ROBERT SEPEGA *v.* LAWRENCE R. DELAURA (SC 19683)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa, Robinson and Vertefeuille, Js.*

Syllabus

The plaintiff, a municipal police officer, brought a negligence action seeking to recover damages for certain personal injuries that he sustained while attempting to force entry into the defendant's home. Specifically, the plaintiff alleged that the defendant had entered the home in violation of a protective order, locked himself inside, and threatened to cause harm to himself. The plaintiff further alleged that, through these acts, the defendant had negligently created conditions that required the plaintiff to forcibly enter the home. The defendant filed a motion to strike the complaint pursuant to the common-law firefighter's rule, which generally bars firefighters and police officers who enter private property in the exercise of their duties from bringing civil actions against the landowner for injuries caused by defective conditions on the property. The trial court granted the defendant's motion, concluding that the plaintiff's claim was barred by the firefighter's rule. The trial court subsequently rendered judgment for the defendant, from which the plaintiff appealed. *Held* that the trial court improperly granted the defendant's motion to strike the plaintiff's claim of ordinary negligence, this court having concluded that the firefighter's rule should not be extended beyond claims alleging premises liability: the various public policy considerations underlying the firefighter's rule did not support the expansion of that rule to claims of ordinary negligence in light of this state's statutory (§ 52-572h [*l*]) abolition of the assumption of risk doctrine, the fact that other public sector employees may pursue recovery in similar cases, and the absence of any evidence of a chilling effect on calls for emergency assistance; moreover, the defendant's assertion that *Kaminski* v. *Fairfield* (216 Conn. 29) supports barring negligence claims by public safety officers was foreclosed by this court's subsequent decision in *Levandoski* v. *Cone* (267 Conn. 651), which explicitly declined to extend the firefighter's rule beyond the context of premises liability.

(*Three justices concurring separately in one opinion*)

Argued February 22—officially released September 26, 2017

Procedural History

Action to recover damages for the defendant's alleged negligence, brought to the Superior Court in the judicial district of Middlesex, where the defendant filed a

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

motion to strike the plaintiff's complaint; thereafter, the court, *Aurigemma, J.*, granted a motion to intervene filed by the town of Clinton; subsequently, the court, *Vitale, J.*, granted the motion to strike, and the court, *Aurigemma, J.*, granted the defendant's motion for judgment and rendered judgment thereon, from which the plaintiff appealed. *Reversed*; *further proceedings*.

Gerald S. Sack, with whom, on the brief, was *Jonathan A. Cantor*, for the appellant (plaintiff).

Keith S. McCabe, for the appellee (defendant).

Opinion

EVELEIGH, J. The common-law firefighter's rule provides, in general terms, that a firefighter or police officer who enters private property in the exercise of his or her duties generally cannot bring a civil action against the property owner for injuries sustained as the result of a defect in the premises. See *Levandoski* v. *Cone*, 267 Conn. 651, 653–54, 841 A.2d 208 (2004). The principal issue in this appeal is whether the firefighter's rule should be extended beyond the scope of premises liability so as to bar a police officer from recovering, under a theory of ordinary negligence, from a homeowner who is also an alleged active tortfeasor. The plaintiff, Robert Sepega,[1] a municipal police officer, appeals from the judgment of the trial court in favor of the defendant, Lawrence R. DeLaura, following the granting of a motion to strike. In granting that motion, the trial court concluded that the firefighter's rule barred the plaintiff's sole claim, which sounded in ordinary negligence. We conclude that the firefighter's rule should not be extended beyond claims of premises liability and, accordingly, reverse the judgment of the trial court in favor of the defendant and remand the case to the trial court for further proceedings.

[1] We note that Sepega's employer, the town of Clinton, was granted permission by the trial court to intervene as a plaintiff in the present case. For the sake of simplicity, however, we refer to Sepega as the plaintiff in this opinion.

The following facts, as alleged by the plaintiff in his amended complaint, and procedural history are relevant to the present appeal. The plaintiff, while in the course of his employment as a municipal police officer, responded to a call at a premises owned by the defendant. The call indicated that the defendant had locked himself inside his home and was threatening to harm himself. After arriving at the premises and making numerous requests of the defendant for entry into the home, the plaintiff ultimately attempted to kick in a door and, in doing so, sustained serious injuries. The plaintiff alleged that the resulting damages were caused by the negligence and carelessness of the defendant. Specifically, the plaintiff alleged that the defendant had negligently "created conditions which mandated that the plaintiff, as a police officer, forcibly enter the premises in order to prevent harm to the defendant or to others." In support of this claim, the plaintiff alleged that the defendant "had violated a protective order by entering and remaining in the premises," was "threatening to harm himself," and was "uncooperative with police requests to come to the door and speak to them." We note that the complaint does not make any allegations against the defendant relating to dangerous or defective conditions on the premises.

The defendant filed a motion to strike the amended complaint, and the plaintiff objected. On September 15, 2015, the trial court issued a memorandum of decision denying the defendant's motion to strike. Thereafter, the defendant filed a motion for articulation that the court, sua sponte, recast as a motion for reargument and reconsideration. After hearing argument from the parties, the trial court vacated its original decision and issued a new memorandum of decision granting the defendant's motion to strike on October 29, 2015. The

defendant then filed a motion for judgment, which the trial court granted. This appeal followed.[2]

"We begin by setting out the well established standard of review in an appeal from the granting of a motion to strike. Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling . . . is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016); see also *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). "The issue of whether to recognize a common-law cause of action in negligence is a matter of policy for the court to determine based on the changing attitudes and needs of society." *Craig* v. *Driscoll*, 262 Conn. 312, 339, 813 A.2d 1003 (2003). We note that, because the firefighter's rule is rooted in the common law, it "is subject to both legislative and judicial modification." *Ascuitto* v. *Farricielli*, 244 Conn. 692, 698, 711 A.2d 708 (1998). We also

[2] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

note that, "because the firefighter's rule is an exception to the general rule of tort liability that, as between an innocent party and a negligent party, any loss should be borne by the negligent party, the burden of persuasion is on the party who seeks to extend the exception beyond its traditional boundaries." *Levandoski* v. *Cone*, supra, 267 Conn. 661.

On appeal to this court, the plaintiff asserts that the trial court incorrectly granted the motion to strike because his claim is not barred by the firefighter's rule. Specifically, the plaintiff asserts that his claim is controlled by this court's decision in *Levandoski* v. *Cone*, supra, 267 Conn. 654, in which the firefighter's rule was limited to claims of premises liability. In response, the defendant claims that the trial court correctly granted his motion to strike because this case is distinguishable from *Levandoski*. Instead, the defendant asserts that *Kaminski* v. *Fairfield*, 216 Conn. 29, 578 A.2d 1098 (1990), governs the plaintiff's claim. We agree with the plaintiff.

In *Kaminski*, this court considered whether parents could be held liable for injuries that a police officer received when accompanying mental health workers to a home in response to a request for mental health assistance to control the behavior of an adult son. Id., 30. The injured police officer relied on the following two theories of liability in support of his claim: (1) the parents owed him a duty of care pursuant to § 319 of the Restatement (Second) of Torts because, in permitting their adult schizophrenic son to live with them, they undertook a custodial relationship that encompassed responsibility for controlling his behavior; and (2) the parents were negligent in failing to warn the police officer of the son's dangerous and violent propensities, and that he possessed several axes. Id., 33–36. This court rejected the police officer's first claim, holding that the parents did not owe the police officer a duty

of care because, in permitting their adult schizophrenic son to live with them, they had not undertaken a custodial relationship that encompassed responsibility for controlling his behavior. Id., 36. In rejecting the police officer's reliance on *Tarasoff* v. *Regents of University of California*, 17 Cal. 3d 425, 551 P. 2d 334, 131 Cal. Rptr. 14 (1976), this court further concluded that the parents were not negligent in failing to warn the police officer of their son's dangerous and violent propensities, and that he possessed several axes, because the parents did not have a professional relationship with their son and because the police officer was not a specifically identifiable victim. *Kaminski* v. *Fairfield*, supra, 216 Conn. 37. This court explained that the parents "cannot be held liable [to the police officer, who was] acting as a trained escort for a mental health team on a visit to a disturbed patient known to be agitated and to have access to axes." Id., 38.[3]

In *Levandoski*, a police officer brought a claim against a suspect for injuries he sustained during a pursuit. *Levandoski* v. *Cone*, supra, 267 Conn. 654–56. The issue before this court in that case was "whether the firefighter's rule should be extended beyond the scope of premises liability so as to bar a police officer from recovering, based on a claim of ordinary negligence, from a tortfeasor who is neither an owner nor

[3] We emphasize that *Kaminski* (1) involved a police officer, (2) was decided before the firefighter's rule was extended to police officers, and (3) did not involve the application of the firefighter's rule at all, but instead involved the duty to warn a third party about a mentally ill person's propensity for violence. *Kaminski* v. *Fairfield*, supra, 216 Conn. 30. The concurrence relies upon dictum in *Kaminski* for the proposition that the firefighter's rule is grounded in a public policy of not discouraging citizens from calling the police when needed. It is interesting to note that, one year after our decision in *Kaminski*, this court noted that "the firefighter's rule adopted by this court . . . applies to police officers who are injured by defective conditions on private property while the officers are present upon such property in the performance of their duties." *Furstein* v. *Hill*, 218 Conn. 610, 620, 590 A.2d 939 (1991).

a person in control of the premises." Id., 654. This court held that the firefighter's rule "should not be extended to a nonpremises liability case . . . ." Id., 661. In reaching this conclusion, we noted that, "[b]ecause the firefighter's rule is an exception to the general rule of tort liability that, as between an innocent party and a negligent party, any loss should be borne by the negligent party, the burden of persuasion is on the party who seeks to extend the exception beyond its traditional boundaries," and that "the history of and rationales for the [firefighter's] rule persuade us . . . that it should be confined to claims of premises liability." Id. In addition, after briefly discussing *Kaminski*, this court limited the breadth and scope of that case by concluding that, "we agree with those jurisdictions that have framed the [firefighter's] rule as one that relates specifically to premises liability . . . ." Id., 664.

In *Levandoski*, we explained the history of the firefighter's rule in this state as follows: "This court first applied the firefighter's rule in *Roberts* v. *Rosenblatt*, 146 Conn. 110, 148 A.2d 142 (1959). In that case, the plaintiff firefighter, who had responded to an alarm, sought to recover from the defendant landowners based upon the defendants' negligent maintenance of their property. . . . The trial court declined the defendants' request to charge the jury, as a matter of law, that the plaintiff was a licensee upon the defendant's property and that the duty which the defendants owed to the plaintiff was limited by that relationship. . . . This court stated: Upon these facts, the court should have instructed the jury as a matter of law that the plaintiff entered upon the premises in the performance of a public duty under a permission created by law and that his status was akin to that of a licensee and the defendants owed him no greater duty than that due a licensee. . . .[4]

[4] *Levandoski*, therefore, correctly identified the public policy principles underlying the firefighter's rule as, unsurprisingly, being rooted in the law

"In *Furstein* v. *Hill*, [218 Conn. 610, 590 A.2d 939 (1991)], we considered whether to extend the firefighter's rule to a police officer. We phrased the issue as whether a police officer occupies the status of an invitee or of a licensee when, in the course of performing his official duties, he is injured by a defective condition on the property of a landowner. We read *Roberts* as [adopting] the principle expressed in the Restatement (Second) of Torts, § 345 (1), that the liability of a possessor of land to one who enters the land only in the exercise of a privilege, for either a public or a private purpose, and irrespective of the possessor's consent, is the same as the liability to a licensee. . . . We concluded that the rule applies to police officers as well as firefighters. . . . In doing so, we gave three reasons for extending the rule to police officers. . . .

"The first reason was cast in terms of the similarity of the roles of firefighters and police officers, and the reasonable expectations of landowners regarding those two types of public officers. . . . The second reason was essentially a reiteration of the doctrine of assumption of the risk. . . . The third reason rested upon the

of premises liability, because the firefighter's rule arose in that context in Connecticut. *Levandoski* v. *Cone*, supra, 267 Conn. 661–62. The concurrence fails to address the "most compelling" principle, as explained in *Levandoski*, which is that firefighters and police are licensees rather than invitees. Id., 662. Once their duty as public servants is triggered, a landowner's or occupier's consent is irrelevant to their power to enter land. In fact, once that duty is triggered, an owner or occupier cannot exclude them from entering. Therefore, it would be unreasonable to impose a duty on owners or occupiers to keep their premises free from defects, especially since such entries can occur at any time of day or night. Imposition of that duty would require owners and occupiers to keep the premises free of defect constantly. Id. The concurrence instead focuses on two principles that *Levandoski* considered less compelling—double taxation and assumption of risk. Id., 662–63. The concurrence then criticizes *Levandoski*'s reliance on these principles. By suggesting that these are the primary public policy principles underlying this court's decision in *Levandoski*, the concurrence sets up a straw man. We again emphasize that the holding in *Levandoski*—that the firefighter's rule should not be extended beyond the context of premises liability—is not dictum. That was the precise issue this court identified as being presented

combination of the avoidance of double taxation upon landowners and the availability of workers' compensation benefits to compensate the injured firefighter or police officer." (Citations omitted; footnote added; internal quotation marks omitted.) *Levandoski* v. *Cone*, supra, 267 Conn. 658–61.

In *Levandoski*, this court concluded that "[t]his background persuades us that the rule should not be extended to a nonpremises liability case, such as the present appeal. Because the firefighter's rule is an exception to the general rule of tort liability that, as between an innocent party and a negligent party, any loss should be borne by the negligent party, the burden of persuasion is on the party who seeks to extend the exception beyond its traditional boundaries. The history of and rationales for the rule persuade us, however, that it should be confined to claims of premises liability." Id., 661.[5]

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on appeal. It was also the issue that was argued by the parties in that case. There is, therefore, simply no basis for characterizing the holding of this court in *Levandoski* as dictum.

[5] The concurrence asserts that *Levandoski* "stand[s] only for the limited proposition that none of the public policies supporting the firefighter's rule precludes the imposition of a duty of care on suspected criminals who are fleeing or resisting a police officer" and that "much of *Levandoski*, echoed by the majority in the present case, constitutes legally flawed dictum that undercuts the duty analyses in *Kaminski* . . . and *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998), which are based substantially on the well established public policies that support the firefighter's rule, especially that of encouraging our citizens to call for professional help in emergencies without fear of civil liability." The concurrence further asserts that "[l]egislative action, as in some of our sister states, would be ideal for making the appropriate findings and articulating the contours of Connecticut's firefighter's rule. . . . Nevertheless, until such time as our legislature can act, I would adopt a formulation of the firefighter's rule as a matter of common law that encourages citizens to seek help in emergencies, while not slamming the courthouse door to appropriate claims of our first responders." (Footnote omitted.) We disagree.

First, as a unanimous panel of this court explained in *Levandoski*, "[t]he principal issue in [that case was] whether the firefighter's rule should be extended beyond the scope of premises liability so as to bar a police officer from recovering, based on a claim of ordinary negligence, from a tortfeasor

who is neither an owner nor a person in control of the premises. The defendant, who is not a landowner or person in control of land, appeals from the judgment of the trial court, following a jury trial, in favor of the plaintiff, a police officer who was injured by the defendant's negligent conduct on the land of another person. We conclude that the firefighter's rule should not be so extended and, accordingly, we affirm the judgment of the trial court in favor of the plaintiff." (Footnote omitted.) *Levandoski* v. *Cone*, supra, 267 Conn. 654. Accordingly, we conclude that *Levandoski* is the appropriate legal framework by which to analyze the present case and that its holding that the firefighter's rule should not be extended beyond premises liability was not dictum.

Second, to the extent that the concurrence asserts that determining the extent of the firefighter's rule is a legislative issue, we conclude that the legislature's inaction since *Levandoski* is indicative of the legislature's validation of this court's interpretation of the firefighter's rule in that case. *Levandoski* was decided approximately thirteen years ago. Over that time, the legislature has not addressed our decision or passed any legislation to overrule it. "Although we are aware that legislative inaction is not necessarily legislative affirmation . . . we also presume that the legislature is aware of [this court's] interpretation of [law], and that its subsequent nonaction may be understood as a validation of that interpretation." (Internal quotation marks omitted.) *Caciopoli* v. *Lebowitz*, 309 Conn. 62, 78, 68 A.3d 1150 (2013). By choosing not to legislatively overrule *Levandoski*, the legislature has acquiesced to this court's interpretation that the firefighter's rule is limited to premises liability. Indeed, one of the indicators of legislative acquiescence to our interpretation of a statute is the passage of "an appropriate interval [of time] to permit legislative reconsideration . . . without corrective legislative action . . . ." (Internal quotation marks omitted.) *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 494–95, 923 A.2d 657 (2007); see also *Efstathiadis* v. *Holder*, 317 Conn. 482, 493, 119 A.3d 522 (2015).

The concurrence further states that it "respectfully disagree[s] . . . with the analytical approach taken in the majority's opinion insofar as it follows *Levandoski* and broadly holds that the firefighter's rule does not apply beyond the limited context of premises liability." There is nothing broad about our interpretation of *Levandoski*. The concurrence reads into *Levandoski* an interpretation that the written words do not suggest. The concurrence suggests an alleged parade of horribles that transforms the firefighter's rule far beyond its definition. The concurrence suggests, for instance, "that the breadth of the majority's opinion carries with it numerous unintended and deleterious consequences insofar as it invites first responders to bring civil actions against victims of crime and motor vehicle accidents." This suggestion transforms the firefighter's rule into a much broader debate about common-law negligence, duty, and responsibility. This suggestion goes far beyond the facts of the present case and amounts to a general advisory opinion.

As explained in *Levandoski* "[t]he common-law firefighter's rule provides, in general terms, that a firefighter or police officer, *who enters private*

property in the exercise of his duties occupies the status of a licensee and, therefore, is owed a duty of care by the property owner that is less than owed to an ordinary invitee." (Emphasis added; internal quotation marks omitted.) *Levandoski* v. *Cone*, supra, 267 Conn. 653–54. The present case involves the issue of whether a property owner who allegedly acted negligently after the police arrived could be liable. The doctrine should be confined to the facts of the present case insofar as it involves a property owner. Even the concurrence suggests that there could be liability in this instance. While the concurrence is content to criticize the "legally flawed dictum" and "errors" of *Levandoski*, we rely upon it as controlling precedent on an issue that is precisely on point with the present case. We also note that *Levandoski*, which was written fourteen years after *Kaminski* and six years after *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998), which are both relied on by the concurrence, was a unanimous decision of this court written by Justice Borden. We further note that it would appear that the concurrence wishes to have the rule apply to all first responders, which is an issue that this court has never addressed and is not at issue in the present case. Although the concurrence does suggest that it "leave[s] to another day the question of whether the firefighter's rule applies to emergency medical personnel," its reasoning would certainly apply to such individuals.

