NATIONWIDE MUTUAL INSURANCE COMPANY ET AL. *v.* JEFFREY S. PASIAK ET AL.
(SC 19618)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa, Robinson and D'Auria, Js.*

Syllabus

The plaintiff insurance companies sought a declaratory judgment to determine, inter alia, whether they were obligated to indemnify the defendant P in connection with a successful underlying tort action brought against him by the defendants S and S's husband. The tort action involved an incident that occurred when S, who recently had been hired by P's construction company to perform office duties, was working alone in an office located in P's home. An armed, masked intruder entered that office and tied S's hands, gagged and blindfolded her, and, pointing a gun at her head, threatened to kill her family if she did not give him the combination to a safe in the home. P returned home during the incident and unmasked the intruder, discovering that the intruder was K, P's friend. After S was untied, she asked to leave, but P told her to stay. Although S told P about the threats that K had made to her, P would not let S call the police. S remained with P for several hours in fear that, if she left, K might harm her or her family. S eventually left later that day, and the police subsequently were contacted. K was arrested and charged with various offenses related to the incident. At the time of the incident, P was covered by homeowners and umbrella insurance policies issued by the plaintiffs, but he did not have a separate commercial liability policy. The plaintiffs provided P with an attorney to defend him in the tort action but notified him that they were reserving their right to contest coverage. In the tort action, which included an allegation

* This case was originally argued before a panel of this court consisting of Justices Palmer, Eveleigh, McDonald, Espinosa, and Robinson. Thereafter, Chief Justice Rogers and Justice D'Auria were added to the panel and have read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

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

of false imprisonment, the jury returned a general verdict for S and her husband, awarding compensatory and punitive damages. In the declaratory judgment action, the trial court granted P's motion for summary judgment as to the plaintiffs' duty to defend P in the tort action, but, following judgment in the tort action, denied the plaintiffs' motion for summary judgment regarding the plaintiffs' duty to indemnify P under the umbrella policy, as the injury of false imprisonment was covered under that policy. Following a trial to the court, in which only documentary evidence, largely originating from the tort action, was submitted, the court concluded that the business pursuits exclusion to the umbrella policy, which excluded from coverage occurrences arising out of business pursuits, did not apply and rendered judgment for P. The plaintiffs appealed to the Appellate Court, challenging the trial court's limitations on discovery, the scope of the declaratory judgment trial, the court's determinations regarding certain of the policy exclusions, and its rejection of their public policy argument regarding indemnification for punitive damages. The Appellate Court reversed the trial court's judgment, determining that that court improperly had concluded that the business pursuits exclusion of the umbrella policy did not apply. On the granting of certification, P appealed to this court, contending that the Appellate Court improperly determined, inter alia, that S's acquiescence in obeying P's commands was a function of their employer-employee relationship and that the false imprisonment of S was therefore an occurrence arising out his business pursuits that was excluded from coverage under his umbrella policy. *Held*:

1. The Appellate Court and the trial court having employed an incorrect standard for determining whether P's tortious conduct was an occurrence arising out of his business pursuits, and there not having been sufficient evidence in the record to conclude whether the business pursuits exclusion applied as a matter of law, this court reversed the Appellate Court's judgment with direction to remand the case for a trial de novo at which the trial court must resolve the factual issue of whether P's false imprisonment of S arose out of his business pursuits in operating his company in determining whether S's claim for false imprisonment was excluded from coverage under the business pursuits exclusion in P's umbrella policy: the trial court improperly focused on K's actions as they may have related to the actual profitability of P's business rather than considering P's purported statements to and actions toward S as they may have related to P's business or the employment relationship and incorrectly indicated that an act could fall within the exclusion only if was exclusively in furtherance of P's business pursuits, and the Appellate Court relied too heavily on S's employment status and the work based location at which she sustained her injury; moreover, the purpose of the particular act giving rise to liability, its nature and its relationship, or lack of relationship, to the business, or use of the employment relationship or status to effectuate the harmful act may support

the requisite causal nexus for purposes of establishing that the act arose out a business pursuit.

2. The plaintiffs could not prevail on any of their alternative grounds for affirming in whole or in part the Appellate Court's judgment: the workers' compensation exclusion in P's umbrella policy did not preclude indemnification because the evidence established that S was an employee of P's company, and P, the insured, would not have personally incurred any obligation to pay a compensable workers' compensation claim if S had timely filed a notice of such claim and, in any event, the plaintiffs failed to establish that S's injuries would have been compensable; furthermore, the exclusion in the policy for personal injury resulting from physical or mental abuse did not apply as a matter of policy construction, the covered occurrence of false imprisonment having constituted a specific intentional act expressly covered by the policy, and any maltreatment undertaken by P to commit the false imprisonment was not of such independent consequence as to distinguish it from that inherent in the intentional tort; moreover, this court concluded that, in the absence of a public policy reflected in this state's laws against providing coverage for common-law punitive damages, under the facts of the present case, the plaintiffs were bound to keep the bargain they had struck with P, which included providing coverage for such damages for false imprisonment.

3. This court concluded that, on remand, the plaintiffs are entitled to appropriate discovery and a trial de novo to determine whether they have met their burden of proving that the business pursuits exclusion bars coverage: there was no privity between the plaintiffs and P as to that issue in the underlying tort action because they did not share an interest in proving that P's false imprisonment of S arose out of his business pursuits, it having been the interest of both P and S to minimize or avoid presentation of facts that could have established a connection between P's interests as the owner of the construction company and the wrongful actions he was alleged to have undertaken, and the issue of whether that causal connection existed was neither actually litigated nor necessarily determined; furthermore, it was of no consequence that the plaintiffs did not seek permission to intervene in the tort action, the plaintiffs having had no such right, and it would have been an abuse of discretion to allow permissive intervention to litigate their policy exclusion in the tort action.

(*Two justices concurring and dissenting in one opinion*)

Argued December 5, 2016—officially released December 19, 2017

Procedural History

Action for a declaratory judgment to determine whether the plaintiffs were obligated to defend and indemnify the named defendant under certain insurance

policies for damages awarded against him in a separate tort action, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the Complex Litigation Docket, where the court, *Brazzel-Massaro*, *J.*, denied the plaintiffs' motion for summary judgment and granted the motion for summary judgment filed by the named defendant et al. as to the duty to defend under the policies; thereafter, the named defendant filed a counterclaim; subsequently, the court granted in part the plaintiffs' motion for summary judgment as to the duty to indemnify under the homeowners insurance policy; thereafter, the court granted the plaintiffs' motion to bifurcate the trial and the matter was tried to the court, *Brazzel-Massaro*, *J.*, on the complaint only; judgment for the named defendant et al. on count two of the complaint determining that the plaintiffs were required to indemnify under the umbrella policy, from which the plaintiffs appealed to the Appellate Court, *Keller*, *Prescott* and *West*, *Js.*, which reversed the trial court's judgment and remanded the case with direction to render judgment for the plaintiffs on count two of the amended complaint and to dismiss as moot their appeal regarding their duty to defend under the umbrella policy, and the named defendant et al., on the granting of certification, appealed to this court. *Reversed; further proceedings.*

David J. Robertson, with whom were *Christopher H. Blau*, and, on the brief, *Madonna A. Sacco*, for the appellants (named defendant et al.).

Robert D. Laurie, with whom, on the brief, were *Heather L. McCoy* and *Elizabeth F. Ahlstrand*, for the appellees (plaintiffs).

Opinion

McDONALD, J. This declaratory judgment action concerns whether an insurer is obligated to indemnify a business owner under a personal insurance policy for

liability arising from his false imprisonment of his company's employee at her workplace and the evidentiary basis on which such a determination is to be made. In this certified appeal, the defendant Jeffrey S. Pasiak[1] challenges the Appellate Court's determination that such liability fell under the business pursuits exclusion to coverage under his personal umbrella policy. The plaintiffs, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, contend that coverage not only is barred under the business pursuits exclusion, but also that (1) coverage is barred under policy exclusions for workers' compensation obligations and for mental abuse, (2) construing the policy to provide indemnification for common-law punitive damages arising from intentional wrongdoing violates public policy, and (3) the trial court improperly limited the scope of discovery and the declaratory judgment trial, depriving the plaintiffs of a trial de novo on coverage issues that they could not litigate in the underlying tort action.

We hold that the case must be remanded to the trial court for further proceedings, limited to the issue of whether the business pursuits exclusion applies. We conclude that neither the Appellate Court nor the trial court employed the correct standard for determining whether the defendant's tortious conduct was an occurrence "arising out of" the business pursuits of the insured and that further factual findings would be necessary to determine whether this exception applies

[1] The complaint in the declaratory judgment action also named three other defendants: Pasiak Construction Services, LLC, the company owned and operated by Pasiak; and Sara Socci and Kraig Socci, the plaintiffs in the underlying tort action. The claims in the present action arise under a policy issued to Pasiak as the sole policyholder, and the Soccis have not participated in this appeal. Accordingly, we refer to Pasiak throughout this opinion as the defendant and to the remaining defendants by name. Because Kraig Socci's only claim is derivative of Sara Socci's claims, any reference to Socci is to Sara Socci.

under the correct standard. We further conclude that the plaintiffs cannot prevail on their alternative grounds regarding the other exclusions and public policy as a matter of law. Finally, we conclude that the plaintiffs are not limited to the evidentiary record in the underlying tort action to establish that the business pursuits exclusion barred coverage. Accordingly, we reverse the judgment of the Appellate Court with direction to remand the case to the trial court for a trial de novo on that issue.

I

BACKGROUND

The Appellate Court's opinion summarized the facts that the jury reasonably could have found in the underlying tort action; see *Nationwide Mutual Ins. Co.* v. *Pasiak*, 161 Conn. App. 86, 90–91, 127 A.3d 346 (2015); which we have supplemented with the limited additional facts found by the trial court in the declaratory judgment action, also gleaned from the evidence in the underlying action.[2] At the time of the incident in question, the defendant operated a construction company, Pasiak Construction Services, LLC. The sole office for the company was a room located on the second floor of the defendant's home in Stamford; the company's construction equipment was stored at another site. Sara Socci was hired by the defendant to perform duties as an office worker for the construction company and worked at that office in the defendant's home. Her work hours were from 9:30 a.m. to 2:30 p.m., four days a week.

During Socci's second week of employment, while she was alone at the office performing her duties, a masked intruder carrying a gun entered the office and

[2] The same judge presided over both actions. For a more comprehensive discussion of the facts giving rise to the tort action, see *Socci* v. *Pasiak*, 137 Conn. App. 562, 565–67, 49 A.3d 287, cert. denied, 307 Conn. 919, 54 A.3d 563 (2012).

demanded that she open the safe. Unaware that a safe existed in the home, Socci could not provide the intruder with the safe's combination. The intruder led Socci into a bedroom, where he tied her hands, gagged her, and blindfolded her. At one point, he pointed a gun at her head and threatened to kill her family if she did not give him the combination.

The defendant returned home during the incident and was attacked by the intruder. During an ensuing struggle, the defendant pulled off the intruder's mask, revealing him to be Richard Kotulsky, a lifelong friend of the defendant. The defendant began talking to Kotulsky and inquired about Socci. Kotulsky led the defendant to Socci, who was crying and hysterical. After the defendant made Kotulsky untie Socci, the three of them returned to the office, where a discussion continued between the defendant and Kotulsky about a woman.[3] Socci asked to leave, but the defendant told her to stay and sit down. After further discussions with Kotulsky, the defendant allowed him to leave the house. Socci then told the defendant about the threats that Kotulsky had made to her and her family, but the defendant would not call the police. He told Socci to stay with him and refused to let her call the police or to discuss the incident further. She remained with the defendant for several hours, in fear that, if she left, she or her family might be harmed by Kotulsky. Only after he drove Socci to Greenwich to discuss the incident with a mutual friend, Denise Taranto, who advised them to call the police, did he allow Socci to leave.

The police were not contacted until later that day, after Socci and her husband, Kraig Socci, went to the

[3] Although the trial court made no findings regarding this discussion, Socci's testimony indicated that she had heard statements in the exchange between Kotulsky and the defendant indicating that Kotulsky was angry with the defendant because he believed that the defendant had been intimate with a woman with whom Kotulsky was, or had been, involved.

defendant's home and learned that he had not yet contacted them. In the presence of the Soccis and the police, the defendant telephoned Kotulsky and told him that "the girl" had identified him to the police. Some days later, Kotulsky was arrested and eventually convicted of various criminal offenses in connection with this incident.[4] The safe was never opened, and its contents were never divulged.

As a result of the incident, Socci developed posttraumatic stress disorder, requiring extensive therapy, and was unable to return to work.

The record reveals the following additional undisputed facts and procedural history. Socci and Kraig Socci commenced a tort action against the defendant (Socci action), alleging (1) false imprisonment, (2) negligence, (3) negligent infliction of emotional distress, (4) intentional infliction of emotional distress, and (5) loss of consortium as to Kraig Socci.[5] The first two claims related to the defendant's conduct in preventing Socci from leaving until she and the defendant returned from their meeting with Taranto. The third and fourth claims related to the entirety of the defendant's conduct leading up to his comments on the telephone to Kotulsky implicating Socci as the police informant. The complaint alleged that Socci had sustained permanent physical and emotional injuries and requested compensatory and punitive damages.

At the time of the relevant events, the defendant was covered by insurance policies issued by the plaintiffs, including a homeowners policy covering bodily injury and a personal umbrella policy covering bodily injury

[4] In the declaratory judgment action, the plaintiffs produced evidence that the defendant also had been arrested in connection with this incident, eventually pleaded nolo contendere to two misdemeanor offenses, and paid a fine of $3015.

[5] The complaint also alleged reckless infliction of emotional distress, but the jury was not charged on that count.

and personal injury. He did not have a separate commercial liability policy. The plaintiffs provided the defendant with an attorney to defend him in the Socci action, but notified him by letter that they were reserving their right to contest coverage.

In accordance with that reservation, the plaintiffs commenced the present action seeking a declaration that they had no duty to defend or indemnify the defendant in the Socci action. The plaintiffs then filed a motion for summary judgment, and the defendant filed a motion for summary judgment solely as to the duty to defend. The court concluded that the allegations of the complaint were sufficiently broad to obligate the plaintiffs to provide the defendant with a defense under both his homeowners policy and his personal umbrella policy. The court deemed it improper at that juncture to determine the plaintiffs' duty to indemnify the defendant. Accordingly, it granted the defendant's motion for summary judgment as to the duty to defend and denied the plaintiffs' motion seeking a declaratory judgment in their favor.

The Socci action proceeded to trial with the plaintiffs providing defense counsel to the defendant. At the conclusion of evidence, the parties agreed not to submit special interrogatories to the jury. The jury returned a general verdict in favor of the Soccis. It awarded Socci $628,200 in compensatory damages and $175,000 in punitive damages, and awarded Kraig Socci $32,500 in compensatory damages.

Following judgment in the Socci action, the plaintiffs filed a second motion for summary judgment in the declaratory judgment action regarding their duty to indemnify the defendant.[6] In support of their motion,

[6] Prior to the filing of the plaintiffs' second motion for summary judgment, the defendant filed a twelve count counterclaim against the plaintiffs, alleging various acts of bad faith, misrepresentation, and breach of contract. The trial court granted a motion to bifurcate the declaratory judgment complaint and the counterclaim. Although the defendant's counterclaim remains pend-

the plaintiffs argued that the defendant's policies did not provide coverage for his liability in the Socci action because those policies cover accidents, not intentional acts, and do not cover claims for emotional distress. The plaintiffs further contended that any coverage would be barred under policy exclusions for intentional acts, wilful violations of law, business pursuits, workers' compensation, and mental abuse. Finally, they contended that indemnification for the punitive damages would contravene public policy.

The trial court framed its decision on the motion in three parts: (1) the effect of the general verdict; (2) the duty to indemnify under the homeowners policy; and (3) the duty to indemnify under the umbrella policy. The court concluded that the general verdict rule[7] precluded the plaintiffs' arguments premised on characterizing the defendant's conduct as exclusively intentional and, therefore, not a covered accidental occurrence. The court reasoned that the absence of jury interrogatories created an ambiguity as to the counts on which the verdict rested, and that because the *plaintiffs* had failed to afford themselves of the opportunity to seek such interrogatories, the verdict must be construed to rest on both intentional and negligent conduct as alleged in the complaint. The court did not, at this stage, explain

ing before the trial court, the decision on the declaratory judgment action was an appealable final judgment because the court's decision disposed of all counts of the plaintiffs' complaint. See Practice Book § 61-2.

[7] "Under the general verdict rule, if a jury renders a general verdict for one party, and no party requests interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party. . . . Thus, in a case in which the general verdict rule operates, if any ground for the verdict is proper, the verdict must stand; only if every ground is improper does the verdict fall. . . . A party desiring to avoid the effects of the general verdict rule may elicit the specific grounds for the verdict by submitting interrogatories to the jury." (Citations omitted; internal quotation marks omitted.) *Dowling* v. *Finley Associates, Inc.*, 248 Conn. 364, 371–72, 727 A.2d 1245 (1999).

how the plaintiffs could have availed themselves of this opportunity.

With regard to the duty to indemnify, the court concluded that the plaintiffs were entitled to summary judgment under the homeowners policy, but were not entitled to judgment under the broader umbrella policy. Specifically, the court pointed to the homeowners policy coverage limited to "bodily injury," which was defined to exclude emotional distress unless caused by a physical injury, and the lack of evidence in the Socci action establishing such physical injury. Although the umbrella policy contained a similar definition for bodily injury, that policy also covered "personal injury," a term defined by reference to specified injuries/acts, including "false imprisonment." In light of that express coverage, the trial court concluded that many of the policy exclusions on which the plaintiffs relied were inapplicable. The court also concluded that the requisite facts to support other exclusions on which the plaintiffs relied were not supported by evidence or jury interrogatories in the Socci action. The court rejected the plaintiffs' public policy argument regarding the punitive damages. Accordingly, it granted in part and denied in part the plaintiffs' motion for summary judgment.

After the trial court clarified that its decision on the motion for summary judgment was not a final judgment for purposes of appeal, a dispute arose over the scope of evidence, and, hence, discovery, that would be permitted in the declaratory judgment trial. In a written decision addressing that dispute, the trial court cast the parties' positions as polar opposites, with the plaintiffs contending that they were entitled to a trial de novo regarding the issue of indemnification, unfettered as to what evidence may be proffered on that issue, and the defendant contending that the trial must be limited to the evidence presented in the Socci action. Ultimately the court concluded that "[i]t was [the plaintiffs'] choice

in the [Socci] action to not actively pursue in greater detail the issues affecting the exclusions in the policy," that the plaintiffs could have submitted interrogatories to the jury to determine the basis of its decision, and that they should not be permitted to have a second bite at the apple. The court suggested that the plaintiffs could have requested interrogatories through defense counsel, with whom they were in close contact, or through their intervention as a party. Accordingly, it denied the plaintiffs' request to permit unrestricted evidence. However, a week before the trial commenced, the court permitted the plaintiffs to obtain certain limited discovery related to the workers' compensation exclusion, and they were able to depose the defendant on that matter. At the conclusion of that deposition, the plaintiffs stated for the record that the trial court had precluded discovery on matters other than those on which they questioned the defendant that the plaintiffs believed were relevant.

Thereafter, the declaratory judgment trial proceeded with only documentary evidence submitted to the court, largely originating from the Socci action, except as to certain matters related to workers' compensation. Following argument, the court issued a decision declaring that the plaintiffs were obligated to indemnify the defendant for his liability in the Socci action. In setting forth the procedural history of the case, the court cast its earlier ruling on the scope of discovery as precluding new evidence relating to the basis of liability in the Socci action, and not that relating to the issue of coverage under the policy. In analyzing the substantive issue, the court largely followed its prior reasoning when denying the plaintiffs' motion for summary judgment. Accordingly, it rendered judgment for the defendant.

The plaintiffs appealed from the judgment to the Appellate Court. They challenged the trial court's limitations on discovery, the scope of the declaratory judg-

ment trial, the court's determinations regarding the policy exclusions, except the intentional acts and wilful violation of law exclusions, and its rejection of the public policy argument. The Appellate Court determined that the trial court improperly had concluded that the business pursuits exclusion of the policy did not apply. Therefore, it reversed the trial court's judgment on that basis without reaching the other issues raised by the plaintiffs. *Nationwide Mutual Ins. Co.* v. *Pasiak*, supra, 161 Conn. App. 89. The defendant's certified appeal to this court followed. See *Nationwide Mutual Ins. Co.* v. *Pasiak*, 320 Conn. 913, 130 A.3d 266 (2016).

II

INSURANCE POLICY AND ITS CONSTRUCTION

We begin with the relevant policy provisions and the principles of construction that guide our review of those provisions.

A

The defendant's personal umbrella policy obligated the plaintiffs to pay for damages an insured is legally obligated to pay due to an "occurrence" in excess of certain sums. This term and others of significance are defined in the policy as follows:

"Occurrence(s) means an accident including continuous or repeated exposure to the same general conditions. It must result in bodily injury, property damage, or personal injury caused by an insured. . . .

"Bodily injury means bodily harm, including resulting sickness, disease, or death. Bodily injury *does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any other similar injury unless the direct result of bodily harm*. . . .

