made it impossible for the [defendant] to avail [itself] of the one year safe harbor" of § 31-294c (b). For that reason, the defendant submits that "[t]he facts in this case are indistinguishable from the facts in *Dubrosky*." We disagree.

In *Dubrosky*, the defendant employer accepted that an incident had occurred but sought to maintain its ability to contest the extent of the plaintiff's disability. *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 145 Conn. App. 266. That employer also paid all medical bills submitted to it by the plaintiff's physician. Id., 265. Given those unique circumstances, this court concluded "that, *under the facts of this case*, it was not reasonably practical for the board to require the defendant to have complied with § 31-294c (b) . . . ." (Emphasis added.) Id., 267. As we recently explained, "[t]his court held [in *Dubrosky*] that, under such circumstances, when a defendant employer does not challenge the claim of a work-related injury, but challenges only the extent of the plaintiff's disability, strict compliance with the twenty-eight day statutory time frame to begin payment of benefits will be excused when it is impossible for the [employer] to comply." *Woodbury-Correa* v. *Reflexite Corp.*, 190 Conn. App. 623, 638, 212 A.3d 252 (2019), citing *Dubrosky* v. *Boehringer Ingelheim Corp.*, supra, 273–75.

Unlike the defendant employer in *Dubrosky*, the defendant here has not accepted liability for the plaintiff's injuries. Rather, it filed a belated form 43 in which it denied liability. Moreover, as the commissioner found in his decision, the defendant "did not pay the [plaintiff] for any of his lost time from work or for any of the medical treatment related to the repetitive trauma claim

[for compensation]." Contrary to the contention of the defendant, this case is patently distinguishable from *Dubrosky*. Accordingly, the board properly determined that the defendant was precluded from contesting its liability for the plaintiff's injuries. See *Woodbury-Correa* v. *Reflexite Corp.*, supra, 190 Conn. App. 639.

To the extent that the defendant invites us to extend the narrow exception to the preclusion provision articulated in *Dubrosky*, we decline to do so for the reasons set forth in *Dominguez* v. *New York Sports Club*, 198 Conn. App. 854, A.3d (2020), which also was released today. In so doing, we reiterate that "[i]t is not the court's role to acknowledge an exclusion when the legislature painstakingly has created such a complete statute. We consistently have acknowledged that the act is an intricate and comprehensive statutory scheme. . . . The complex nature of the workers' compensation system requires that policy determinations should be left to the legislature, not the judiciary." (Citations omitted; internal quotation marks omitted.) *McCullough* v. *Swan Engraving, Inc.*, 320 Conn. 299, 310, 130 A.3d 231 (2016); see also *Wiblyi* v. *McDonald's Corp.*, 168 Conn. App. 92, 107, 144 A.3d 530 (2016) ("we will not recognize, in the absence of legislative action" new exception to § 31-294c (b)); *Izikson* v. *Protein Science Corp.*, 156 Conn. App. 700, 713, 115 A.3d 55 (2015) (expressly declining "to carve out another exception" to statutory scheme embodied in § 31-294c "because we believe that the legislature, rather than this court, is the proper forum through which to create" additional exceptions to that statute).

The decision of the Compensation Review Board is affirmed.

In this opinion the other judges concurred.

# THE BANK OF NEW YORK MELLON, TRUSTEE *v.* BEAGY FRANCOIS (AC 42573)

Prescott, Devlin and Sheldon, Js.