There is another important legal concept at issue in the present case—namely, stare decisis. As Chief Justice Rogers has noted in a recent concurring opinion, "[n]o judicial system could do society's work if it eyed each issue afresh in every case that raised it. . . . Indeed, the very concept of the rule of law underlying our own [c]onstitution requires such continuity over time that a respect for precedent is, by definition, indispensable." (Internal quotation marks omitted.) *State* v. *Peeler*, 321 Conn. 375, 378, 140 A.3d 811 (2016); see *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U.S. 833, 854, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992); see also *George* v. *Ericson*, 250 Conn. 312, 318, 736 A.3d 889 (1999) ("Stare decisis is justified because it allows for predictability in the ordering of conduct, it promotes the necessary perception that the law is relatively unchanging, it saves resources and it promotes judicial efficiency . . . . It is the most important application of a theory of [decision-making] consistency in our legal culture and it is an obvious manifestation of the notion that [decision-making] consistency itself has normative value." [Citation omitted; internal quotation marks omitted.]).

"While stare decisis is not an inexorable command . . . even in constitutional cases, the doctrine carries such persuasive force that we have always required a departure from precedent to be supported by some special justification." (Citations omitted; internal quotation marks omitted.) *Dickerson* v. *United States*, 530 U.S. 428, 443, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000). "Such justifications include the advent of subsequent changes or development in the law that undermine a decision's rationale . . . the need to bring [a decision] into agreement with experience and with facts newly ascertained . . . and a showing that a particular precedent has become a

On appeal to this court, the defendant asserts that *Levandoski* can be distinguished on the ground that, unlike the present case, the cause of action in *Levandoski* was not against a homeowner. *Levandoski* v. *Cone*, supra, 267 Conn. 654–56. The defendant contends that *Kaminski* was not overruled by *Levandoski* and that *Kaminski* did not present a claim sounding in premises liability. *Kaminski* v. *Fairfield*, supra, 216 Conn. 37. We are not persuaded. Our statements subsequent to *Kaminski* indicate the firefighter's rule should be limited to claims of premises liability. *Kaminski* may be distinguished because it was a claim of vicarious liability, in that the parents in that case did not cause the damage to the police officer, and they could not be held liable for the actions of their adult son. Id., 36–37. We also note that the decision in *Levandoski* came fourteen years after the decision in *Kaminski*, yet this

detriment to coherence and consistency in the law . . . ." (Citations omitted; internal quotation marks omitted.) *Payne* v. *Tennessee*, 501 U.S. 808, 849, 111 S. Ct. 2579, 115 L. Ed. 2d 720 (1991) (Marshall, J., dissenting); see also *State* v. *Peeler*, supra, 321 Conn. 378–79 (*Rogers, C. J.*, concurring). We conclude that the present case does not present any special justification that would support a departure from this court's precedent and require this court to overrule *Levandoski*.

The concurrence would overrule *Levandoski* "insofar as it stands for the broad proposition that the firefighter's rule does not extend beyond the context of premises liability." As we have explained previously herein, the proposition that the firefighter's rule does not extend beyond premises liability is, indeed, the precise holding of *Levandoski*. Accordingly, the concurrence in actuality calls for *Levandoski* to be overruled because, according to the concurrence, "many aspects of *Levandoski* are clearly wrong . . . ." (Internal quotation marks omitted.) We disagree. *Levandoski* provided a thorough and detailed analysis of both the history and policies underlying the firefighter's rule. Although the fear of civil liability was not discussed, we are not convinced that there is any proof that this concept actually exists. It is the defendant's burden to persuade us to depart from precedent and extend the rule. The defendant has failed to do so. There is no empirical proof that convinces us that we should extend the rule and ignore existing precedent. In short, we conclude that *Levandoski* was not wrongfully decided. Further, we refuse to accept the concurrence's baseless contentions that *Levandoski* is "legally flawed" and contains "errors."

court still expressly limited the firefighter's rule to premises liability cases.[6]

The plaintiff contends that the public policy considerations often cited for the firefighter's rule not only do not justify expanding the applicability of the rule to general negligence claims, but they also suggest the rule should be abolished or limited to premises liability

[6] The concurrence relies on this court's decision in *Kaminski* to support its claim that the firefighter's rule encourages citizens to call for help. Specifically, the concurrence quotes *Kaminski*'s description of the fact that "the defendant, an armed police officer, came to the plaintiffs' home in the course of his professional responsibilities to assist in dealing with the crisis to which the team had been alerted," and this court's statement that "[f]undamental concepts of justice prohibit a police officer from complaining of negligence in the creation of the very occasion for his engagement." *Kaminski* v. *Fairfield*, supra, 216 Conn. 37–38. The concurrence reasons that, "*Kaminski* is significant because it is our seminal recognition, as a matter of public policy, of the benefits of encouraging our state's citizens to seek assistance from our communities' first responders, rather than stoking a fear of liability that would create incentives for delayed calls, self-help, or both." We disagree. These statements from *Kaminski* do not support the policy argument that the concurrence claims is at issue, but instead are "redraped [arguments] drawn from . . . implied assumption of risk." *Christensen* v. *Murphy*, 296 Or. 610, 619, 678 P. 2d 1210 (1984). This language from *Kaminski* can be phrased another way—namely, that the plaintiff, by agreeing to be a police officer, *assumed the risk* of encountering violent people and possibly being injured. As we explain subsequently in this opinion, the assumption of risk doctrine has been abolished in Connecticut. See General Statutes § 52-572h (*l*). Although we agree with the concurrence that the abolition of assumption of risk alone does not warrant the preclusion of the firefighter's rule beyond premises liability cases, the assumption of risk doctrine should not be the basis upon which we decide cases involving the firefighter's rule.

We also agree with the concurrence that "if an individual fails to warn of known, hidden dangers on his premises or misrepresents the nature of [a] hazard" and "such misconduct causes [an] injury to [a firefighter]," there should be an exception to the firefighter's rule that allows a civil action by the firefighter.

We take issue, however, with the assertion by the concurrence that our application of the firefighter's rule represents economic classism insofar as it gives tort immunity only to landowners. We have raised the issue of the questionable continued vitality of the rule and suggested that we are not reaching this issue only because it has not been raised by the parties. See footnote 15 of this opinion. Further, we have suggested that the classification of the type of person entering on property and the respective duty a landowner may have to that individual seems to be a concept no longer accepted

claims. In response, the defendant claims that, although the firefighter's rule essentially began as a rule of prem-

by a majority of states. See, e.g., *Berko* v. *Freda*, 93 N.J. 81, 85, 459 A.2d 663 (1983). The concurrence seems to suggest a good reason to do away with the firefighter's rule entirely, instead of extending it in the absence of sound empirical evidence to support the extension. What the concurrence neglects to observe is that the burden of persuasion to extend this doctrine is upon the person seeking the extension, not the person relying upon existing case law. In the absence of empirical evidence that people do not call emergency personnel because they are afraid of civil liability, this extension must fail for lack of persuasive proof.

Further, the concurrence cites *Baldonado* v. *El Paso Natural Gas Co.*, 143 N.M. 288, 176 P.3d. 277 (2008), in support of a "policy-based approach to the firefighter's rule." In that case, a natural gas pipeline exploded killing twelve members of an extended family who were camping at a nearby campsite. Id., 290. The plaintiffs, who were first responders, claimed that they suffered extreme emotional distress in witnessing the injuries suffered by the victims when the plaintiffs assisted them after the explosion. Id. The New Mexico Supreme Court adopted a policy based approach to the firefighter's rule and held that a firefighter may recover damages if such damages were proximately caused by (1) intentional conduct or (2) reckless conduct, provided the harm to the firefighters exceeded the scope of risks inherent in the firefighters' professional duties. Id. Applying this rule to the case before it, the New Mexico Supreme Court concluded that the firefighters had properly pleaded a claim for intentional infliction of emotional distress. Id. It is interesting that the court noted that "specific duties [of a homeowner]—to warn of hidden hazards and to accurately represent the nature of a hazard—are distinct from the conduct that brings firefighters to the scene, and thus fall outside the scope of [the] rule." Id., 292. Thus, the failure to warn descriptions in the concurrence's hypothetical would appear to be outside the scope of the rule in New Mexico. Further, we note that, pursuant to *Clohersy* v. *Bachelor*, 237 Conn. 31, 56, 675 A.2d 852 (1996), recovery for negligent infliction of emotional distress requires proof of the following: (1) the bystander must be "closely related" to the victim; (2) the bystander's emotional injury must be "caused by the contemporaneous sensory perception" of the event that causes the injury; (3) the injury must be "substantial, resulting in [either] death or serious physical injury"; and (4) the bystander must have sustained a "serious" emotional injury that is "beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response." Likewise, in order to establish a claim for intentional infliction of emotional distress, the plaintiff must establish four elements: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) *Appleton* v. *Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). It is therefore doubtful that, under Connecticut law, a

ises liability, "that basis has frequently been abandoned as jurisdictions have moved away from archaic categorizations such as licensee and invitee." See *England* v. *Tasker*, 129 N.H. 467, 469, 529 A.2d 938 (1987) ("[t]his basis for the rule is currently without justification, given the modern rejection of the licensee-invitee distinction in New Hampshire"); see also *Berko* v. *Freda*, 93 N.J. 81, 85, 459 A.2d 663 (1983) ("the formalistic classification of invitees, licensees and trespassers no longer forms the basis of the rule"). The defendant next asserts that "the majority of jurisdictions that have established the firefighter's rule have extended [it] to nonpremises liability [cases] . . . ." The defendant further asserts that *Levandoski* did not overrule *Kaminski*, and that *Levandoski* does not apply to the present case because *Levandoski* did not involve an action against a landowner. The defendant argues that *Kaminski* is more on point because, in that case, this court did not allow an action by a police officer alleging a nonpremises liability claim against a landowner. He further maintains that the claim in the present case should not be allowed because the injury occurred as part of the plaintiff's duties as a police officer.

"The most often cited policy considerations [in support of the firefighter's rule] include: (1) [t]o avoid placing too heavy a burden on premises owners to keep their premises safe from the unpredictable entrance of fire fighters; (2) [t]o spread the risk of . . . injuries to the public through workers' compensation, salary and fringe benefits; (3) [t]o encourage the public to call for professional help and not to rely on self-help in emergency situations; and (4) [t]o avoid increased litigation." *Christensen* v. *Murphy*, 296 Or. 610, 619, 678 P.2d 1210 (1984). Proponents also cite "double taxation" as another policy consideration in favor of the firefighter's

policeman or firefighter would be able to present a claim for negligent or intentional infliction of emotional distress, regardless of the firefighter's rule.

rule. *Levandoski* v. *Cone*, supra, 267 Conn. 660–61. We consider each of these policy considerations in turn.

By focusing on a firefighter or police officer as a class from whom a premises owner needs immunity from liability, not on the reasonableness of the activity of the premises owner in the circumstances, the first policy consideration operates as a veiled form of an assumption of risk analysis. This legislature of this state, however, has abolished the assumption of risk doctrine. See General Statutes § 52-572h (*l*);[7] see also *Levandoski* v. *Cone*, supra, 267 Conn. 662–63. As a result, this policy consideration fails to support an extension of firefighter's rule in the present case.

The defendant asserts that we should recognize a difference between a "primary" assumption of risk, which arises from the "special relationship between the firefighter and the public," and a "secondary" assumption of risk, which arises from an individual firefighter's decision to encounter a particular risk. The defendant argues that, while Connecticut may have abolished the latter, it did not abolish the reasoning underlying the former. Thus, the defendant argues that a firefighter may assume a risk, in the broader sense, when that risk is inherent to his or her occupation. We are not persuaded. There is no indication in § 52-572h (*l*) that the legislature intended to differentiate between degrees of assumption of risk. The doctrine was abolished in its entirety. It would be both unfair and incongruous, therefore, for this court to rely on the assumption of risk doctrine as a basis for extending the firefighter's rule beyond premises liability claims when the clear public policy of our state is contrary to the very rationale for that doctrine. Regardless of the

[7] General Statutes § 52-572h (*l*) provides: "The legal doctrines of last clear chance and assumption of risk in actions to which this section is applicable are abolished."

continuing vitality of the firefighter's rule as it relates to premises liability claims, it certainly should not be extended on the basis of the common-law doctrine of assumption of risk.[8]

Furthermore, as this court explained in *Levandoski*, "the firefighter's rule is essentially a rule of premises liability. The distinction upon which it rests, namely, whether the plaintiff is an invitee or licensee, is itself a distinction that exists in our law only with regard to claims based upon premises liability, and the differing duties of care that emanate from those distinctions are cast in terms of a landowner's duty to persons on his or her land. We have recognized that the rule is directly applicable [to] an issue of landowner liability . . . . We have declined to extend the rule to a case in which the plaintiff firefighters sought to recover damages from the defendant alarm company for injuries and death sustained as a result of a collision caused by the negligent maintenance and failure of brakes on their fire engine while responding to a false alarm transmitted by the defendant. . . . This essential link to a landowner's liability, as we [have previously] explained . . . is the most compelling argument for the rule, because of the reasonable expectations of landowners, and because of the ensuing hardship that would be visited upon a landowner in the absence of the rule. Indeed, we have reiterated that this is [t]he most compelling argument for the continuing validity of the rule . . . . This argument simply does not apply if the defendant is not a landowner. Indeed, neither the differing status of the plaintiff nor the reasonable expectations of the defen-

[8] It is also interesting to note that, while it may appear that the old distinction between licensees and invitees are disappearing, that policy argument may provide stronger support for abolishing the firefighter's rule entirely. Indeed, because one of the very foundations for the firefighter's rule is disappearing, perhaps it would be better to examine each claim on the basis of an ordinary negligence test and allow cases to proceed on that basis.

dant are relevant if the plaintiff is not engaged in entering the land of the defendant. It would be anomalous, therefore, to extend the rule to a case in which the most compelling argument for the rule is inapplicable." (Citations omitted; internal quotation marks omitted.) *Levandoski* v. *Cone*, supra, 267 Conn. 661–62.

Indeed, in *Levandoski*, this court explained that "to the extent that the firefighter's rule rests on the doctrine of assumption of the risk, it would be inconsistent with the policy of our general tort law to extend the rule beyond its present confines. That policy is expressed in . . . § 52-572h, pursuant to which the legislature has abolished the doctrine of assumption of the risk in negligence actions. Section 52-572h (*l*) provides: 'The legal doctrines of last clear chance and assumption of risk in actions to which this section is applicable are abolished.' Subsection (b) of § 52-572h makes the statute applicable to 'causes of action based on negligence . . . .' The present action is '[a cause] of action based on negligence . . . .' " (Footnote omitted.) Id., 662–63.

We next turn to the claim that the firefighter's rule is supported because it spreads the risk of firefighter's injuries to the public through workers' compensation, salary and fringe benefits. As the Supreme Court of Oregon explained, "[t]he weakness in the loss-spreading rationale . . . is obvious. By denying a public safety officer recovery from a negligent tortfeasor, the officer is not directed to recover his damages from the general public; rather the officer is totally precluded from recovering these damages from anyone. Contrast this with other public employees who are injured when confronting dangers on their jobs. The latter can recover workers' compensation and salary benefits from the public, but are also allowed additional tort damages from the third-party [tortfeasors]." *Christensen* v. *Murphy*, supra, 296 Or. 620. For instance, either the municipal emergency medical technician, injured due to a home-

owner's negligence in the maintenance of his property while transporting a patient, or the municipal building inspector, injured due to homeowner's negligence while examining structures, is able to bring civil actions against defendants who may be responsible for his or her injuries. However, "[u]nder the [firefighter's] rule the injured public safety officer must bear a loss which other public employees are not required to bear." Id. Expanding such a rule would unnecessarily and improperly discriminate against public safety officers. While there is certainly danger inherent in the job of being a police officer or a firefighter, it is interesting to note that, in terms of the most dangerous public sector jobs, refuse and recyclable collectors were ranked as having the fifth most dangerous overall job in the United States in 2015, ahead of both firefighters and police officers. United States Dept. of Labor, "National Census of Fatal Occupational Injuries in 2015" (2016) p. 4, available at https://www.bls.gov/news.release/pdf/cfoi.pdf (last visited September 13, 2017). Despite these statistics, we do not have a similar rule for refuse and recyclable collectors. Instead, a refuse and recyclable collector may bring a civil action against third-party tortfeasors responsible for his or her injuries if he or she is injured on someone's property.[9] If one of the foundations underlying the firefighter's rule is that the job of police officers and firefighters are so inherently dangerous that danger and injury are part of the job, it hardly seems justified to extend the rule when statistically there are more dangerous public sector jobs in which we allow the injured worker to pursue recovery from a third-party. See S. Maloney, United States Dept. of Labor, "Nonfatal Injuries and Illnesses Among State and Local Government Workers" (2014) p. 8, available at https://www.bls.gov/spotlight/2014/soii-gov-workers/home.htm (last visited September 13, 2017) (for state

[9] We note that, although some refuse and recyclable collectors are employed by private companies, some also work in the public sector.

and local employees, nursing and residential care workershave highest rate of nonfatal injuries).

The defendant claims that the firefighter's rule is also justified because police officers and firefighters receive extra benefits as a result of their employment. We disagree. While there may be certain additional benefits negotiated with municipalities as the result of union collective bargaining, we cannot discern any statute in which the legislature has provided extra compensation to police officers or firefighters as a result of their employment.[10]

The proponents of the firefighter's rule claim that it encourages the public to call for professional help and not to rely on self-help in emergency situations. This rationale has been criticized by one legal scholar, William L. Prosser, as "preposterous rubbish." W. Prosser, Law of Torts (4th Ed. 1971) § 61, p. 397. Indeed, we conclude that, in an emergency situation, it is unlikely any person would be hesitant to call for help because they are concerned about liability for potential injuries to public safety personnel.

We note that the concurrence disagrees with this conclusion. Although a majority of jurisdictions employ the firefighter's rule, there are many that do not.[11] In total, eighteen states have abolished the firefighter's

[10] We note that General Statutes § 7-433c (a) provides for certain workers' compensation benefits for police officers and firefighters that are disabled as a result of hypertension or heart disease. The benefits of this provision, however, have been limited by our legislature to those employed before July 1, 1996. See General Statutes § 7-433c (b).