"*Personal injury means*:

"[a] false arrest, *false imprisonment*, wrongful conviction, wrongful entry . . . ." (Emphasis added.)

The policy provides exclusions to this coverage. Those exclusions include:

"An occurrence arising out of the business pursuits . . . of an insured";

"Any insured's obligation, including benefits required to be paid, under any of the following laws . . . workers' compensation"; and

"Bodily injury or personal injury resulting from acts or omissions relating directly or indirectly to sexual molestation, physical or mental abuse, harassment, including sexual harassment, whether actual, alleged or threatened. . . ."

B

In considering the meaning of these exclusions and their application to the facts, we are guided by settled principles. "[C]onstruction of a contract of insurance presents a question of law for the [trial] court which this court reviews de novo. . . . The determinative question is the intent of the parties, that is, what coverage the [insured] expected to receive and what the [insurer] was to provide, as disclosed by the provisions of the policy. . . . In evaluating the expectations of the parties, we are mindful of the principle that provisions in insurance contracts must be construed as laymen would understand [them] and not according to the interpretation of sophisticated underwriters and that the policyholder's expectations should be protected as long as they are objectively reasonable from the layman's point of view. . . . [W]hen the words of an insurance contract are, without violence, susceptible of two [equally responsible] interpretations, that which will

sustain the claim and cover the loss must, in preference, be adopted. . . . [T]his rule of construction favorable to the insured extends to exclusion clauses." (Citations omitted; internal quotation marks omitted.) *Vermont Mutual Ins. Co.* v. *Walukiewicz*, 290 Conn. 582, 591–92, 966 A.2d 672 (2009). When construing exclusion clauses, "the language should be construed in favor of the insured unless [the court] has a high degree of certainty that the policy language clearly and unambiguously excludes the claim." (Internal quotation marks omitted.) *Connecticut Ins. Guaranty Assn.* v. *Drown*, 314 Conn. 161, 188, 101 A.3d 200 (2014). While the insured bears the burden of proving coverage, the insurer bears the burden of proving that an exclusion to coverage applies. See *Capstone Building Corp.* v. *American Motorists Ins. Co.*, 308 Conn. 760, 788 n.24, 67 A.3d 961 (2013).

This court previously has applied these rules of construction to policy definitions similar to those in the present case. In *Imperial Casualty & Indemnity Co.* v. *State*, 246 Conn. 313, 327–29, 714 A.2d 1230 (1998), this court confronted the internal inconsistency between a policy limiting coverage to accidents (i.e., unintentional conduct) while also providing coverage for certain injuries that could result only from intentional conduct, such as false imprisonment. Consistent with our rules of construction, we construed this ambiguity in favor of the insured to provide coverage for the intentional acts specified.[8] See id., 330–31.

[8] The defendant suggests that, applying the logic of *Imperial Casualty & Indemnity Co.*, supra, 246 Conn. 329, we should conclude that the business pursuits exclusion in his policy is ambiguous and must be construed in his favor to afford coverage. Specifically, he contends that the policy is ambiguous as to whether that exclusion applies to both intentional and accidental acts. However, the ambiguity identified in *Imperial Casualty & Indemnity Co.* would dictate that the policy coverage extends to both types of acts, not that the exclusion does not apply to either type of act.

Our prior construction of those provisions has particular significance to the present case. As the trial court emphasized in its decision on the second motion for summary judgment regarding indemnification, "the provision within the umbrella policy that includes coverage for false imprisonment is crucial in the determination of whether the policy provides coverage for the plaintiffs' verdict entered in the underlying Socci [action]." The trial court identified the injury of false imprisonment, and no other, as covered under the policy at issue.[9] With that focus in mind, we turn to the certified issue.

III

BUSINESS PURSUITS EXCLUSION

The defendant contends that the Appellate Court improperly concluded that the false imprisonment of Socci was "[a]n occurrence arising out of the business pursuits . . . of an insured." As we explain subsequently in this opinion, although we agree with the defendant that the Appellate Court's analysis was flawed, we conclude that the trial court's analysis also was flawed.

The trial court made no separate factual findings with regard to this exclusion. However, its analysis referred to critical testimony in the Socci action regarding cer-

[9] Socci's emotional distress (whether negligently or intentionally inflicted) is not an enumerated personal injury. Nor is it a covered bodily injury because bodily injury is defined to exclude emotional distress unless caused by a physical injury, and the trial court found that the evidence established at most the converse—that Socci's emotional distress may have caused or exacerbated existing physical symptoms. Socci's claim of negligence would not give rise to a covered bodily injury for similar reasons. Although in submissions to the court, the defendant occasionally referred to the claim of negligence as a claim for "wrongful detention," which is a type of personal injury specified in the policy, the trial court characterized wrongful detention as an intentional act. The defendant has provided no analysis regarding the meaning of the wrongful detention provision or its relationship to the exclusions at issue.

tain statements the defendant purportedly made to Socci after Kotulsky left as to reasons why they should not call the police. The defendant purportedly cited his long, close friendship with Kotulsky and the ruinous effect on his business.

The trial court framed its analysis in terms of two related issues. First, it noted that "the real issue is whether the actions of [the defendant] in response to the robbery arose out of the business pursuits for the Pasiak Construction business *or* [arose] as the defendant contends because he was trying to protect a lifelong friend." (Emphasis added.) Second, it considered whether the defendant's actions evidenced the continuity and profit motive necessary under the business pursuits test. The court rejected the plaintiffs' reliance on Socci's testimony indicating that the defendant had claimed (at the time of the incident) that the incident would ruin his business, reasoning that this argument ignored the testimony reflecting Kotulsky's friendship with the defendant, and the lack of proof of any impact on the defendant's business had the robbery succeeded.

The Appellate Court determined that the trial court's analysis reflected a misapplication of the business pursuits exclusion. *Nationwide Mutual Ins. Co.* v. *Pasiak*, supra, 161 Conn. App. 89, 100–101. The Appellate Court concluded that the defendant's operation of his construction company, and his employment of Socci in support thereof, constituted the requisite "business pursuits," and that Socci's injuries arose out of that business pursuit. Id., 99. As to the latter conclusion, the court reasoned that "the sine qua non of the defendant's tortious conduct was . . . Socci's presence at his business office fulfilling her responsibilities as his employee. . . . Stated alternatively, had . . . Socci not been at the office performing her duties as an employee of the defendant's business, there is no reason to believe that she would have been assaulted by Kotul-

sky and, consequently, detained by the defendant. Indeed, there was no other reason for . . . Socci's presence on the premises, and her acquiescence in obeying the defendant's commands to wait and not leave were, in part, a function of their employer-employee relationship." Id., 99–100. The Appellate Court deemed the defendant's subjective motivations for his actions irrelevant. Id., 101.

On appeal to this court, the defendant contends that the Appellate Court's analysis improperly focused on the sequence of events rather than the mechanism of the injury. He also contends that the Appellate Court improperly found facts insofar as it concluded that Socci's acquiescence in obeying the defendant's commands was a function of their employer-employee relationship. He claims that the trial court properly focused on whether his actions met the continuity and profit motive test for a business pursuit articulated by this court. We conclude that the analysis in both of the lower courts' decisions was a misapplication of the business pursuits exclusion, and that the case should be remanded to the trial court to allow it to reconsider the evidence, adduced after further proceedings, under the proper standard.

Although the policy defines the term "business" as "a trade, profession, occupation, or employment including self-employment," it does not define "business pursuits" or "arising out of." The meaning of both terms, however, has been articulated by this court as well as other jurisdictions considering this exclusion.

This court adopted a definition of "business pursuits" in *Pacific Indemnity Insurance Co.* v. *Aetna Casualty & Surety Co.*, 240 Conn. 26, 30, 688 A.2d 319 (1997), that conformed to the meaning ascribed in most other jurisdictions: "[T]he term business pursuits encompasse[s] two elements, continuity and profit motive. As

to the first, there must be a customary engagement or a stated occupation; as to the latter, there must be shown to be such activity as a means of livelihood; gainful employment; means of earning a living; procuring subsistence or profit; commercial transactions or engagements." (Internal quotation marks omitted.) This test casts a broader net to include activities other than those that bear the formal or legal hallmarks of an established business or a full-time occupation. See, e.g., id., 27–28 (boarding horses by persons otherwise employed full-time was business pursuit). "The determination of whether a particular activity constitutes a business pursuit is to be made by a flexible fact-specific inquiry." Id., 33.

In the present case, no one questions that the activities of the defendant's construction company meet the two elements of a business pursuit. Nor does anyone contend that false imprisonment constitutes a business pursuit. Therefore, the question is not whether the false imprisonment itself satisfied the continuity/profit elements of a business pursuit, as the trial court's rationale suggested, but, rather, whether the defendant's false imprisonment of Socci "arose out of" his business pursuits in operating the construction company. See *Neal* v. *Celina Mutual Ins. Co.*, 522 S.W.2d 179, 180–81 (Ky. 1975) ("[o]f course accidents of any kind are not business pursuits in themselves; the exclusion clause plainly has reference to accidents that occur in the carrying on of a business pursuit"); *Greenman* v. *Michigan Mutual Ins. Co.*, 173 Mich. App. 88, 94, 433 N.W.2d 346 (1988) ("[t]he complained of acts themselves need not be performed for profit; the acts need only be performed during the business pursuit of the insured"); 46 C.J.S. 226, Insurance § 1353 (2007) ("[w]hen the questioned conduct is incidental to the insured's regular employment, profit motive is irrelevant to a business pursuits determination"); see also *Cambridge Mutual Fire Ins. Co.*

v. *Sakon*, 132 Conn. App. 370, 378, 31 A.3d 849 (2011) (conducting separate inquiries as to whether actions alleged in counterclaim for which indemnification was sought were business pursuits and whether actions arose from insured's business pursuit of commercial development plan), cert. denied, 304 Conn. 904, 38 A.3d 1202 (2012). Therefore, the present case turns on the meaning of "arising out of" the defendant's business pursuits.

The meaning of "arising out of" in the context of insurance policies was already well established when this court first defined business pursuits. In *Hogle* v. *Hogle*, 167 Conn. 572, 577, 356 A.2d 172 (1975), this court explained that "it is sufficient to show only that the accident or injury 'was connected with,' 'had its origins in,' 'grew out of,' 'flowed from,' or 'was incident to' the [specified subject] in order to meet the requirement that there be a causal relationship between the accident or injury and the [subject]." See also *Misiti, LLC* v. *Travelers Property Casualty Co. of America*, 308 Conn. 146, 158, 61 A.3d 485 (2013) (recognizing that definition in *Hogle* applies outside of motor vehicle context). This court has described the definition in *Hogle* as "expansive," underscoring that it is less demanding than the standard for proximate cause. *New London County Mutual Ins. Co.* v. *Nantes*, 303 Conn. 737, 759, 36 A.3d 224 (2012); accord *Board of Education* v. *St. Paul Fire & Marine Ins. Co.*, 261 Conn. 37, 48, 801 A.2d 752 (2002); see also *Fibreboard Corp.* v. *Hartford Accident & Indemnity Co.*, 16 Cal. App. 4th 492, 504, 20 Cal. Rptr. 2d 376 (1993) (citing same definition and noting that " '[a]rising out of' are words of much broader significance than 'caused by' "); *Metropolitan Property & Casualty Ins. Co.* v. *Fitchburg Mutual Ins. Co.*, 58 Mass. App. 818, 820–21, 793 N.E.2d 1252 (2003) ("[t]he terms 'arising out of' and 'in connection with' are not be to be construed narrowly but are read expan-

sively in insurance contracts"); *United States Fire Ins. Co.* v. *New York Marine & General Ins. Co.*, 268 App. Div. 2d 19, 21–22, 706 N.Y.S.2d 377 (2000) ("when used in automobile exclusion clauses, the words arising out of the . . . use are deemed to be broad, general, comprehensive terms, ordinarily understood to mean originating from, incident to, or having connection with the use of the vehicle" [internal quotation marks omitted]).

Although *Hogle* involved a provision affording coverage, its expansive definition also has been applied when the phrase was used in coverage exclusions; see, e.g., *New London County Mutual Ins. Co.* v. *Nantes*, supra, 303 Conn. 753–54; including the business pursuits exclusion. See *Cambridge Mutual Fire Ins. Co.* v. *Sakon*, supra, 132 Conn. App. 380. Numerous other jurisdictions apply the same definition to the business pursuits exclusion. See, e.g., *Metropolitan Property & Casualty Ins. Co.* v. *Fitchburg Mutual Ins. Co.*, supra, 58 Mass. App. 821; *Blomdahl* v. *Peters*, Docket No. 2014AP2696, 2016 WL 413174, *2 (Wis. App. February 4, 2016). But see *Farm Bureau Life Ins. Co.* v. *Holmes Murphy & Associates, Inc.*, 831 N.W.2d 129, 134 n.7 (Iowa 2013) ("a phrase like 'arising out of' may be given a narrower scope in an exclusion when a court finds the exclusion ambiguous and therefore determines the phrase means 'proximately caused by' "); *South Carolina Farm Bureau Mutual Ins. Co.* v. *S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 339–40, 554 S.E.2d 870 (App. 2001) (concluding that narrower construction of arising out of applied to business pursuits exclusion under rule of construction specific to exclusions), rev'd on other grounds, 353 S.C. 249, 578 S.E.2d 8 (2003).

Our case law indicates that the question of whether the defendant's false imprisonment of Socci was connected with, had its origins in, grew out of, flowed from, or was incident to his business pursuits would also be a factual matter. See *Kolomiets* v. *Syncor International*

Corp., 252 Conn. 261, 265, 746 A.2d 743 (2000) (considering whether injury arose out of employment in workers' compensation claim as matter of fact); *Whitney Frocks, Inc.* v. *Jobrack*, 135 Conn. 529, 534, 66 A.2d 607 (1949) ("the question whether or not the transaction arose out of the business for which the corporation was organized was a question of fact for the jury to decide"). But see *Northern Security Ins. Co.* v. *Rosenthal*, 186 Vt. 578, 579, 980 A.2d 805 (2009) ("[t]he court's determination that there was no coverage presents a mixed question of fact and law: [1] a factual determination concerning the nature of the conduct giving rise to the liability; and [2] a legal conclusion as to whether the conduct falls within the business-pursuits exclusion").

Our case law construing the phrase "arising out of" offers useful, but limited, guidance. Although broadly construed, this court's application of this phrase indicates that the requisite causal nexus would not be met merely by a sequential relationship between the injury and the business pursuit. Compare *Misiti, LLC* v. *Travelers Property Casualty Co. of America*, supra, 308 Conn. 162–63 n.11 (causal nexus to establish liability arising out of use of part of premises leased to tavern not established simply because use of tavern and injury occurred in sequence; injury occurred after patron left tavern, took detour from walkway to parking lot to scenic area, and was injured on part of premises not leased to tavern), with *Board of Education* v. *St. Paul Fire & Marine Ins. Co.*, supra, 261 Conn. 45, 47–48 (causal nexus to establish liability resulting from use of covered vehicle established when bus driver negligently allowed special education student to depart from bus unsupervised and student thereafter was sexually assaulted in school bathroom when driver's negligence was direct factor in causing injury). Accordingly, this case law makes clear that the mere fact that the false imprisonment occurred after Socci arrived at her work-

place would not, in and of itself, establish the requisite nexus.

Given the paucity of Connecticut case law applying this exclusion, it is useful to consider other courts' applications of this common exclusion, albeit with a critical eye in light of other textual differences.[10] See annot., 35 A.L.R.5th 375 (1996) (noting that business pursuits exclusions may be found in "practically all homeowners' policies," "nearly all of the provisions employ virtually the same language," "provisions . . . include broad exclusionary language for liabilities 'arising out of business pursuits of an insured' ").

Although the workplace as the locus of the injury is always a significant factor, as one early commentator noted: "There seems almost unanimous accord in the decisions that the location at which an act is performed is not decisive on the question of whether the act constitutes part of an excluded business pursuit. Rather, it

[10] Cases from other jurisdictions must be critically examined because the business pursuits exclusion is often accompanied by an exception for activities that are ordinarily incident to nonbusiness pursuits. See, e.g., *Hennings* v. *State Farm Fire & Casualty Co.*, 438 N.W.2d 680, 684 (Minn. App. 1989). In the present case, no such exception is included in the defendant's umbrella policy, although a similar exception is included in the business pursuits exclusion in the defendant's homeowners policy.

When such an exception is present, some courts have excluded from coverage only those occurrences that are exclusively in furtherance of the business pursuit or that could not be accomplished outside the employment relationship. See, e.g., *Farmers Ins. Exchange* v. *Sipple*, 255 N.W.2d 373, 375 (Minn. 1977); *New Jersey Property Liability Guaranty Assn.* v. *Brown*, 174 N.J. Super. 629, 633, 417 A.2d 117 (App. Div.), cert. denied, 85 N.J. 462, 427 A.2d 561 (1980); see also *Crane* v. *State Farm Fire & Casualty Co.*, 5 Cal. 3d 112, 118, 485 P.2d 1129, 95 Cal. Rptr. 513 (1971) (when there is dual purpose, nonbusiness pursuit exception to exclusion applies). Other courts have rejected such a broad reading of the exclusion. See, e.g., *Armed Forces Ins. Exchange* v. *Transamerica Ins. Co.*, 88 Haw. 373, 379, 966 P.2d 1099 (App. 1998), cert. denied sub nom. *Armed Forces Ins. Exchange* v. *Sagawa*, Hawaii Supreme Court, Docket No. 21183 (October 26, 1998); *Martinelli* v. *Security Ins. Co. of New Haven*, 490 S.W.2d 427, 432 (Mo. App. 1972) (citing Illinois and Michigan cases).

is the nature of the particular act involved and its relationship, or lack of relationship, to the business that controls." L. Frazier, "The 'Business Pursuits' Exclusion in Personal Liability Insurance Policies: What the Courts Have Done with It," 1970 Ins. L.J. 519, 533–34 (1970). The requisite connection is obvious in cases in which the act giving rise to liability occurred in the usual course of employment or the acts were incidental to those occurring in the usual course of employment. See, e.g., *Metropolitan Property & Casualty Ins. Co.* v. *Fitchburg Mutual Ins. Co.*, supra, 58 Mass. App. 821 (focusing on fact that act injuring coworker at workplace, although not itself related to employment, occurred while coworker was working, and injury would not have occurred but for fact that insured tortfeasor had been performing task for her employer just before injury occurred); *Berkshire Mutual Ins. Co.* v. *LaChance*, 115 N.H. 487, 489, 343 A.2d 642 (1975) (accident injuring coworker at workplace arose out of business pursuit when it occurred while insured was engaged in his regular occupation).

Because "arising out of" is an expansive phrase, however, the causal connection to the business pursuit extends beyond such obvious examples. For example, the purpose of the activity or action giving rise to the liability, in connection with other employment related facts, may support the requisite causal nexus. Altercations causing bodily injury and even death have been deemed to arise from a business pursuit when the dispute giving rise to the action was business related. *Liberty Mutual Ins. Co.* v. *Miller*, 549 So. 2d 1200, 1200–1201 (Fla. App. 1989) (exclusion applied to confrontation between physicians at hospital, regarding care and treatment of mutual patient, that resulted in personal injury); *Otero* v. *United States Fire Ins. Co.*, 314 So. 2d 208, 209 (Fla. App. 1975) (exclusion applied to assault of tenant by insured landlord's son-in-law

when assault arose in course of dispute regarding insured's return of security deposit and tenant's return of key), cert. denied, 328 So. 2d 843, 844 (Fla. 1976); *Reliance Ins. Co.* v. *Fisher*, 164 Mont. 278, 280, 284–85, 521 P.2d 193 (1974) (exclusion applied when teacher struck another teacher over disciplining of student during school hours); *U. S. F. & G. Ins. Co.* v. *Brannan*, 22 Wn. App. 341, 342, 350, 589 P.2d 817 (1979) (killing of one business associate and wounding of another fell within exclusion when altercation arose over business matter and took place on business site during business hours); see also *Kermans* v. *Pendleton*, 62 Mich. App. 576, 579, 233 N.W.2d 658 (1975) (exclusion applied when insured owner of bar shot patron because owner "was engaged in his business pursuit at the time of the shooting and . . . but for this business pursuit, the shooting would not have occurred"; shooting incident was related to physical safety of bar and its patrons); *Luneau* v. *Peerless Ins. Co.*, 170 Vt. 442, 443, 446, 750 A.2d 1031 (2000) (exclusion applied when insured, engaged as disc jockey at wedding, knocked over negligently stacked speakers when he got into fight with one wedding guest about song insured had forgotten to play, injuring another wedding guest). Although courts often have placed emphasis on the fact that the incident occurred at a work site during normal business hours; see 9A S. Plitt et al., Couch on Insurance (3d Ed. Rev. 2015) § 128.19, p. 128-58 ("liabilities in connection with workplace altercations have been held to necessarily involve the insured's business pursuits and therefore fall within the business pursuits exclusion"); the absence of such facts has not precluded application of the exclusion as a matter of law when an employment relationship existed and related to the basis of the dispute. See, e.g., *Smith* v. *Sears, Roebuck & Co.*, 191 W. Va. 563, 566, 447 S.E.2d 255 (1994) (material question of fact as to whether business pursuits exclusion applied

because, although initial disagreement between coworkers was related to business, conflict occurred after they left workplace).