*Syllabus*

The plaintiff bank sought to foreclose a mortgage on certain real property owned by the defendant. During trial, the defendant's counsel filed a motion for a continuance, on the basis that he was due to appear in this court in another matter on the second day of the trial. The defendant and the defendant's counsel thereafter failed to appear for the scheduled continuation of the foreclosure trial. The court denied the motion and rendered a judgment of foreclosure, from which the defendant appealed. The trial court thereafter vacated the judgment of foreclosure and set a new trial date, after it was discovered that there had been miscommunications among court staff and the defendant's counsel had, in fact, been required to appear at this court. A new foreclosure trial was held and the trial court rendered a judgment of strict foreclosure, from which the defendant filed an amended appeal. On appeal, the defendant claimed that the trial court improperly vacated the prior judgment of foreclosure and rendered a new judgment of strict foreclosure in violation of the automatic appellate stay in effect that arose as a result of the defendant's initial appeal. *Held* that the defendant's claim that the appellate stay of execution arising from the vacated first judgment and initial appeal was violated when the trial court rendered its second judgment of strict foreclosure was unavailing, as the trial court had the authority to vacate a judgment on appeal, even if the effect of such an order was to render any appeal from that judgment moot; although this court agreed that any appellate stay of execution resulting from the filing of the initial appeal technically continued at the time the trial court vacated the first judgment of foreclosure and at the time the trial court rendered the second judgment of strict foreclosure, the court's vacatur of the first judgment could not have violated the appellate stay because it did nothing to enforce or carry out that judgment, but, to the benefit of the defendant, merely returned the parties to the same legal position that the parties occupied prior to the rendering of the initial judgment and, similarly, the new foreclosure judgment rendered in favor of the plaintiff did nothing to execute, effectuate, or give legal effect to any judgment in contravention of an appellate stay, the court had continuing jurisdiction to act in an ongoing matter despite the initial appeal provided that the court refrained from taking any action that permitted the judgment winner to begin enjoying the fruits of its victory, and, because the second judgment of foreclosure was, itself, an appealable judgment, any new law days set by the court were stayed until the time to appeal had passed and continued to be stayed by virtue of the defendant's amended

appeal and, therefore, the automatic stay that may have remained by virtue of the initial appeal was not violated by entry of an entirely new foreclosure judgment.

Argued February 6—officially released July 14, 2020

*Procedural History*

Action to foreclose a mortgage on certain of the defendant's real property, and for other relief, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Hon. Michael Hartmere*, judge trial referee; judgment of strict foreclosure, from which the defendant appealed; thereafter, the court, *Bellis, J.*, vacated the judgment of foreclosure and ordered a new trial; subsequently, the case was tried to the court, *Hon. George N. Thim*, judge trial referee; judgment of strict foreclosure, from which the defendant filed an amended appeal. *Affirmed.*

*John R. Williams*, for the appellant (defendant).

*Adam D. Lewis*, with whom was *Joshua P. Joy*, for the appellee (plaintiff).

*Opinion*

PRESCOTT, J. In this residential mortgage foreclosure action, the amended appeal of the defendant, Beagy Francois, challenges the judgment of strict foreclosure rendered by the court in favor of the plaintiff, The Bank of New York Mellon FKA The Bank of New York as Trustee for the Certificate Holder of Cwalt, Inc., Alternative Loan Trust 2007-J1, Mortgage Pass-Through Certificates, Series 2007-J1. The defendant's sole claim in her amended appeal is that the court improperly vacated the prior judgment of foreclosure and subsequently rendered a second judgment of foreclosure in violation of an existing appellate stay of execution. We disagree and, accordingly, affirm the judgment of the trial court.

The record reveals the following relevant procedural history, which is not in dispute. On November 17, 2015, the plaintiff commenced the underlying action to foreclose a mortgage on residential property at 1995 Barnum Avenue in Stratford owned by the defendant. A trial date was set for February 5, 2019. On that date, the defendant filed a motion seeking a continuance of the trial date.[1] The court, *Bellis*, *J.*, denied the motion that same day, indicating in its order that "[t]his is the sixth trial date and the case was on the dormancy docket." The trial began in the afternoon, as scheduled, but did not finish and was scheduled to resume the following day.

On February 6, 2019, however, prior to the resumption of the trial, the defendant filed another motion seeking a continuance of the trial to May 2, 2019. In that motion, counsel for the defendant asserted that he was "scheduled to be at the Appellate Court for [Docket No.] AC 42001" on February 6, 2019, and, thus, was unavailable to continue with the foreclosure trial. The plaintiff did not consent to the continuance, and the court, *Bellis*, *J.*, denied the motion later that same day. The court explained in its order that the Office of the Appellate Clerk, in response to an inquiry from trial court staff, had indicated that no proceeding was scheduled that day at the Appellate Court in the matter referenced by the defendant's counsel in her motion for continuance. Judge Bellis' order further stated that, "[i]n light of this second same day trial continuance and what appears to be a misrepresentation by counsel that he is 'scheduled to be in Appellate Court', the clerk is directed to send a copy of this order to disciplinary counsel for the appropriate investigation and action."