[11] "[M]ore than [thirty] jurisdictions in the United States have adopted the firefighter's rule . . . . Approximately [ten] states do not appear to have addressed the firefighter's rule at all. Of the remaining states, Florida, Illinois, Massachusetts, Minnesota, New Jersey, and New York have abolished or severely limited the rule by statute. . . . Oregon and South Carolina have abolished or declined to adopt the firefighter's rule by judicial decision." (Citations omitted.) *Apodaca* v. *Willmore*, 306 Kan. 103, 113–14, 392 P.3d 529 (2017).

rule, severely limited its application, or have not addressed it at all.[12] See *Apodaca* v. *Willmore*, 306 Kan. 103, 114, 392 P.3d 529 (2017). We have not been able to find, and the concurrence does not point to, any evidence that there has been an effect on the residents in these eighteen states that deters them from calling for emergency assistance. Moreover, we cannot find, and the concurrence does not point to, any evidence of any significant detriment to society in those states that have never adopted the rule. See generally *Holmes* v. *Adams Marine Center*, Docket No. CV-99-239, 2000 WL 33675369 (Me. Super. July 17, 2000).[13]

Although the concurrence correctly states that we provide no evidence to support our agreement with Prosser, this is because there is no significant evidence

[12] The concurrence asserts that the "overwhelming majority of other courts continue to hold that encouraging citizens to call for help without fear of liability, even for emergencies of their own creation, remains a paramount public policy." None of the cases cited by the concurrence, however, specifically focuses on the public policy rationale of encouraging society to call for help except for a quick mention. Of specific note is the concurrence's reliance on *Berko* v. *Freda*, supra, 93 N.J. 81, and *Lanza* v. *Polanin*, 581 So. 2d 130 (Fla. 1991), where the New Jersey and Florida Supreme Courts examined the public policy arguments behind the firefighter's rule and approved of the policy rationales. Those cases, however, have been superseded in both states by legislative action abolishing the firefighter's rule. See Fla. Stat. Ann. § 112.182 (1) (West 2014); N.J. Stat. Ann. § 2A:62A-21 (West 2014). While New Jersey and Florida courts may have decided that the public policy was in favor of the firefighter's rule, it is the proper role of the legislature to make those determinations, and the legislative bodies in those states decided that the public policy rationales did not support continuation of the firefighter's rule. See *Campos* v. *Coleman*, 319 Conn. 36, 65–67, 123 A.3d 854 (2015) (*Zarella, J.*, dissenting). The concurrence's reliance on *Steelman* v. *Lind*, 97 Nev. 425, 634 P.2d 666 (1981), is misplaced as well, since the Nevada legislature examined the public policy rationales and felt that this concern was not so important so as to permit the continued expansion of the firefighter's rule, although the rule was not completely abolished. See Nev. Rev. Stat. § 41.139 (2015).

[13] To be clear, we are not advocating for the complete abolition of the firefighter's rule in this opinion. The issue has not been raised by the parties. We only mention these other jurisdictions for a broader view of places that are apparently unaffected by the lack of the firefighter's rule.

for, or against, Prosser's statement. Other jurisdictions have either agreed with his characterization; *Christensen* v. *Murphy*, supra, 296 Or. 620; or disagreed with it; *Fordham* v. *Oldroyd*, 171 P.3d 411, 413 (Utah 2007). No jurisdiction appears to have analyzed whether the absence of the firefighter's rule actually *does* deter people from calling for emergency assistance. The concurrence also fails to rebut our approval of Prosser's statement by pointing to any evidence to demonstrate that the "chilling" effect on citizens has occurred anywhere else in the nation where the firefighter's rule has been abolished or limited. It is important to note that the firefighter's rule presently allows a police officer or firefighter to bring claims for negligence that do not involve premises liability. It is not a rule of absolute liability for injuries to firefighters or police officers who suffer an injury at a homeowner's residence due to the negligence of the homeowner. If an injury is suffered without negligence, the action is covered by workers' compensation. We note that even the concurrence would allow an action by a firefighter or police officer against a homeowner for negligence that occurred after the police officer or firefighter arrived. We suggest that most cases, as exhibited by the fact pattern in the present case, would fall into that category. The concurrence would also allow an action, like the present case, against a third party who was not involved in contacting the police. It is simply inconceivable to us that someone whose house is on fire will debate or hesitate in calling the fire department because he or she fears a firefighter might bring some negligence action if injury occurs. Instead, we presume that the primary concern of a person whose house is on fire would be to act to protect the health and safety of the people in the home and to salvage the property.

The concurrence relies on *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998), to support its con-

tention that this court has previously relied on this policy rationale to support the firefighter's rule. We disagree. As this court explained in its opinion, *Lodge* did not involve the application of the firefighter's rule. Specifically, this court explained as follows: "In *Furstein*, we analyzed the firefighter rule, which gives a firefighter the status of a licensee in a personal injury action against a landowner for harm sustained during the course of duty. *Furstein* v. *Hill*, supra, 218 Conn. 615–16 . . . . The firefighter rule is not directly applicable in this case because this is not an issue of landowner liability, and we decline to extend the rule to the present situation. Its rationale is, however, instructive for understanding the policy issues relevant to compensation of firefighters injured in the line of duty. We concluded that limited liability was appropriate in *Furstein* . . . and *Roberts* . . . because (1) the nature of a firefighter's work is inherently hazardous and the choice of that occupation is akin to assumption of the risk, and (2) firefighters are adequately compensated for the job they perform and are able to recover workers' compensation for injuries sustained in the course of their employment. . . . Both of these public policy considerations are equally relevant to the question of whether, as a matter of policy, the defendants should be liable for the unforeseen consequences of their negligent transmission of a false alarm." (Citations omitted.) *Lodge* v. *Arett Sales Corp.*, supra, 580–81 n.12. Accordingly, we conclude that the well reasoned analysis of *Levandoski*, not *Lodge*, is central to whether to apply the firefighter's rule in the present case. Furthermore, even in *Lodge*, we acknowledged that this court declines to extend the firefighter's rule beyond landowner liability. Id., 580 n.12.

In *Lodge*, firefighters were responding to a fire alarm, which was in reality a false alarm, and the fire engine's brakes were defective. Id., 566–70. The defective brakes

caused an accident, which injured and killed firefighters. Id. This court mentioned the public policy arguments in support of the firefighter's rule in one paragraph, but it was not the primary rationale behind the conclusion in *Lodge*. Id., 579–81. This court reasoned that imposing liability on the alarm company would be too far removed from the harm incurred. Id., 582–84. The concern of having a "chilling" effect on alarm companies is fully justified in the circumstances of *Lodge*. Specifically, if this court had allowed a claim to proceed against the alarm company in Lodge, it would have forced alarm companies to be responsible for monitoring and maintaining the brakes of emergency response vehicles to ensure they would not crash. Such a result would be absurd and would threaten the viability of fire alarm companies. Id., 584–85. This court was not referring to the "chilling" effect upon society in regard to calling for help if a negligent resident could be held liable for *directly* harming emergency responders, but specifically stated that the decision was based on liability "for those consequences that are not reasonably foreseeable, but, rather, are significantly attenuated from the original negligent conduct . . . ." Id., 584. In circumstances where there is a direct causal relation between the tortfeasor and the harm suffered by the claimant, like the present case, *Lodge* is not persuasive and does not support the position of the defendant as the concurrence suggests.

The concern that limiting the firefighter's rule will result in increased litigation is also not persuasive. As this court has recognized in other contexts, "rather than unnecessarily and unwisely increasing litigation, imposing a duty in this case will likely prompt [people] to act more responsibly . . . in the interest of preventing foreseeable harm . . . ." *Ruiz* v. *Victory Properties, LLC*, 315 Conn. 320, 340, 107 A.3d 381 (2015). This is consistent with "the general tort policy of deter-

ring similar tortfeasors from wrongful conduct." *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 23, 699 A.2d 964 (1997). This is also consistent with "the general rule of tort liability that, as between an innocent party and a negligent party, any loss should be borne by the negligent party . . . ." *Levandoski* v. *Cone*, supra, 267 Conn. 661.

Finally, we are not persuaded by the rationale that the firefighter's rule helps to avoid double taxation. This assertion has its genesis in the expectation that "the public should [and does] compensate its safety officers both in pay that reflects the hazard of their work and in workers' compensation benefits for injuries suffered when the risks inherent in the occupation materialize." *Furstein* v. *Hill*, supra, 218 Conn. 619. We reject this argument as contrary to the clear public policy of General Statutes § 31-293, that "the third party tortfeasor, and not the employer, shall be primarily responsible for bearing the economic loss resulting from the tortfeasor's negligence." *Cruz* v. *Montanez*, 294 Conn. 357, 383, 984 A.2d 705 (2009); see also, e.g., *Dodd* v. *Middlessex Mutual Assurance Co.*, 242 Conn. 375, 384, 698 A.2d 859 (1997) ("[b]y allowing the employer to take action in order to recover the workers' compensation benefits it was legally obligated to pay to its injured employee, the act ensure[s] that, as in an action in tort, the ultimate loss [falls on] the wrongdoer"). All or virtually all of the towns and cities in Connecticut self-administer their workers' compensation insurance plans. As a result, taxpayers' money is spent when an injured police officer undergoes medical treatment and receives indemnity benefits through workers' compensation. An injured police officer who is precluded from bringing a claim against a negligent third party would frustrate the legislative intent and public policy set forth in § 31-293 because the taxpayers, through the municipality, would be unable to recoup

the money they spent on the workers' compensation claim of the injured police officer.

As this court explained in *Levandoski*, "to the extent that the firefighter's rule rests on the avoidance of double taxation of the landowner and the presence of workers' compensation benefits for the injured firefighter or police officer, the rationale does not apply to the present case. The defendant is not a taxpayer, as is a landowner who pays taxes on his or her property. Of course, although in any given case a negligent tortfeasor who injures a firefighter or police officer may also pay taxes to the local municipality, that fact would be wholly fortuitous. The point of the rule, however, is that the landowner who owes a lesser degree of duty to the police officer who enters his or her land has that benefit because, as a landowner, he or she also indirectly pays the salary of the officer through property taxes. Furthermore, we are not persuaded that, simply because the firefighter or police officer has recourse to workers' compensation benefits, he or she should not also be able to recover from a third party based on negligence. We do not ordinarily put such an elevated burden on recovery where, for example, the third party is a product manufacturer, and we see no persuasive reason to do so in the context of the present case. In addition, as the present case indicates, permitting the plaintiff to recover for the defendant's negligence will tend to reduce workers' compensation costs by permitting the plaintiff's employer to recoup those benefits." *Levandoski* v. *Cone*, supra, 267 Conn. 663–64.

Further, we recognize that most homeowners are insured against the risk of people being injured on their property due to the fault of the homeowner. The homeowner is able to insure against such a risk. Therefore, it hardly constitutes double taxation when a homeowner's insurance carrier must pay money to a person injured on the homeowner's property due to the homeowner's

negligence. Given these facts, public policy considerations strongly suggest that the firefighter's rule should be, at the very least, limited to premises liability claims.[14] Although the defendant points to several jurisdictions that have extended the firefighter's rule beyond premises liability claims, we note that some of those jurisdictions have not specifically rejected the doctrine of assumption of risk as the legislature has in Connecticut. Further, we are persuaded by the reasoning of those cases that have either refused to adopt the firefighter's rule at all or limited it to premises liability. See *Thompson* v. *FMC Corp.*, 710 So. 2d 1270, 1271 (Ala. Civ. App. 1998) (not adopted); *Bath Excavating & Construction Co.* v. *Wills*, 847 P.2d 1141, 1146 (Colo. 1993) (declining to adopt); *Holmes* v. *Adams Marine Center*, supra, 2000 WL 33675369 (noting that Maine has declined to adopt); *Hopkins* v. *Medeiros*, 48 Mass. App. 600, 608–609, 724 N.E.2d 336 (2000) (declining to adopt); *Christensen* v. *Murphy*, supra, 296 Or. 620 (abolished); *Minnich* v. *Med-Waste, Inc.*, 349 S.C. 567, 575, 564 S.E.2d 98 (2002) (declining to adopt).

Accordingly, we are persuaded by the plaintiff's argument that the present case is controlled by *Levandoski*. To the extent that the defendant asserts that *Kaminski* supports barring negligence claims against third parties by public safety officers, we conclude that assertion is foreclosed by *Levandoski*. As we stated in *Levandoski* "[w]e disagree with the defendant's suggestion that we ought to extend the firefighter's rule beyond situations in which the plaintiff is injured while on the defendant's land; instead, we agree with those jurisdictions that have framed the rule as one that relates specifically to premises liability and defines the duty owed *by an*

[14] Even in premises liability cases, however, the double taxation argument fails because, as mentioned previously in this opinion, most homeowners have insurance to cover people who may be injured on their property through the homeowner's negligence.

owner or occupier of land." (Emphasis in original.) *Levandoski* v. *Cone*, supra, 267 Conn. 664. We have examined the policy considerations that served as the foundation for *Levandoski*, together with the additional arguments presented by counsel in the present case. We note that, because the defendant is urging us to expand a common-law rule on the basis of public policy considerations, the burden is on him to persuade us that the rule should be so extended. We declined to extend the firefighter's rule in *Levandoski*. Likewise, we conclude that the defendant has failed to convince us that the firefighter's rule should be expanded in the present case. Although the distinctions that existed at common law when the firefighter's rule was first developed—namely, the distinction between a licensee and an invitee—no longer appear to be used by many jurisdictions, the other policy considerations remain valid.[15] In the present case, the plaintiff did not make any claim that his injuries were caused by a defect in the premises. Therefore, we conclude that the trial court improperly granted the defendant's motion to strike.[16]

[15] In fact, the policy considerations are more supportive of a complete abrogation of the rule than an expansion of same. However, because that issue is not before us in the present case, we leave the question of the continuing vitality of the firefighter's rule as to premises liability for another day.

[16] The concurrence provides a litany of possible cases that could occur as a result of this opinion, and, although we will not comment on every single possible hypothetical suggested, we feel that they are less than realistic considering that our opinion does not abrogate traditional elements of a negligence action. This opinion speaks only of the duty owed to a police officer and whether the trial court's judgment granting the motion to strike was legally correct. Consequently, many of those cases to which the concurrence refers may lack the other elements necessary to maintain a negligence action. The concurrence even admits as much, but still asserts that our opinion is improper because it will give these cases their "ill-deserved day in court." We fail to see how someone exercising their right to have an issue adjudicated, unless it is a frivolous claim, should be considered an "ill-deserved day in court."

One possible "ill-deserved" case suggested by the concurrence is that an emergency medical technician could bring an action for injuries arising from a patient's negligence. The concurrence fails to realize that emergency

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion ROGERS, C. J., and ESPINOSA and VERTEFEUILLE, Js., concurred.

ROBINSON, J., with whom PALMER and McDONALD, Js., join, concurring in the judgment. I agree with the majority's conclusion that the common-law firefighter's rule[1] does not bar the claims of ordinary negli-

medical technicians are not barred by the firefighter's rule in Connecticut and have brought actions for injuries caused by negligence in the past. See *Nagy* v. *Arsenault*, Superior Court, judicial district of Windham, Docket No. CV-14-6007793-S (May 21, 2015) (60 Conn. L. Rptr. 389). Professor Robert H. Heidt, whom the concurrence cites, refers to another situation where an emergency medical technician in Connecticut brought an action against a heart attack patient after the emergency medical technician slipped on the patient's staircase. See R. Heidt, "When Plaintiffs Are Premium Planners for Their Injuries: A Fresh Look at the Fireman's Rule," 82 Ind. L.J. 745, 784 n.143 (2007); see also J. Dee, "Are Homeowners Liable for Rescuers' Injuries?" Hartford Courant, April 2, 1999, p. A1. The legislature did not pass any legislation in response to this highly publicized incident, however, and emergency medical personnel are still permitted to bring an action against a negligent patient, which is in direct contrast to the concurrence's assertion. Despite this, we have not seen a significant rise in litigation regarding negligently injured emergency medical personnel, and there is no evidence to suggest that a chilling effect on citizens' request for emergency medical assistance has occurred. Other jurisdictions have also refused to extend their respective firefighter's rules to emergency medical personnel, and there has not been any apparent deterrent effect for emergency medical assistance in those jurisdictions. See *Sallee* v. *GTE South, Inc.*, 839 S.W.2d 277, 278 (Ky. 1992); *Kowalski* v. *Gratopp*, 177 Mich. App. 448, 450–52, 442 N.W.2d 682 (1989); *Krause* v. *U.S. Truck Co.*, 787 S.W.2d 708, 713 (Mo. 1990).

[1] Given its applicability to other emergency professions such as police officers, the doctrine known in Connecticut as the firefighter's rule has been described in other jurisdictions using broader terms such as the "public safety officer's rule" or the "professional rescuers doctrine." (Internal quotation marks omitted.) *Ellinwood* v. *Cohen*, 87 A.3d 1054, 1058 n.4 (R.I. 2014); see also, e.g., *Seibert Security Services, Inc.* v. *Superior Court*, 18 Cal. App. 4th 394, 404 n.3, 22 Cal. Rptr. 2d 514 (1993) (noting that doctrine was historically known as "fireman's rule," with modern case law embracing gender-neutral term "firefighter's rule"). I refer to police officers, firefighters, and emergency medical technicians, collectively, as first responders.

gence made by the plaintiff, Robert Sepega,[2] a municipal police officer, against the defendant, Lawrence R. DeLaura. Specifically, I agree with the majority that this case, which arises from injuries that the plaintiff sustained when he forcibly entered a home inside of which the defendant had barricaded himself while violating a protective order, is controlled by this court's decision in *Levandoski* v. *Cone*, 267 Conn. 651, 841 A.2d 208 (2004). I respectfully disagree, however, with the analytical approach taken in the majority's opinion insofar as it follows *Levandoski* and broadly holds that the firefighter's rule does not apply beyond the limited context of premises liability. As discussed in part I A of this concurring opinion, I believe that much of *Levandoski*, echoed by the majority in the present case, constitutes legally flawed dictum that undercuts the duty analyses in *Kaminski* v. *Fairfield*, 216 Conn. 29, 578 A.2d 1048 (1990), and *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998), which are based substantially on the well established public policies that support the firefighter's rule, especially that of encouraging our citizens to call for professional help in emergencies without fear of civil liability. Beyond the majority's reliance on *Levandoski*, I suggest in part I B of this concurring opinion that the breadth of the majority's opinion carries with it numerous unintended and deleterious consequences insofar as it invites first responders to bring civil actions against victims of crime and motor vehicle accidents. Consistent with *Kaminski* and *Lodge*, I would instead adopt a "policy-based approach to the firefighter's rule [that] will encourage the public to ask for rescue while allowing professional rescuers to seek redress in limited but appropriate circumstances." *Baldonado* v. *El Paso Nat-*

[2] I note that the town of Clinton is also a plaintiff in the present case. See footnote 1 of the majority opinion. For the sake of simplicity, I refer to Sepega as the plaintiff.

ural Gas Co., 143 N.M. 288, 293, 176 P.3d 277 (2008). To that end, as discussed in part II of this concurring opinion, I read *Levandoski* to stand only for the limited proposition that none of the public policies supporting the firefighter's rule precludes the imposition of a duty of care on suspected criminals who are fleeing or resisting a police officer. Accordingly, I concur only in reversing the judgment of the trial court.

I agree with the majority's statement of the relevant facts, procedural history, and standard of review. Turning to the applicable legal principles, it is well settled that a "cause of action in negligence is comprised of four elements: duty; breach of that duty; causation; and actual injury." (Internal quotation marks omitted.) *Lawrence* v. *O & G Industries, Inc.*, 319 Conn. 641, 649, 126 A.3d 569 (2015). The application of the firefighter's rule concerns the duty element of the negligence cause of action. See, e.g., *Levandoski* v. *Cone*, supra, 267 Conn. 658–59; *Roberts* v. *Rosenblatt*, 146 Conn. 110, 112–13, 148 A.2d 142 (1959).

"Whether a duty exists is a question of law for the court, and only if the court finds that such a duty exists does the trier of fact consider whether that duty was breached. . . .

"Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . By that is

not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury [that] resulted was foreseeable . . . . [T]he test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Internal quotation marks omitted.) *Lawrence* v. *O & G Industries, Inc.*, supra, 319 Conn. 649–50.