In other circumstances in which the business nexus of the activity itself is not clear, the purpose of the activity may be a decisive factor. Compare *South Carolina Farm Bureau Mutual Ins. Co.* v. *S.E.C.U.R.E. Underwriters Risk Retention Group*, supra, 347 S.C. 339–40 (exclusion did not apply to dog owner's liability for dog bite sustained by minor at office because dog was family pet; it was not kept for security purposes, as mascot or any function associated with business), with *Safeco Ins. Co.* v. *Leslie*, 276 Or. 221, 224, 554 P.2d 469 (1976) (exclusion applied to injury from accidental discharge of gun kept by service station employee when he brought gun to work to protect large amounts of cash that accumulated at station on Friday nights). In addition, injuries sustained in social gatherings initiated by the employer may be deemed to arise out of a business pursuit if the purpose of the gathering related to the business, i.e., improving employee relationships or workplace morale. See *West American Ins. Co.* v. *California Mutual Ins. Co.*, 195 Cal. App. 3d 314, 323–24, 240 Cal. Rptr. 540 (1987). The mere fact that a dual social and business purpose exists will not, in and of itself, take the activity outside the scope of the exclusion.[11] See id., 324; see also *New London County Mutual Ins. Co.* v. *Nantes*, supra, 303 Conn. 756–58.

In addition, even when no business purpose reasonably could motivate or be furthered by the action, use of the employment relationship or status to effectuate the harmful act may provide the requisite causal connection. Thus, sexual assaults have been deemed to arise out of a business pursuit when the employer or

[11] But see footnote 10 of this opinion, which recognizes that some courts apply a more stringent approach when the exclusion includes an exception.

employee used his or her position of authority or trust attendant to that position to perpetrate the acts. See, e.g., *Armed Forces Ins. Exchange* v. *Transamerica Ins. Co.*, 88 Haw. 373, 381, 386, 966 P.2d 1099 (App. 1998) (sexual assaults by public housing inspector against residents arose from business pursuit because inspector gained entry to residents' homes purportedly to conduct inspections, which was function performed as part of employment), cert. denied sub nom. *Armed Forces Ins. Exchange* v. *Sagawa*, Hawaii Supreme Court, Docket No. 21183 (October 26, 1998); *Rubin* v. *United Services Automobile Assn.*, Docket No. 04-P-1629, 2006 WL 1543972, *1–2 (Mass. App. June 6, 2006) (dentist's sexual harassment of employee at office and at YMCA arose out of business pursuit; latter "was related to, linked to, or associated with her employment" because dentist paid employee for her time during both periods [internal quotation marks omitted]); *Greenman* v. *Michigan Mutual Ins. Co.*, supra, 173 Mich. App. 90, 94 (employer's sexual harassment of employee occurred at law firm where both worked; additional support for finding that act arose from business pursuit is that claim could not legally exist but for employer-employee relationship); *Frankenmuth Mutual Ins. Co.* v. *Kompus*, 135 Mich. App. 667, 677, 354 N.W.2d 303 (1984) (insured therapist "was able to commit the complained-of acts [against patients] apparently only because of the trust imposed in him as doctor by his patients"), appeal denied, Supreme Court of Michigan, Docket Nos. 74742, 74743 (February 28, 1985); *Zimmerman* v. *Safeco Ins. Co. of America*, 605 N.W.2d 727, 731 (Minn. 2000) ("[B]ecause the sexual harassment for which [the insured] was found liable can only happen in the workplace—for example, the creation of a hostile work environment—by definition it falls within the 'business pursuits' exclusion. . . . [T]he liability-creating conduct is based upon the

employment relationship in the business setting."). But see *Scheer* v. *State Farm Fire & Casualty Co.*, 708 So. 2d 312, 313 (Fla. App.) (where court did not distinguish between two policies at issue, respectively including "caused by" and "arising out of" business pursuits, exclusions did not bar duty to defend physician alleged to have touched employees' breasts and buttocks because acts did not arise out of his profession and conduct was not primarily undertaken in furtherance of business interest), review denied, 719 So. 2d 893 (Fla. 1998); *Miller* v. *McClure*, 326 N.J. Super. 558, 570, 742 A.2d 564 (App. Div. 1998) (deeming exclusion applicable to hostile workplace environment sexual harassment claims but deeming it inapplicable to any claims not legally dependent on employment relationship), aff'd, 162 N.J. 575, 745 A.2d 1162 (1999). A supporting factor cited in harassment cases in which the exclusion applied was that the conduct directly impacted the employee's employment. See, e.g., *Greenman* v. *Michigan Mutual Ins. Co.*, supra, 94 (claim of employer's sexual harassment could not have existed outside employer-employee relationship); *Zimmerman* v. *Safeco Ins. Co. of America*, supra, 731 (sexual harassment led to employee's constructive discharge, occurrence that could not take place outside business environment).

In light of this case law, it is clear that neither the trial court nor the Appellate Court applied the proper standard for "arising out of" a business pursuit. The trial court's continuity and profit motive test conflated the test for determining whether a business pursuit exists with the one for determining whether the act giving rise to the injury arose out of such a pursuit. It appears to have compounded that misstep in two ways. First, the court focused on Kotulsky's actions as they may have related to the actual profitability of the defendant's business, rather than considering the defendant's

purported statements to, and actions toward, Socci as they may have related to his business and/or the employment relationship.[12] Second, the court's analysis indicated that an act could satisfy the exclusion only if it was exclusively in furtherance of the business pursuit; consequently, any personal motive for that act would negate application of the exclusion. However, equating "arising out of" with exclusively "in furtherance of" would render the former clearly more restrictive than the descriptive terms used in *Hogle*. Indeed, such an interpretation would render most tortious conduct (even accidental) outside the scope of the business pursuits exclusion, as such conduct rarely actually furthers a business purpose. Moreover, an employer's misuse of the employer-employee relationship to accomplish an end, whether partially or wholly motivated by personal reasons, could satisfy the expansive definition in *Hogle* of "arising out of."[13]

[12] Socci's testimony reflects numerous additional facts on which the trial court's decision is silent. For example, Kotulsky was targeting Socci's "boss." Because Socci was a new employee, the defendant periodically stopped by the office to see whether Socci had any questions. After the incident, the defendant anxiously and repeatedly expressed a concern to Socci that Kotulsky's actions would "ruin" his business, and did so as part of a two-pronged argument as to why she should not report the incident to the police. When she told the defendant that she wanted to leave the office, he told her, "[i]t's business as usual." Although Socci was too distraught to perform any of her usual tasks, she viewed her presence in acquiescence to the defendant's demands as having "worked all day." When he and Socci left the office to meet with Taranto to discuss the incident, the defendant directed Socci to leave her personal effects at the office. The defendant stopped at a construction site on the way to the meeting with Taranto and spoke with two workers there. Socci announced to the defendant that she could no longer work for him, and he relayed that concern to Taranto when the three met. Taranto was instrumental in Socci's hiring and training, and she was intimately involved in the defendant's business affairs. Socci and Taranto knew each other from having previously worked for the same employer for several years, but never had any relationship outside of work. The defendant allowed Socci to leave close to the time that her normal workday was scheduled to end.

[13] Under workers' compensation, an injury sustained by an employee when performing a personal errand for his or her employer may be deemed to

While the trial court's approach was too restrictive, the Appellate Court's was too expansive. The Appellate Court's "but for" approach relied too heavily on Socci's employment status and the work based location at which she sustained the injury. We agree with the Appellate Court that the requisite standard could be met if, in addition to these facts, the false imprisonment was a function of, or facilitated by, the employer-employee relationship. See *Nationwide Mutual Ins. Co.* v. *Pasiak*, supra, 161 Conn. App. 100. However, this is a factual finding on which the trial court expressed no view.

Indeed, we cannot say on the basis of the limited facts found by the trial court or the evidentiary record whether the business pursuits exclusion applies as a matter of law. There was additional evidence in the Socci action relating to the matter raised by the Appellate Court on which the trial court made no findings, which that court may consider on remand. See footnote 12 of this opinion. We express no view as to whether the court must credit this evidence or the weight that such evidence should be given if the court elects to credit it.

IV

ALTERNATIVE GROUNDS FOR AFFIRMANCE

Because our conclusion entitles the plaintiffs only to reconsideration of whether the business pursuits exclusion bars indemnification, not judgment in their favor, we consider the plaintiffs' alternative grounds for affirming in whole or in part the Appellate Court's judgment directing the trial court to enter such a judg-

arise out of and in the course of the employment, often under the logic that the employee usually has no choice in the matter. See, e.g., *Hebert* v. *CIGNA*, 637 So. 2d 1221, 1224–25 (La. App. 1994); *Keene* v. *Insley*, 26 Md. App. 1, 8–10 and nn. 3–6, 337 A.2d 168 (1975) (citing authorities); *Keasey* v. *Mitzel Bros.*, 135 Pa. Super. 460, 463, 5 A.2d 631 (1939); 27 N.Y. Practice Series, Workers' Compensation § 20:9, Lunch Break (2d Ed. Rev. May, 2017).

ment. We disagree that any of these grounds requires a directed judgment.

A

Workers' Compensation Exclusion

The plaintiffs contend that indemnification is precluded under the umbrella policy's exclusion for "[a]ny insured's obligation, including benefits required to be paid under . . . workers' compensation . . . [or] any similar law." They contend that the trial court improperly equated this issue with the question of whether the defendant had injured Socci in furtherance of his business pursuit, when the proper focus should have been on whether the Workers' Compensation Act; General Statutes § 31-275 et seq.; applied to Socci. The plaintiffs claim that the act applied because (1) it was uncontroverted that Socci was an employee of the construction company and was injured at work, and (2) Socci did not fall under an exclusion to employees covered under the act, as the defendant contended. See General Statutes § 31-275 (9) (B) (" 'Employee' shall not be construed to include . . . (iv) [a]ny person engaged in any type of service in or about a private dwelling provided he is not regularly employed by the owner or occupier over twenty-six hours per week"). Even if we accept both of these contentions, the plaintiffs have failed to prove that this exclusion applies.

The plaintiffs assume that this exclusion is satisfied if the insured *would have been obligated* under the act to pay workers' compensation benefits *had a claim for such benefits been made.*[14] They have not established, however, that any such obligation exists in the present case. By their own admission, the construction company was Socci's employer, a fact evidenced by the

[14] The plaintiffs' interpretation of this exclusion raises numerous questions, none of which we need answer in the present case in light of their inability to establish that the exclusion as interpreted by them applies.

paychecks issued to Socci by the construction company that were admitted into evidence at the declaratory judgment trial. See General Statutes § 31-275 (10) (defining employer to include limited liability corporation). As such, the defendant, the insured, presumably would not personally incur any obligation to pay a compensable workers' compensation claim had Socci timely filed a notice of claim. Even if the defendant could be deemed legally obligated for the workers' compensation obligations of the construction company, an argument the plaintiffs have not made; cf. *Patel* v. *Flexo Converters U.S.A., Inc.*, 309 Conn. 52, 58, 68 A.3d 1162 (2013) (discussing when high ranking person may be deemed alter ego of corporation); the plaintiffs have proffered no authority to establish that Socci's injuries would have been compensable under the act. In order for Socci's emotional distress injuries to have been compensable, they would have had to have been caused by physical injury or occupational disease. See General Statutes § 31-275 (16) (B) (ii). The trial court found to the contrary. See footnote 9 of this opinion.

B

Abuse Exclusion

The plaintiffs also claim that indemnification is barred under the umbrella policy exclusion for "personal injury resulting from acts or omissions relating directly or indirectly to . . . physical or mental abuse . . . ." They contend that the defendant's conduct and its effect on Socci satisfied the common meaning of mental abuse, pointing to the construction of abuse under a similar policy exclusion in *Safeco Ins. Co. of America* v. *Vecsey*, Docket No. 3:08cv833 (JBA), 2010 WL 3925126, *9–10 (D. Conn. September 30, 2010), on which several other courts have relied. Although the trial court found that the defendant had not abused Socci and distinguished *Vecsey* on its facts, the plaintiffs

claim that this finding was contrary to the evidence and the award of punitive damages, and that factual differences between the cases miss the mark. We conclude that the abuse exclusion does not apply as a matter of policy construction, an additional ground cited in the trial court's decision denying the plaintiffs' second motion for summary judgment as to this exclusion.

In *Vecsey*, the policy covered an accident that resulted in bodily injury, but excluded bodily injury "arising out of physical or mental abuse . . . ." Id., *2. The United States District Court for the District of Connecticut assumed that a permanent eye injury sustained by the insured's wife when her eye had been struck by a carrot thrown by the insured, after he had yelled and cursed at her, was a covered occurrence, but concluded that it fell under the abuse exclusion. Id., *3–4, *7. After consulting dictionaries, the court concluded that abuse means the improper use or maltreatment of another "that deviates from a baseline societal understanding of what is appropriate conduct," that the act need not be motivated by a subjective expectation that bodily injury will occur, and that there need not be a pattern of conduct. Id., *9–11.

Although a literal application of these definitions would seem to encompass almost every wrongful act, we observe that *Vecsey* and the other cases cited by the plaintiffs in which the requisite abuse was found involved threatening, harassing, screaming, and/or verbally or physically intimidating conduct. See, e.g., *Barstow* v. *Shea*, 196 F. Supp. 2d 141, 150 (D. Conn. 2002); *Havsy* v. *Washington State Dept. Health Board of Osteopathic Medicine & Surgery*, Docket No. 53198-1-I, 2004 WL 2153876, *16–17 (Wn. App. September 27, 2004), review denied, 154 Wn. 2d 1009, 113 P.3d 481 (2005). Nonetheless, even assuming that the District

Court properly construed "abuse" in *Vecsey*, we disagree that this exclusion applies in the present case.

There is a significant difference between the policy in *Vecsey* and the one in the present case. Here, the covered occurrence is not simply an unspecified accident causing an unspecified injury (i.e., bodily injury) but a specific intentional act—false imprisonment—expressly covered by the policy. Applying the District Court's definition of abuse to the policy in the present case would render the promise of coverage for false imprisonment largely illusory, as almost every such tort would involve some form of physical or mental "abuse" as defined in *Vecsey*.[15] See *Safeco Ins. Co. of America* v. *Vecsey*, supra, 2010 WL 3925126, *9–11. Even assuming it is technically possible to commit false imprisonment without inflicting physical or mental maltreatment, we are not persuaded that a layperson would understand the coverage to be so limited. See *Northrop* v. *Allstate Ins. Co.*, 247 Conn. 242, 251, 720 A.2d 879 (1998) (declining to interpret policy to yield result that would render coverage "largely illusory"); *Hansen* v. *Ohio Casualty Ins. Co.*, 239 Conn. 537, 544, 687 A.2d 1262 (1996) ("[i]n general, courts will protect the reasonable expectations of applicants, insureds, and intended beneficiaries regarding the coverage afforded by insurance contracts" [internal quotation marks omitted]).

Conversely, when the maltreatment undertaken to commit false imprisonment is of such independent con-

[15] The defendant suggests that this conflict would be resolved if we were to construe the phrase "mental or physical abuse" to mean abuse of a *sexual* nature. He contends that, because this exclusion refers to "a variety of sexually based behaviors" (i.e., sexual molestation), the entire exclusion should be read to refer only to such behaviors. We decline to adopt this construction, as it is plainly not supported by the text. The clearest evidence is the inclusion of both "harassment" and "sexual harassment" in the exclusion, the former being rendered superfluous under the defendant's construction.

sequence to distinguish it from that inherent in the intentional tort, a layperson reasonably would understand that the abuse exclusion would bar coverage. Cf. *Auto-Owners Ins. Co.* v. *Todd*, 547 N.W.2d 696, 699–700 (Minn. 1996) (concluding that intentional acts exclusion barred coverage for claim of false imprisonment, even though false imprisonment was covered occurrence, because that action was simply means by which insured accomplished intentional plan to commit sexual assault). Acts of such independent consequence, however, plainly were not implicated in the present case.

C

Public Policy

The plaintiffs next contend that the Appellate Court's judgment should be affirmed in part as to their obligation to indemnify the defendant for punitive damages. They contend that, in the absence of an express grant of coverage for punitive damages, it would violate public policy to construe a policy to indemnify a wrongdoer for punitive damages. As support, they cite *Bodner* v. *United Services Automobile Assn.*, 222 Conn. 480, 497–98, 610 A.2d 1212 (1992), wherein this court stated that "a tortfeasor may not protect himself from liability by seeking indemnity from his insurer for damages, punitive in nature, that we imposed on him for his own intentional or reckless wrongdoing." We are not persuaded that *Bodner* controls the present case.

Bodner was a case focusing on policy considerations specific to uninsured motorist coverage.[16] See *Caulfield*

[16] In making the statement upon which the plaintiffs rely, the court in *Bodner* relied on a case that did not involve an uninsured motorist policy, *Tedesco* v. *Maryland Casualty Co.*, 127 Conn. 533, 18 A.2d 357 (1941). However, *Tedesco* also raised materially different policy concerns from those in the present case. It involved the question of indemnification for statutory double damages, which were not intended to compensate the victim in any way, but to punish the wrongdoer for an offense committed against the state and designed to protect the public. Id., 536.

This court also relied on *Tedesco* in dicta in the context of a policy for

v. *Amica Mutual Ins. Co.*, 31 Conn. App. 781, 786, 627 A.2d 466 ("[n]otwithstanding policy language that would permit coverage of common law [punitive] damages, the *Bodner* court concluded that public policy considerations precluded such coverage *in the context of uninsured motorist coverage*" [emphasis added]), cert. denied, 227 Conn. 913, 632 A.2d 688 (1993). Such coverage serves a different function than coverage under a personal liability policy: "The public policy established by the uninsured motorist statute is that every insured is entitled to recover for the damages he or she would have been able to recover if the uninsured motorist had maintained a policy of liability insurance. . . . [A]llowing a recovery of punitive damages under uninsured motorist coverage would, in effect, place the insured in a better position than would exist if the tortfeasor had been insured. . . . Further . . . [the insurer here] has no relationship . . . to the tortfeasor . . . and cannot allocate even a portion of the risk of punitive damages to the tortfeasor by increasing the tortfeasor's insurance rates." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 499. None of those concerns is implicated in the present case.

In addition, *Bodner* did not involve, as does the present case, a policy expressly providing coverage for an intentional act, namely, false imprisonment. A leading treatise argues that to refuse to enforce a contract covering punitive damages for intentional acts under such circumstances would allow insurers to avoid an obligation for which they bargained, and to be enriched

professional liability insurance when concluding that public policy prohibited indemnification for punitive damages for an intentional tort, in that case a dentist's sexual assault of a patient. See *St. Paul Fire & Marine Ins. Co.* v. *Shernow*, 222 Conn. 823, 824, 832 n.4, 610 A.2d 1281 (1992). Given the serious criminal nature of the act and the professional obligations violated in that case, it too is materially distinguishable from the present case.

unjustly: "[I]n those various contracts where the company insures against liability for false arrest, false imprisonment, malicious prosecution, libel, slander, and invasion of privacy, [punitive] damages—under current judicial practices—almost necessarily will follow. It is not seemly for insurance companies to collect premiums for risks which they voluntarily undertake, and for which they actively advertise in competition with other companies, and then when a loss arises to say 'It is against public policy for us to pay this award.' " 12 J. Appleman, Insurance Law and Practice (1981) § 7031, p. 155; accord *St. Paul Mercury Ins. Co.* v. *Duke University*, 849 F.2d 133, 136 (4th Cir. 1988) (applying this majority position); *Fluke Corp.* v. *Hartford Accident & Indemnity Co.*, 102 Wn. App. 237, 242–43, 246–48, 7 P.3d 825 (2000) (concluding that public policy did not bar coverage for punitive damages when policy covered intentional tort of malicious prosecution and did not expressly exclude punitive damages), aff'd, 145 Wn. 2d 137, 34 P.3d 809 (2001).

Notably, the plaintiffs do not contend that it would violate public policy to indemnify the defendant for compensatory damages awarded for the same intentional conduct. Common-law punitive damages under our law, which, unlike most jurisdictions, are limited to litigation costs, also help to make the injured plaintiff whole. See *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 492; see also *Bifolck* v. *Philip Morris, Inc.*, 324 Conn. 402, 455, 152 A.3d 1183 (2016) (our common-law measure of punitive damages is "indisputably one of the most conservative in the nation" [internal quotation marks omitted]). Accordingly, in the absence of a public policy reflected in our laws against providing such coverage, we conclude that, under the facts of the present case, the plaintiffs are bound to keep the bargain they struck, which includes

coverage for common-law punitive damages for false imprisonment.

V

SCOPE OF DISCOVERY AND TRIAL

Finally, we turn to the plaintiffs' claim that the trial court improperly deprived them of a full and independent hearing on all of the issues relevant to coverage of the defendant's liability. Specifically, they contend that the trial court improperly determined that they were bound by the general verdict in the Socci action and limited to the evidence adduced in that case because, in the trial court's view, the plaintiffs had an opportunity in that action (1) to intervene to submit interrogatories to ascertain the basis of the jury's verdict, and (2) to develop a factual record relating to the policy exclusions. The plaintiffs make the related claims that, as a result of these improper determinations, the trial court improperly denied them the opportunity to develop their coverage defenses in discovery and at trial and then improperly construed evidentiary gaps against them. The plaintiffs acknowledge that the trial court did not preclude all discovery, but contend that the belated and limited basis on which discovery was permitted was too little, too late.