[1] Counsel stated in the motion for continuance that the defendant would be unable to attend trial because "[she] had an emergency which caused her to travel to the Bahamas on February 2, 2019, to care for a family member who suffered a heart attack. She is currently in the Bahamas caring for her loved one."

Neither the defendant nor her counsel appeared for the scheduled continuation of the foreclosure trial, and the court, *Hon. Michael Hartmere*, judge trial referee, rendered judgment in favor of the plaintiff.[2] The defendant filed an appeal that same day. According to her appeal form, in addition to appealing from the judgment of foreclosure, the defendant sought to challenge the court's denial of her motions for continuance of the foreclosure trial, its decision to refer her attorney to the Office of Chief Disciplinary Counsel, and the denial of her motion to dismiss.[3]

On February 20, 2019, the parties appeared before Judge Bellis, who indicated to the parties on the record that, after the February 6, 2019 judgment was rendered, she learned that a clerk at the Office of the Appellate Clerk had provided the court with incorrect information and that the defendant's counsel, in fact, had been ordered to appear before the Appellate Court on its motion docket on February 6, 2019. After confirming these facts with counsel, the court indicated that it was withdrawing its disciplinary referral of the defendant's counsel and also was vacating the foreclosure judgment

[2] We note that the electronic trial court record does not reflect the terms of the foreclosure judgment rendered by Judge Hartmere on February 6, 2019, and the defendant did not order a transcript of the proceedings for our review.

In addition to the foreclosure judgment, Judge Hartmere also denied, without explanation, a motion to dismiss that the defendant had filed the day before, in which she argued that the court lacked jurisdiction over the foreclosure action because the plaintiff had failed to aver in its complaint that it had complied with certain statutory notice requirements pursuant to the emergency mortgage assistance program as provided in General Statutes §§ 8-265dd and 8-265ee (a).

[3] In her preliminary statement of issues filed later on March 15, 2019, the defendant seemingly abandoned any challenge to the court's denial of her motions for continuance and to the disciplinary referral, having limited her issues to the following: "Did the court err when it denied the defendant/appellant's motion to dismiss for lack of subject matter jurisdiction? Did the court err when it proceeded to a trial within the appeal period after denying the defendant/appellant's motion to dismiss for lack of subject jurisdiction?"

rendered by Judge Hartmere on February 6, 2019. The court instructed the parties to report to caseflow to schedule a new trial date.

A new foreclosure trial was scheduled to begin on April 10, 2019. Both parties appeared on that date and, at that time, the defendant raised the issue of whether the court could proceed with the trial in light of the fact that the appeal of Judge Hartmere's prior rulings remained pending at the Appellate Court. Judge Bellis rejected the defendant's assertion that an appellate stay barred the trial court from proceeding with a new foreclosure trial.[4] The court ordered the trial to proceed as

[4] The plaintiff also raised a concern about the trial moving forward given the pending appeal. The plaintiff had filed a caseflow request on April 2, 2019, in which it stated that "the [April 10, 2019] trial was scheduled in anticipation that the appeal . . . then pending would be withdrawn. On March 15, 2019, [the] defendant filed additional documents with the Appellate Court, preventing the appeal from being dismissed. At this time, the appeal remains pending and, accordingly, stays this matter pending the appeal's dismissal." The court denied the caseflow request without comment on April 2, 2019.

The following colloquy occurred at the April 10, 2019 hearing in response to the court's indication that the trial could proceed despite the pending appeal:

"[The Defendant's Counsel]: At the time of the filing of the appeal, it was filed as a result (inaudible) final judgment.

"The Court: Right.

"[The Defendant's Counsel]: And I know Your Honor then reopened and vacated the judgment, however the appeal was already filed and my client does not want me to withdraw the appeal. I was hoping that the plaintiff can file a motion to dismiss the appeal and then let the Appellate Court decide what should happen. But I don't want to withdraw the appeal and get in trouble with my client. And there are more than one issue in the—

"The Court: All right.