With respect to the public policy aspect of the duty analysis, it is well established that: "Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed. . . . A further inquiry must be made, for we recognize that duty is not sacrosanct in itself . . . but is only an expression of the sum total of those considerations of policy [that] lead the law to say that the plaintiff is entitled to protection. . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results. . . . [I]n considering whether public policy suggests the imposition of a duty, we . . . consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions. . . . [This] totality of the circumstances rule . . . is most consistent with the public policy goals of our legal system, as well as the general tenor of our [tort] jurisprudence." (Internal quotation marks omitted.) Id., 650–51.

I

Like the majority, I begin my analysis with a review of this court's decision in *Levandoski*. I conclude that: (1) much of *Levandoski* is based on flawed reasoning, errors that the majority compounds by extending that decision in a way that is inconsistent with the significant public policy of encouraging Connecticut's citizens to seek professional help in emergencies; and (2) it was not necessary for the court in *Levandoski* to reach that broader conclusion because the facts of that case, like those of the present case, did not implicate the fundamental public policies underlying the firefighter's rule insofar as those facts did not involve a civil action against a citizen who requested or is receiving aid from first responders.

A

I begin with the broader firefighter's rule analysis in *Levandoski*, in which this court held that the firefighter's rule did not bar the claim of the plaintiff, a police officer, who was injured while chasing the defendant, whom he suspected of possessing marijuana while attending a house party that the officer had been called to break up. *Levandoski* v. *Cone*, supra, 267 Conn. 654–56. In its analysis, the court considered the firefighter's rule as described in *Furstein* v. *Hill*, 218 Conn. 610, 615–16, 590 A.2d 939 (1991), which extended the doctrine to police officers. *Levandoski* v. *Cone*, supra, 659. Observing that the firefighter's rule was rooted in premises liability principles under § 345 (1) of the Restatement (Second) of Torts, the court stated that it "provides, in general terms, that a firefighter or police officer who enters private property in the exercise of his duties occupies the status of a licensee and, therefore, is owed a duty of care by the property owner that is less than that owed to an ordinary invitee. . . . Thus, under the firefighter's rule, the landowner generally

owes the firefighter or police officer injured on his property 'only the duty not to injure him wilfully or wantonly . . . .' "[3] (Citation omitted.) *Levandoski* v. *Cone*, supra, 653–54, 658–59. The court determined in *Levandoski* that the three major policy considerations—namely, premises liability considerations, assumption of risk, and avoiding the double taxation of landowners given the availability of workers' compensation benefits—that supported the extension of the firefighter's rule to police officers in *Furstein*, nevertheless did not support the rule's expansion "beyond the scope of premises liability so as to bar a police officer from recovering, based on a claim of ordinary negligence, from a tortfeasor who is neither an owner nor a person in control of the premises." Id., 654; see also id., 661–64. I believe that the court's overbroad conclusion in *Levandoski* that the firefighter's rule should not extend beyond premises liability cases rested on legally and factually incorrect premises.

I start with the assumption of risk doctrine. In *Levandoski*, this court stated that, "to the extent that the firefighter's rule rests on the doctrine of assumption of risk, it would be inconsistent with the policy of our general tort law to extend the rule beyond its present confines. That policy is expressed in General Statutes § 52-572h, pursuant to which the legislature has abolished the doctrine of assumption of risk in negligence actions." (Footnote omitted.) Id., 662–63. I disagree with *Levandoski*'s conclusion, echoed by the majority in the present case, that the statutory abolition of assumption of risk precludes expansion of the firefighter's rule beyond premises liability cases. Rather, I agree

[3] As noted in *Levandoski* v. *Cone*, supra, 267 Conn. 658–59, Connecticut's seminal firefighter's rule case is *Roberts* v. *Rosenblatt*, supra, 146 Conn. 112–13, which held that a firefighter, as a licensee, could not recover from landowners based on the negligent maintenance of their property when he was injured while responding to an alarm.

with the multitude of other courts that have concluded that the abolition of the assumption of risk doctrine does not by itself furnish a basis for the abolition or restriction of the firefighter's rule, given the substantial public policies that continue to support the firefighter's rule. See, e.g., *Winn* v. *Frasher*, 116 Idaho 500, 503–504, 777 P.2d 722 (1989); *Babes Showclub, Jaba, Inc.* v. *Lair*, 918 N.E.2d 308, 313 (Ind. 2009); *Apodaca* v. *Willmore*, 306 Kan. 103, 110–12, 392 P.3d 529 (2017); *Farmer* v. *B & G Food Enterprises, Inc.*, 818 So. 2d 1154, 1157 (Miss. 2002); *England* v. *Tasker*, 129 N.H. 467, 470–71, 529 A.2d 938 (1987); *Carson* v. *Headrick*, 900 S.W.2d 685, 689–90 (Tenn. 1995); *Fordham* v. *Oldroyd*, 171 P.3d 411, 414–16 (Utah 2007); *Pinter* v. *American Family Mutual Ins. Co.*, 236 Wis. 2d 137, 152–53, 613 N.W.2d 110 (2000); see also *Kreski* v. *Modern Wholesale Electric Supply Co.*, 429 Mich. 347, 365, 415 N.W.2d 178 (1987) ("While we find that primary assumption of a risk is still viable in Michigan, we decline to adopt the fireman's rule on the basis of the doctrine. However, we do not do so for the reason argued by plaintiff—the lack of direct employment relationship between taxpayers and fire fighters. The public policy rationales advanced in favor of the rule are more than sufficient to support it."), superseded by statute as stated in *Lego* v. *Liss*, 498 Mich. 559, 563, 874 N.W.2d 684 (2016); but see *Christensen* v. *Murphy*, 296 Or. 610, 619–21, 678 P.2d 1210 (1984) (relying largely on statutory abolition of doctrine of assumption of risk, and abandoning common-law firefighter's doctrine in Oregon, noting that "so-called policy reasons [in support of firefighter's rule] are merely redraped arguments drawn from premises liability or implied assumption of risk, neither of which are now available as legal foundations in this state").

I next address the court's determination in *Levandoski* that the "distinction upon which [the firefighter's

rule] rests, namely, whether the plaintiff is an invitee or licensee, is itself a distinction that exists in our law only with regard to claims based upon premises liability, and the differing duties of care that emanate from those distinctions are cast in terms of a landowner's duty to persons on his or her land."[4] *Levandoski* v. *Cone*, supra, 267 Conn. 661–62. The court stated that "[t]his essential link to a landowner's liability . . . is the most compelling argument for the rule, because of the reasonable expectations of landowners, and because of the ensuing hardship that would be visited upon a landowner in the absence of the rule."[5] Id., 662. Specifically, the court observed that, "to the extent that the firefighter's rule rests on the avoidance of double taxation of the landowner and the presence of workers' compensation benefits for the injured firefighter or police officer, the rationale does not apply to the present case. The defen-

[4] "Unlike the minority of other states that have abolished distinctions between licensees and invitees in favor of the general duty of reasonable care that the plaintiff favors, we continue to adhere to the proposition that the defendant's duty is based on the entry status of the particular person in question." *Morin* v. *Bell Court Condominium Assn., Inc.*, 223 Conn. 323, 330–31, 612 A.2d 1197 (1992).

[5] I suggest that *Levandoski*'s incorrect distinction between ordinary negligence and premises liability cases, which is reaffirmed in the majority opinion in the present case, is rooted in dictum in footnote 12 in *Lodge*, which initially cited *Furstein* v. *Hill*, supra, 218 Conn. 615–16, for the otherwise unremarkable proposition that "the firefighter rule . . . gives a firefighter the status of a licensee in a personal injury action against a landowner for harm sustained during the course of duty." *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 580 n.12. In *Lodge*, the court further stated that the "firefighter rule is *not directly applicable* in this case because this is not an issue of landowner liability, and we decline to extend the rule to the present situation." (Emphasis added.) Id. As is apparent from the majority's reliance upon it, I believe that the use of this phrase in *Lodge* sowed confusion because the court immediately shifted gears, nevertheless describing the "rationale" of the firefighter's rule as instructive for understanding the policy issues relevant to compensation of firefighters injured in the line of duty, namely, the "inherently hazardous" nature of firefighting, and the fact that "firefighters are adequately compensated for the job they perform and are able to recover workers' compensation for injuries sustained in the course of their employment." Id.

dant is not a taxpayer, as is a landowner who pays taxes on his or her property. Of course, although in any given case a negligent tortfeasor who injures a firefighter or police officer may also pay taxes to the local municipality, that fact would be wholly fortuitous. The point of the rule, however, is that the landowner who owes a lesser degree of duty to the police officer who enters his or her land has that benefit because, as a landowner, he or she also indirectly pays the salary of the officer through property taxes." Id., 663.

In my view, *Levandoski*'s reliance on the defendant's status as a property taxpayer, echoed by the majority in the present case, is a distinction without a difference that manages to raise the unappealing specter of economic classism by, in effect, bestowing tort immunity only on landowners.[6] More fundamentally, *Levandoski* ignores the fact that renters of property also contribute to the property tax coffers of the municipalities in which they live, both directly through personal property tax payments on vehicles and indirectly through rental payments to their landlords. *Levandoski* also ignores the fact that not all first responders are solely compensated through property tax revenues.[7] Even putting aside

[6] I agree with the majority that economic classism in this area, should it persist as a result of the majority's decision to follow *Levandoski* and confine the rule to premises liability cases, might well present a "good reason to do away with the firefighter's rule entirely," but also, that this case does not present that question. Although the defendant's briefing strategy aptly attempts to harmonize *Levandoski* and the court's earlier decision in *Kaminski*, it nevertheless also invites the court to overrule *Levandoski* as necessary. Bearing in mind well established principles of stare decisis; see, e.g., *Conway* v. *Wilton*, 238 Conn. 653, 658–61, 680 A.2d 242 (1996); I believe that many aspects of *Levandoski* are clearly wrong when read in the context of this court's earlier decisions and subsequent decisions of the Appellate Court. Put differently, I would not entertain overruling the firefighter's rule itself in the present case, but I would overrule *Levandoski* insofar as it stands for the broad proposition that the firefighter's rule does not extend beyond the context of premises liability.

[7] The majority posits that the availability of homeowners insurance mitigates the likelihood of double taxation, in both ordinary negligence and premises liability cases, because that insurance will pay for damages arising

those first responders who are employed by the state of Connecticut, such as state troopers, income, sales, and other tax receipts flow to municipalities though various state aid payments to municipalities. See, e.g., General Statutes § 12-19a (providing grants to municipalities in lieu of property tax for state-owned property). Unlike the majority, which perpetuates these flawed distinctions in its firefighter's rule analysis, I agree with those jurisdictions who understand that the entire community pays indirectly for the services of first responders,[8] shares in the benefits of their services,

from negligently inflicted injuries to police officers and firefighters. I would not consider liability insurance in this aspect of the public policy analysis because insurance companies may well accommodate for increased exposure and costs by some combination of increased premiums or decreased coverage. See R. Heidt, "When Plaintiffs Are Premium Planners for Their Injuries: A Fresh Look at the Fireman's Rule," 82 Ind. L.J. 745, 788–92 (2007) (arguing that first party insurers are better able to account for risks encountered by first responders than are liability insurers, which will lead to increased liability insurance prices, particularly given unpredictable nature of tort awards); accord *Pottebaum* v. *Hinds*, 347 N.W.2d 642, 645–46 (Iowa 1984) ("although we are aware of the widespread existence of liability insurance, we believe these risks are more effectively and fairly spread by passing them onto the public through the government entities that employ firefighters and police officers"); cf. *Jarmie* v. *Troncale*, 306 Conn. 578, 600–601, 50 A.3d 802 (2012) (declining to extend health care providers' duty of care from patients to general public, with respect to failure to warn patient not to drive, because "[i]njured parties may be covered by their own motor vehicle and health insurance policies," rendering unjustified the "impact of the proposed duty on thousands of physician-patient relationships across the state and the potentially high costs associated with increased litigation").

[8] Citing data from the United States Department of Labor, the majority considers it discriminatory "against public safety officers" to expand the firefighter's rule beyond premises liability cases, observing that "[w]hile there is certainly danger inherent in the job of being a police officer or a firefighter, it is interesting to note that, in terms of the most dangerous public sector jobs, refuse and recyclable collectors ranked as the fifth most dangerous overall job in the United States in 2015, ahead of both firefighters and police officers." The majority observes that, "[d]espite these statistics, we do not have a similar rule for refuse and recyclable collectors. Instead, a refuse and recyclable collector may bring a civil action against third-party tortfeasors responsible for his or her injuries if he or she is injured on someone's property. If one of the foundations underlying the firefighter's

and spreads the cost of their injuries.[9] See, e.g., *Moody* v. *Delta Western, Inc.*, 38 P.3d 1139, 1142–43 (Alaska 2002); *Farmer* v. *B & G Food Enterprises, Inc.*, supra, 818 So. 2d 1159; *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 291; *Pinter* v. *American Family Mutual Ins. Co.*, supra, 236 Wis. 2d 154–55; accord *Flowers* v. *Rock Creek Terrace Ltd. Partnership*, 308 Md. 432, 446–47, 520 A.2d 361 (1987) (relying on public policy in abandoning premises liability distinctions as basis for firefighter's rule).

Second, limiting the firefighter's rule to premises liability cases creates an absolutely illogical distinction in both theory and practice. My research has revealed only one other case, where, akin to the language in *Levandoski*, the Illinois Supreme Court, holding that the firefighter's rule did not preclude a products liability

rule is that the job of police officers and firefighters are so inherently dangerous that danger and injury are part of the job, it hardly seems justified to extend the rule when statistically there are more dangerous public sector jobs in which we allow the injured worker to pursue recovery from a third-party." (Footnote omitted.) I respectfully disagree.

In my view, the danger of the public safety professions relative to other public sector jobs, such as refuse collection, is not the primary driving policy behind the firefighter's rule. Rather, I view the firefighter's rule as reflective of the fact that, in contrast to more predictable, yet potentially dangerous, activities such as refuse collection and roadway maintenance, many emergencies requiring the services of first responders, such as fires and motor vehicle accidents, are the product of antecedent negligent acts. Accordingly, I reject a public policy that would potentially penalize Connecticut's citizens for calling for assistance in an emergency, and otherwise dissuade them from calling for help sooner, rather than later.

[9] Under limited circumstances; see part I B of this concurring opinion; I agree, however, with the court's rejection of the position that, "simply because the firefighter or police officer has recourse to workers' compensation benefits, he or she should not also be able to recover from a third party based on negligence. We do not ordinarily put such an elevated burden on recovery where, for example, the third party is a product manufacturer, and we see no persuasive reason to do so in the context of the present case. In addition, as the present case indicates, permitting the plaintiff to recover for the defendant's negligence will tend to reduce workers' compensation costs by permitting the plaintiff's employer to recoup those benefits." *Levandoski* v. *Cone*, supra, 267 Conn. 663–64; see also General Statutes § 31-293.

action against automobile dealer and manufacturer, also specifically "reject[ed] the opportunity to extend the 'fireman's rule' beyond its limited context of landowner/occupier liability." *Court* v. *Grzelinski*, 72 Ill. 2d 141, 150–51, 379 N.E.2d 281 (1978); see also *Knight* v. *Schneider National Carriers, Inc.*, 350 F. Supp. 2d 775, 782–83 (N.D. Ill. 2004) (reviewing Illinois case law subsequent to *Grzelinski* confirming application of firefighter's rule is limited to premises liability cases). Like the Michigan Supreme Court; see *Kreski* v. *Modern Wholesale Electric Supply Co.*, supra, 429 Mich. 376 n.19; I find Justice Ryan's dissenting opinion in *Grzelinski* far more persuasive, as it points out the "extremely illogical" result of limiting the firefighter's rule to premises liability cases, which "would not permit a fireman to recover for injuries he receives in extinguishing a fire in my automobile which I caused by negligently pouring gasoline on the hot manifold if the automobile is parked in my driveway, but [would permit recovery] if my automobile is parked in the street." *Court* v. *Grzelinski*, supra, 152.

An even more glaring error in *Levandoski*, which is amplified by the majority in the present case, was the short shrift given to *Kaminski* v. *Fairfield*, supra, 216 Conn. 29, which "held that homeowners, who had summoned mental health workers to their home to evaluate their mentally ill son, had no duty to warn a police officer, who accompanied the mental health workers, of the son's dangerous and violent propensities."[10] *Lev-*

[10] The court blithely stated in *Levandoski* that *Kaminski* "did not present the applicability of the firefighter's rule to a nonlandowner." *Levandoski* v. *Cone*, supra, 267 Conn. 664. The court also noted that, "although, in rejecting the claim of a duty to warn [in *Kaminski*], we used language and cited some out-of-state cases that appear to apply beyond the confines of landowner's liability . . . our principal rationale was consistent with the limitation of the rule to premises liability cases, namely, the risk of double taxation. Thus, we stated: Exposing the negligent taxpayer to liability for having summoned the police would impose upon him multiple burdens for that protection." (Citation omitted; internal quotation marks omitted.) Id. Accordingly, the court stated in *Levandoski* that it "agree[d] with those jurisdictions

andoski v. *Cone*, supra, 267 Conn. 664; see *Kaminski* v. *Fairfield*, supra, 36–39. In my view, *Kaminski* is significant because it is our seminal recognition, as a matter of public policy, of the benefits of encouraging our state's citizens to seek assistance from our communities' first responders, rather than stoking a fear of liability that would create incentives for delayed calls, self-help, or both. In concluding that the parents had no duty to warn, the court emphasized in *Kaminski* that there were "two significant uncontroverted facts: (1) the plaintiffs disclosed [their son's] excitable condition to the crisis team when they asked for its intervention; and (2) the defendant, an armed police officer, *came to the plaintiffs' home in the course of his professional responsibilities to assist in dealing with the crisis to which the team had been alerted*." (Emphasis added.) *Kaminski* v. *Fairfield*, supra, 37.

Turning to the second consideration, the court cited the firefighter's rule case law and emphasized that the parents "cannot be held liable to the defendant for risks that inhered in his presence, as a police officer acting as a trained escort for a mental health team on a visit to a disturbed patient known to be agitated and to have access to axes. '[*F*]*undamental concepts of justice prohibit a police officer from complaining of negligence in the creation of the very occasion for his engagement*. . . . This fundamental concept rests on the assumption that governmental entities employ firefighters and police officers, at least in part, to deal with the hazards that may result from their taxpayers' own future acts of negligence. Exposing the negligent taxpayer to liability for having summoned the police would impose upon him multiple burdens for that protection.' *Berko* v. *Freda*, 93 N.J. 81, 87, 459 A.2d 663 (1983) (a

that have framed the rule as one that relates specifically to premises liability and defines the duty owed by an owner or occupier of land." (Emphasis omitted.) Id.

police officer injured in the pursuit of a stolen car cannot sue the car owner for negligence in leaving the car with keys in the ignition)." (Emphasis added; footnote omitted.) *Kaminski* v. *Fairfield*, supra, 216 Conn. 38–39. The court observed that, in "accordance with this principle, a police officer has been precluded from suing parents for negligence when he was assaulted by intoxicated guests at a party after having been summoned to quell the disturbance. *Walters* v. *Sloan*, 20 Cal. 3d 199, 202–205, 571 P.2d 609, 142 Cal. Rptr. 152 (1977). Similarly, a police officer struck by another car while assisting a truck driver to gather fallen cargo was not allowed to sue the truck driver for having negligently secured his freight. *Steelman* v. *Lind*, 97 Nev. 425, 427–28, 634 P.2d 666 (1981) . . . ." (Citations omitted.) *Kaminski* v. *Fairfield*, supra, 39. Relying on these public policy considerations, all of which are germane to the firefighter's rule, the court held that the parents owed no duty to the police officer. Id.