We observe that the record is not a model of clarity or consistency regarding either the plaintiffs' claims or the trial court's rulings relating to them. However, our conclusions in the preceding sections of this opinion make it unnecessary to resolve some of the thornier questions raised by the plaintiffs,[17] as well as the defen-

[17] The vexing questions include whether a general verdict in an underlying action can serve as a basis for collateral estoppel in a subsequent action to resolve insurance coverage issues, and whether such an effect depends on the insurer having taken some action (through counsel it has provided its insured or through party intervention) to avoid a general verdict. We note that resolution of these questions is complicated by the conflicting substantive and procedural approaches taken in various jurisdictions, as well as by the varied factual permutations that bear on whether the issue

dant's responsive procedural arguments. We have concluded that, with the possible exception of the business pursuits exclusion, none of the exclusions raised on appeal negates the plaintiffs' duty to indemnify the defendant for liability incurred as a result of Socci's false imprisonment, an act that both parties agree the evidence and verdict support. Our conclusions rest solely on legal grounds, not on deficiencies in the evidence. The business pursuits exclusion remains the only policy exclusion on which a factual basis could exist to negate the plaintiffs' indemnification obligation. Accordingly, the sole issue remaining is the proper procedure on remand on this issue. We conclude that the plaintiffs are entitled to litigate the business pursuits issue without being limited to the evidentiary record in the Socci action.

We begin with the question of what coverage matters may be litigated by an insurer following judgment against its insured, and then turn to the question of

is one on which the insured or the insurer bears the burden of proof. See generally 17 L. Russ & T. Segalla, Couch on Insurance (3d Ed. 2005) § 239:42, p. 239-60 (acknowledging that question of whether there has been decision on specific issue as to which preclusion is claimed can be particularly problematic when there is ambiguous finding or jury verdict); 1 A. Windt, Insurance Claims & Disputes: Representation of Insurance Companies and Insureds (6th Ed. 2013) § 6.27, pp. 6-286 through 6-287 (discussing various rules for allocating jury verdict between covered and noncovered claims depending on burden of proof); see also C. McIlwain, "Clear As Mud: An Insurer's Rights and Duties Where Coverage Under a Liability Policy Is Questionable," 27 Cumb. L. Rev. 31 (1996–1997); F. Ryan & K. Gorak, "Splitting the Baby: The Insurer's Duty To Notify the Insured of the Need for an Allocated Verdict," 24 Mealey's Litigation Report: Insurance Bad Faith No. 15, p. 28 (December 9, 2010).

We also observe that, on appeal, the plaintiffs did not challenge the trial court's legal determination that the policy's intentional acts exclusion does not negate coverage for false imprisonment. Therefore, although they contend that the trial court's ruling improperly prohibited them from litigating the issue of whether the defendant's conduct was intentional, they would not be entitled to relief even if they were allowed to do so. Indeed, as we previously have indicated, the parties are in agreement that the defendant committed an intentional act.

what evidence may be used to adjudicate such matters. The general rule regarding the effect of a judgment against an insured on an insurer who has an independent duty to defend its insured is set forth in the Restatement (Second) of Judgments. It provides: "(1) When an indemnitor has an obligation to indemnify an indemnitee (such as an insured) against liability to third persons and also to provide the indemnitee with a defense of actions involving claims that might be within the scope of the indemnity obligation, and an action is brought against the indemnitee involving such a claim and the indemnitor is given reasonable notice of the action and an opportunity to assume its defense, a judgment for the injured person has the following effects on the indemnitor in a subsequent action by the indemnitee for indemnification:

"(a) The indemnitor is estopped from disputing the existence and extent of the indemnitee's liability to the injured person; and

"(b) The indemnitor is precluded from relitigating *those issues determined in the action against the indemnitee as to which there was no conflict of interest between the indemnitor and the indemnitee.*

"(2) A 'conflict of interest' for purposes of this Section exists when the injured person's claim against the indemnitee is such that it could be sustained on different grounds, one of which is within the indemnitor's obligation to indemnify and another of which is not." (Emphasis added.) 2 Restatement (Second), Judgments § 58 (1982).

A leading treatise further elaborates on the circumstances under which an insurer will not be collaterally estopped from relitigating issues relating to coverage in a subsequent declaratory judgment action. One such circumstance occurs "[w]hen, because of a conflict of interest, the insurer hires an independent counsel, who

does not also represent the company's interests, to defend the insured . . . ." (Footnote omitted.) 1 A. Windt, Insurance Claims & Disputes: Representation of Insurance Companies and Insureds (6th Ed. 2013) § 6:22, p. 6-266. Thus, for example, an insurer that had reserved its right to challenge coverage on the basis of the purported intentional nature of the insured's act was not bound by a verdict finding the insured negligent. See *State Farm Fire & Casualty Co.* v. *Mabry*, 255 Va. 286, 288, 497 S.E.2d 844 (1998). The insurer was not a party to the action, and it was not in privity with the insured defendant because its reservation of rights established that its position diverged from that of its insured on this issue. See id., 290; see also *Shelter Mutual Ins. Co.* v. *Vaughn*, 300 P.3d 998, 1001–1003 (Colo. App. 2013). The insurer could not assert its position in conjunction with providing a defense to its insured; doing so would violate its duty to the insured by exposing the insured to the possibility of punitive damages. See *State Farm Fire & Casualty Co.* v. *Mabry*, supra, 291; see also *Metropolitan Life Ins. Co.* v. *Aetna Casualty & Surety Co.*, 249 Conn. 36, 61, 730 A.2d 51 (1999) (defense counsel provided by insurer owes exclusive duty of loyalty to insured).

Significantly, "[c]ollateral estoppel works . . . only with regard to facts necessarily adjudicated in the lawsuit against the insured. Gratuitous statements in judgments, therefore, adjudicating facts that would result in the creation of coverage, but which facts did not truly determine the insured's liability and the amount of the damages should not give rise to collateral estoppel." 1 A. Windt, supra, § 6:22, p. 6-261; accord *Hartford Accident & Indemnity Co.* v. *Villasenor*, 21 Ariz. App. 206, 209, 517 P.2d 1099 (1974) ("The application of this doctrine of collateral estoppel . . . is limited to those facts essential to the judgment of tort liability. An insurer, when sued upon the policy, can present any

defenses not inconsistent with the judgment against its insured."); see also *Dowling* v. *Finley Associates, Inc.*, 248 Conn. 364, 373–74, 727 A.2d 1245 (1999) (Collateral estoppel "precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them upon a different claim. . . . If an issue has been determined, but the judgment is not dependent upon the determination of the issue, the parties may relitigate the issue in a subsequent action." [Citations omitted.]). Indeed, "[t]he insurer should be afforded an opportunity to raise and have independently adjudicated any issue relating to its own liability as long as the resolution of that issue in its favor will not be inconsistent with the findings already made in the underlying action." 1 A. Windt, supra, § 6:25, pp. 6-279 through 6-280.

Although there are some efficiency arguments favoring litigating coverage issues in the underlying tort action giving rise to that obligation, there are three principal reasons cited as to why facts material only to coverage would not properly be adjudicated in the underlying tort action. First, defense counsel provided by the insurer would violate his or her duty to the insured by proffering evidence intended to prove a lack of coverage. See *Seaco Ins. Co.* v. *Devine Brothers, Inc.*, Docket No. CV-00-0374721, 2003 WL 21958391, *5 (Conn. Super. July 30, 2003) (citing cases); see also 1 A. Windt, supra, § 4:22, p. 4-214 and § 6:27, p. 6-291 (independent counsel hired by insurer should not be asked to comment on coverage issues, let alone be made aware of such issues). Consequently, it has been held that defense counsel hired by an insurer could not request special interrogatories or special verdicts concerning coverage issues because of counsel's exclusive duty to represent the insured. See *Universal Underwriters Ins. Co.* v. *East Central Alabama Ford-*

Mercury, Inc., 574 So. 2d 716, 723 (Ala. 1990). Second, facts pertaining to insurance coverage may have no relevance to the issues of liability and damages that the trier of fact must decide in the underlying action. See *Chenkus* v. *Dickson*, Docket No. 282007, 1990 WL 283216, *1 (Conn. Super. September 7, 1990) (noting that, because case pertains to negligent and intentional assault, it had nothing to do with whether those acts are covered under contract of insurance). A related third reason is that courts must exercise care not to allow evidence that would indicate that the defendant tortfeasor is insured against liability, as the availability of insurance is generally inadmissible due to its potential to prejudice the trier of fact. See Conn. Code Evid. § 4-10 and commentary; *Cromer* v. *Sefton*, 471 N.E.2d 700, 704 (Ind. App. 1984) ("Clearly the policy of the law is to keep the issue of insurance out of personal injury litigation. . . . To permit intervention by the insurer to litigate coverage in the principal tort case against its insured would distract the trier and literally force the plaintiff to become embroiled in a matter in which she does not yet have an interest.").[18]

Stated broadly then, an insurer may litigate coverage issues previously litigated on which it had a conflict of interest with its insured or coverage issues on which material facts were not litigated and necessary to the

[18] A few jurisdictions have concluded that, in order to appropriately safeguard against these concerns while at the same time ensuring consistency between the underlying case and the insurance coverage case, a request can be made to consolidate the cases and to address the insurance issues in a supplemental or bifurcated proceeding with the same trier of fact that decided the liability issues. See, e.g., *Universal Underwriters Ins. Co.* v. *East Central Alabama Ford-Mercury, Inc.*, supra, 574 So. 2d 723–24. But see C. McIlwain, "Clear As Mud: An Insurer's Rights and Duties Where Coverage Under a Liability Policy Is Questionable," 27 Cumb. L. Rev. 31, 51–52 (1996–1997) (arguing that such procedures often are not made available to insurers as matter of court's discretion). This court has not yet considered such rules or procedures, and we need not do so in the present case given the limited issue on remand.

underlying judgment. The next question is what evidence may be considered to decide such issues.

When the coverage issue previously was litigated, one treatise argues that the issue should be resolved only by reference to the record in the underlying case. See 1 A. Windt, supra, § 6:26, pp. 6-282 through 6-283; see also *DaCruz* v. *State Farm Fire & Casualty Co.*, 268 Conn. 675, 688, 846 A.2d 849 (2004) ("duty to indemnify depends upon the facts established at trial and the theory under which judgment is actually entered in the case" [internal quotation marks omitted]). But there is a fair body of authority taking the contrary position. See, e.g., *United States Steel Corp.* v. *Hartford Accident & Indemnity Co.*, 511 F.2d 96, 100 (7th Cir. 1975) (Illinois law); *Spears* v. *State Farm Fire & Casualty Ins.*, 291 Ark. 465, 467, 469, 725 S.W.2d 835 (1987); *Bay State Ins. Co.* v. *Wilson*, 108 Ill. App. 3d 1096, 1104–1105, 440 N.E.2d 131 (1982), aff'd, 96 Ill. 2d 487, 451 N.E.2d 880 (1983); *Snodgrass* v. *Baize*, 405 N.E.2d 48, 53–54 (Ind. App. 1980); *Wear* v. *Farmers Ins. Co. of Washington*, 49 Wn. App. 655, 661, 745 P.2d 526 (1987) ("[T]he jury's interrogatories and the verdict in the liability trial are irrelevant to the determination of [the insured's] intent and the existence of coverage under the [the insured's] policy. How, then, is the issue of the insured's intent to be determined? It can only be determined at a hearing at which the trial court takes evidence on the coverage issue. Here, instead of taking testimony at the declaratory judgment action on the issue of intentional action, the parties elected to submit the record from the liability trial to the trial court."); see also *Duke* v. *Hoch*, 468 F.2d 973, 984 (5th Cir. 1972) (Florida law; allowing for additional evidence if coverage issue can not be decided on basis of record in underlying case).

When the issue was not litigated or insufficient factual findings were made to make a determination on the coverage issue, there is consensus that additional

evidence properly may be introduced.[19] See 1 A. Windt, supra, § 6:26, pp. 6-281 through 6-282 n.2; see also, e.g., *State Farm Mutual Automobile Ins. Co.* v. *Coughran*, 303 U.S. 485, 486–87, 58 S. Ct. 670, 82 L. Ed. 970 (1938) (insurer proffered evidence on issue to prove that coverage was unavailable for judgment rendered against insured on issue that was not litigated in underlying tort action).

Applying these principles to the present case, it is clear that the plaintiffs are entitled to a de novo trial on the issue of coverage in light of the business pursuits exclusion. There was no privity between the plaintiffs and the defendant as to that issue because they did not share an interest in proving that the defendant's false imprisonment of Socci arose out of his business pursuits. Indeed, it was in the interest of both the defendant and Socci to minimize or avoid the presentation of facts that could have established a connection between the defendant's interests as the owner of his construction company and the wrongful actions he was alleged to have undertaken. More fundamentally, whether that causal connection existed was neither actually litigated nor necessarily determined. Socci's claims were in no way dependent on proving that the defendant's wrongful acts arose out of his business pursuits. The fact that some evidence relevant to this issue was presented in the Socci action is immaterial.

It also is of no consequence that the plaintiffs did not seek permission to intervene in the Socci action.

[19] The defendant concedes that the plaintiffs could have proffered new evidence on the exclusions that were not litigated, but contends that they failed to take the proper steps to identify the information that they sought and the need for such evidence. As to the latter point, we previously have indicated that we need not consider whether the plaintiffs are entitled to a new trial because they were improperly denied the right to proffer new evidence. We have already determined that they are entitled to a new trial and simply provide guidance as to what that procedure should encompass.

Even if an unexercised right to intervene could be relevant; but see *Mount Vernon Fire Ins. Co.* v. *Morris*, 90 Conn. App. 525, 538–39, 877 A.2d 910 (2005) (reaching contrary conclusion), appeal dismissed, 281 Conn. 544, 917 A.2d 538 (2007); the plaintiffs had no such right,[20] and it plainly would have been an abuse of discretion to allow permissive intervention to litigate this policy exclusion in the Socci action. Therefore, on remand, the plaintiffs are entitled to appropriate discovery and a trial de novo to determine whether they have met their burden of proving that the business pursuits exclusion bars coverage.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the trial court's judgment with respect to count two of the complaint and to remand the case to the trial court for further proceedings consistent with this opinion.

In this opinion ROGERS, C. J., and PALMER, ROBINSON and D'AURIA, Js. concurred.

EVELEIGH, J., with whom ESPINOSA, J., joins, concurring and dissenting. Although I agree with the majority that the plaintiffs, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, cannot prevail on their alternative grounds regarding the exclusions for workers' compensation

[20] It appears to be broadly accepted that a personal liability insurer has no right to intervene in the underlying action because its interest is contingent before judgment has entered against its insured. See, e.g., *Restor-A-Dent Dental Laboratories, Inc.* v. *Certified Alloy Products, Inc.*, 725 F.2d 871, 874–75 (2d Cir. 1984); *Universal Underwriters Ins. Co.* v. *East Central Alabama Ford-Mercury, Inc.*, supra, 574 So. 2d 723; see also *Lodigensky* v. *American States Preferred Ins. Co.*, 898 S.W.2d 661, 664–66 (Mo. App. 1995) (insurer not entitled to intervene as of right in tort action against its insured because duty to provide coverage would only arise, if at all, after adverse judgment has been entered against insured and judgment in personal injury action would not bind insurer on issue of coverage it has reserved).

obligations and mental abuse set forth in the relevant personal umbrella policy, and that public policy does not prohibit this court from construing that umbrella policy to provide indemnification for common-law punitive damages arising from intentional wrongdoing, I disagree with the majority that the trial court incorrectly limited the scope of discovery and the declaratory judgment trial and, therefore, also disagree with the majority's conclusion that the present case should be remanded for further proceedings. Instead, I would conclude that the trial court properly limited the scope of discovery and properly limited the scope of the declaratory judgment trial, and that, on the basis of the record in the present case, the trial court properly determined that the business pursuits exclusion set forth in the umbrella policy does not apply.

I

APPLICABILITY OF BUSINESS PURSUITS EXCLUSION

On appeal to this court, the defendant Jeffrey S. Pasiak[1] claims that the Appellate Court incorrectly concluded that his claim for coverage falls within the scope of the business pursuits exclusion contained within his umbrella policy. Specifically, the defendant asserts that the "[o]ccurrence" that forms the basis for Sara Socci's underlying tort claim did not arise from her employment or the defendant's business, but instead arose from the defendant's actions in not allowing Socci to leave his home after the encounter with Richard Kotulsky had ended. I agree.

[1] I note that the complaint in the present declaratory judgment case names three additional defendants: Pasiak Construction Services, LLC, Sara Socci, and Kraig Socci. I further note that Kraig Socci's sole claim in the underlying tort action sounds in loss of consortium and is, therefore, derivative of the claims presented by Sara Socci. For the sake of simplicity, I refer to Pasiak as the defendant and to Sara Socci by name. See footnote 1 of the majority opinion.

I agree with the standard of review explained by the majority, but emphasize that insurance policy exclusions should be read narrowly. See, e.g., *Heyman Associates No. 1* v. *Insurance Company of Pennsylvania*, 231 Conn. 756, 770, 653 A.2d 122 (1995). As the majority explains: "when construing exclusion clauses, the language should be construed in favor of the insured unless it has a high degree of certainty that the policy language clearly and unambiguously excludes the claim. . . . *Connecticut Ins. Guaranty Assn.* v. *Drown*, 314 Conn. 161, 188, 101 A.3d 200 (2014). While the insured bears the burden of proving coverage, the insurer bears the burden of proving that an exclusion to coverage applies. See *Capstone Building Corp.* v. *American Motorists Ins. Co.*, 308 Conn. 760, 788 n.24, 67 A.3d 961 (2013)." (Internal quotation marks omitted.)

I first look to the terms of the defendant's umbrella policy. The provision at issue in this appeal provides in relevant part that "[e]xcess liability and additional coverages do not apply to . . . [a]n occurrence arising out of the business pursuits or business property of an insured." The definitions provision provides as follows: "[An occurrence] means an accident including continuous or repeated exposure to the same general conditions. It must result in . . . personal injury caused by an insured. . . . Personal injury means: (a) false arrest, false imprisonment, wrongful conviction, wrongful entry; (b) wrongful detention or malicious prosecution; (c) libel, slander, defamation of character, or invasion of rights of privacy." The term "[b]usiness" is defined in the umbrella policy as "a trade, profession, occupation, or employment including self-employment, performed on a full-time, part-time or temporary basis."[2]

[2] In view of the allegations made in the underlying tort action, and the general verdict rendered by the jury in that case, it is conceivable that the jury may have found that the act of false imprisonment either occurred in the defendant's house, in his car, in a subsequent meeting with a mutual friend, or in a combination of all three locations.

"The term 'arising out of' indicates that a causal connection between the alleged injury and the excluded activity must exist . . . ." *Cambridge Mutual Fire Ins. Co.* v. *Sakon*, 132 Conn. App. 370, 380, 31 A.3d 849 (2011), cert. denied, 304 Conn. 904, 38 A.3d 1202 (2012); see also 7 S. Plitt et al., Couch on Insurance (3d Ed. Rev. 2013) § 101:52, p. 101-96 ("use of [the phrase] does not require a direct proximate causal connection but instead merely requires some causal relation or connection"). This court has interpreted the term "arising out of" to be synonymous with "was connected with, had its origins in, grew out of, flowed from, or was incident to." (Internal quotation marks omitted.) *Hogle* v. *Hogle*, 167 Conn. 572, 577, 356 A.2d 172 (1975); see also *Misiti, LLC* v. *Travelers Property Casualty Co. of America*, 308 Conn. 146, 157–58, 61 A.3d 485 (2013). In delineating this standard of causation, this court has described it as more "expansive" than proximate cause. (Internal quotation marks omitted.) *New London County Mutual Ins. Co.* v. *Nantes*, 303 Conn. 737, 759, 36 A.3d 224 (2012); see also *Board of Education* v. *St. Paul Fire & Marine Ins. Co.*, 261 Conn. 37, 48, 801 A.2d 752 (2002).

There are, of course, limits to the reach of the term "arising out of." There must be some minimal *causal* connection between the injury and described subject matter. In *Misiti, LLC* v. *Travelers Property Casualty Co. of America*, supra, 308 Conn. 168, this court concluded that the causal connection had not been established when, for purposes of the duty to defend, the complaint in the underlying tort action established only a sequence of events, but not a causal relationship. There, the relevant insurance policy insured injuries arising out of the use of certain property owned by the insured and leased to a tavern keeper consisting of the first floor of the tavern and the use of a nearby parking lot. Id., 149–50. One evening, a tavern patron took a postprandial detour off the path from the tavern to the

parking lot to a retaining wall that overlooked a river. Id., 151. This court emphasized that the cause of the injury in that case was the wooden fence above the retaining wall on property not covered by the policy. Id., 164. It was of no moment that the patron was, just prior to her alleged injury, eating and drinking at the tavern and followed a branch off the path back to the parking lot in order to look at the river. Id., 162–63 n.11.