"[The Defendant's Counsel]: —appeal.

"The Court: Counsel, I think this whole problem was created by your failure to handle your scheduling issues with last minute continuances and such. But right now there's no final judgment in this case, so as far as I'm concerned, this would be—there's nothing that would be—stop this trial from going forward as I indicated in the caseflow request. So [the] plaintiff goes forward with the trial today.

"[Counsel], you have an appearance in the case, so you are ordered to be here for the trial. If your client does—instructs you not to participate or not to say anything, I can't—

"[The Defendant's Counsel]: No, I—I will do the trial. I just think this may give rise to another appellate . . . issue."

scheduled before the court, *Hon. George N. Thim*, judge trial referee. Following trial, Judge Thim rendered a new judgment of strict foreclosure in favor of the plaintiff.[5]

On April 22, 2019, the defendant filed an appeal from Judge Thim's April 10, 2019 judgment of strict foreclosure. The Office of the Appellate Clerk properly treated this new appeal as an amendment to the still pending prior appeal. See Practice Book 61-9 ("[i]f the appellant files a subsequent appeal from a trial court decision in a case where there is a pending appeal, the subsequent appeal shall be treated as an amended appeal"). The defendant filed her appellate brief in this matter on August 26, 2019.

Before turning to her claim on appeal, it is important to clarify what the defendant is not claiming and, thus, what is not before this court on appeal. She does not brief any claims of error directed at either Judge Hartmere's original judgment of foreclosure or Judge Bellis' order referring the defendant's counsel for disciplinary review, presumably because both of those orders were vacated after the appeal was filed and before the defendant filed her appellate brief. Because she has abandoned her appeal with respect to those rulings, we do not need to decide whether any issues she might have raised would be moot and subject to dismissal.

More significantly, she also does not brief any claim of error pertaining to Judge Hartmere's denial of her motion to dismiss the foreclosure action or Judge Bellis' denials of her motions for continuance of the trial date. In other words, even with respect to those orders not subsequently vacated by Judge Bellis, the defendant effectively has abandoned and, thus, waived any claims

[5] The court determined that the fair market value of the property was $289,000 and calculated that the outstanding total debt, including attorney's fees, was $676,502.35. The court set laws days to commence on June 11, 2019.

she might have raised in her initial appeal, choosing to brief only her amended appeal from Judge Thim's judgment of foreclosure.[6] See *Deutsche Bank National Trust Co.* v. *Bertrand*, 140 Conn. App. 646, 648 n.2, 59 A.3d 864 (failure to brief claims of error pertaining to rulings listed on appeal form abandons any such claims), cert. dismissed, 309 Conn. 905, 68 A.3d 661 (2013); see also *Sturman* v. *Socha*, 191 Conn. 1, 3 n.2, 463 A.2d 527 (1983) (issue raised in preliminary statement of issues but not pursued in brief deemed abandoned).

The defendant has briefed a single claim on appeal, namely, that the court improperly vacated the prior judgment of foreclosure[7] and rendered a new judgment of strict foreclosure in violation of the automatic appellate stay in effect that arose as a result of her initial appeal in this matter. We note that the defendant's discussion of this novel claim is limited to a scant three paragraphs, spanning less than one page of her six page brief. For the reasons that follow, we reject the defendant's claim.

Practice Book § 61-11 (a), which governs automatic stays of execution in non-criminal cases, provides in relevant part: "Except where otherwise provided by statute or other law, *proceedings to enforce or carry out the judgment* or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause." (Emphasis added.) Thus, "[i]t is axiomatic that, with limited exceptions, an appellate stay of execution arises from the time a judgment

[6] She does not raise or brief any claim of error with respect to the *merits* of the foreclosure judgment rendered by Judge Thim, claiming only that, in light of an appellate stay of execution that arose when the initial appeal was filed, the court lacked the authority to vacate the judgment of foreclosure and, ultimately, render a new judgment of foreclosure.