Looking beyond *Kaminski*, public policy aspects of the duty analysis in *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 563, also recognize the importance of timely calls for emergency aid and, thus, support the extension of the firefighter's rule beyond premises liability cases. In *Lodge*, this court held that a fire alarm monitoring service, which had negligently transmitted a false alarm, did not owe a duty to firefighters injured or killed in an accident caused by the failure of the brakes on the fire engine that they were using to respond to that false alarm. Id., 567–71, 585. Beyond concluding that the harm caused by the fire engine's brake failure, as opposed to an ordinary traffic accident, was not reasonably foreseeable; id., 577–78; the court also emphasized that "liability should not attach because of those policy considerations relating to the underlying purposes of tort recovery." Id., 578. After citing the firefighter's rule

cases,[11] the court emphasized that, "[i]f one who initiates a false alarm may be liable for those consequences that are not reasonably foreseeable, but, rather, are significantly attenuated from the original negligent conduct, that liability will impose an unreasonable burden on the public. *The costs stemming from this undue burden may include a substantial chilling of the willingness to report an emergency prior to investigating further to determine whether it is legitimate. Such delay may cost precious time, possibly leading to the unnecessary loss of life and property*. It also may reduce the willingness of property owners to install

[11] The court further cited the public policy analysis in the firefighter's rule cases, namely, *Furstein* v. *Hill*, supra, 218 Conn. 619, and *Roberts* v. *Rosenblatt*, supra, 146 Conn. 112, for the proposition that "the public [rather than individual defendants] should compensate its safety officers both in pay that reflects the hazard of their work and in workers' compensation benefits for injuries suffered when the risks inherent in the occupation materialize." (Internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 579–80. Indeed, the court emphasized that firefighters "have been compensated for their risk by society as a whole by way of workers' compensation as well as other statutory benefits provided to injured firefighters" under General Statutes §§ 7-432 and 7-433b, meaning that "[t]o impose additional liability on the defendants under these circumstances would impose an undue burden on individual members of the public." Id., 580–81. Significantly, the court also "[c]ounterbalanc[ed] the limited benefit of providing [the firefighters] with greater compensation than is available through workers' compensation and other statutory disability and survivor benefits [against] the significant costs that would derive from imposing liability under the facts presented. We frequently have concluded that when the social costs associated with liability are too high to justify its imposition, no duty will be found." Id., 584.

The court also noted that "[i]mposing liability on [the alarm company and its customer] would have the deleterious effect of exempting the party that is primarily responsible for the plaintiffs' harm from all liability," because the municipality, which negligently failed to maintain the fire engine, "normally would be entitled to recover [under General Statutes § 31-293] the full costs of workers' compensation benefits paid to the plaintiffs from any judgment against these defendants. Such exemption would reward the [municipality] for the conduct that directly caused this accident by shifting the entire burden of liability to the shoulders of the defendants for their tangential role in initiating the sequence of events that led to the plaintiffs' injuries." Id., 583–84.

alarms for fear of liability. Furthermore, imposing liability for such remote consequences undoubtedly will increase the cost of installing and monitoring alarms. Although those social costs may not be sufficient to prompt us to conclude that public policy dictates that there should be no duty in a case where the harm and the negligence are less attenuated or where the benefits of imposing liability are more substantial, under the circumstances of this case, we find them compelling." (Emphasis added.) Id., 584–85; but see id., 585–86 (emphasizing that alarm companies can be held liable for harms that "are reasonably foreseeable and within the scope of the risk created by their negligent conduct," and that brake failure on responding fire truck was not foreseeable risk).

Indeed, even after *Levandoski*, our Appellate Court has followed *Lodge* and *Kaminski* in recognizing, as a policy matter, that it is undesirable to allow first responders to bring negligence actions against citizens who have called for their help. In addition to recognizing their compensation via workers' compensation and other statutory benefits, these decisions observe that it is bad public policy to create a specter of liability that chills the reporting of emergencies. See *Hollister* v. *Thomas*, 110 Conn. App. 692, 703–704, 955 A.2d 1212 (concluding that homeowner owed no duty to firefighter, injured when jumping from fire truck, to have reported fire more promptly), cert. denied, 289 Conn. 956, 961 A.2d 419 (2008); *Demers* v. *Rosa*, 102 Conn. App. 497, 505–506 n.6, 925 A.2d 1165 (stating that policy considerations disfavor allowing police officer, injured in fall after recovering roaming dog, to bring negligence lawsuit against dog's owner, as existing statutory penalties provide "substantial incentive for dog owners to take appropriate precautions"), cert. denied, 284 Conn. 907, 931 A.2d 262 (2007). Put differently, "[f]ear of a civil action should not deter a citizen from seeking aid

in the event of a conflagration." (Internal quotation marks omitted.) *Hollister* v. *Thomas*, supra, 704.

The majority, however, relies on Dean William L. Prosser's criticism of this policy justification as "preposterous rubbish," and contends that the absence of a firefighter's rule will not deter citizens from calling for emergency aid. W. Prosser, Law of Torts (4th Ed. 1971) § 61, p. 397. The majority, however, cites no legal authority or empirical evidence tending to support Prosser's view. My research demonstrates that, although one court has agreed with Prosser;[12] see *Christensen* v. *Murphy*, supra, 296 Or. 620; the overwhelming majority of other courts continue to hold that encouraging citizens to call for help without fear of liability, even for emergencies of their own creation, remains a paramount public policy. See, e.g., *Neighbarger* v. *Irwin Industries, Inc.*, 8 Cal. 4th 532, 544, 882 P.2d 347, 34 Cal. Rptr. 2d 630 (1994); *Melton* v. *Crane Rental Co.*, 742 A.2d 875, 876 n.5 (D.C. 1999); *Lanza* v. *Polanin*, 581 So. 2d 130, 132 (Fla. 1991); *Kapherr* v. *MFG Chemical, Inc.*, 277 Ga. App. 112, 114–15, 625 S.E.2d 513 (2005); *Babes Showclub, Jaba, Inc.* v. *Lair*, supra, 918 N.E.2d 314; *Pottebaum* v. *Hinds*, 347 N.W.2d 642, 645 (Iowa 1984); *Steelman* v. *Lind*, supra, 97 Nev. 428; *England* v. *Tasker*, supra, 129 N.H. 471; *Berko* v. *Freda*, supra, 93 N.J. 88–89; *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 291; *Day* v. *Caslowitz*, 713 A.2d 758, 761 (R.I. 1998); *Carson* v. *Headrick*, supra, 900 S.W.2d 690; *Fordham* v. *Oldroyd*, supra, 171 P.3d 413–14.

As one scholarly commentator, Professor Robert H. Heidt, observes in disagreeing with Prosser, "once a fire has started at a business . . . it is not preposterous to think that fear of liability to the firefighters may lead

[12] I note that another prominent treatise shares Prosser's view, although it acknowledges that "[e]xtraordinary situations" might exist where deterrence might be a factor, such as certain commercial premises. See 5 F. Harper, et al., Torts (3d Ed. 2008) § 27.14, p. 294 and n.38.

the business to delay calling the professionals in the hope that its employees—the preferred firefighters—can deal with the fire. Abolishing the fireman's rule, therefore, sends a potential defendant who discovers a peril the message: 'First, see if your employees can handle it.' "[13] R. Heidt, "When Plaintiffs Are Premium Planners for Their Injuries: A Fresh Look at the Fireman's Rule," 82 Ind. L.J. 745, 784 (2007). I agree with his observation that, "[w]hile this message may serve the interests of potential defendants, it offends the interest of society. Defendants and their employees may overestimate their relative competence to deal with the peril compared to the professionals."[14] Id.

Moreover, "government entities employ and train firefighters and policemen, at least in part, to deal with those hazards that may result from the actions or inaction of an uncircumspect citizenry, it offends public policy to say that a citizen invites private liability merely

[13] Heidt also cites anecdotal evidence from Connecticut of a case wherein an emergency medical technician sued a heart attack victim after the emergency medical technician slipped on the victim's staircase while moving him into the ambulance. See R. Heidt, "When Plaintiffs Are Premium Planners for Their Injuries: A Fresh Look at the Fireman's Rule," 82 Ind. L.J. 745, 784 n.143 (2007).

[14] As Heidt explains further, "[i]n time, abolition [of the firefighter's rule] would threaten to create at least the appearance of professional rescuers being more willing to risk themselves to save the life and property of some members of the public than of others similarly situated. Suits by professional rescuers arising from a peril may raise doubts about the integrity of the subsequent investigation of the peril, and undermine the public perception of rescuers, the morale of the squad, and the self-respect of individual rescuers. The incentive the prospect of tort recovery gives rescuers to exaggerate their injuries and malinger collides head-on with the culture and the norms that help rescuers serve their mission. Crime victims and home and business owners who are aware of the toxic character of litigation, especially for defendants, may, when faced with a peril, think twice about summoning the professionals, much to the disadvantage of society." R. Heidt, supra, 82 Ind. L.J. 787–88; see also id., 788 ("in light of the other incentives operating on potential defendants, liability seems likely to yield only a modest improvement in precaution taking against police and fire perils").

because he happens to create a need for those public services. . . . Citizens should be encouraged and not in any way discouraged from relying on those public employees who have been specially trained and paid to deal with these hazards. Additionally, a citizen does not have the right to exclude public safety officers from emergency situations or to control their actions once they have been alerted to an emergency and arrive on the scene. Indeed, a citizen may have a legal duty to summon a public safety officer in some instances and [saying that] he may, in the course of discharging that duty, risk tort liability to officers who are specially trained and hired to cope with these hazards, [would be] inconsistent and unfair." (Citation omitted.) *Pottebaum* v. *Hinds*, supra, 347 N.W.2d 645; see also *Babes Showclub*, *Jaba*, *Inc.* v. *Lair*, supra, 918 N.E.2d 314 ("Thus, the automobile driver who negligently causes an accident can call paramedics without fear that they will sue him for causing the accident, but he must behave reasonably once they arrive. Similarly, bar owners may call the police to assist in dealing with an unruly customer, but may not add to the danger faced by the responding officer without exposing themselves to liability."); *Steelman* v. *Lind*, supra, 97 Nev. 428 (stating that, without firefighter's rule, "citizens would be reluctant to seek the aid of a public safety officer or to have such aid sought in their behalf upon the fear that a subsequent claim for injury by the officer might be far more damaging than the initial fire or assault").

I, therefore, agree with the Utah Supreme Court's characterization of Prosser's view as mere "rhetoric," along with its "prefer[ence] to inhabit a society in which the consequences of one's inattention do not include the compensation of those on whom all of us collectively confer the duty to extricate us from our distress. We are confident that most citizens, including those who are conversant with comparative negligence law,

believe that they now inhabit such a society. While judges do not perform their judicial responsibilities by enshrining widely held assumptions into the common law, the widely held belief that one is not exposed to tort liability for negligence requiring rescue emanates from a broadly shared value about the workings of a well-ordered society." *Fordham* v. *Oldroyd*, supra, 171 P.3d 413–14. Put differently, in the absence of contrary public policy direction from our legislature, I do not countenance an approach to the common law that has the effect of encouraging the citizens of Connecticut to undertake self-help in emergency situations, rather than calling 911 immediately.[15]

B

Beyond what I believe is the majority's misunderstanding of *Levandoski*, I suggest that the breadth of the majority's opinion, which renders the firefighter's rule completely dead letter with respect to ordinary negligence claims, carries with it numerous unintended consequences. Specifically, I believe that the majority's wholesale rejection of the firefighter's rule and its supporting public policies in nonpremises liability cases carries the consequence of inviting first responders to bring civil actions against victims of crime and motor vehicle accidents. In addition to its inconsistency with

[15] Given that public policy concerns about chilling our citizens' willingness to report emergencies already have formed a basis for our common-law decision making in *Kaminski* v. *Fairfield*, supra, 216 Conn. 38–39, and *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 580–81, I submit that the legislature is the appropriate forum for any reexamination of the legislative facts underlying our common-law decisionmaking. See *Campos* v. *Coleman*, 319 Conn. 36, 66, 123 A.3d 854 (2015) (*Zarella, J.*, dissenting) ("[T]he legislature, unlike this court, is institutionally equipped to gather all of the necessary facts to determine whether a claim for loss of parental consortium should be permitted and, if it should, how far it should extend. The legislature can hold public hearings, collect data unconstrained by concerns of relevancy and probative value, listen to evidence from a variety of experts, and elicit input from industry and society in general." [Emphasis omitted.]).

Kaminski v. *Fairfield*, supra, 216 Conn. 37, and *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 584–85, which remain good law notwithstanding the overbreadth of *Levandoski*, the majority's conclusion ignores the advantages attendant to modern formulations of the public policy-based firefighter's rule, which "encourage[s] the public to ask for rescue while allowing professional rescuers to seek redress in limited but appropriate circumstances." *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 293.

To begin, the mischief of the majority's outright rejection of the firefighter's rule beyond premises liability cases is illustrated by the kinds of cases that would get their ill-deserved day in court, including:[16] (1) an action against a domestic violence victim, claiming that, although she had told an emergency dispatcher that her husband was occasionally violent and had guns in

[16] The majority criticizes me for reading its holding, namely that "the firefighter's rule should [not] be extended beyond the scope of premises liability," broadly and suggesting that its holding might well lead to an alleged "parade of horribles that transforms the firefighter's rule far beyond its definition," including lawsuits against victims of crime and motor vehicle accidents. The majority posits that "[t]his suggestion transforms the firefighter's rule into a much broader debate about common-law negligence, duty, and responsibility," and "goes far beyond the facts of the present case and amounts to a general advisory opinion." I adamantly disagree with this assertion, and note that, on the one hand, the majority argues that the "doctrine should be confined to the facts of the present case insofar as it involves a property owner." On the other hand, it repeatedly uses broad language stating that the firefighter's rule has no application beyond a certain class of cases. Part II of this concurring opinion provides a narrow, case-specific resolution to the discrete legal issue presented in this case. My use of a so-called "parade of horribles" in this section is merely to demonstrate the real world implications of the majority's application of the firefighter's rule. The words that we use in our opinions matter; they have real world consequences, and a broad statement with regard to the applicability of the firefighter's rule will have a direct effect on our future cases. Accordingly, I embrace the public policy-based approach to the firefighter's rule precisely because it affords us the flexibility to accommodate for the unique facts of each case. See, e.g., *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 293.

the home, she had negligently failed to warn police of certain specific threats, after which two police officers were shot while escorting her home;[17] (2) an action against parents after their teenage daughter hosted a wild house party resulting in an injury to a police officer in the course of arresting a party attendee for public drunkenness;[18] (3) an action against the owner of a stolen vehicle, claiming that the keys had been negligently left inside of the ignition, after the resulting chase injured a police officer;[19] (4) an action against a residential care facility who summoned police for assistance with an agitated and incoherent resident;[20] (5) an action against a restaurant or tavern owner who summoned police for assistance in dealing with a disturbance;[21] (6) an action against the driver of a car involved in an accident by an emergency medical technician, who sustained a hernia while extricating a passenger from a vehicle;[22] and (7) an action against the driver of a car

[17] See *Carson* v. *Headrick*, supra, 900 S.W.2d 686–87.

[18] See *Walters* v. *Sloan*, supra, 20 Cal. 3d 201–202.

[19] See *Moody* v. *Delta Western, Inc.*, supra, 38 P.3d 1140; *Berko* v. *Freda*, supra, 93 N.J. 83.

[20] See *Kennedy* v. *Tri-City Comprehensive Community Mental Health Center, Inc.*, 590 N.E.2d 140, 141 (Ind. App. 1992).

[21] See *Babes Showclub, Jaba, Inc.* v. *Lair*, supra, 918 N.E.2d 309–10; *Pottebaum* v. *Hinds*, supra, 347 N.W.2d 643; *Farmer* v. *B & G Food Enterprises, Inc.*, supra, 818 So. 2d 1155–56.

[22] See *Pinter* v. *American Family Mutual Ins. Co.*, supra, 236 Wis. 2d 142; see also *England* v. *Tasker*, supra, 129 N.H. 468 (police officer injured knee while extricating passenger from defendant's wrecked car). As the majority notes, I recognize that some jurisdictions, including a Connecticut Superior Court, have held that the firefighter's rule does not extend to emergency medical personnel—particularly those who are not public employees. See *Nagy* v. *Arsenault*, Superior Court, judicial district of Windham, Docket No. CV-14-6007793-S (May 21, 2015) (60 Conn. L. Rptr. 389); see also, e.g., *Krause* v. *U.S. Truck Co.*, 787 S.W.2d 708, 713 (Mo. 1990) (en banc); cf. *Heck* v. *Robey*, 659 N.E.2d 498, 500–504 (Ind. 1995) (firefighter's rule did not bar paramedic's claim when patient's acts of negligence took place after paramedic's arrival at scene, when patient was kicking and flailing during extrication from car). I note that, although I cite *Pinter* as illustrative of the lack of a firefighter's rule, I leave to another day the question of whether the firefighter's rule applies to emergency medical personnel.

involved in an accident, after a police officer that had been assisting him was struck and injured by another car.[23]

I cite these cases only for illustration, as it may well be that the facts of particular cases militate in favor of recognizing a duty of care, even on the part of someone receiving help. Indeed, I emphasize that the flexible nature of the public policy-based firefighter's rule allows us to leave the courthouse doors open to first responders injured in the line of duty under circumstances that do not implicate penalizing citizens who have called for emergency help, such as the present case. Indeed, other courts have allowed actions against independent tortfeasors who injure first responders acting in the line of duty. See, e.g., *Melton* v. *Crane Rental Co.*, supra, 742 A.2d 876–79 (doctrine did not bar action by emergency medical technician when crane truck struck ambulance transporting patient to hospital); *McKernan* v. *General Motors Corp.*, 269 Kan. 131, 133, 140–41, 3 P.3d 1261 (2000) (doctrine did not bar products liability action against automobile manufacturer whose hood strut exploded, injuring firefighter working at car fire scene); *Aetna Casualty & Surety Co.* v. *Vierra*, 619 A.2d 436, 439–40 (R.I. 1993) (doctrine did not bar action by police officer against driver who struck him while he was directing traffic at accident scene, because that driver was "independent tortfeasor"). Similarly, subsequent negligence, including the duty not to mislead first responders about known hazards, has also been recognized as an exception to the firefighter's rule. See, e.g., *Lipson* v. *Superior Court*, 31 Cal. 3d 362, 365, 373, 644 P.2d 822, 182 Cal. Rptr.