In *Misiti, LLC*, this court relied on *Edelman* v. *Pacific Employers Ins. Co.*, 53 Conn. App. 54, 59–62, 728 A.2d 531, cert. denied, 249 Conn. 918, 733 A.2d 229 (1999), wherein the Appellate Court concluded that a drunken assault upon a police officer by an innkeeper residing at the inn did not arise out of the use of the inn. In affirming the trial court's determination, the Appellate Court reasoned that "whether the [insurer] had a duty to defend under the policy depends on whether the policy's use of the language 'arising out of the . . . use of . . . the premises' was intended to include or exclude the factual allegations contained in the complaint."[3] Id., 59. The Appellate Court explained that the focus was not the fact that the insured used the premises to consume alcohol "but, rather, on the mechanism that directly caused the plaintiff's injuries, i.e., [the insured's] assault of the plaintiff while he resisted arrest." Id., 61. In other words, the insured's operation of the inn was not the cause of the victim's injuries, the insured's assault, separate and apart from the underlying reason for his presence on the premises, caused the injuries.

[3] As with *Misiti, LLC*, in *Edelman* the Appellate Court analyzed the "arising out of" language in the context of the broader duty to defend and still focused on the "mechanism" of the injury rather than the sequence of events leading to the exercise of said mechanism. *Edelman* v. *Pacific Employers Ins. Co.*, supra, 53 Conn. App. 61. Thus, as *Edelman* demands an analytical focus on the "mechanism" of injury in the broad duty to defend setting, an analysis of the narrower duty to indemnify—and the exclusions applicable thereto—should, at a minimum, require an equally narrow analytical focus as to the cause of injury.

In order to determine whether an injury arose out of a business pursuit in the present case, I examine more closely the meaning of the term "business pursuit." This court has explained that the term "business pursuits," in the exclusionary clause of an insurance policy, "contemplates a continuous or regular activity engaged in by the insured for the purpose of earning a profit or a livelihood. The determination of whether a particular activity constitutes a business pursuit is to be made by a flexible fact-specific inquiry." *Pacific Indemnity Ins. Co.* v. *Aetna Casualty & Surety Co.*, 240 Conn. 26, 33, 688 A.2d 319 (1997). This standard is a useful rubric for distinguishing business pursuits from hobbies. It does not, however, answer the question of whether the conduct from which the injury arose in the present case was connected to a business pursuit.

There are, of course, obvious cases in which the injury occurs as a result of risk created by acts or omissions in the course of performing employment duties. See, e.g., *Worcester Ins. Co.* v. *Fells Acres Day School, Inc.*, 408 Mass. 393, 412, 558 N.E.2d 958 (1990) (claims against two employees of child care facility alleging injuries to children as result of employees' negligent failure to protect and prevent injury from sexual molestation to children under their care fell within "business pursuits" exclusion of their respective homeowners' insurance policies). But, multifarious acts undertaken throughout the course of one's day could cause an injury. Activities that comprise "business pursuits," as that term is defined in the insurance contract and our case law, are woven into the fabric of every working person's daily life. In order to determine whether the activity comprised a business pursuit requires careful examination.

The critical factor is whether the activity that created the risk furthered a business purpose. See, e.g., *Hanson* v. *General Accident Fire & Life Ins. Corp., Ltd.*, 450

So. 2d 1260, 1261–62 (Fla. App. 1984) (removal from insured's business premises of antenna used for two-way communication with insured's wife "unrelated" to insured's business); *Nationwide Mutual Fire Ins. Co.* v. *Johnson*, 121 N.C. App. 477, 482, 466 S.E.2d 313 (1996) (business pursuits exclusion not applicable where decedent employee used insured employer's new truck and cherry picker, purchased to perform contract work, where decedent was not being paid or trained); *Allstate Ins. Co.* v. *Robinson*, 103 N.C. App. 794, 797, 407 S.E.2d 294 (1991) (fact question whether insured struck matches to help himself see in furtherance of his employment duties thereby triggering exclusion or rather to amuse himself); *U. S. F. & G. Ins. Co.* v. *Brannan*, 22 Wn. App. 341, 342, 350, 589 P.2d 817 (1979) (exclusion applied where insured injured one business associate and killed another in altercation precipitated by dispute over business matter); see also *Cambridge Mutual Fire Ins. Co.* v. *Sakon*, supra, 132 Conn. App. 378–80. The fact that the occurrence took place in a workplace is relevant, but not dispositive of whether the business pursuits exclusion is triggered. See, e.g., *Scheer* v. *State Farm Fire & Casualty Co.*, 708 So. 2d 312, 313 (Fla. App.) ("[n]or does it follow from the fact that this conduct occurred in the work place that it was within the business pursuits exclusion"), review denied, 719 So. 2d 893 (Fla. 1998); *Miller* v. *McClure*, 326 N.J. Super. 558, 563, 570–71, 742 A.2d 564 (App. Div. 1998) (concluding that, where proof of employment relationship was necessary, claim of sexual harassment in workplace by insured supervisor precluded by business pursuits exclusion, but also concluding that additional claims "not dependent on the employment relationship" fell outside exclusion), aff'd, 162 N.J. 575, 745 A.2d 1162 (1999); see also L. Frazier, "The Business Pursuits Exclusion in Personal Liability Insurance Policies: What the Courts Have Done with It," 1970 Ins. L.J. 519, 534 (1970).

On the basis of the foregoing, I would conclude that the business pursuits exclusion in the umbrella policy is ambiguous. Therefore, in interpreting the business pursuits exclusion, I am mindful that "insurance policy exclusions should be read narrowly . . . that insurance policies should be construed in favor of the insured . . . and that policy language must be interpreted so as to reflect the understanding of an ordinary policyholder." (Citations omitted.) *New London County Mutual Ins. Co.* v. *Nantes*, supra, 303 Conn. 755;[4] see also *Farm Bureau Life Ins. Co.* v. *Holmes Murphy & Assocs., Inc.*, 831 N.W.2d 129, 134 n.7 (Iowa 2013) ("a phrase like 'arising out of' may be given a narrower scope in an exclusion when a court finds the exclusion ambiguous and therefore determines the phrase means 'proximately caused by'"); *South Carolina Farm Bureau Mutual Ins. Co.* v. *S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 339–40, 554 S.E.2d 870 (App. 2001) (concluding that narrower construction of arising out of applied to business pursuits exclusion under rule of construction specific to exclusions), reversed on other grounds, 353 S.C. 249, 578 S.E.2d 8 (2003).

Turning to the facts of the present case, and employing our standard rules of construction as noted previously in this opinion, I would conclude, as did the trial court, that the occurrence did not arise out of the

[4] The majority explains that "arising out of" has been given an expansive definition even when used in coverage exclusions and cites to *New London County Mutual Ins. Co.* v. *Nantes*, supra, 303 Conn. 753, in support of its position. In *Nantes*, this court explicitly acknowledged that the principles of insurance law demonstrate that "insurance policy exclusions should be read narrowly . . . that insurance policies should be construed in favor of the insured . . . and that policy language must be interpreted so as to reflect the understanding of an ordinary policyholder." (Citations omitted.) Id., 755. In *Nantes*, this court explained that these principles only apply when the exclusion provision is ambiguous, and that it only applied the expansive definition of "arising out of the . . . use" in that case because it determined that the exclusion was not ambiguous. Id., 755–56.

business pursuits of the defendant. On the morning of May 9, 2006, Kotulsky's attempted robbery of the defendant's home while Socci was present in the home set off a series of actions that are wholly separate from the business pursuits of the defendant. The defendant's actions, which a jury found injured Socci, were those that occurred after the defendant arrived home from his morning routine. The record, as found by the trial court, demonstrates that these actions were not in furtherance of a business interest of the defendant; rather, his motivation was purely personal—to protect Kotulsky.

The allegations of the complaint in the underlying tort action demonstrate that the "occurrence" that forms the basis of Socci's claims is the act of false imprisonment. Socci testified that Kotulsky barged in to the defendant's home while the defendant was not home, but Socci was there working. The defendant later walked in and was confronted by Kotulsky. Socci testified that she "heard Kotulsky say, 'I loved you. How could you do that? I loved you. I loved her.' . . . I realized that this was about a girl. They were fighting over a girl."

The sole focus of Socci's claim was the events that occurred after Kotulsky's attempted robbery had ended. Socci sought damages for the distress that she suffered due to the defendant's actions, not Kotulsky's attempted robbery. In finding in favor of Socci on her claim, the jury held the defendant liable for his own actions after returning home. Those actions formed the basis for the damage award. Any activities which preceded the defendant returning home, including interactions between Socci and Kotulsky, were not part of the plaintiffs' claim.

It is evident from the record that the defendant's goal after Kotulsky's attempted robbery was to shield Kotulsky from the consequences of his actions by pre-

venting Socci from calling the police. It was the defendant's perfervid desire to protect his friend. Socci testified that the defendant explained that they "couldn't call the police [because] they had been friends for years and years since high school [and] that Pasiak was . . . godfather to [Kotulsky's] children . . . ." While still at the defendant's house, the defendant pulled pictures of Kotulsky off of the walls to show Socci how close the two were to "make [her] understand" why she could not call the police. When asked at trial whether the defendant was protecting her, Socci stated that Pasiak was "protecting his friend." For his part, the defendant said in a statement to the police that the decision whether to inform the police "was a hard decision because of [his] relationship with [Kotulsky]." Additionally, very soon after the police were finally notified, the defendant, rather than follow the police's instructions to help facilitate Kotulsky's arrest, informed Kotulsky that the police were notified and "it's over."

The plaintiffs claim, and the majority appears to agree, that it was clearly erroneous to conclude that the defendant's actions were not, at least in part, motivated by business interests. The record evidence supporting the theory that concern for the reputation of the business animated the defendant's conduct is equivocal at best. To be sure, Socci testified that the defendant made some statements expressing concern that the events of that day could somehow result in harm to his business. Nevertheless, the trial court's conclusion was not clearly erroneous given that substantial, detailed evidence supported the finding that the defendant desired to protect his friend. There was no evidence to connect the defendant's statements about his business to his actions preventing Socci from leaving his home. While Socci testified that she understood the defendant to be protecting his friend, she did not testify

that he was protecting his enterprise. Additionally, given the lengths the defendant had gone to protect his friend, it would not be unreasonable to infer that the defendant's expressions of concern for his business were merely attempts to persuade Socci to not call the police by suggesting there would be effects beyond merely criminal consequences for Kotulsky—consequences Socci almost certainly would welcome. Accordingly, I reject the plaintiffs' claim that the trial court's finding regarding the defendant's motivation for preventing Socci from leaving was clearly erroneous.

The Appellate Court and the majority also rely upon the flawed premise that Socci's acquiescence with the defendant's demands was, to some extent, a function of the employee-employer relationship. This is unsupported by the record. Socci testified that she did no additional work that day and testified that she would never be coming back to work. All the while, the defendant repeatedly stated that Socci could not leave because he felt she would call the police. Socci testified that she repeatedly asked the defendant if she could leave and assured him "I just want to be alive, I am not going to tell anyone," to which he replied, "you're not going anywhere until I know you're not going to run out of here freaking out telling everybody." She emphasized that the defendant was adamant about it. By not assuring Socci of her personal safety were she to depart or call the police, he preserved Socci's apprehension that Kotulsky could still cause physical harm to her or her family. Indeed, Socci testified to her apprehension of consequences for disobeying the defendant, stating that she feared if she left without permission "it was like if I had a bomb strapped around my chest and [the defendant] had the button and [if] I ran, he could still press the button. He was using [Kotulsky]. He could completely contact [Kotulsky] at any time: She's run. And it was an instant kill for me and my family. I couldn't

do that. That would be insane." In Socci's mind, the prudent course of action was to simply acquiesce to the defendant. This was a function of a fear based relationship, not an employment relationship.[5]

The Appellate Court held, and the plaintiffs assert on appeal to this court, that "the sine qua non of the defendant's tortious conduct was . . . Socci's presence at his business office fulfilling her responsibilities as his employee." *Nationwide Mutual Ins. Co.* v. *Pasiak*, 161 Conn. App. 86, 99, 127 A.3d 346 (2015). Specifically, the plaintiffs assert that Socci was only present at the defendant's home because she worked for his company and that, but for her employment by the defendant's company, she would never have been exposed to Kotulsky or to the defendant's actions thereafter. I disagree. As discussed previously herein, the mere fact alone that an injury occurred in the workplace is insufficient to trigger the business pursuits exclusion. The fact that Socci was working at some point before the defendant committed the tortious actions at issue has nothing to do with the defendant's conduct. Indeed, Socci would have suffered this injury whether she was an employee of the business or not. This was not an

[5] The majority claims that Socci actually viewed her compliance with the defendant's requests that day to be performance of employment duties. Socci did, in fact, testify that she "worked all day, so [the defendant] wouldn't make that one phone call to tell Kotulsky that I called the police." This "work" was not in service of her employer; rather, it was a purely personal endeavor—a deliberate effort to make sure the defendant did not give her up to Kotulsky. She not only complied with the defendant, she endeavored to put on a calm demeanor because "he told me I wasn't going to leave unless he knew I wasn't going to run out of there freaking out and telling everyone, so I knew that I had to show him that I wasn't going to tell anyone, that I was fine like they said I was, that it wasn't a big deal like they said it was." She explained that this was no easy task: "I didn't want to be calm after being threatened [by Kotulsky]. After having my family threatened . . . . You can't be calm after that." These efforts were undoubtedly mentally taxing "work," but cannot fairly be described as work for the defendant or his business.

internal "workplace altercation" between the defendant and Socci. Indeed, "if the injury arises out of an independent act not performed for employment purposes, the business pursuits exclusion may not apply under those circumstances." 9A S. Plitt et al., Couch on Insurance (3d Ed. Rev. 2015) § 128:17, pp. 128-54 through 128-55. In this circumstance, the actions of the defendant must be considered as independent acts because, as the trial court found, the defendant's actions limiting Socci's ability to leave were motivated by his desire to protect Kotulsky, and not motivated by any business or employment purpose.

The cause-in-fact, or "but for" cause, standard of causation applied by the Appellate Court stretches the meaning of "arising out of" too far. It is, of course, true that had Socci not been an employee of the defendant, she would not have been present when Kotulsky attempted to rob the defendant's home. Such a broad standard of causation was, however, rejected in *Misiti, LLC*. In that case, but for the tavern patron's use of the tavern that evening, she would not have been injured when she detoured off the path to the parking lot, but the injury did not flow from, or have its origins in, her patronage of the tavern. See *Misiti, LLC* v. *Travelers Property Casualty Co. of America*, supra, 308 Conn. 159–60; see also *Edelman* v. *Pacific Employers Ins. Co.*, supra, 53 Conn. App. 61 (injury did not arise out of use of leased property where insured innkeeper, who resided on premises, assaulted police officer). Likewise, in the present case, Socci would not have been injured but for being in the employ of the defendant, but the injury did not flow from, or have its origin in, her employment. Rather, her injury flowed from the defendant's decision to protect Kotulsky by preventing her, as a victim of an attempted armed robbery, from calling the police.

In sum, I disagree with the Appellate Court's conclusion that the plaintiffs carried their burden in proving the business pursuits exclusion in the present case. Rather, I would agree with the majority that the Appellate Court used the wrong standard. I disagree, however, with the majority that the trial court used the wrong standard. In my view, the trial court used the correct standard as established by our case law. Therefore, I would reverse the judgment of the Appellate Court and remand the case to that court with direction to affirm the judgment of the trial court.

II

RIGHT TO A FULL HEARING

The plaintiffs claim, as an alternative ground for affirming the judgment of the Appellate Court, that the trial court incorrectly refused to conduct a full evidentiary hearing on all issues relevant to the coverage claims. Specifically, the plaintiffs claim that the trial court narrowly defined the issues it would consider, prohibited the plaintiffs from calling witnesses at trial, and gave preclusive effect to the findings in the underlying Socci action and, thereby, violated the plaintiffs' due process rights. The plaintiffs claim that, because they were denied a basic right to be heard, they are entitled to de novo review. They argue that because the plaintiffs were "not a party to the Socci action, nor in privity with any party to that action, [they] could not obtain a full and fair hearing on the coverage claims in the [declaratory judgment] action without the freedom to fully develop the record and obtain the court's independent review." Essentially, the majority agrees with this position and remands the case for a full trial on the business pursuits exclusion. I disagree and would conclude that the trial court properly defined the scope of the trial in this declaratory judgment action. Essentially, the claim is no different than any other ruling by

a trial judge concerning the admissibility of evidence. I therefore evaluate the claim under an abuse of discretion standard. *State* v. *Dehaney*, 261 Conn. 336, 354–55, 803 A.2d 267 (2002), cert. denied, 537 U.S. 1217, 123 S. Ct. 1318, 154 L. Ed. 2d 1070 (2003).

The following additional facts and procedural history are relevant to my resolution of this issue. On July 9, 2012, the plaintiffs filed a memorandum of law regarding the scope of the declaratory judgment trial. The plaintiffs claimed that they were "entitled to . . . de novo fact finding" in the present case. The defendant claimed that the trial was to be based "solely and completely on the facts presented" in the underlying civil trial.

On August 9, 2012, the trial court denied the plaintiffs' request for a trial de novo. The trial court framed the matter as one of collateral estoppel and concluded that the plaintiffs "cannot now ask the court to relitigate what has already been fully and fairly litigated." The trial court noted that the plaintiffs did not convey to the court precisely what evidence it sought to present to the court that had not already been presented in the Socci action. The trial court criticized the "complacency" of the plaintiffs for, in the underlying action, not "actively [pursuing] in greater detail the issues affecting the exclusions in the [umbrella] policy." The trial court noted that issues regarding intentional acts, wilful violation of the law, and workers' compensation were properly raised and necessarily determined in the underlying action "as not applicable to negate liability." The trial court concluded that it would deny the plaintiffs' request "for a de novo hearing to permit unrestricted testimony and evidence of the issues [already] litigated in the underlying trial . . . ."

The trial was held on August 30, 2012. On the day of the trial, the plaintiffs filed a "trial brief" with the court.

In their brief, the plaintiffs requested findings of fact and conclusions of law on seven listed issues. The issues listed can be separated into two categories. First, the plaintiffs sought an allocation of liability found on the general verdict by the jury in the underlying action.[6] Second, the plaintiffs sought findings on the applicability of certain enumerated exclusions. The trial court indicated to plaintiffs' counsel that it would allow the presentation of evidence and testimony and consider any objection in turn. The plaintiffs submitted a number of exhibits, including the complaint, transcript, jury charge, and verdict form of the Socci action, the defendant's pleas of nolo contendere to certain criminal charges, limited deposition testimony from the Socci action, certain expert testimony, and response to a request for production of documents regarding Socci's employment.[7]

After the submission of exhibits, the plaintiffs' counsel attempted to call Socci as a witness to testify. Upon inquiry by the trial court, counsel for the plaintiffs explained that he intended for Socci to testify to the issues enumerated in the brief so that the court could make a finding as to whether the defendant engaged

[6] Specifically, the plaintiffs sought findings of fact and conclusions of law as to the following: (1) "[w]hether Pasiak either engaged in intentional conduct to falsely imprison [Socci] or inflicted emotional distress upon [Socci], or both, and is such conduct covered or excluded from coverage under the [u]mbrella [p]olicy as argued in Nationwide's [motion for summary judgment]"; and (2) "[whether] Pasiak commit[ed] any negligence in addition to intentional [torts] and if so what was that negligent conduct, and is such negligence covered or excluded from coverage under the [u]mbrella [p]olicy as argued in Nationwide's [motion for summary judgment . . . ." (Footnote omitted.)

[7] On the Monday before trial, an off the record conference was held. At that conference, the trial court granted a one day continuance of trial for a deposition and ordered certain discovery. Despite the fact that the court indicated in its memorandum of decision that matters pertaining to workers' compensation were "necessarily determined" in the underlying trial, the deposition and production pertained to Socci's employment and apparently were relevant to the issue of the workers' compensation exclusion.

in intentional conduct to cause emotional distress or false imprisonment and a finding on negligence. Counsel for the defendant objected and sought clarification as to what additional evidence the plaintiffs sought from Socci that was not already elicited in the underlying trial. Counsel for the plaintiffs responded that he wanted the court to assess the credibility of Socci's testimony. The court rejected this proffer, reasoning that the jury made that determination in the underlying action. The court emphasized that the general verdict in the underlying action meant that there was a finding in favor of Socci on every issue. The court clarified that the plaintiffs had been restricted to presenting evidence on issues that were in addition to those raised in the underlying action, i.e., issues pertaining to exclusions.

Moving to exclusion issues, the counsel for the defendant demanded to know precisely what additional testimony the plaintiffs sought from Socci. Other than asking Socci questions that would elicit legal conclusions,[8] counsel for the plaintiffs indicated that he would not elicit any additional testimony not already presented in the underlying action with respect to the business pursuits exclusion. Socci did not testify.[9] Counsel for the plaintiffs did not proffer any other testimony as to any of the other exclusions.[10]

After the trial, the parties submitted posttrial memoranda. In their brief, the plaintiffs "incorporated by reference" arguments made in their motion for summary judgment. In detail, the plaintiffs raised coverage issues

[8] Counsel for the plaintiffs suggested he would ask Socci if the defendant was acting in furtherance of business pursuits when he prohibited her from leaving his house and if the defendant was acting "in a way that was abusive" to her.

[9] At trial, Socci's counsel expressed concern about presenting testimony from Socci because testifying would exacerbate her emotional distress.