[7] Although the defendant's claim on appeal focuses on the authority of the trial court to render the second judgment of foreclosure, we interpret her claim, as a matter of logic, to also challenge implicitly the authority of the trial court to vacate the first judgment of foreclosure.

is rendered until the time to file an appeal has expired. Practice Book § 61-11 (a). If an appeal is filed, any appellate stay of execution in place during the pendency of the appeal period *continues until there is a final disposition of the appeal or the stay is terminated.* Practice Book § 61-11 (a) and (e)." (Emphasis added.) *Sovereign Bank* v. *Licata*, 178 Conn. App. 82, 99, 172 A.3d 1263 (2017).

As we have clarified in the past, however, "[i]n this state, the filing of an appeal does not divest the trial court of jurisdiction or authority *to continue to act in the matter on appeal.* To the contrary, our Supreme Court has stated on numerous occasions that trial courts in this state continue to have the power *to conduct proceedings* and to act on motions filed during the pendency of an appeal provided they take no action to enforce or carry out a judgment while an appellate stay is in effect. . . . [Thus] [*t*]*he automatic stay prohibits only those actions that would execute, effectuate, or give legal effect to all or part of a judgment challenged on appeal.*" (Citations omitted; emphasis added; footnote omitted; internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, 180 Conn. App. 818, 832–33, 184 A.3d 1254 (2018). In other words, an appellate stay of execution "merely denies [the successful litigant] the immediate fruits of his or her victory . . . in order to protect the full and unhampered exercise of the right to appellate review." (Citation omitted; internal quotation marks omitted.) *Preisner* v. *Aetna Casualty & Surety Co.*, 203 Conn. 407, 414, 525 A.2d 83 (1987).

Turning to the present case, it is indisputable that an appellate stay of execution arose by virtue of Judge Hartmere's February 6, 2019 judgment of foreclosure and that the defendant's appeal from that judgment acted to extend that stay until there was a final determination of the appeal or the stay otherwise was terminated. The appellate stay served the important legal

purpose of preventing title to the foreclosed property from vesting in the plaintiff as a consequence of the running of any law days set by the court, which could have no legal effect while an appellate stay remained operable. See *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 683, 899 A.2d 586 (2006). All of the issues the defendant raised or could have raised with respect to the initial appeal, however, have been abandoned by her. What remains for this court to decide is the limited challenge to the subsequent foreclosure judgment premised on an alleged violation of the initial automatic stay that arose as a result of the initial judgment of foreclosure, which has since been vacated, and the filing of the now abandoned initial appeal.

The initial appeal filed by the defendant was never dismissed or otherwise disposed of by this court and, thus, we agree with the defendant that any appellate stay of execution resulting from the filing of that appeal technically continued at the time Judge Bellis vacated the first judgment of foreclosure and at the time Judge Thim later rendered his foreclosure judgment.[8] We are unpersuaded, however, that the appellate stay of execu-

[8] We disagree with the plaintiff's assertion that Judge Bellis necessarily terminated any appellate stay that was in effect as a consequence of her having vacated the foreclosure judgment rendered by Judge Hartmere. An automatic appellate stay may be terminated by the trial court either on a motion by a party pursuant to Practice Book § 61-11 (e) or, sua sponte, in accordance with Practice Book § 61-11 (d). In either instance, however, the court "shall hold a hearing prior to terminating the stay." Practice Book § 61-11 (d). No motion to terminate the stay was ever filed with the trial court. The court never indicated any intent to terminate the appellate stay as part of her ruling vacating the foreclosure judgment. Rather, the court simply indicated that conducting a new foreclosure trial would not violate the existing appellate stay. The court never held a hearing or heard argument from the parties about whether to terminate the appellate stay, which is mandatory before a trial court may terminate any appellate stay of execution. Here, the proper inquiry is not whether any appellate stay remained in effect, but whether the trial court's actions violated the scope of any stay in existence.

tion arising from the vacated first judgment and appeal was violated under the facts presented.[9]

It is well settled that the trial court has the authority to vacate a judgment on appeal, even if the effect of such an order is to render any appeal from that judgment moot.[10] See id., 685–92. The court's vacatur of the first judgment could not have violated the appellate stay because it did nothing to enforce or carry out that judgment, but, to the benefit of the defendant, merely returned the parties to the same legal position the parties occupied prior to the rendering of the initial judgment. In other words, the court's action in vacating the first judgment constituted the polar opposite of a "proceeding to enforce or carryout the judgment." Practice Book § 61-11 (a).