[23] See *Wietecha* v. *Peoronard*, 102 N.J. 591, 595, 510 A.2d 19 (1986) (per curiam); *Ellinwood* v. *Cohen*, 87 A.3d 1054, 1056 (R.I. 2014); *Fordham* v. *Oldroyd*, supra, 171 P.3d 412; see also *Steelman* v. *Lind*, supra, 97 Nev. 428–29 (police officer struck by vehicle while parked behind truck driver gathering fallen cargo cannot recover against truck driver for having negligently secured freight).

629 (1982) (firefighter's rule did not bar action by firefighters against chemical plant owner who negligently or intentionally told firefighters responding to boilover that there were no toxic chemicals involved).

Thus, I emphasize that I would join those jurisdictions that have retained the common-law firefighter's rule as a matter of public policy, notwithstanding underlying doctrinal changes such as the statutory abolition of assumption of risk or differing landowners' duties.[24] As

[24] As the Kansas Supreme Court comprehensively explained in *Apodaca* v. *Willmore*, supra, 306 Kan. 113–14, the legislatures of several states, including California, Nevada, and New Hampshire, have codified the firefighter's rule in their respective statutes. See Cal. Civil Code § 1714.9 (Deering 2015); Nev. Rev. Stat. § 41.139 (2015); N.H. Rev. Stat. Ann. § 507:8-h (West 2010). Accordingly, I do not understand why the majority criticizes my reliance on the Nevada Supreme Court's decision in *Steelman* v. *Lind*, supra, 97 Nev. 425, insofar as that state's firefighter's rule statute codified that decision, the reach of which had been limited to those acts of negligence occasioning the first responder's presence on the scene. See *Borgerson* v. *Scanlon*, 117 Nev. 216, 220–21, 19 P.3d 236 (2001); *Moody* v. *Manny's Auto Repair*, 110 Nev. 320, 328, 871 P.2d 935 (1994).

Several other state legislatures have, however, limited or abrogated their common-law firefighter's rules. See, e.g., Fla. Stat. Ann. § 112.182 (1) (West 2014) (premises liability); Minn. Stat. Ann. § 604.06 (West 2010); *Ruiz* v. *Mero*, 189 N.J. 525, 536–38, 917 A.2d 239 (2007) (noting that state legislature abolished firefighter's rule except as to officer's employer or co-employee); *Wadler* v. *New York*, 14 N.Y.3d 192, 194, 925 N.E.2d 875, 899 N.Y.S.2d 73 (2010) (noting that state statute limits firefighter's rule to actions against officer's employer or co-employee).

I disagree with the majority's position that the Florida and New Jersey statutes blunt the persuasive impact of the decisions of the state supreme courts in *Lanza* v. *Polanin*, supra, 581 So. 2d 130, and *Berko* v. *Freda*, supra, 93 N.J. 81, with respect to the present case. First, the Florida statute is plainly and unambiguously cast in terms of premises liability, and my research reveals no case law expanding it beyond that context. See Fla. Stat. Ann. § 112.182 (1) (West 2014) ("A firefighter or properly identified law enforcement officer who lawfully enters upon the premises of another in the discharge of his or her duty occupies the status of an invitee. The common-law rule that such a firefighter or law enforcement officer occupies the status of a licensee is hereby abolished."). Second, although the New Jersey statute largely abolishes the firefighter's rule in that state, the reasoning of *Berko* v. *Freda*, supra, 93 N.J. 84–91, remains persuasive and instructive in the context of the common law. See, e.g., *Moody* v. *Delta Western, Inc.*, supra, 38 P.3d 1141.

the New Mexico Supreme Court has observed, given these shifts in the common law, "[m]ost modern decisions base the firefighter's rule on a public policy rationale."[25] *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 291; see also *Moody* v. *Delta Western, Inc.*,

[25] As the majority points out, the appellate courts of a small minority of jurisdictions, notably Oregon and South Carolina, have rejected the firefighter's law as a matter of common law. See also *Court* v. *Grzelinski*, supra, 72 Ill. 2d 150–51 (limiting firefighter's rule to premises liability cases); *Angelo* v. *Campus Crest at Orono, LLC*, United States District Court, Docket No. 1:15CV469 (JCN) (D. Maine February 1, 2016) (discussing two Maine trial court decisions declining to adopt firefighter's rule, and denying motion to dismiss because the state's supreme court had not yet adopted firefighter's rule, with further consideration of issue "more appropriately made with a fully-developed record"). The leading case on the minority view is *Christensen* v. *Murphy*, supra, 296 Or. 619–21, which relied largely on the statutory abolition of assumption of risk in abandoning the firefighter's rule, noting that "so-called policy reasons [in support of firefighter's rule] are merely redraped arguments drawn from premises liability or implied assumption of risk, neither of which are now available as legal foundations in this state." I view *Christensen*, including its reliance on Prosser's criticism, as inconsistent with our decisions in *Kaminski* v. *Fairfield*, supra, 216 Conn. 38–39, and *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 584–85. *Christensen* also is also inconsistent with our well established duty and public policy analysis; see, e.g., *Lawrence* v. *O & G Industries, Inc.*, supra, 319 Conn. 650–51; because the Oregon Supreme Court expressly declined to consider the costs and benefits of increased litigation in its analysis of the firefighter's rule. See *Christensen* v. *Murphy*, supra, 620.

The South Carolina Supreme Court's decision in *Minnich* v. *Med-Waste, Inc.*, 349 S.C. 567, 564 S.E.2d 98 (2002), is similarly unpersuasive. In that case, the South Carolina Supreme Court declined to adopt the firefighter's rule as question of first impression because "those jurisdictions which have adopted the firefighter's rule offer no uniform justification therefor, nor do they agree on a consistent application of the rule. The legislatures in many jurisdictions which adhere to the rule have found it necessary to modify or abolish the rule." Id., 575. I disagree with this analysis, insofar as its criticism of the doctrine's exceptions fails to appreciate the nuance necessary to achieve a rule that is just for both citizen and first responder.

I do, however, disagree with the majority's reliance on *Hopkins* v. *Medeiros*, 48 Mass. App. Ct. 600, 724 N.E.2d 336 (2000), for the proposition that Massachusetts has rejected the firefighter's rule as a matter of common law. Although the *Hopkins* decision had some discussion of the minority of jurisdictions that have rejected the firefighter's rule as a matter of common law, such as *Christensen* v. *Murphy*, supra, 296 Or. 610, it ultimately decided the issue on statutory grounds, relying on the existence of "two [state]

supra, 38 P.3d 1142; *Apodaca* v. *Willmore*, supra, 306 Kan. 122; *Farmer* v. *B & G Food Enterprises, Inc.*, supra, 818 So. 2d 1159–60; *Ellinwood* v. *Cohen*, 87 A.3d 1054, 1058 n.5 (R.I. 2014); *Fordham* v. *Oldroyd*, supra, 171 P.3d 413–14. This allows for an "approach to the firefighter's rule [that] will encourage the public to ask for rescue while allowing professional rescuers to seek redress in limited but appropriate circumstances." *Baldonado* v. *El Paso Natural Gas Co.*, supra, 143 N.M. 293.

I agree, then, with the Rhode Island Supreme Court that the firefighter's rule "bar[s] an injured public-safety official from maintaining a negligence action against a tortfeasor whose alleged malfeasance is responsible for bringing the officer to the scene of a fire, crime, or other emergency where the officer is injured. . . . To be shielded from liability under the public-safety officer's rule, the defendant, or alleged tortfeasor, must establish three elements: (1) that the tortfeasor injured the [first responder] . . . in the course of [the first responder's] employment; (2) that the risk the tortfea-

statutes . . . that grant police officers the right to file suit against alleged tortfeasors . . . . The [l]egislature has thereby expressly chosen not to immunize such individuals from suits in tort. We think this consideration decisive, and it constrains us to conclude that the firefighter's rule has no continuing vitality in Massachusetts. To conclude otherwise would contravene legislative intent." *Hopkins* v. *Medeiros*, supra, 608–609.

Finally, I disagree with the majority's reliance on *Thompson* v. *FMC Corp.*, 710 So. 2d 1270, 1271 (Ala. Civ. App. 1997), and *Bath Excavating & Construction Co.* v. *Wills*, 847 P.2d 1141, 1146–47 (Colo. 1993), for the proposition that those jurisdictions have "refused" or "declined" to adopt the firefighter's rule. Those cases stand only for the far different proposition that the Alabama Court of Civil Appeals and the Colorado Supreme Court did *not* need to reach the question of whether to adopt a firefighter's rule on the facts of those cases. See *Thompson* v. *FMC Corp.*, supra, 1271 ("we need not decide whether this state should adopt the firefighter's rule"); *Bath Excavating & Construction Co.* v. *Wills*, supra, 1147 ("we do not believe that the underlying rationale of the cases from other jurisdictions that have adopted a fireman's rule would extend" to water department employee, and therefore "[w]e express no view on the question of whether Colorado should judicially adopt a no-duty fireman's rule").

sor created was the type of risk that one could reasonably anticipate would arise in the dangerous situation which [the first responder's] employment requires [him or her] to encounter; and (3) that the tortfeasor is the individual who created the dangerous situation which brought the [first responder] . . . to the . . . accident scene . . . ." (Citations omitted; internal quotation marks omitted.) *Ellinwood* v. *Cohen*, supra, 87 A.3d 1057–58.

With respect to the circumstances under which it is appropriate for our first responders to seek redress, I find instructive the Kansas Supreme Court's recent formulation of exceptions to the firefighter's rule, under which "law enforcement officers, like firefighters, who suffer injuries as a result of discharging their duties at the scene of negligently caused hazards or conditions their jobs require them to mitigate and eliminate cannot recover from the person or persons responsible for the existence of the hazards or conditions, unless one of the three exceptions . . . applies. Under those exceptions, a law enforcement officer will not be barred from recovery [1] for negligence or intentional acts of misconduct by a third party, [2] if the individual responsible for the [officer's] presence engages in a subsequent act of negligence after the [officer] arrives at the scene,[26] or [3] if an individual fails to warn of known, hidden dangers on his premises or misrepresents the nature of the hazard where such misconduct causes the injury to the [officer]." (Footnote added; internal quotation

[26] I note that the trial court in *Levandoski* had held that "the firefighter's rule should be extended to nonpremises liability cases, but that the so-called 'subsequent negligence' exception to the rule would also apply. Under that exception, a police officer is not treated as a licensee when the defendant engages in negligent acts after the police officer arrives at the scene." *Levandoski* v. *Cone*, supra, 267 Conn. 658 n.5. This court did not consider whether "subsequent negligence" exception to the firefighter's rule applies, instead stating more broadly that "the firefighter's rule simply does not apply" in nonpremises liability cases. Id.

marks omitted.) *Apodaca* v. *Willmore*, supra, 306 Kan. 122–23.

Legislative action, as in some of our sister states, would be ideal for making the appropriate findings and articulating the contours of Connecticut's firefighter's rule. See footnote 15 of this concurring opinion. Nevertheless, until such time as our legislature can act, I would adopt a formulation of the firefighter's rule as a matter of common law that encourages citizens to seek help in emergencies, while not slamming the courthouse door to appropriate claims of our first responders.

II

Although I respectfully disagree with its firefighter's rule analysis, I nevertheless agree with the majority's order reversing the judgment of the trial court on the ground that the firefighter's rule does not bar the plaintiff's claims. I reach this conclusion because the facts of the present case, as in *Levandoski*, do not implicate the public policy of encouraging calls for emergency assistance. I suggest that *Levandoski* may be more narrowly read to hold that the firefighter's rule does not preclude the imposition of a duty of care on persons fleeing or resisting police officers, which is not inconsistent with the public policy of encouraging Connecticut's citizens to summon emergency services when they are needed.

Specifically, Pennsylvania's intermediate appellate court has cited *Levandoski* in support of its conclusion that a person who fled from a police officer owed that officer, who was injured during the chase, a duty of care given factors such as: (1) "the utter dearth of social utility of . . . conduct in fleeing from an officer"; (2) "the obvious risk and foreseeability of possible injury to the pursuing officer"; (3) "the positive consequences of discouraging flight and encouraging apprehension of

criminals"; and (4) "the public interest in empowering police to enforce the law and keep the communities safe . . . ." *Schemberg* v. *Smicherko*, 85 A.3d 1071, 1076 (Pa. Super. 2014); see also *Lanza* v. *Polanin*, supra, 581 So. 2d 132 (firefighter's rule did not bar action by police officer against passenger in vehicle involved in accident that occasioned officer's presence, when passenger injured officer in course of resisting arrest); *Trainor* v. *Santana*, 86 N.J. 403, 404–408, 432 A.2d 23 (1981) (firefighter's rule did not bar action against defendant who injured police officer while trying to escape from arrest during traffic stop).

Indeed, in holding that the firefighter's rule, as a matter of public policy, barred a police officer injured after a high speed chase from bringing a civil claim against the owner of a stolen vehicle, claiming negligence for leaving the keys in the ignition, the New Jersey Supreme Court emphasized that "nothing in the 'fireman's rule' prevents [the police officer] from suing the thief." *Berko* v. *Freda*, supra, 93 N.J. 90. The New Jersey court aptly rejected the proposition that police officers who fight crime "must expect an occasional encounter with violence. Why then should they be permitted to sue a thief for personal injuries when they have assumed the risk that the thief might fight back? We resolve this paradox by observing that the public policy underlying the fireman's rule simply does not extend to intentional abuse directed specifically at a police officer. To permit this would be to countenance unlimited violence directed at the policeman in the course of most routine duties. Certainly the policeman and his employer should have some private recourse for injuries so blatantly and criminally inflicted. . . . No fundamental unfairness results from allowing an officer to sue a criminal. The crook does not summon the police for help. While the police are paid to risk being assaulted, they are not paid to

submit to a criminal assault."[27] (Citation omitted; internal quotation marks omitted.) Id., 90.

To me, this is where the reach of *Levandoski* should end, namely, with a holding that the firefighter's rule does not preclude police officers from bringing civil actions against suspects or perpetrators who have endangered them through their conduct in fleeing from or resisting apprehension. Indeed, like the fleeing defendant in *Levandoski*, the defendant in the present case, by barricading himself in the house after violating a protective order, actively engaged in conduct that had the effect of endangering the plaintiff after his arrival at the scene. Put differently, the defendant was not the party who sought or received emergency aid; instead, his conduct was consistent with the plaintiff, a law enforcement officer, being the last person he wanted to see.[28] Given that the relatively high risks created by

[27] I note, however, that not all courts share this view of the firefighter's rule. See *Zanghi* v. *Niagara Frontier Transportation Commission*, 85 N.Y.2d 423, 440, 649 N.E.2d 1167, 626 N.Y.S.2d 23 (1995) ("For example, if a police officer who is simply walking on foot patrol is injured by a flower pot that fortuitously falls from an apartment window, the officer can recover damages because nothing in the acts undertaken in the performance of police duties placed him or her at increased risk for that accident to happen. On the other hand, if an officer is injured by a suspect who struggles to avoid an arrest, the rule precludes recovery in tort because the officer is specially trained and compensated to confront such dangers."), superseded in part by statute as stated in *Wadler* v. *New York*, 14 N.Y.3d 192, 194, 925 N.E.2d 875, 899 N.Y.S.2d 73 (2010) (noting that N.Y. Gen. Oblig. Law § 11-106 [McKinney 2017] limits firefighter's rule to actions against employer or coemployee); *Juhl* v. *Airington*, 936 S.W.2d 640, 647–48 (Tex. 1996) (Gonzalez, J., concurring) (urging court to adopt firefighter's rule to bar claims of police officer against abortion clinic demonstrator, arising from officer's injuries sustained while forcibly removing demonstrator from premises).

[28] Given the broad manner in which we construe allegations in a complaint in deciding a motion to strike, I recognize that the rather sparse allegations in the complaint might also be understood to encompass conduct that reflects a person needing assistance during a mental health emergency, in addition to having committed criminal conduct. Accordingly, I reserve further judgment on this matter, including the scope of any duty owed, until discovery proceeds and a factual record is developed.

the defendant's conduct bring with them minimal social utility, it does not implicate any fundamental principle of justice to hold that he owed the plaintiff a duty of reasonable care. Accordingly, I agree with the majority that the trial court improperly granted the defendant's motion to strike in the present case.

I concur in the majority's judgment reversing the judgment of the trial court and remanding the case for further proceedings according to law.

JUSTIN LUND *v.* MILFORD HOSPITAL, INC.
(SC 19834)

Rogers, C. J., and Eveleigh, McDonald, Espinosa and Robinson, Js.*

Syllabus

The plaintiff, a police officer, brought a negligence action, seeking to recover damages for personal injuries that he sustained while subduing an emotionally disturbed person, P, who had been committed to the defendant hospital's custody on an emergency basis for psychiatric evaluation. Specifically, the plaintiff alleged that P had been transported to the defendant's facilities after exhibiting certain irrational behavior and injuring two other police officers at the scene of an automobile accident. The plaintiff traveled to the defendant's facilities to check on the injured officers and observed that P had been restrained by the defendant's employees. Subsequently, P was allowed to go to the bathroom unaccompanied and unrestrained. Upon exiting the bathroom, P threw an object at the plaintiff and fled. The plaintiff was injured in the course of the pursuit that followed. The defendant filed a motion to strike the original complaint, which the trial court granted, concluding that the plaintiff's claim was barred by the justifications underlying the firefighter's rule, which generally bars firefighters and police officers who enter private property in the exercise of their duties from bringing civil actions against the landowner for injuries caused by defective conditions on the property. The plaintiff then filed a substitute complaint, to which the defendant objected. In sustaining the defendant's objection, the trial court concluded that, despite certain new allegations, the plaintiff had failed to state a claim for which relief could be granted. The trial court subse-

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

quently rendered judgment for the defendant, from which the plaintiff appealed. *Held*:

1. This court concluded that the allegations set forth in the plaintiff's substitute complaint were materially different from those in the original complaint, and, therefore, the plaintiff had preserved his right to appeal after repleading; the new and revised factual allegations set forth in the substitute complaint, read in the light most favorable to the plaintiff, constituted a good faith effort to address the trial court's determination that the claims of negligence in the original complaint were barred by the justifications underlying the firefighter's rule insofar as the substitute complaint deemphasized, or eliminated entirely, the plaintiff's role in P's committal.
2. The trial court improperly sustained the defendant's objection to the plaintiff's substitute complaint, this court having concluded that the claims of negligence set forth therein alleged a valid cause of action and, therefore, the trial court's judgment was reversed and the case was remanded for further proceedings; pursuant to this court's decision in *Sepega* v. *DeLaura* (326 Conn. 788), the firefighter's rule does not extend to cases, such as the present case, in which the complaint alleges ordinary negligence rather than premises liability.

(*Two justices dissenting in one opinion*)

Argued February 22—officially released September 26, 2017

Procedural History

Action to recover damages for the defendant's alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Ansonia-Milford, where the court, *Stevens*, *J.*, granted the defendant's motion to strike the plaintiff's complaint; thereafter, the court, *Stevens*, *J.*, granted the defendant's objection to the plaintiff's corrected substitute complaint and the defendant's motion for judgment, and rendered judgment thereon for the defendant, from which the plaintiff appealed. *Reversed*; *further proceedings*.

Jennifer B. Goldstein, with whom were *Jonathan M. Levine* and, on the brief, *Jeffrey L. Ment*, for the appellant (plaintiff).