[10] The trial court excluded certain documentary evidence, but the plaintiffs have not appealed from that decision.

pertaining only to the applicability of exclusions.[11] The plaintiffs did not make any argument as to the allocation of liability in their posttrial brief.

In its memorandum of decision, the court emphasized that it gave the plaintiffs the opportunity to present evidence on coverage issues. Although the plaintiffs did not address the issue in their posttrial brief, the trial court discussed the allocation of liability and determined that the "jury verdict consist[ed] of a finding of personal injury for negligent as well as intentional acts, all of which may be subject to indemnification." In other words, the court concluded that the defendant's actions that caused damages to Socci were an "occurrence" within the meaning of the umbrella policy. As previously discussed herein, the court further determined that none of the exclusions asserted by the plaintiffs applied to the defendant's conduct.

Against this procedural backdrop, I turn to whether the plaintiffs were entitled to a trial de novo on the coverage issue in this declaratory judgment action. The trial court correctly, albeit for the wrong reasons, concluded that the plaintiffs were not entitled to retry the underlying case in the present declaratory judgment trial. The trial court correctly defined the scope of the presentation of evidence in the trial. Contrary to the plaintiffs' claim, they had a fair opportunity to present their case with respect to the disputed coverage issues. While I agree with the majority on the scope of the new hearing and the standard for such cases, I disagree, respectfully, that a new hearing is necessary in the present case. The plaintiffs, as determined by the trial court, were allowed to present evidence on the exclusion issues, however, they never formally indicated to

[11] The plaintiffs indicated that the applicability of exclusions were the only issues that appeared unresolved after the denial of their motion for summary judgment and the decision regarding the scope of trial.

the trial court what evidence they intended to present. In my view, the plaintiffs are now being given a "second bite at the apple" and their position constitutes an ambuscade of the trial court. Unfortunately, through its ruling, the majority now condones the plaintiffs' actions.

The issue of whether the plaintiffs have a duty to indemnify is a contractual one. See, e.g., *New London County Mutual Ins. Co.* v. *Nantes*, supra, 303 Conn. 748–49. According to the umbrella policy, the plaintiffs agreed to "pay for damages an insured is legally obligated to pay due to an occurrence" subject to certain exclusions. There is no doubt that the defendant in the present case owes damages that he is legally obligated to pay to Socci. The issue for the trial court was whether and to what extent the damages were due to an occurrence, and, if so, whether and to what extent coverage was precluded by a relevant exclusion.

With respect to the question of whether the damages the defendant caused Socci were due to an occurrence as defined by the terms of the umbrella policy, the plaintiffs were, in essence, seeking an allocation of liability among the counts in the complaint in the underlying tort action to determine to what extent the defendant's liability is covered by the umbrella policy. As the trial court noted in its memorandum of decision, the general verdict in the underlying action greatly adds to the difficulty in allocating liability. Indeed other courts have observed the difficulty of allocating liability in cases where the liability is determined by general verdict. See, e.g., *Automax Hyundai South, L.L.C.* v. *Zurich American Ins. Co.*, 720 F.3d 798, 809 (10th Cir. 2013) (noting an "epistemological barrier to determining the jury's grounds for judgment"); *Board of County Supervisors* v. *Scottish & York Ins. Services, Inc.*, 763 F.2d 176, 179 (4th Cir. 1985) (describing the "winnowing out the specific grounds upon which the jury based its

general verdict" as an "impossibility"). Nevertheless, courts are skeptical about retrying the underlying case. See, e.g., *TranSched Systems Ltd.* v. *Federal Ins. Co.*, 67 F. Supp. 3d 523, 534 (D.R.I. 2014) (describing relitigating the underlying tort action as "uneconomical" and ordering mediation). Indeed, the plaintiffs have not cited a single case that supports the contention that in circumstances such as the present case the insurer is entitled to retry the underlying case.

One treatise has specifically rejected retrial on the issue of liability. 1 A. Windt, Insurance Claims & Disputes: Representation of Insurance Companies and Insureds, § 6:26, pp. 6-280 through 6-282 (6th Ed. 2013). "When the dispute is over which causes of action or allegations were found to be meritorious, only one question should be addressed: the factual and legal grounds on which the prior judgment was entered. The parties, therefore, should not be allowed to retry the liability issue." (Footnote omitted.) Id.; see also *FountainCourt Homeowners' Assn.* v. *FountainCourt Development, LLC*, 360 Or. 341, 357, 380 P.3d 916 (2016) ("[i]n other words, an insurer cannot, in a subsequent proceeding, retry its insured's liability"). Rather, the parties "should look to the pleadings, the jury charge, any written opinions, and the trial transcript in the underlying litigation. They should not, for example, be allowed to call as witnesses the people that testified at the earlier trial . . . ." (Footnote omitted.) 1 A. Windt, supra, p. 6-282; accord *Carolina Casualty Ins. Co.* v. *Nanodetex Corp.*, 733 F.3d 1018, 1026 (10th Cir. 2013). Indeed, these principles are not inconsistent with Connecticut law. "[T]he duty to indemnify depends upon the facts established at trial and the theory under which judgment is actually entered in the case." (Internal quotation marks omitted.) *DaCruz* v. *State Farm Fire & Casualty Co.*, 268 Conn. 675, 688, 846 A.2d 849 (2004); see also id. ("the duty to indemnify arises only if the evidence adduced

at trial establishes that the conduct *actually* was covered by the policy" [emphasis in original]).

Counsel for the plaintiffs' own representation to the trial court as to the nature and purpose of Socci's anticipated testimony in the trial in the present case supports my conclusion that permitting relitigation on the issue of liability is unwarranted. Counsel for the plaintiffs sought to present Socci's testimony initially on the issue of liability. When pressed, the counsel for the plaintiffs could not articulate precisely what testimony he sought to present that had not already been presented in the underlying trial. Rather, the plaintiffs' counsel stated that it sought "the court's determination as to credibility and the weight to be given the testimony . . . ." To present Socci or other witnesses to testify a second time to the very issues at the heart of the underlying tort action would simply be an exercise in presenting cumulative evidence not needed for resolution of the issue of whether, or to what extent, damages were caused by an occurrence.

Contrary to the reasoning of the trial court, the rationale for limiting the scope of trial is not grounded in the doctrine of collateral estoppel. "The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality. . . . Collateral estoppel . . . prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties [or those in privity with them] upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 223, 982 A.2d 1053 (2009).

Collateral estoppel does not apply to the plaintiffs in this case for two reasons. First, the plaintiffs in the present case were not in privity with the defendant in the underlying tort action. Second, because the general verdict in that case renders the basis of the jury's determination unclear, it cannot be said that the relevant factual issues were necessarily determined and, therefore, such issues cannot have preclusive effect in the present case.

The principal inquiry is whether the plaintiffs were in privity with the defendant in the underlying action. "Privity is a difficult concept to define precisely. . . . There is no prevailing definition of privity to be followed automatically in every case. It is not a matter of form or rigid labels; rather it is a matter of substance. In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties. Privity is not established by the mere fact that persons may be interested in the same question or in proving or disproving the same set of facts. Rather, it is, in essence, a shorthand statement for the principle that collateral estoppel should be applied only when there exists such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion." (Citation omitted.) *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn. 799, 813–14, 695 A.2d 1010 (1997).

Defending an insured under a reservation of rights has been recognized as sufficient to dispel privity for purposes of collateral estoppel. See, e.g., *State Farm Fire & Casualty Co.* v. *Mabry*, 255 Va. 286, 290, 497 S.E.2d 844 (1998). When an insurer defends an insured under a reservation of rights, it creates an inherent conflict of interest preventing the insurer from asserting its policy defenses. See *Allstate Ins. Co.* v. *Blount*, 491 F.3d 903, 910 (8th Cir. 2007) (applying Missouri law); see also 2 Restatement (Second) Judgments § 58 (2)

(1982) ("[a] 'conflict of interest' . . . exists when the injured person's claim against the indemnitee is such that it could be sustained on different grounds, one of which is within the indemnitor's obligation to indemnify and another which is not"). Thus, while it may well be true that both insured and insurer have an interest obtaining a verdict for the defendant in the tort action, it cannot be said that the parties represent the same legal rights.[12]

In addition, collateral estoppel does not apply against the plaintiffs in the present case because the issues were not "actually and necessarily determined" in the underlying action. (Internal quotation marks omitted.) *Dowling* v. *Finley Associates, Inc.*, 248 Conn. 364, 376, 727 A.2d 1245 (1999). For collateral estoppel to apply, "the fact sought to be foreclosed by [the] defendant must necessarily have been determined in his favor in the prior trial; it is not enough that the fact may have been determined in the former trial." (Internal quotation marks omitted.) Id., 377. "Because a verdict to which the general verdict rule[13] applies is necessarily one that

[12] This is especially so in actions alleging both negligent and intentional conduct. Where a personal liability policy contains an intentional acts exclusion, an insurer has an interest in proving such conduct, whereas an insured would rather avoid establishing such facts so that he does not lose his right to indemnification.

[13] "Under the general verdict rule, if a jury renders a general verdict for one party, and no party requests interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party. . . . Thus, in a case in which the general verdict rule operates, if any ground for the verdict is proper, the verdict must stand; only if every ground is improper does the verdict fall. . . . The rule rests on the policy of the conservation of judicial resources, at both the appellate and trial levels. . . .

"On the appellate level, the rule relieves an appellate court from the necessity of adjudicating claims of error that may not arise from the actual source of the jury verdict that is under appellate review. In a typical general verdict rule case, the record is silent regarding whether the jury verdict resulted from the issue that the appellant seeks to have adjudicated. Declining in such a case to afford appellate scrutiny of the appellant's claims is consistent with the general principle of appellate jurisprudence that it is

can rest on different grounds, there is no way to know definitively that the verdict satisfied the criteria required to invoke the collateral estoppel doctrine." (Footnote added.) Id., 376–77.

I disagree with the trial court that, in the underlying action, the insurers' failure to intervene or the defendant's counsel's failure to seek special interrogatories alters the analysis with respect to collateral estoppel. First, although this court has not decided the issue until today, there is broad consensus in our Superior Court and other jurisdictions that an insurer cannot intervene as of right for any purpose because their interest was contingent until a verdict had been rendered for a covered claim. See *Seaco Ins. Co.* v. *Devine Bros., Inc.*, Superior Court, judicial district of Fairfield, Docket No. CV-00-0374721-S (July 30, 2003) (35 Conn. L. Rptr. 235, 240 n.3) (citing numerous decisions from our Superior Court and other jurisdictions denying insurer intervention as of right because insurer's interest is not direct, but rather contingent on outcome of case). I agree with these cases. There is a split of authority in our Superior Courts as to whether permissive intervention would be proper even if solely for the purpose of submitting interrogatories.[14]

the appellant's responsibility to provide a record upon which reversible error may be predicated." (Citation omitted; internal quotation marks omitted.) *Dowling* v. *Finley Associates, Inc.*, supra, 248 Conn. 371. Generally speaking, in order to avoid the effects of the general verdict rule, a party "may elicit the specific grounds for the verdict by submitting interrogatories to the jury." (Internal quotation marks omitted.) Id., 372.

[14] See *Wright* v. *Judge*, Superior Court, judicial district of New London, Docket No. CV-08-5006839-S (October 5, 2010) (50 Conn. L. Rptr. 738, 738–39) (denying motion to intervene for limited purpose of submitting special interrogatories, noting that issues of liability in underlying case did not require determination of coverage issues raised by insurer in order to be resolved, that allowing intervention for this purpose would directly insert into action issues of insurance which are generally not admissible evidence in tort case, and that, therefore, allowing insurer to interpose interrogatories "would potentially create complications both for the plaintiff . . . and counsel for [the] insured"); *Hunter* v. *Peters*, Superior Court, judicial district of New Haven, Docket No. 423946 (December 13, 2001) (31 Conn. L. Rptr. 141, 142)

Second, the fact that the defendant's counsel did not seek special interrogatories cannot simply be imputed to the plaintiffs, even though they furnished the defense. "[W]e have long held that *even* when an insurer retains an attorney in order to defend a suit against an insured, the attorney's only allegiance is to the client, the insured." (Emphasis in original.) *Metropolitan Life Ins. Co.* v. *Aetna Casualty & Surety Co.*, 249 Conn. 36, 61, 730 A.2d 51 (1999). "[E]ven when an attorney is compensated or expects to be compensated by a liability insurer, [his or] her duty of loyalty and representation nonetheless remains *exclusively* with the insured." (Emphasis added.) *Higgins* v. *Karp*, 239 Conn. 802, 810, 687 A.2d 539 (1997). Even if the decision not to request special interrogatories could somehow be imputed to the insurer in these circumstances, such a decision does not convert the general verdict into a sword applied against the insurer. See *Dowling* v. *Finley Associates, Inc.*, supra, 248 Conn. 376 n.8. Thus, the plaintiffs' lack of participation in the underlying action was not inappropriate such that the findings in that case should be given preclusive effect against the plaintiffs in the present case.

Turning to the scope of the trial in the present case, the trial court admitted the transcripts from the underlying action, the pleadings, the verdict form, and the jury charge. This was all the trial court needed to determine whether there was coverage in the present case to con-

(recognizing that permissive intervention for limited purpose of submitting special interrogatories to determine whether insurance policy covers defendant's alleged conduct could be proper in some cases, but was not in that case because mutually exclusive potential bases of jury verdict alleviated need for interrogatories); *Murphy* v. *Kapura*, Superior Court, judicial district of Tolland, Docket No. CV-95-56977-S (May 19, 1995) (14 Conn. L. Rptr. 312, 313) (denying insurer's request to intervene in action against insured alleging negligent assault and intentional assault for purpose of submitting interrogatory to determine whether intentional act exclusion of policy precluded coverage under rationale that intervention could prejudice parties and insurer had alternative means of establishing whether intentional assault occurred through separate declaratory judgment action).

sider the issue of allocating liability.[15] With respect to the issue of the applicability of relevant exclusions, the presentation of additional testimony or evidence may be necessary for an insurer to carry its burden. In order to prove that a coverage exclusion applies, an insurer may seek to develop facts that were not relevant to the underlying tort action. The record in the underlying tort action likely will not adequately speak to exclusion issues. In the present case, the plaintiffs did indeed submit additional evidence regarding the exclusions. Again, the trial court provided counsel for the plaintiffs' an opportunity to explain what additional testimony he intended to present in support of their claims that coverage was excluded. Counsel for the plaintiffs did not seek to present any other oral testimony.

All in all, the trial court gave the plaintiffs a fair hearing in this declaratory judgment action. It properly weighed the burden on judicial resources, and the parties, in declining to permit the plaintiffs to present evidence already submitted in the underlying action. The trial court permitted the plaintiffs to present new or additional evidence related to issues not relevant in the underlying tort action. Accordingly, I would conclude that the trial correct correctly established the scope of the trial in the present case.

III

PLAINTIFFS' OPPORTUNITY TO DEVELOP THEIR CASE

The plaintiffs claim, as an additional ground for affirming the judgment of the Appellate Court, that they

[15] The plaintiffs did not address this issue in their posttrial brief, apparently believing the issue was decided at summary judgment or in the trial court's decision regarding the scope of trial. Nevertheless, the trial court discussed the issue in its memorandum of decision. The plaintiffs do not claim on appeal that the trial court improperly determined whether, or to what extent, the damages were caused by an occurrence under the umbrella policy. I express no opinion about the trial court's analysis of that issue. My discussion herein is limited to simply whether the trial court correctly concluded that the plaintiffs were not entitled to a trial de novo on all issues.

were denied the opportunity to develop their case, in particular their coverage defenses, through both discovery and trial evidence. Because this ground appears to be very similar to the previous issue, although it may encompass rulings on discovery, I again review it under an abuse of discretion standard. *State* v. *Dehaney*, supra, 261 Conn. 354–55.

Specifically, the plaintiffs claim that if permitted to conduct appropriate discovery, they might have established that the defendant's motivations in detaining and threatening Socci were business related. Similarly, they might have learned whether Socci's hours were ultimately to be increased beyond the twenty-six hour threshold, where workers' compensation insurance is required, even for a domestic employee. Instead, the plaintiffs assert they were left with a record that did not fully address all of the coverage issues and included a general verdict. As a result, the plaintiffs claim that the trial court's "limiting decisions were inherently unfair to [them], and fundamentally against the interests of justice."

While the plaintiffs assert that they were denied "virtually every form of discovery it sought," they never identify a discovery request or ruling with specificity. They claim that they were not allowed to depose "key witnesses" such as the defendant and Socci. The plaintiffs deposed the defendant on the eve of trial on issues regarding his business, workers' compensation, and Socci's employment. Counsel for Socci sought a protective order and the plaintiffs failed to explain to the court why it needed further information when it had her trial testimony. Thereafter, the court issued a protective order. Nothing prevented the plaintiffs from calling the defendant as a trial witness. There were also lengthy discussions about Socci testifying. Her counsel sought an order of protection due to the fragility of her mental state with respect to these events, but she agreed to a

stipulation of facts. The plaintiffs refused to do so. Because the plaintiffs could not articulate why it needed live testimony, the court was unwilling to allow the testimony and issued a protective order.

In view of the plaintiffs' failure to identify a specific ruling of the trial court regarding discovery, other than the testimony of both the defendant and Socci, my review of the record leads me to conclude that the trial court properly exercised its discretion in this matter. There was no ruling that constituted an abuse of discretion. I, therefore, would reject the plaintiffs' claims in this regard.

To summarize, I would conclude that the trial court correctly determined that the business pursuits, abuse, and workers' compensation exclusions did not apply in the present case. Additionally, I believe that the trial court correctly determined that the plaintiffs were not entitled to a de novo fact finding hearing on all issues in the present declaratory judgment action. Finally, I would conclude that the trial court did not abuse its discretion in denying certain discovery requests.

Therefore, I would reverse the judgment of the Appellate Court and remand the matter to that court with direction to affirm the judgment of the trial court.

I respectfully concur and dissent.

STATE OF CONNECTICUT *v.* LORENZO ADAMS
(SC 19690)
(SC 19692)

Rogers, C. J., and Palmer, McDonald, Robinson and D'Auria, Js.

Syllabus

Convicted of the crimes of attempted larceny in the sixth degree and breach of the peace in the second degree in connection with an incident in which the defendant attempted to shoplift a bag of items from a store

before leaving that bag behind and fleeing, the defendant appealed to the Appellate Court, which reversed his conviction as to attempted larceny because there was no evidence that the items in the bag had belonged to the store. The Appellate Court reasoned that the store surveillance video had not captured the defendant's placing of specific, identifiable store merchandise into the bag, and, although one of the investigating police officers testified that the store's employees had determined the total dollar amount of the items in the bag, there was no evidence to substantiate how those employees arrived at that exact value. On the granting of certification, the state appealed to this court. *Held* that the Appellate Court incorrectly concluded that the evidence was insufficient to support the defendant's conviction of attempted larceny, the evidence having supported a reasonable inference that the items in the bag belonged to the store and that the defendant intended to deprive the store of those items permanently without its consent: the fact finder could have reasonably inferred, from the evidence that the employees determined the exact value of the items in the bag, that those items had price tags on them from the store, which, together with the surveillance video showing the defendant's furtive movements, his resistance when store employees had attempted to stop him, his abandonment of the bag, and his flight from the store, raised a reasonable inference that the bag contained items owned by the store; furthermore, the defendant's claim that the evidence of his flight could not be used to establish that a crime was committed was unavailing because, although evidence of flight, standing alone, may be ambiguous, it was for the fact finder to resolve that ambiguity under all of the relevant facts and circumstances.

Argued October 16—officially released December 19, 2017

Procedural History

Substitute information charging the defendant with the crimes of robbery in the third degree, attempt to commit larceny in the sixth degree and breach of the peace in the second degree, brought to the Superior Court in the judicial district of Danbury, geographical area number three, and tried to the court, *Roraback*, *J.*; judgment of guilty of attempt to commit larceny in the sixth degree and breach of the peace in the second degree, from which the defendant appealed to the Appellate Court, *Beach*, *Sheldon* and *Harper*, *Js.*, which reversed in part the judgment of the trial court, and the defendant and the state, on the granting of certification,

filed separate appeals with this court. *Reversed in part; judgment directed; appeal dismissed.*

Deren Manasevit, assigned counsel, for the appellant-appellee (defendant).

Nancy L. Walker, deputy assistant state's attorney, with whom, on the brief, were *Stephen J. Sedensky III*, state's attorney, and *Colleen P. Zingaro*, assistant state's attorney, for the appellee-appellant (state).