Similarly, the fact that a new foreclosure judgment was rendered in favor of the plaintiff did nothing to execute, effectuate, or give legal effect to any judgment in contravention of an appellate stay. The court has continuing jurisdiction to act in an ongoing matter despite a prior appeal provided that the court refrains from taking any action that permits the judgment winner to begin enjoying the fruits of its victory. See *Preisner* v. *Aetna Casualty & Surety Co.*, supra, 203 Conn. 414. Because the second judgment of foreclosure was, itself,

[9] It is important to note that the defendant's exercise of her right to appellate review of the new foreclosure judgment prevented the passing of title from the defendant to the plaintiff as a result of the running of the new law days set by Judge Thim, thereby preserving for all practical purposes the legal protection afforded by the earlier stay.

[10] It is unnecessary to resolve any portion of the appeal as amended on mootness grounds. As we previously indicated, any issues that could have been raised with respect to the initial appeal with respect to Judge Hartmere's now vacated foreclosure judgment have been abandoned by the defendant. In the initial appeal, the defendant also challenged Judge Hartmere's denial of her motion to dismiss the foreclosure action, a decision that was not vacated by the trial court, and the defendant has abandoned any claim regarding the denial of that motion by failing to brief it.

an appealable judgment, any new law days set by the court were stayed until the time to appeal had passed and continued to be stayed by virtue of the defendant's amended appeal. Practice Book § 61-11 (a). The plaintiff has continued to be denied the fruits of a foreclosure judgment—namely the transfer of title to the subject property from the defendant to the plaintiff upon passage of the law days—and, therefore, whatever automatic stay may have remained by virtue of the original appeal, it certainly was not violated by entry of an entirely new foreclosure judgment.

Finally, the defendant's bald statement, made without any accompanying analysis, that "this appeal is governed by [our] recent ruling in *Wachovia Mortgage, FSB* v. *Toczec*, 189 Conn. App. 812, 821–24, 209 A.3d 725, [cert. denied, 333 Conn. 914, 216 A.3d 650] (2019)," is unavailing. The issue in *Wachovia Mortgage, FSB*, was whether a trial court's decision to *reset* law days that had passed during the pendency of an appeal challenging the foreclosure judgment violated the appellate stay that remained in effect. Id., 821. The court in *Wachovia Mortgage, FSB*, held that an order resetting law days with respect to a foreclosure judgment subject to an appellate stay was an action to carry out or to enforce the judgment on appeal. Id., 824. Unlike in the present case, the trial court in *Wachovia Mortgage, FSB*, had not issued an entirely new foreclosure judgment, but merely had reset expired law days for the express purpose of permitting title to pass to the plaintiff following an unsuccessful appeal by the defendant. Because, however, resolution of a motion for reconsideration en banc of the Appellate Court's dismissal of the appeal as frivolous was still pending, this court held that the court's resetting of law days was premature and in violation of the automatic appellate stay, which remained in effect until the appeal was finally determined, which included a resolution of the defendant's motion for reconsideration. Id., 823.

In the present case, the court did not simply reset law days to effectuate a still existing foreclosure judgment but, instead, vacated the prior foreclosure judgment and then later rendered an entirely new judgment, a necessary component of which was the setting of new law days. See *Connecticut National Bank* v. *L & R Realty*, 40 Conn. App. 492, 494, 671 A.2d 1315 (1996) ("Without the setting of law days, the time for redemption has not been limited and the parties' rights remain unconcluded as to that issue. As a result, a strict foreclosure judgment that is silent as to law days cannot be final for the purpose of appeal."). Here, the law days set by Judge Thim as part of the new judgment of foreclosure have passed without legal effect due to the defendant's having filed the amended appeal. Because of the unique procedural posture of *Wachovia Mortgage, FSB*, and the fact that, unlike in the present case, the trial court's order resetting law days unquestionably was made *solely* for the purpose of effectuating a judgment on appeal, whereas here the first judgment on appeal had been vacated, we disagree that its holding controls the outcome of the present action.

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.