Sherwin M. Yoder, with whom, on the brief, was *Mariella LaRosa*, for the appellee (defendant).

Opinion

EVELEIGH, J. The plaintiff, Justin Lund, a Connecticut state trooper, brought this action against the defendant, Milford Hospital, Inc., seeking damages for personal injuries sustained while subduing an emotionally disturbed person, Dale Pariseau, who had been committed to the defendant's custody on an emergency basis for psychiatric evaluation. The plaintiff has alleged that the defendant was negligent in numerous ways, including (1) failing to supervise or restrain Pariseau properly, (2) failing to provide for adequate security in the area where foreseeably dangerous patients are held, (3) allowing Pariseau, who was known to be dangerous, to go to the bathroom unrestrained and unaccompanied, and (4) failing to train its staff properly.

The record contains the following relevant procedural history. The plaintiff filed a substitute complaint[1]

[1] The substitute complaint alleges the following underlying facts. Pariseau had been transported to the defendant's facilities and committed for psychiatric observation following certain violent and irrational behavior—including attacks that injured two police officers—at the scene of an automobile accident on Interstate 95. The plaintiff, who had been attending to an earlier accident nearby and had assisted in Pariseau's arrest, subsequently traveled to the defendant's facilities to check on the condition of the injured police officers. The defendant did not "at any time" ask for the assistance of any police officer, including the plaintiff, with regard to Pariseau. In the process of checking on the injured police officers, the defendant's employees showed the plaintiff that Pariseau was being restrained under observation while undergoing a full psychiatric evaluation. The plaintiff relied on the representations of the defendant's employees that Pariseau had been properly secured and restrained.

Shortly before leaving, the plaintiff noticed that Pariseau was no longer in his room. The plaintiff asked where Pariseau had gone, and a nurse indicated that he had gone unaccompanied and unrestrained into the bathroom behind the nurse's station to change into a hospital gown. The plaintiff then knocked on the locked bathroom door, heard water running in the sink, and asked Pariseau to unlock the door. Pariseau asked for more time in the bathroom, with the water still running. After ten minutes, Pariseau flung open the door and ran out, hurling a garbage can that was filled with a mix of hot water and his own urine at the plaintiff, another police officer, and two nurses. The plaintiff, after slipping and falling in the mix of urine

pursuant to Practice Book § 10-44[2] after the trial court granted the defendant's motion to strike his original complaint on the ground that the claims set forth therein were barred by "underlying justifications for the [firefighter's] rule . . . ." In sustaining the defendant's objection to the substitute complaint, the trial court concluded that, despite certain new allegations, the plaintiff's pleading failed to state a claim for which relief could be granted because this court's decision in *Kaminski* v. *Fairfield*, 216 Conn. 29, 38–39, 578 A.2d 1048 (1990), is not limited to cases in which a person has actually requested police assistance. The trial court rendered judgment accordingly, and this appeal followed.[3]On appeal, the plaintiff claims primarily that, under this court's subsequent decision in *Levandoski* v. *Cone*, 267 Conn. 651, 841 A.2d 208 (2004), the firefighter's rule does not bar police officers from bringing negligence claims in nonpremises liability cases for injuries suffered during the performance of their duties. The plaintiff also claims that the trial court erred in sustaining the objection to the substitute complaint because the allegations set forth therein were materially different from his original complaint. For the reasons that follow, we reverse the judgement of the trial court and remand the case for further proceedings.

and water on the floor, caught up with Pariseau and, with the assistance of others, subdued him. In the course of these events, the plaintiff sustained injuries to his head, shoulder, elbow, wrist, and hand.

[2] Practice Book § 10-44 provides: "Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules."

[3] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

I

The governing legal principles on motions to strike are very well established. "[A]fter a court has granted a motion to strike, [a party] may either amend his pleading [pursuant to Practice Book § 10-44] or, on the rendering of judgment, file an appeal. . . . The choices are mutually exclusive [as the] filing of an amended pleading operates as a waiver of the right to claim that there was error in the sustaining of the [motion to strike] the original pleading. . . . Stated another way: When an amended pleading is filed, it operates as a waiver of the original pleading. The original pleading drops out of the case and although it remains in the file, it cannot serve as the basis for any future judgment, and previous rulings on the original pleading cannot be made the subject of appeal." (Citations omitted; internal quotation marks omitted.) *Ed Lally & Associates, Inc.* v. *DSBNC, LLC*, 145 Conn. App. 718, 745–46, 78 A.3d 148, cert. denied, 310 Conn. 958, 82 A.3d 626 (2013); see also *Royce* v. *Westport*, 183 Conn. 177, 178–79, 439 A.2d 298 (1981); *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, 128 Conn. App. 84, 90, 15 A.3d 1163 (2011); *Wilson* v. *Hryniewicz*, 38 Conn. App. 715, 719, 663 A.2d 1073, cert. denied, 235 Conn. 918, 665 A.2d 610 (1995).

If the plaintiff elects to replead following the granting of a motion to strike, the defendant may take advantage of this waiver rule by challenging the amended complaint as not "materially different than the [stricken] . . . pleading that the court had determined to be legally insufficient. That is, the issue [on appeal becomes] whether the court properly determined that the plaintiffs had failed to remedy the pleading deficiencies that gave rise to the granting of the motions to strike or, in the alternative, set forth an entirely new cause of action. It is proper for a court to dispose of the substance of a complaint merely repetitive of one to which a demurrer had earlier been sustained." *Cal-*

tabiano v. *L & L Real Estate Holdings II*, *LLC*, supra, 128 Conn. App. 88. "Furthermore, if the allegations in a complaint filed subsequent to one that has been stricken are not materially different than those in the earlier, stricken complaint, the party bringing the subsequent complaint cannot be heard to appeal from the action of the trial court striking the subsequent complaint." Id., 90; see also *Parsons* v. *United Technologies Corp.*, 243 Conn. 66, 74, 700 A.2d 655 (1997). In the present case, the defendant argues that, because the two complaints were not materially different, no other issue is properly before the court on appeal, and the plaintiff abandoned any claim of error with respect to the trial court's prior decision striking the original complaint. We disagree. The law in this area requires the court to compare the two complaints to determine whether the amended complaint "advanced the pleadings" by remedying the defects identified by the trial court in granting the earlier motion to strike.[4] *Caltabiano* v. *L & L Real Estate Holdings II*, *LLC*, supra, 88–89. In determining whether the amended pleading is "materially different," we read it in the light most favorable to the plaintiff.[5] See, e.g., *Melfi* v. *Danbury*, 70 Conn. App. 679, 684,

[4] "An example of a proper pleading filed pursuant to Practice Book § 10-44 is one that [supplies] the essential allegation lacking in the complaint that was stricken." (Internal quotation marks omitted.) *Perugini* v. *Giuliano*, 148 Conn. App. 861, 878, 89 A.3d 358 (2014). It may not assert an entirely new cause of action premised on a legal theory not previously asserted in the stricken complaint, which would require permission under Practice Book § 10-60 (a). See also id., 878–79 (substitute complaint asserting new legal theories was not proper because it did not correct deficiencies identified in previous decision granting motion to strike, which was grounded on fact that "Rules of Professional Conduct do not give rise to a private cause of action," and, thus, "there was no essential allegation or any other correction to be added that would have made the stricken count legally sufficient" [internal quotation marks omitted]).

[5] Subsequent appellate review of this comparative process is plenary because it considers the trial court's interpretation of the pleadings. See, e.g., *Caltabiano* v. *L & L Real Estate Holdings II*, *LLC*, supra, 128 Conn. App. 88.

800 A.2d 582, cert. denied, 261 Conn. 922, 806 A.2d 1061 (2002).[6]

Changes in the amended pleading are material if they reflect a "good faith effort to file a complaint that states a cause of action" in a manner responsive to the defects identified by the trial court in its grant of the motion to strike the earlier pleading. *Parsons* v. *United Technologies Corp.*, supra, 243 Conn. 75–76. Factual revi-

[6] We note that the defendant's arguments regarding this issue may be premised on a misunderstanding of the trial court's memorandum of decision. Specifically, the introduction to the trial court's decision sustaining the defendant's objection to the substitute complaint states generally that the court "agrees" with the defendant's arguments "that the allegations of the substitute complaint are insufficient to cure the legal deficiencies of the earlier pleading. The defendant requests that its objection be sustained and that judgment enter in its favor based on the plaintiff's failure to file an adequate substitute pleading in response to the order granting the motion to strike. See Practice Book § 10-44." Acknowledging the changes made to the allegations in the substitute complaint, the trial court nevertheless concluded that the "substantive allegations of the substitute complaint describing the circumstances of the plaintiff's injur[ies] remain essentially the same as those of the original complaint." The trial court's analysis does *not*, however, specifically conclude that the substitute complaint lacked "materially different" allegations; see *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, supra, 128 Conn. App. 88; rather, the trial court went on to reach the merits of the plaintiff's claim, concluding that, in light of the factual allegations made in the substitute complaint, the justifications underlying the firefighter's rule barred the plaintiff's cause of action. Specifically, the trial court concluded that the plaintiff's substitute complaint continued to allege that "the defendant's negligence precipitated the very reason for his involvement" and rejected "the plaintiff's argument that the . . . holding in *Kaminski* . . . should be applied only in situations where a person actually requests police assistance." Following *Jainchill* v. *Friends of Keney Park*, Superior Court, judicial district of Hartford, Docket No. CV-00-0800130-S (February 28, 2001), the trial court in the present case reiterated that "there is no question that the alleged acts of negligence . . . were 'intimately connected' with the very reason why the plaintiff became involved with Pariseau and why he acted to apprehend Pariseau when he attempted to escape. Specifically, the plaintiff engaged Pariseau precisely because he was concerned about the level of the [defendant's] control or supervision of Pariseau. Furthermore, the plaintiff was injured while acting in the performance of his duty as a police officer to apprehend a dangerous, fleeing individual and to protect other people from this potential danger."

sions or additions are necessary; mere rewording that "basically restate[s] the prior allegations" is insufficient to render a complaint new following the granting of a previous motion to strike. *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, supra, 128 Conn. App. 89 n.4. The changes in the allegations need not, however, be extensive to be material.

For example, in *Parsons*, the trial court had stricken an earlier wrongful termination count on the ground that the complaint had "fail[ed] to specify a particular 'workplace' or 'place of employment' within Bahrain that was allegedly unsafe. The [trial] court held that the plaintiff's allegation that the entire nation was generally unsafe was insufficient." *Parsons* v. *United Technologies Corp.*, supra, 243 Conn. 75. In concluding that the additional facts pleaded in the subsequent complaint "render the allegations sufficiently different from those in the [stricken] complaint to make the waiver rule inapplicable," this court recognized that "the only difference between the two sets of allegations is the addition of the specific location in Bahrain to which the plaintiff was to be sent. This addition, however, addresses the specific defect that the trial court had emphasized in originally striking the plaintiff's wrongful termination claim . . . ." Id., 74–75; see also id., 71 (noting that amendment specified location of " 'Headquarters, Bahrain Defense Force,' " while previously stricken complaint "merely stated that the plaintiff was to be sent to Bahrain"). The court emphasized that, "although the plaintiff's subsequent additions to his factual allegations may have been limited, they can fairly be read as attempting to address the specific problem identified by the trial court in striking the plaintiff's original wrongful termination claim. The plaintiff appears to have made a good faith effort to file a com-

plaint that states a cause of action."[7] (Footnote omitted.) Id., 75–76.

The defendant argues that the trial court properly concluded that the substitute complaint was not materi-

[7] A comparison of other cases is helpful to illustrate those amendments that rise to the level of "materially different" for purposes of avoiding the waiver rule. Compare *Alexander* v. *Commissioner of Administrative Services*, 86 Conn. App. 677, 683, 862 A.2d 851 (2004) ("new allegations [in amended complaint] that transformed [the] previous, generic equal protection claim into a colorable claim of selective enforcement . . . differ materially from the equal protection allegation contained in [the] original complaint"), *Emerick* v. *Kuhn*, 52 Conn. App. 724, 734, 737 A.2d 456 (adding statutory and constitutional references, even if inapposite, "may be read as attempting to address the legal insufficiency specifically identified by the trial court . . . making the count materially different," and, therefore, plaintiff had not "waived his right to appeal from the striking"), cert. denied, 249 Conn. 929, 738 A.2d 653, cert. denied, 528 U.S. 1005, 120 S. Ct. 500, 145 L. Ed. 2d 386 (1999), and *Doe* v. *Marselle*, 38 Conn. App. 360, 364–65, 660 A.2d 871 (1995) (reaching "merits of the plaintiff's argument that she has pleaded wilful conduct" in amended complaint because, "[d]espite this inexplicable continued absence of the word wilful, her next pleading contained additional language with which she argues that wilful conduct may be inferred," which constituted "a good faith effort to file a complaint that states a cause of action"), rev'd on other grounds, 236 Conn. 845, 675 A.2d 835 (1996), with *St. Denis* v. *de Toledo*, 90 Conn. App. 690, 695–96, 879 A.2d 503 (reiteration of facts, without satisfying defect by providing content of confidential information gained by defendant during attorney-client relationship, did not constitute "materially different" complaint), cert. denied, 276 Conn. 907, 884 A.2d 1028 (2005), *Ross* v. *Forzani*, 88 Conn. App. 365, 369–70, 869 A.2d 682 (2005) (waiver rule applicable when original complaint alleged that " 'the defendant deposed the plaintiff and . . . used against the plaintiff at said deposition confidential information [previously] disclosed by the plaintiff to the defendant's law firm,' " and amended complaint "simply restated the original allegations, now stating that '[i]n representing [the plaintiff's wife] in the dissolution of her marriage to the plaintiff, after having represented the plaintiff in the same matter, the defendant used to the plaintiff's disadvantage privileged information obtained as a result of his prior representation of the plaintiff' "), and *Parker* v. *Ginsburg Development CT, LLC*, 85 Conn. App. 777, 780 n.2, 859 A.2d 46 (2004) ("[T]he plaintiff attempted to amend the complaint by emphasizing that he had been promised employment until a certain time and omitted the language regarding the number of houses contemplated to be sold per year. These changes are not material. Furthermore, substituting the phrase 'explicitly told' for 'promised without ambiguity' does not change the plaintiff's status as an at-will employee, which was the basis of the trial court's decision to strike the complaint. In both the original and substitute complaints, the two phrases mean the same thing.").

ally different from the original complaint and, therefore, properly sustained its objection. We disagree. While the original and substitute complaints at issue in the present appeal contain similar factual allegations and specifications of negligence, there are significant differences that appear to address the trial court's determination that the claims in the original complaint were barred by the justifications underlying the firefighter's rule. In particular, the original complaint alleged that the plaintiff followed the ambulance transporting Pariseau to the defendant's facilities to "*both* . . . check upon the condition of the [police officers] injured by Pariseau incident to his arrest, *and* to attend to the paperwork necessary for Pariseau's emergency committal as a psychiatric patient. To this end, he brought with him Pariseau's effects, specifically the quantities of psychotropic prescription drugs [found in Pariseau's car] as evidence of the necessity of such committal." (Emphasis added.) The original complaint then alleges that, when the plaintiff arrived at the defendant's facilities, "he first checked on the condition of the injured [police officers], *then he attended to filling out the emergency committal paperwork for Pariseau*. Pursuant to committal, [the defendant] took Pariseau into custody based on the evidence of the clear danger he posed to the public. During this process, [the plaintiff] was shown by [the defendant's employees] that Pariseau was in a holding room under observation, undergoing a full psychiatric evaluation. [The plaintiff] saw that Pariseau had been placed in restraints by [the defendant's employees]." (Emphasis added.)

In granting the defendant's motion to strike the original complaint, the trial court agreed with the plaintiff that this court stated in *Levandoski* v. *Cone*, supra, 267 Conn. 661, that the firefighter's rule itself is limited to premises liability cases. Nevertheless, the court followed Superior Court case law; see, e.g., *Jainchill* v.

Friends of Keney Park, Superior Court, judicial district of Hartford, Docket No. CV-00-0800130-S (February 28, 2001); implementing the policies underlying the firefighter's rule as expressed in *Kaminski* v. *Fairfield*, supra, 216 Conn. 38–39, and *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 579–81, 717 A.2d 215 (1998), and determined that it precluded liability based on the allegations in the complaint because "the plaintiff was injured while acting in the performance of his duty as a police officer and that the alleged acts of negligence were *intimately connected with the very occasion for which the plaintiff was on the property*." (Emphasis added; internal quotation marks omitted.) The trial court relied on the allegations that the plaintiff had arrested Pariseau and brought him to the defendant's facilities for emergency commitment, at which point the plaintiff became concerned about the defendant's security measures.

The new and revised factual allegations in the substitute complaint are responsive to the memorandum of decision granting the motion to strike insofar as they deemphasize, or eliminate entirely, the plaintiff's role in Pariseau's committal. First, the substitute complaint contains a new paragraph alleging that the plaintiff first proceeded to Bridgeport Hospital "to follow up with [a separate] accident," which had occurred prior to and in the vicinity of Pariseau's accident. See footnote 1 of this opinion. The substitute complaint then alleges that, "[u]pon the completion of his obligations as to the first accident, the plaintiff left Bridgeport Hospital and proceeded to [the defendant's facilities], to check upon the condition of the [police officers] injured by Pariseau incident to his arrest." Notably, the substitute complaint omits the allegation from the original complaint concerning the plaintiff's role in completing the documents necessary for Pariseau's emergency committal. The substitute complaint further minimizes the plaintiff's role in the committal of Pariseau, alleging that, when

the plaintiff arrived at the defendant's facilities, "he first checked on the condition of the [injured police and officers and then] attended to additional paperwork." The substitute complaint then specifically alleges that, "[b]ased upon the actions of Pariseau and the observations of [the injured police officers], an emergency committal was completed for Pariseau pursuant to [General Statutes] § 17a-503 (a)." To this end, the substitute complaint also alleges that the defendant "did not at any time call for or seek or invite in any regard the assistance of the Connecticut state troopers, including but not limited to [the plaintiff]."[8]

Read in the light most favorable to the plaintiff, the allegations set forth in the plaintiff's substitute complaint constitute a "good faith effort" to address the pleading deficiency identified by the trial court in granting the motion to strike the original complaint. *Parsons* v. *United Technologies Corp.*, supra, 243 Conn. 75–76. Specifically, the new allegations in the substitute complaint are an attempt to distinguish this case from *Kaminski* v. *Fairfield*, supra, 216 Conn. 31, which held that the parents who allowed their adult schizophrenic son to live with them could not be held vicariously liable for the injuries he inflicted on a policeman, and that

[8] The plaintiff also added new allegations to the substitute complaint concerning the defendant's duty. The substitute complaint emphasized that the plaintiff "at no time assumed a duty as a public servant to protect a mentally compromised individual" and that the plaintiff had acted under an assumption that, following Pariseau's committal, the defendant and its employees "would perform to the reasonable standards inherent in their duty as professional custodians so as not to risk the safety and well-being of others." The plaintiff also added numerous allegations emphasizing the defendant's special competence and relationship of custody and control over Pariseau in light of the emergency committal under § 17a-503 (a).