Opinion

ROGERS, C. J. The issues that we must resolve in these certified appeals by the defendant, Lorenzo Adams, and the state are whether the Appellate Court correctly concluded that (1) the defendant's conviction of breach of the peace in the second degree in violation of General Statutes § 53a-181 was supported by the evidence, and (2) the defendant's conviction of attempted larceny in the sixth degree in violation of General Statutes § 53a-49 and General Statutes (Rev. to 2005) § 53a-125b[1] was not supported by the evidence. The defendant was charged with a variety of offenses after he attempted to steal merchandise from a Marshalls department store in Danbury and engaged in a scuffle with the store's security personnel. After a trial to the court, the defendant was found guilty of breach of the peace in the second degree and attempted larceny in the sixth degree, and the court rendered judgment accordingly. The defendant appealed from the judgment of conviction to the Appellate Court, which affirmed the conviction of breach of the peace and, in a split decision, reversed the conviction of attempted larceny. See *State* v. *Adams*, 163 Conn. App. 810, 825, 137 A.3d 108 (2016). We then granted the defendant's petition

[1] General Statutes (Rev. to 2005) § 53a-125b was amended by No. 09-138, § 6, of the 2009 Public Acts, which increased the maximum value of the property obtained from $250 to $500. In this opinion, all references to § 53a-125b are to the 2005 revision unless otherwise indicated.

for certification to appeal to this court on the following issue: "Did the Appellate Court correctly determine that there was sufficient evidence to support the defendant's conviction for breach of the peace?" *State* v. *Adams*, 321 Conn. 913, 136 A.3d 1273 (2016). We also granted the state's petition for certification to appeal on the following issue: "Did the Appellate Court majority correctly determine that there was insufficient evidence to support a judgment against the defendant of attempted larceny in the sixth degree?" *State* v. *Adams*, 321 Conn. 912, 138 A.3d 281 (2016). We dismiss the defendant's appeal on the ground that certification was improvidently granted, and we reverse in part the Appellate Court's judgment with respect to its determination that there was insufficient evidence to support the conviction of attempted larceny in the sixth degree.

The record reveals the following facts that the trial court reasonably could have found and procedural history. On September 23, 2006, the defendant went to the men's department of the Marshalls department store in Danbury. The defendant's activities after he entered the men's department were recorded on an eighteen minute surveillance video.[2] Approximately thirty seconds into the video recording, the defendant removed an item, which appeared to be either a jacket or a suit, from a clothing rack. The defendant then carried the item to a corner of the store where his entire body, except for the top of his head, was hidden by a merchandise display. When he left the corner several seconds later, he was not carrying anything. Approximately six minutes later, the video recording showed the defendant carrying a pair of shoes in his right hand and another item in his left hand. Several minutes later, the defendant returned to the same corner of the store where, over the course of about three minutes, he repeatedly glanced

[2] The video recording was not continuous but showed a series of still pictures at the rate of approximately one per second.

around furtively, ducked and looked down as if doing something with his hands. The defendant eventually emerged from the right end of the merchandise display carrying a plastic bag in his left hand, which appeared to be either empty or only partially filled, and other items in his right hand. He then can be seen placing items in the bag, at which point he returned to the hidden area behind the merchandise display. Several seconds later, the defendant emerged from the left end of the merchandise display without the bag and continued to browse around the store and to pick up merchandise. After approximately two minutes, he returned to the same corner. Several seconds later, he again emerged from the right end of the merchandise display and again appeared to be placing items in a bag. The defendant can then be seen walking to the front of the store with a heavily loaded plastic bag. Without going through any checkout line, he headed toward the exit. At that point, a man and a woman, identified at trial as Marshalls' loss prevention officers Joseph Fernandes and Christine Nates, approached the defendant from inside the store. Fernandes and Nates wore similar dark colored smocks over their clothes. There was a brief scuffle between the defendant and the officers, during which Nates grabbed the bag from the defendant. The defendant then ran out of the store.

Shortly thereafter, Sergeant Vincent LaJoie and Officer Jose Pastrana of the Danbury Police Department responded to a report of a larceny in progress at Marshalls. LaJoie arrived first and obtained a description of the defendant from Fernandes and Nates. Pastrana arrived shortly thereafter and accompanied Fernandes and Nates to the store's loss prevention office where he viewed the video recording of the defendant in the store. Meanwhile, LaJoie searched for the suspect in the parking lot of the shopping plaza. Upon seeing the defendant, LaJoie notified the police dispatcher that he

had located the suspect, and then LaJoie approached him. Shortly thereafter, Pastrana, Fernandes and Nates arrived at the scene, and the loss prevention officers identified the defendant as the person who had attempted to steal items from the store. The defendant was arrested and ultimately charged with, among other crimes, attempted larceny in the sixth degree and breach of the peace in the second degree. Specifically, the long form information alleged that the defendant committed attempted larceny in the sixth degree when he "attempted to take a jacket from the [Marshalls] store . . . ."

Fernandes and Nates were unavailable to testify at trial.[3] Pastrana testified without objection, however, that he had been informed, presumably by Fernandes and Nates, that the value of the merchandise that was in the bag that the defendant had attempted to carry out of the store was approximately $979. Specifically, when asked whether he knew what merchandise the defendant was trying to take, Pastrana responded that he did not know what specific items were in the bag, but "the total amount that they gave me—they ran up . . . was approximately $979 and change."

The trial court found the defendant guilty of attempted larceny in the sixth degree and breach of the peace in the second degree. The defendant appealed from the judgment of conviction to the Appellate Court, which concluded that the evidence was sufficient to support the conviction of breach of the peace in the second degree; *State* v. *Adams*, supra, 163 Conn. App. 825; but not to support the conviction of attempted larceny in the sixth degree. Id., 822. With respect to the breach of the peace conviction, the Appellate Court determined that the conviction was supported by the

[3] We note that the trial took place in 2014, more than seven years after the incident at the Marshalls store.

video recording showing the defendant trying to force his way past Fernandes and Nates when they confronted him at the exit and by Pastrana's testimony that Fernandes and Nates told him that the defendant shoved them. Id., 824. The court concluded that "[t]he cumulative force of this evidence is that the defendant used physical force, namely, a shove, with the intent to impede a lawful activity." Id., 824–25; see also *State* v. *Wolff*, 237 Conn. 633, 670, 678 A.2d 1369 (1996) ("[t]he predominant intent [required for a breach of the peace conviction] is to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity" [internal quotation marks omitted]).

With respect to the conviction of attempted larceny in the sixth degree, a majority of the Appellate Court concluded that "there is no evidence that the items that the defendant tried to exit Marshalls with belonged to the store. The surveillance footage does not capture the defendant's placing of specific, identifiable store merchandise into the bag before making off with it, and there was no evidence before the trial court that the contents of the bag that the defendant abandoned belonged to Marshalls. It is entirely conceivable that the defendant entered Marshalls with the bag, and that the bag contained items from somewhere else. To the extent that the state argues that evidence of value may, by itself, establish that the items belonged to Marshalls, we reject that position as well. For all we know, Fernandes and Nates guessed the value that they reported to Pastrana. We have no evidence to substantiate how they concluded that the items valued $979. In the absence of some evidence, we conclude that the court could not infer ownership from value without speculating." *State* v. *Adams*, supra, 163 Conn. App. 821–22. Accordingly, the majority concluded, the state had failed to prove an essential element of §53a-125b.

Judge Beach dissented from the judgment reversing the defendant's conviction of attempted larceny in the sixth degree. He contended that the video recording and Pastrana's testimony regarding the value of the merchandise in the bag gave rise to a reasonable inference that "the defendant was engaged in the process of collecting items from the store and placing them in the bag" and that innocent explanations for the defendant's behavior were implausible. Id., 826.

These certified appeals followed. The defendant claims that the Appellate Court incorrectly concluded that the evidence supported his conviction of breach of the peace in the second degree because no reasonable person could find that he had the intent to impede a lawful activity when he scuffled with Fernandes and Nates. After examining the record on appeal and considering the briefs and the arguments of the parties, we have concluded that the defendant's appeal should be dismissed on the ground that certification was improvidently granted. The issue that the defendant raises was fully considered in the opinion of the Appellate Court, and it would serve no useful purpose to repeat that discussion here. See, e.g., *State* v. *Dyous*, 320 Conn. 176, 177, 128 A.3d 505 (2016).

We agree, however, with the state's claim that the Appellate Court incorrectly concluded that the evidence was insufficient to support the defendant's conviction of attempted larceny in the sixth degree. We begin with the standard of review. "In [a defendant's] challenge to the sufficiency of the evidence . . . [w]hether we review the findings of a trial court or the verdict of a jury, our underlying task is the same. . . . We first review the evidence presented at trial, construing it in the light most favorable to sustaining the facts expressly found by the trial court or impliedly found by the jury. We then decide whether, upon the facts thus established and the inferences reasonably drawn therefrom, the

trial court or the jury could reasonably have concluded that the cumulative effect of the evidence established the defendant's guilt beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Drupals*, 306 Conn. 149, 157–58, 49 A.3d 962 (2012). "[W]e give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses." (Internal quotation marks omitted.) Id., 158.

"We have repeatedly acknowledged that it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence." (Internal quotation marks omitted.) *State* v. *Buhl*, 321 Conn. 688, 713–14, 138 A.3d 868 (2016). "On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [trier's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Morelli*, 293 Conn. 147, 152, 976 A.2d 678 (2009).

General Statutes (Rev. to 2005) § 53a-125b (a) provides: "A person is guilty of larceny in the sixth degree when he commits larceny as defined in section 53a-119 and the value of the property or service is two hundred fifty dollars or less." General Statutes § 53a-119 provides in relevant part: "A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. . . ." Thus, the essential elements of larceny are: "(1) the wrongful taking or carrying away of the personal property of another; (2) the existence of a felonious intent in the taker to deprive the owner of

[the property] permanently; and (3) the lack of consent of the owner." (Internal quotation marks omitted.) *State* v. *Smith*, 148 Conn. App. 684, 699, 86 A.3d 498 (2014), aff'd, 317 Conn. 338, 118 A.3d 49 (2015). General Statutes § 53a-49 (a) provides: "A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime."

We conclude in the present case that the evidence supports the defendant's conviction of attempted larceny in the sixth degree. The video recording showed the defendant carrying a suit or jacket to a corner of the store, where he was hidden by a merchandise display, and leaving the corner without the items. It also showed the defendant carrying other merchandise around the store and returning repeatedly to the same corner, where he glanced furtively around and engaged in activity that did not appear to be normal shopping behavior. At one point, the defendant emerged from the right end of the merchandise display carrying an empty or nearly empty plastic bag in one hand and items in the other. He then put some items in the bag, returned to the hidden portion of the corner and emerged at the left end of the merchandise display without the bag. At the end of the video recording, the defendant emerged from behind the merchandise display with a heavily loaded plastic bag and then headed toward the exit without first going through the checkout lanes. When Fernandes and Nates confronted the defendant as he tried to leave, he did not demand an explanation from them or seek assistance from oth-

ers, as it would have been natural for him to do if he had been attempting to leave the store with his own property. Rather, he abandoned the bag full of items and ran away. Marshalls employees later told Pastrana that they "ran up" the value of the merchandise in the bag as "$979 and change."

We conclude that this evidence overwhelmingly supports a reasonable inference that the items in the bag belonged to Marshalls and that the defendant intended to deprive Marshalls of the property permanently without its consent. Indeed, we agree with Judge Beach that it is simply implausible that the defendant would have entered the Marshalls store with a bag full of his own belongings, hidden the bag in the corner behind the merchandise display, carried Marshalls merchandise to that area, taken his belongings out of the bag and then put them back in, and then abandoned the bag when confronted by Fernandes and Nates. We also disagree with the Appellate Court's conclusion that Pastrana's testimony regarding the value of the items in the bag did not imply that Marshalls owned them because it was possible that Fernandes and Nates had simply guessed the value. It was perfectly reasonable for the trial court to infer, from the very specific dollar amount that Pastrana gave, that Fernandes and Nates "ran up" the items on a cash register or calculator and, therefore, that the items must have had price tags on them from Marshalls. It simply defies common sense to conclude that they might have guessed a value of "$979 and change."

The defendant contends that, to the contrary, the state failed to prove the elements of attempted larceny because it did not present any evidence that would have allowed the trial court to ascertain the precise identity of the goods, and, without such evidence, ownership cannot be established. The defendant cites no authority, however, for the proposition that evidence sufficient

to establish beyond a reasonable doubt that the goods at issue were owned by the alleged victim of the theft, but not the specific nature of those goods, is insufficient as a matter of law to establish ownership for purposes of an attempted larceny charge. Rather, in each case cited by the defendant in which the evidence was found to be insufficient to establish a theft, the specific identity of the goods alleged to have been stolen was established, but the state failed to prove either ownership or a wrongful taking. See *People* v. *Cowan*, 49 Ill. App. 3d 367, 368–69, 364 N.E.2d 362 (1977) (when defendant was accused of stealing shirt from warehouse where he worked, evidence that defendant, while in warehouse, was in possession of shirt of type that warehouse stored was insufficient to establish ownership when evidence also showed that other retailers sold similar shirts and defendant testified that he bought shirt from peddler); *Stewart* v. *State*, 258 Ind. 107, 111, 279 N.E.2d 202 (1972) (when defendant was charged with having control over property stolen by another, evidence that skates belonging to skating rink were found in defendant's car was not sufficient to establish that skates had been stolen); *Maughs* v. *Charlottesville*, 181 Va. 117, 119–21, 23 S.E.2d 784 (1943) (when evidence showed that police observed defendant make several trips between his automobile and location where railway company had stored "tie plates," and search of defendant's car revealed twenty-one tie plates, evidence was insufficient to establish that tie plates belonged to railway company because company employees could not swear that tie plates were missing from place where they were stored).

The defendant's reliance on the principle that the state must present evidence of the corpus delicti is also misplaced. See *State* v. *Harris*, 215 Conn. 189, 192, 575 A.2d 223 (1990) ("the corroborative evidence of the corpus delicti should be presented, and the court satis-

fied of its material character and adequacy"). *Harris* merely stands for the principle that "a *naked* extrajudicial confession of guilt by one accused of [a] crime is not sufficient to sustain a conviction when unsupported by *any* corroborative evidence." (Emphasis in original; internal quotation marks omitted.) Id.; see also *State* v. *Beverly*, 224 Conn. 372, 375, 618 A.2d 1335 (1993) ("[t]he corpus delicti rule is a rule of evidence intended to protect an accused from conviction as a result of a baseless confession when no crime has in fact been committed"). *Harris* does not support the proposition that circumstantial evidence is insufficient to establish that a crime was committed as a matter of law. Indeed, that opinion expressly held to the contrary. See *State* v. *Harris*, supra, 193 ("corroborating evidence [that a crime was committed] may be circumstantial in nature").

The defendant further contends that evidence of flight from the scene of a crime is probative only on the issues of identity or intent, and it cannot be used to establish that a crime was committed in the first instance. In support of this claim, the defendant cites a number of cases in which evidence of flight was used to establish identity or intent. See *State* v. *Cerilli*, 222 Conn. 556, 569, 610 A.2d 1130 (1992); *State* v. *White*, 127 Conn. App. 846, 854, 17 A.3d 72, cert. denied, 302 Conn. 911, 27 A.3d 371 (2011); *Robinson* v. *Commissioner of Correction*, 73 Conn. App. 579, 581, 808 A.2d 1159 (2002), cert. denied, 262 Conn. 944, 815 A.2d 676 (2003); *State* v. *Reddick*, 33 Conn. App. 311, 329–30, 635 A.2d 848 (1993), cert. denied, 228 Conn. 924, 638 A.2d 38 (1994). None of these cases, however, expressly held that such evidence may be not be used for any other purpose.

The general rule is that, in the absence of a limiting instruction, the finder of fact is "entitled to draw any inferences from the evidence that it reasonably would

support." *Curran* v. *Kroll*, 303 Conn. 845, 864, 37 A.3d 700 (2012). Although we recognize that, standing alone, evidence of flight may be ambiguous, any such ambiguities are for the finder of fact to resolve under all of the relevant facts and circumstances. *State* v. *Wright*, 198 Conn. 273, 281, 502 A.2d 911 (1986) ("[t]he fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render evidence of flight inadmissible but simply constitutes a factor for the jury's consideration. . . . The probative value of evidence of flight depends upon all the facts and circumstances and is a question of fact for the jury." [Citation omitted; internal quotation marks omitted.]). In any event, as Judge Beach noted in his dissenting opinion; see *State* v. *Adams*, supra, 163 Conn. App. 826–27; it is difficult in the present case to imagine an innocent explanation for the defendant's conduct when he immediately resisted the attempt by Fernandes and Nates to stop him as he left the store, abandoned $979 worth of merchandise and ran away. Unlike the situation where a violent crime has been committed and innocent bystanders might understandably want to leave the area, there was nothing inherently threatening or frightening about the appearance or behavior of Fernandes and Nates, who wore similar smocks and approached the defendant in a nonaggressive manner from inside the store. Moreover, if the defendant believed for some reason that they were about to mug or assault him, despite the fact that the area was brightly lit and they were surrounded by numerous shoppers and store personnel, the most natural response would have been for him to appeal to those people around him for help, or at least to seek help after he left the store. We can perceive *no* reason why he would have simply abandoned $979 worth of merchandise if it had belonged to him.

The defendant relies on *Maughs* v. *Charlottesville*, supra, 181 Va. 117, to support his claim that flight cannot

be used to prove that a crime was committed.[4] To the extent that the court in *Maughs* believed that circumstantial evidence is insufficient as a matter of law to establish ownership for purposes of proving larceny, we find it unpersuasive. Although it is true that ownership is not established when there is insufficient circumstantial evidence *and* the alleged victim's "doubts [are] so great that he could neither swear that he had lost, nor that the property in question was his own"; *Goldman* v. *Commonwealth*, 100 Va. 865, 880, 42 S.E. 923 (1902); see also id., 879–80 (when alleged victim of theft declined to identify specific property in question as its property and there was evidence that property could have been owned by another entity, evidence was insufficient to establish ownership); that does not mean that, when circumstantial evidence *is* capable of raising the logical inference of ownership, such evidence is insufficient as a matter of law unless there is also testimony by the owner identifying the specific property as his own. In any event, there was evidence in the present case that Fernandes and Nates had identified the items in the bag as belonging to Marshalls, namely, Pastrana's testimony that they "ran up" the value of the items as

[4] In *Maughs*, the defendant fled from the scene after he was observed by police officers making multiple trips between his automobile and an area where a railway company was storing railroad track "tie plates." *Maughs* v. *Charlottesville*, supra, 181 Va. 119–20. When the police caught up to the defendant, they found twenty-one tie plates in his automobile. Id., 120. Three of the railway company's employees testified that the tie plates in the defendant's possession were similar to the tie plates in the storage area. Id., 121. One of these employees testified that, although he could not testify conclusively that the tie plates belonged to the railway company, he " 'would think so' " based on the fact that they came from the storage area. Id. Another employee testified that the railway company had not had occasion to determine whether tie plates were missing from the storage area. Id. The Supreme Court of Appeals of Virginia concluded that this evidence was insufficient to establish that the railway company owned the tie plates. Id. ("[w]hen the alleged owner thinks he has lost the property, but will not swear he has . . . the ownership is not, by this evidence sufficiently proved" [internal quotation marks omitted]).

"$979 and change." We conclude that this evidence, together with the evidence showing the defendant's furtive and secretive conduct in the store, his resistance when Fernandes and Nates attempted to stop him, his abandonment of the bag and his flight from the store, cumulatively raised a reasonable inference that the bag contained items that were owned by Marshalls.

The judgment of the Appellate Court is reversed only with respect to the defendant's conviction of attempted larceny in the sixth degree and the case is remanded to that court with direction to affirm the judgment of the trial court, the judgment of the Appellate Court is affirmed in all other respects, and the defendant's appeal is dismissed.

In this opinion the other justices concurred.

IN RE HENRRY P. B.-P.*
(SC 19907)

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

Syllabus

Pursuant to statute (§ 45a-608n [b]), "[a]t any time during the pendency of a petition . . . to appoint a guardian or coguardian . . . a party may file a petition requesting the Probate Court to make findings . . . to be used in connection with a petition [for] special immigrant juvenile status under [federal law]."

H, a minor child, traveled from Honduras, where his life was threatened, to the United States in order to seek refuge with his mother, the petitioner, who lives in Connecticut. Five weeks before H's eighteenth birthday, the petitioner filed petitions seeking, inter alia, the appointment of a coguardian and juvenile status findings pursuant to § 45a-608n (b)

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

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

so that H could obtain special immigrant status and avoid potential deportation. The Probate Court then scheduled a hearing on a date after H's eighteenth birthday and ordered the Department of Children and Families to conduct a study related to the guardianship petition. Shortly before H's birthday, the petitioner filed an emergency petition for findings under § 45a-608n (b), which the Probate Court denied. Thereafter, the petitioner and H appealed to the Superior Court from certain of the Probate Court's rulings, including the denial of the emergency petition. The Superior Court dismissed the appeal for lack of subject matter jurisdiction on the ground that H was no longer a minor, and the petitioner and H appealed to the Appellate Court. While that appeal was pending, the Probate Court issued a final decision denying the petitions seeking appointment of a coguardian and juvenile status findings pursuant to § 45a-608n (b) on the ground that H was no longer a minor. The petitioner and H then appealed from the Probate Court's final decision to the Superior Court, which dismissed that appeal. Thereafter, the petitioner and H filed a second appeal with the Appellate Court, which consolidated the two appeals. The Appellate Court affirmed the judgments of the Superior Court dismissing the probate appeals, concluding that the Probate Court lacked authority to appoint a coguardian and to make juvenile status findings under § 45a-608n (b) because H had reached the age of eighteen. On the granting of certification, the petitioner and H appealed to this court. *Held* that the Appellate Court improperly affirmed the Superior Court's judgments dismissing the probate appeals, this court having concluded that the Probate Court was not divested of authority to make juvenile status findings under § 45a-608n (b) after H reached the age of eighteen during the pendency of the underlying proceeding: although the text of § 45a-608n (b) requires juvenile status findings upon the granting of certain guardianship petitions, there was no statutory language expressly conditioning the Probate Court's authority to make such findings on the granting of such a petition; moreover, adding such restrictive language would be inconsistent with the maxim that this court does not read language into statutes and with the statutory (§ 45a-605 [a]) directive favoring a liberal construction of § 45a-608n, recognizing the authority to make findings under such circumstances was consistent with the overarching purpose of § 45a-608n, which is to facilitate access to the state court findings necessary for federal juvenile status petitions, which must be filed with federal immigration authorities before a child's twenty-first birthday, and the legislative history of § 45a-608n counseled in favor of a broader reading of the statute as to those persons eligible to obtain predicate state court findings necessary to render available the federal immigration benefits of juvenile status.