We note that the substitute complaint also contains certain immaterial differences, namely, an allegation that the plaintiff walked from the first accident on Interstate 95 to a second accident involving Pariseau. See footnote 1 of this opinion. Likewise, the substitute complaint also provides greater detail about the plaintiff's injuries.

they had no duty to warn beyond the initial call. The new allegations seek to disconnect the plaintiff's presence from the emergency committal of Pariseau in an apparent attempt to address the trial court's observation in granting the motion to strike that the defendant's "alleged acts of negligence were intimately connected with the very occasion for which the plaintiff was on the property." (Internal quotation marks omitted.) The new allegations in the substitute complaint, therefore, materially differ from those in the original complaint for purposes of preserving the plaintiff's right to appeal after repleading pursuant to Practice Book § 10-44. Accordingly, we reach the merits of the plaintiff's claims on appeal.

II

We note that, following this court's decisions in *Kaminski* and *Levandoski*, some trial court judges have continued to apply the firefighter's rule[9] to nonpremises liability claims while others have not. In the present case, the trial court relied on *Jainchill* v. *Friends of Kenney Park*, supra, Superior Court, Docket No. CV-00-0800130-S, which had applied the justifications underlying firefighter's rule to a nonpremises liability claim. In granting the defendant's motion to strike, the trial court in the present case found that "the alleged acts of negligence were 'intimately connected with the very occasion for which the plaintiff was on the property'" because "[s]pecifically, according to the complaint, the plaintiff knew about Pariseau's violent and unstable emotional condition because the plaintiff had arrested him and brought him to the hospital."

[9] The common-law firefighter's rule provides, in general terms, that a firefighter or police officer who enters private property in the exercise of his or her duties cannot bring a civil action against the property owner for injuries sustained as the result of a defect in the premises. See *Levandoski* v. *Cone*, supra, 267 Conn. 653–54. We note that a full discussion of the policies underlying the firefighter's rule and its limitation to premises liability claims is set forth in *Sepega* v. *DeLaura*, 326 Conn. 788, A.3d (2017).

In response, the plaintiff added multiple new allegations to clarify the circumstances under which the plaintiff had gone to the defendant's facilities and certain other facts on which the trial court had previously relied. Specifically, the substitute complaint alleged that (1) the plaintiff had been on duty on Interstate 95 in connection with an entirely unrelated accident before encountering Pariseau, (2) the plaintiff had traveled to Bridgeport Hospital in connection with his duties relating to the other accident before traveling to the defendant's facilities, (3) the plaintiff had traveled to the defendant's facilities in order to check on the police officers who had arrested Pariseau and to complete additional paperwork, (4) Pariseau was brought to the defendant's facilities by an ambulance, not by the plaintiff, and (5) the defendant had accepted custody of Pariseau, in its institutional capacity, as a professional custodian with a degree of special competence.

In sustaining the defendant's objection to the substitute complaint, the trial court held that the defendant's negligent act was " 'intimately connected' with the very reason . . . the plaintiff . . . acted to apprehend Pariseau when he attempted to escape" and that "the plaintiff was injured while acting in the performance of his duty as a police officer . . . ."[10] In reaching its conclusion, the trial court again cited *Jainchill* and *Kaminski*. As this court has recently clarified in *Sepega* v. *DeLaura*, 326 Conn. 788, A.3d (2017), however,

[10] We note that this language, which is different from that used by the trial court in granting the motion to strike, appears to dispense with any requirement of antecedent negligence on the property and, thereby, would provide immunity to a defendant whenever there is any negligence that triggers a response by a public safety officer in the performance of his or her official duties. This test would convert the firefighter's rule into an outright ban on any claim by a public safety officer who was injured through the negligence of a third party while on duty. For the reasons stated in *Sepega* v. *DeLaura*, 326 Conn. 788, A.3d (2017), such an expansion is unwarranted.

the firefighter's rule does not extend beyond claims of premises liability. In *Sepega*, this court also distinguished *Kaminski* as a case that was primarily concerned with vicarious liability of parents and an independent duty to warn. Id., 799. Accordingly, we conclude that the trial court's decision to sustain the defendant's objection to the substitute complaint in the present case was improper because the plaintiff had alleged a valid cause of action. As a result, the trial court's subsequent judgment in favor of the defendant must be reversed in light of this court's decision in *Sepega*.[11]

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion ROGERS, C. J., and ESPINOSA, Js., concurred.

ROBINSON, J., with whom McDONALD, J., joins, dissenting. I respectfully disagree with part II of the majority's opinion, which concludes that the claims of the plaintiff, Justin Lund, a Connecticut state trooper, are not barred by the firefighter's rule in accordance with *Sepega* v. *DeLaura*, 326 Conn. 788, A.3d (2017), also decided today, which limits that doctrine to premises liability cases.[1] As I stated in my concurring opinion in *Sepega*, I believe that, under *Kaminski* v. *Fairfield*, 216 Conn. 29, 578 A.2d 1048 (1990), and *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998), along with the vast majority of sister state decisions, the firefighter's rule is not so limited, notwithstanding some unfortunate obiter dicta in *Levandoski* v. *Cone*, 267 Conn. 651, 841 A.2d 208 (2004). See *Sepega* v. *DeLaura*,

[11] The plaintiff has requested that we recognize § 319 of the Restatement (Second) of Torts. In view of our decision that the substitute complaint stated a valid cause of action, it is unnecessary for us to reach that issue.

[1] I note that I agree with, and join in, part I of the majority's opinion.

supra, 817. Applying the firefighter's rule to the present case, I conclude that it bars the ordinary negligence claims made by the plaintiff, who was injured in the line of duty while attempting to subdue an emotionally disturbed person who had been committed to the custody of the defendant, Milford Hospital, Inc. I would affirm the judgment of the trial court, rendered after sustaining the defendant's objection to a substitute complaint, which the plaintiff filed after the court had granted the defendant's motion to strike the original complaint. Accordingly, I respectfully dissent.

My analysis of the firefighter's rule is framed by a review of the operative facts, as pleaded in the substitute complaint.[2] The substitute complaint alleges that Dale Pariseau was transported by ambulance to the defendant's emergency room for psychiatric observation following his violent and irrational behavior—including attacks that injured two other Connecticut state troopers—at the scene of an automobile accident on Interstate 95. The plaintiff, who had been attending to an earlier accident nearby, went to the defendant's emergency room to check on the two police officers who had been injured by Pariseau; the defendant's staff did not "at any time" ask for the assistance of any other police officers, including the plaintiff, with regard to Pariseau. In the process of checking on the injured officers, the defendant's staff showed the plaintiff that Pariseau was being restrained under observation while undergoing a full psychiatric evaluation. The plaintiff relied on their representations that Pariseau had been properly secured and restrained.

After gathering up Pariseau's effects and leaving the emergency room, the plaintiff looked into Pariseau's

[2] The standards governing review of a motion to strike are well established. See, e.g., *Lawrence* v. *O & G Industries, Inc.*, 319 Conn. 641, 648–49, 126 A.3d 569 (2015).

room and noticed that he was no longer there. The plaintiff asked where Pariseau had gone, and a nurse indicated that he had gone unaccompanied and unrestrained into a bathroom behind the nurse's station to change into a hospital gown. The plaintiff then knocked on the locked bathroom door, heard water running in the sink, and asked Pariseau to unlock the door. Pariseau asked for more time in the bathroom, with the water still running. After ten minutes, Pariseau flung open the door and ran out, hurling a garbage can that was filled with a mix of hot water and his own urine at the plaintiff, another police officer, and two nurses. The plaintiff pursued Pariseau, but slipped in the mix of urine and water on the floor. The plaintiff then caught up to Pariseau, and sustained injuries to his head, shoulder, elbow, wrist, and hand in the ensuing struggle.

The plaintiff then brought the civil action underlying the present appeal, alleging that the defendant was negligent in numerous ways, including (1) failing to supervise or restrain Pariseau properly, (2) failing to provide for adequate security in the area where foreseeably dangerous patients are held, (3) allowing Pariseau, who was known to be dangerous, to go to the bathroom unrestrained and unaccompanied, and (4) failing to train its staff properly.

In my concurring opinion in *Sepega*, I disagreed with the majority's decision to limit the firefighter's rule to premises liability cases and concluded that, like the vast majority of our sister states, Connecticut should retain "the common-law firefighter's rule as a matter of public policy, notwithstanding underlying doctrinal changes such as the statutory abolition of assumption of risk or differing landowners' duties." *Sepega* v. *DeLaura*, supra, 326 Conn. 839. In reaching this conclusion, I agreed with the New Mexico Supreme Court's recent observation in *Baldonado* v. *El Paso Natural Gas Co.*, 143 N.M. 288, 293, 176 P.3d 277 (2008), that

grounding the firefighter's rule in public policy allows for an "approach [that] will encourage the public to ask for rescue while allowing professional rescuers to seek redress in limited but appropriate circumstances." (Internal quotation marks omitted.) *Sepega* v. *DeLaura*, supra, 841.

In *Sepega*, I agreed with the enumeration of the firefighter's rule by the Rhode Island Supreme Court in *Ellinwood* v. *Cohen*, 87 A.3d 1054, 1057–58 (R.I. 2014), namely, that an injured first responder[3] is barred "from maintaining a negligence action against a tortfeasor whose alleged malfeasance is responsible for bringing the officer to the scene of a fire, crime, or other emergency where the officer is injured. . . . To be shielded from liability under the public-safety officer's rule, the defendant, or alleged tortfeasor, must establish three elements: (1) that the tortfeasor injured the [first responder] . . . in the course of [the first responder's] employment; (2) that the risk the tortfeasor created was the type of risk that one could reasonably anticipate would arise in the dangerous situation which [the first responder's] employment requires [him or her] to encounter; and (3) that the tortfeasor is the individual who created the dangerous situation which brought the [first responder] . . . to the . . . accident scene . . . ." (Internal quotation marks omitted.) *Sepega* v. *DeLaura*, supra, 326 Conn. 841–42.

With respect to the circumstances under which it is appropriate for our first responders to seek redress, I found instructive the Kansas Supreme Court's recent formulation of exceptions to the firefighter's rule in

[3] I note that the doctrine known in Connecticut as the firefighter's rule has been described in other jurisdictions in broader terms such as the "public safety officer's rule" or the "professional rescuer doctrine." *Sepega* v. *Delaura*, supra, 326 Conn. 816 n.1 (*Robinson, J.*, concurring). As in *Sepega*, I refer to police officers, firefighters, and emergency medical technicians, collectively, as first responders.

Apodaca v. *Willmore*, 306 Kan. 103, 392 P.3d 529 (2017), under which "a law enforcement officer will not be barred from recovery [1] for negligence or intentional acts of misconduct by a third party, [2] if the individual responsible for the [officer's] presence engages in a subsequent act of negligence after the [officer] arrives at the scene, or [3] if an individual fails to warn of known, hidden dangers on his premises or misrepresents the nature of the hazard where such misconduct causes the injury to the [officer]." (Footnote omitted; internal quotation marks omitted.) *Sepega* v. *DeLaura*, supra, 326 Conn. 842.

Assuming the applicability of the firefighter's rule, the plaintiff argues that the subsequent negligence exception allows him to maintain this action against the defendant. Specifically, the plaintiff argues that, "[w]hether [he] even came to the [defendant's facilities] in the exercise of *any* official capacity, he was clearly not summoned by the [defendant]. He was, thus, injured not by the negligence which caused his engagement (the accident on the highway), but rather—once he completed his official duties—by the [defendant's] *subsequent* negligence in failing properly to control a dangerous psychiatric patient who had been previously delivered to its custody." (Emphasis in original.) I disagree. Rather, in concluding that the plaintiff's claim is barred by the firefighter's rule—despite the fact that he acted independently and was not summoned by the defendant's staff to aid in controlling Pariseau—I find highly instructive the decision of the California Court of Appeal in *Seibert Security Services, Inc.* v. *Superior Court*, 18 Cal. App. 4th 394, 22 Cal. Rptr. 2d 514 (1993), the facts of which are remarkably similar to the present case.

In *Seibert Security Services, Inc.*, a police officer, John Migailo, had brought a suspect in custody to a hospital for examination of possible injuries. Id., 402.

While Migailo was doing paperwork, a psychiatric patient became abusive toward a privately employed security guard and another police officer. Id. At the time, the patient "was restrained in a chair; Migailo asked that he be handcuffed for greater control, but [the security guard] failed to do so. Shortly thereafter, [the patient] stood up and grabbed for [the security guard's] baton, and Migailo helped subdue him." Id. The patient "was then handcuffed and put in an isolation cell, but the handcuffs were taken off because he seemed 'pretty pleasant' " to another security guard, who believed that the patient was abusive toward only black persons. Id. Within fifteen minutes, however, the patient attacked the second security guard, who then called for help. Id., 402–403. Migailo then helped subdue the patient again and was injured. Id., 403.

The California court rejected the argument that the firefighter's rule did not apply because Migailo's "presence was unrelated to the negligence which caused his injury." Id., 407. The court noted that, while at the hospital, Migailo "was performing one duty—completing paperwork relating to the injured suspect—when the alleged negligence of [the security guards] caused him to initiate a new and different law enforcement action and attempt to subdue [the patient]. While the conduct of [the security guards] may have been 'independent of and unrelated to' the conduct which originally brought Migailo to the hospital, it is factually undisputed that it was the *immediate cause* of Migailo's presence in or near the holding cell . . . ." (Emphasis in original.) Id., 411. The court emphasized that "the fortuitous presence of such personnel cannot mean that any negligent conduct which creates a crisis to which such personnel react becomes actionable in tort . . . ." Id. It observed the inequity of "awarding tort recovery to the officer who happens to be at the scene when a negligently caused incident occurs, but barring recov-

ery for the officer who responds to a radio call. We find such distinctions untenable and inconsistent with the long-established purpose of the [firefighter's] rule." Id., 410; see also *Kelhi* v. *Fitzpatrick*, 25 Cal. App. 4th 1149, 1158–60, 31 Cal. Rptr. 2d 182 (1994) (The court followed *Seibert Security Services, Inc.*, and held that the firefighter's rule barred claims of a highway patrol officer who was injured while blocking traffic from runaway tires because "despite the fortuitous nature of [officer's] presence" riding department motorcycle on way to work, "the runaway tires were a significant factor in prompting [his] subsequent actions. Once aware of the crippled truck and the runaway tires, [the officer] unhesitatingly reacted as though on duty, which he was, and as though he had been summoned to deal with those precise hazards."); cf. *Hodges* v. *Yarian*, 53 Cal. App. 4th 973, 984–85, 62 Cal. Rptr. 2d 130 (1997) (Following *Seibert Security Services, Inc.*, and holding that firefighter's rule barred claim of off-duty deputy sheriff injured while apprehending burglar in neighbor's garage, because "original reason" deputy was in garage was "irrelevant" and apprehension of criminal suspect is "precisely the [type] of public [function] the taxpayers expect, pay, and equip . . . [police] officers to perform. When a [police] officer assumes responsibility for performing such functions and is injured in the process, his or her recourse is in the system of special public benefits established to compensate the officer for such injuries." [Internal quotation marks omitted.]).

Similarly, in *Higgins* v. *Rhode Island Hospital*, 35 A.3d 919, 921 (R.I. 2012), the plaintiff, a firefighter and emergency medical technician, was present in a hospital emergency room after transporting a patient there by ambulance. A nurse asked the plaintiff for assistance in restraining an emotionally disturbed patient who was shouting and spitting at her, so that she could administer medication to him. Id. The plaintiff was injured while

attempting to restrain the patient in conjunction with two private security guards contracted by the hospital. Id., 921–22. In holding that the plaintiff's claim against the hospital and the security firm was barred by the firefighter's rule, the Rhode Island Supreme Court rejected his argument that "the firefighter's rule should bar claims only in those limited situations when an emergency requires the firefighter to go to the scene, and that for the rule to apply, injury must arise out of the same circumstances that originally brought the firefighter to the scene. [The plaintiff] points out that the emergency that caused him to go to the hospital in the first place had been resolved and that his efforts to assist the nurse in subduing the unruly patient were not a requirement of his job." Id., 923.

The Rhode Island court emphasized in *Higgins* that the firefighter's rule "was never intended to impose a literal requirement for the alleged tortfeasor to have called the [first responder] to the scene in order for the rule to apply. . . . What is required is that there be some nexus or connection between the alleged tortfeasor and the emergency that brought the [first responder] to the place where he or she was injured." (Citations omitted; internal quotation marks omitted.) Id. The court held that the hospital and its nurse were "the allegedly negligent tortfeasors who caused the [plaintiff] to go to the place where he was injured," and rejected the plaintiff's "argument that he was injured in an intervening incident that occurred at the original emergency scene." Id., 923–24. Focusing on the nurse, the court emphasized that the plaintiff, as a firefighter and emergency medical technician, "was responding to a citizen who was in distress and who was at risk of being injured by an unruly patient. Thus, he was reacting to an emergency as opposed to a routine, previously scheduled call." Id., 924. The court emphasized that when the plaintiff "completed his original task of trans-

porting the first patient to the hospital, he left the emergency scene involving the first patient and moved to a new emergency scene after a nurse at the hospital requested [his] assistance with a difficult patient. At that point, the first emergency ended and a new emergency, allegedly created by the negligent restraint of the patient, began." Id., 925; see *Read* v. *Keyfauver*, 233 Ariz. 32, 34–37, 308 P.3d 1183 (App. 2013) (firefighter's rule barred claim of on-duty police officer injured while extricating plaintiff from wrecked vehicle, despite fact that officer's actions exceeded his obligations because "[a]pplication of the rule . . . does not . . . turn on [the officer's] responsibilities and obligations once he arrived on the scene; rather, the key to the analysis is whether [the officer's] on-duty obligations as a law enforcement officer compelled his presence at the scene in the first instance"); *Kennedy* v. *Tri-City Comprehensive Community Mental Health Center, Inc.*, 590 N.E.2d 140, 145 (Ind. App. 1992) (firefighter's rule "particularly suited" to bar claim of police officers summoned by group home to assist with emotionally disturbed resident).

These cases demonstrate that, for purposes of the firefighter's rule, it was of no moment that the plaintiff in the present case, as an on-duty police officer, did not act in response to a formal request by the defendant for assistance, but rather, exercised his own initiative to check on, and ultimately subdue, Pariseau. I recognize that, "while the firefighter's rule may be a wise one, implementation often depends on fortuitous circumstances," and that, at least in some ways, its application to the present case would have rewarded the plaintiff "had he chosen to ignore his duty, and penalize[d] him for his courage and conscientiousness" in voluntarily acting to restrain Pariseau. *Kelhi* v. *Fitzpatrick*, supra, 25 Cal. App. 4th 1161. Nevertheless, the significant public policy underlying the firefighter's

rule; see *Sepega* v. *DeLaura*, supra, 326 Conn. 817 (*Robinson, J.*, concurring); leads me to conclude that the defendant did not owe the plaintiff a duty of care in this situation, thus, barring the plaintiff's negligence claims. Accordingly, I conclude that the trial court properly sustained the defendant's objection to the substitute complaint and rendered judgment accordingly.

Because I would affirm the judgment of the trial court in favor of the defendant, I respectfully dissent.