Argued September 20—officially released December 14, 2017***

*** December 14, 2017, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Appeal from the decision by the Hartford Regional Children's Probate Court setting a hearing date on the petition filed by the petitioner for removal of guardian and appointment of guardian and denying the emergency petition filed by the petitioner for special immigrant juvenile status findings as to the petitioner's minor child, Henrry P. B.-P., brought to the Superior Court in the judicial district of Hartford, Juvenile Matters, where the court, *Dannehy, J.*, rendered judgment dismissing the appeal, from which the petitioner and Henrry P. B.-P. filed an appeal with the Appellate Court; thereafter, appeal by the petitioner and Henrry P. B.-P. from the decisions of the Hartford Regional Children's Probate Court denying the petitioner's petitions for removal of guardian, appointment of guardian and for special immigrant juvenile status findings as to Henrry P. B.-P., brought to the Superior Court in the judicial district of Hartford, Juvenile Matters, where the court, *Burgdorff, J.*, rendered judgment dismissing the appeal, from which the petitioner and Henrry P. B.-P. appealed to the Appellate Court, which consolidated the appeals; subsequently, the Appellate Court, *Mullins* and *Bear, Js.*, with *Lavine, J.*, dissenting, affirmed the judgments of the trial court, and the petitioner and Henrry P. B.-P., on the granting of certification, appealed to this court. *Reversed; further proceedings.*

Enelsa Diaz, with whom were *Giovanna Shay*, and, on the brief, *Charles D. Ray* and *Brittany A. Killian*, for the appellants (petitioner et al.)

Edwin D. Colon and *Jay E. Sicklick* filed a brief for the Center for Children's Advocacy, Inc., et al., as amici curiae.

James Worthington and *Kevin P. Broughel* filed a brief for Kids in Need of Defense as amicus curiae.

Opinion

ROBINSON, J. In this certified appeal, we consider whether the Probate Court retains the statutory authority to make findings pursuant to General Statutes § 45a-608n (b)[1] in connection with a petition for special immigrant juvenile status (juvenile status) under 8 U.S.C. § 1101 (a) (27) (J),[2] when the minor child who is the

[1] General Statutes § 45a-608n (b) provides: "At any time during the pendency of a petition to remove a parent or other person as guardian under section 45a-609 or 45a-610, or to appoint a guardian or coguardian under section 45a-616, a party may file a petition requesting the Probate Court to make findings under this section to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor child as having special immigrant juvenile status under [8 U.S.C. § 1101 (a) (27) (J)]. The Probate Court shall cause notice of the hearing on the petition to be given by first class mail to each person listed in subsection (b) of section 45a-609, and such hearing may be held at the same time as the hearing on the underlying petition for removal or appointment. If the court grants the petition to remove the parent or other person as guardian or appoint a guardian or coguardian, the court shall make written findings on the following: (1) The age of the minor child; (2) the marital status of the minor child; (3) whether the minor child is dependent upon the court; (4) whether reunification of the minor child with one or both of the minor child's parents is not viable due to any of the grounds sets forth in subdivisions (2) to (5), inclusive, of section 45a-610; and (5) whether it is not in the best interests of the minor child to be returned to the minor child's or parent's country of nationality or last habitual residence."

[2] Title 8 of the United States Code, § 1101 (a) (27), provides in relevant part as follows: "The term 'special immigrant' means . . .

"(J) an immigrant who is present in the United States—

"(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

"(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

"(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

"(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human

subject of the petition reaches the age of eighteen years old during the pendency of the petition. The petitioner, Reyna P. A., and her son, Henrry P. B.-P., appeal, upon our grant of their petition for certification,[3] from the judgment of the Appellate Court, which affirmed the judgments of the Superior Court for Juvenile Matters dismissing their appeals from the decisions of the Probate Court. *In re Henrry P. B.-P.*, 171 Conn. App. 393, 415, 156 A.3d 673 (2017). We agree with their dispositive claim in this appeal, and conclude that the Probate Court did not lose its authority to make juvenile status findings pursuant to § 45a-608n (b) when Henrry turned eighteen years old during the pendency of the petition. Accordingly, we reverse the judgment of the Appellate Court.

The record and the opinion of the Appellate Court set forth the relevant facts and procedural history. "[The petitioner] and her two . . . children, Henrry and [his sister], are from Honduras. After her husband and father-in-law were brutally murdered by the same group of individuals, [the petitioner] fled Honduras, seeking safety in the United States and leaving her two minor children behind with their paternal grandmother because they were too young to make the treacherous journey into the [United States]. As the children grew into adolescents, the threats against them began to escalate as well. . . . Eventually, fearing for their lives, [Henrry and his sister], unbeknownst to relatives,

Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

"(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter . . . ."

[3] We granted the petition for certification to appeal from the judgment of the Appellate Court, limited to the following issue: "Did the Appellate Court properly affirm the Superior Court's dismissal of the petitioners' appeals on April 22, 2016, and September 26, 2016, from the Probate Court orders?" *In re Henrry P. B.-P.*, 325 Conn. 915, 159 A.3d 232 (2017).

decided to embark on their own journey into the United States to find their mother and seek refuge. . . .

"Upon entering the United States in 2015, Henrry and [his sister] were detained by Immigration Customs and Border Patrol and then ultimately released to [the petitioner] in Connecticut. They were seventeen and sixteen years old at that time. Since arriving in Connecticut, both minors have resided with [the petitioner] and the proposed coguardian in this case, [Santos O. R.], and have been enrolled in . . . high school, where Henrry recently completed tenth grade. . . . Both [the petitioner] and [Santos] work full-time to support the needs of Henrry and his [sister]. . . .

"On March 1, 2016, approximately five weeks prior to Henrry's eighteenth birthday, [the petitioner], through counsel, initiated the underlying [action in the Probate Court]. On that date, she filed a petition for removal of guardian, to remove her minor children's father as guardian and affirm herself as guardian, and additionally seeking the appointment of [Santos] as] coguardian. . . . On that date, she also filed a petition for [juvenile status findings] pursuant to § 45a-608n, to be used in connection with an application to the United States Citizenship and Immigration Services [Immigration Services]. . . . Finally, on that date, [the petitioner] filed a motion for waiver of study by the Department of Children and Families [department] for Henrry, notifying the Probate Court that Henrry would be turning eighteen in approximately five weeks, and that time was of the essence." (Internal quotation marks omitted.) Id., 396–97.

" 'On March 23, 2016, the Probate Court issued its first order of notice of hearing in this case indicating that the matter was being set down for a hearing with "no appearance necessary" by the parties on April 22, 2016, a date after Henrry's eighteenth birthday. . . .

The Probate Court also [sent notice to] a [department] social work supervisor, ordering [the department] to complete a study for both minors on the petition for removal, and impliedly denying [the petitioner's] motion for the waiver of study by [the department] for Henrry. . . .

" 'On April 1, 2016, with Henrry's eighteenth birthday closely approaching, with no [department] study and no hearing date, [the petitioner] filed an emergency petition for findings under § 45a-608n . . . . In her motion, [the petitioner] requested that the court make findings in connection with her petition for [juvenile status] findings, or, in the alternative, hold an emergency hearing before Henrry's eighteenth birthday, in order to do so. . . . The attorney for the child, appointed by the Probate Court, Attorney Frank Twohill, having received a copy of the [e]mergency [p]etition, visited with the child and wrote a letter to the court indicating both his support for the [emergency petition], and his availability for an evidentiary hearing . . . should the court choose to hold one. . . .

" 'On April 1, 2016, the Probate Court . . . denied the emergency petition in a brief written order, indicating [as follows]: "The [e]mergency [p]etition for [f]indings under [§] 45a-608n, dated April 1, 2016, is hereby [denied] by the court. Pursuant to [§] 45a-608n (b), the granting of a petition to remove is a prerequisite to making the requested written findings." . . . Henrry subsequently turned eighteen a few days later, before any hearing was ever held in the Probate Court.

" 'On April 22, 2016, [the petitioner] and Henrry . . . jointly filed an appeal to the Superior Court . . . pursuant to [General Statutes § 45a-186 (a)] and Practice Book § 10-76 (a), appealing both the March 23, 2016 order, setting a "no appearance" hearing after Henrry's eighteenth birthday and impliedly denying [the petition-

er's] motion for waiver of the study by [the department], and the April 1, 2016 order, denying the emergency petition for findings under [§] 45a-608n. . . . The [Superior] Court set the matter down for a hearing on May 19, 2016, and another attorney was appointed for Henrry as attorney for the minor child. . . .

" 'On May 19, 2016, the [Superior] Court . . . dismissed the appeal from Probate Court on the record, without holding an evidentiary hearing, stating that the [Superior] Court lacked jurisdiction over the appeal, because Henrry was now eighteen years old. . . . [The petitioner] and Henrry filed [their first appeal] with [the Appellate Court] on June 2, 2016. . . .

" 'On May 31, 2016 . . . approximately eight weeks after Henrry's eighteenth birthday, [the department] completed its social study on both Henrry and his sister . . . and provided its report to the Probate Court. In its report, [the department] indicated its support for the pending petitions, asking that the court grant the petition to remove the father as guardian, to affirm [the petitioner] as guardian, and to appoint [Santos] as coguardian of Henrry and his [sister]. . . .

" 'On June 3, 2016, the Probate Court issued another order for notice of hearing, this time scheduling an actual hearing date for the underlying petitions for July 19, 2016, but the hearing was set down for [Henrry's sister] . . . and not for Henrry. . . . On June 22, 2016, [the petitioner] filed a motion to schedule hearing or for a dispositive order in Henrry's case. . . . The Probate Court responded to the motion by scheduling a hearing on the underlying petitions for Henrry on July 19, 2016, along with that of his younger sister . . . .

" 'On July 19, 2016, the Probate Court held a full hearing for both Henrry and his sister, first entertaining legal argument from counsel on the jurisdictional issue regarding Henrry's case, [given] that he [was] eighteen,

and then taking testimony on the substantive issues from all the interested parties. The matter was then taken under advisement . . . .'

"On August 30, 2016, the Probate Court mailed its decision affirming the petitioner as sole guardian, but denying her petition for removal of the father as guardian and the appointment of Santos . . . as coguardian of Henrry because Henrry was eighteen years old and no longer a minor child. It declined to make the requested juvenile status findings, also because Henrry was age eighteen and no longer a minor child. On September 26, 2016, the petitioner and Henrry filed a second appeal to the Superior Court . . . from the Probate Court's August 30, 2016 decision, and on November 1, 2016, that appeal was dismissed. On November 4, 2016, the petitioner and Henrry [filed a second appeal to the Appellate Court]." Id., 398–401. The Appellate Court then consolidated the two appeals. Id., 401.[4]

In considering whether the Probate Court had the authority to grant the relief sought by the petitioner and Henrry, the Appellate Court reviewed numerous provisions in "chapter 802h of the General Statutes, which pertains to protected persons, including minors or minor children."[5] Id., 403–404. The Appellate Court

[4] The Appellate Court clarified that the "consolidated appeal challenges first the interlocutory orders . . . and then the final orders . . . of the Probate Court. The appeal in AC 39276 challenges the denial of a hearing on [the petitioner's] petitions in Probate Court before Henrry turned eighteen, and the [Superior] Court's May 19, 2016 dismissal of the . . . appeal from [the Probate Court] . . . . The appeal in AC 39787 challenges the Probate Court's final orders denying [the petitioner's] petitions because Henrry had turned eighteen, which were appealed to the [Superior] Court . . . and dismissed on November 1, 2016." (Internal quotation marks omitted.) *In re Henrry P. B.-P.*, supra, 171 Conn. App. 401–402.

[5] In particular, the Appellate Court observed as follows: "Pursuant to General Statutes § 45a-604 (4), 'minor' or 'minor child' means a person under the age of eighteen. Pursuant to . . . § 45a-604 (5), 'guardianship' means guardianship of the person of a minor. Pursuant to General Statutes § 45a-606, the biological father and mother are joint guardians of the person of the minor, and the powers, rights, and duties of the father and the mother

stated as follows: "In this case . . . on the date the petitioner filed the petitions she, pursuant to [General Statutes] § 45a-606, was Henrry's sole guardian because his father was and had been deceased before [Henrry] arrived in the United States. There is no mention in that statute, in § 45a-608n, or in any other of the statutes in part II of chapter 802h, of any statutory authority granted to Connecticut courts to take action with respect to a person who has reached the age of majority. Section 45a-608n by its terms applies solely during the minority of any child." Id., 405. The Appellate Court further determined that the "plain language" of the statutes at issue, "particularly § 45a-608n, [does] not provide the Probate Court with authority either to appoint

in regard to the minor are equal. If either the father or the mother dies or is removed as guardian, the other parent becomes the sole guardian of the person of the minor child." *In re Henrry P. B.-P.*, supra, 171 Conn. App. 404–405.

With respect to coguardianship, the Appellate Court discussed General Statutes § 45a-616. See id., 406–407. Section 45a-616 (b) provides in relevant part: "If any minor has a parent or guardian, who is the sole guardian of the person of the child, the court of probate for the district in which the minor resides may, on the application of the parent or guardian of such child or of the Commissioner of Children and Families with the consent of such parent or guardian and with regard to a child within the care of the commissioner, appoint one or more persons to serve as coguardians of the child. When appointing a guardian or guardians under this subsection, the court shall take into consideration the standards provided in section 45a-617. . . ."

Section 45a-616 (b) refers to the standards set forth in General Statutes § 45a-617, which provides: "When appointing a guardian, coguardians or permanent guardian of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian, coguardians or permanent guardian to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian, coguardians or permanent guardian; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a guardian, coguardian or permanent guardian is in the best interests of the minor child."

a guardian for an individual after his or her eighteenth birthday, or to make juvenile status findings after such eighteenth birthday." Id., 414.

Following two decisions from this court construing General Statutes § 46b-129; see *In re Jose B.*, 303 Conn. 569, 34 A.3d 975 (2012); *In re Jessica M.*, 303 Conn. 584, 35 A.3d 1072 (2012); along with one of its own decisions; see *In re Pedro J.C.*, 154 Conn. App. 517, 105 A.3d 943 (2014); the Appellate Court then deemed itself "constrained to conclude" that the present case was rendered moot "after Henrry reached the age of majority [because] the Probate Court lacked statutory authority to appoint a coguardian for him and to make the juvenile status findings permitted by § 45a-608n."[6] *In re Henrry P. B.-P.*, supra, 171 Conn. App. 410. Accordingly, over a dissent by Judge Lavine, the Appellate Court affirmed the Superior Court's judgments dismissing the probate appeals.[7] Id., 411–15. This certified appeal followed. See footnote 3 of this opinion.

[6] The Appellate Court also addressed the delay in scheduling proceedings pursuant to General Statutes § 45a-609, which requires that a hearing on an application to remove a parent or parents as guardian to be held within thirty days of the application, or receipt of the report of the department's investigation if ordered by the court pursuant to General Statutes § 45a-619. See *In re Henrry P. B.-P.*, supra, 171 Conn. App. 408–409. The Appellate Court determined that the Probate Court's referral of the matter to the commissioner for an investigation was mandatory under § 45a-619, based on the "classic neglect allegations" contained in the petition for the removal of Henrry's father as guardian. Id., 408; see also id., 409 ("[t]he authority of the Probate Court to waive the investigation and report thus is limited to cases not involving allegations of abuse or neglect"). Thus, the Appellate Court concluded that, "[i]n light of the language of and the considerations raised in the relevant statutes, and Henrry's relatively short time in Connecticut, the Probate Court's decision not to waive the statutory requirement for an investigation and report was within its discretion." Id.

[7] Judge Lavine issued a thoughtful and comprehensive opinion dissenting from the judgment of the Appellate Court, ultimately concluding that, "[b]y failing to hold an expedited hearing and timely rule on the petition seeking the removal of Henrry's guardian and appointment of a coguardian, and the petition for special immigrant juvenile findings, as it was permitted to do by statute and its own rules, the Probate Court itself frustrated and undermined the legislative intent of this state's special immigrant juvenile status

On appeal, the petitioner and Henrry claim, inter alia, that the Appellate Court improperly determined that it was bound by our decisions in *In re Jose B.*, supra, 303 Conn. 582, and *In re Jessica M.*, supra, 303 Conn. 588–89, in concluding that the Probate Court lacked the authority to grant them the relief they sought after Henrry reached the age of majority. The petitioner and Henrry argue that those cases are distinguishable because they were not juvenile status cases but, rather, concerned whether the court had the statutory authority under § 46b-129 (a) and (j) to commit a person over the age of eighteen to the custody of the department. To this end, the petitioner and Henrry emphasize that *In re Jose B.* and *In re Jessica M.* predate the 2014 enactment of the § 45a-608n, the juvenile status findings statute, and that they do not seek Henrry's commitment to, or any services from, the department. We agree with the petitioner and Henrry, and conclude that the Probate Court did not lose its statutory authority to make juvenile status findings pursuant to § 45a-608n after Henrry reached the age of majority during the pendency of the proceedings.[8]

findings statute . . . § 45a-608n, leading to the dismissal of the petitions. Moreover, by failing to hold an expedited hearing and to rule on the petitions prior to the day Henrry turned eighteen, I believe that the Probate Court abused its discretion and thus violated the rights of the petitioner . . . and Henrry to due process under the fourteenth amendment to the United States constitution and article first, § 10, of the constitution of Connecticut. By failing to invoke its equitable jurisdiction to expedite the proceedings, the Probate Court potentially has caused Henrry and the petitioner irreparable harm by exposing Henrry to possible deportation to his country of nationality where he has been subject to death threats." (Footnote omitted.) *In re Henrry P. B.-P.*, supra, 171 Conn. App. 415–16; see also id., 428 (*Lavine, J.*, dissenting) (suggesting use of Supreme Court "supervisory authority . . . to incorporate an order that cases with similar time constraints be addressed on an expedited basis so as to ensure possible compliance with § 45a-608n [b]" [citation omitted]).

[8] The petitioner and Henrry also contend that, despite the fact that Henrry had reached the age of majority, the Superior Court retained jurisdiction to determine whether the Probate Court (1) had abused its discretion by not expediting its consideration of the petition, including waiving the investigation by the department pursuant to General Statutes § 45a-619, and (2)

In considering whether the Probate Court had the statutory authority to make juvenile status findings pursuant to § 45a-608n after Henrry reached the age of majority during the pendency of the proceedings, we are mindful that the "Probate Court is a court of limited jurisdiction prescribed by statute, and it may exercise only such powers as are necessary to the performance of its duties. . . . As a court of limited jurisdiction, it may act only when the facts and circumstances exist upon which the legislature has conditioned its exercise of power. . . . Such a court is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Citations omitted; internal quotation marks omitted.) *Heussner* v. *Hayes*, 289 Conn. 795, 802–803, 961 A.2d 365 (2008); see also *In re Bachand*, 306 Conn. 37, 59–61, 49 A.3d 166 (2012) (Probate Court's limited jurisdiction creates constraints over its authority, even with respect to matter over which Superior Court has concurrent jurisdiction). Thus, whether the Probate Court had jurisdiction to render the decree challenged by the commissioner presents a question of statutory interpretation. See *In re Bachand*, supra, 42. Consequently, whether the Probate Court had the statutory authority to provide the relief requested presents a question of law over which our review is plenary.[9] See, e.g., *In re Jose B.*, supra, 303 Conn. 580.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent

violated their rights to due process of law under the federal and state constitutions. They also ask us to utilize our supervisory power over the administration of justice to require the Probate Court and the Superior Court to handle petitions for juvenile status findings expeditiously. Given our conclusion with respect to the Probate Court's continuing authority under § 45a-608n, we need not consider the merits of these other claims. But see footnote 19 of this opinion.

[9] A discussion of the overlapping jurisdiction of the Probate Court and the Superior Court with respect to petitions for juvenile status findings pursuant to § 45a-608n is set forth in footnotes 14 and 15 of this opinion.

of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Gonzalez* v. *O & G Industries, Inc.*, 322 Conn. 291, 302–303, 140 A.3d 950 (2016).

We begin with the language of § 45a-608n (b), which provides: "*At any time during the pendency of a petition to remove a parent or other person as guardian under section 45a-609 or 45a-610, or to appoint a guardian or coguardian under section 45a-616, a party may file a petition requesting the Probate Court to make findings under this section to be used in connection with a petition to . . . Immigration Services for designation of the minor child as having special immigrant juvenile status under* [*8 U.S.C. § 1101 (a) (27) (J)*]. The Probate Court shall cause notice of the hearing on the petition to be given by first class mail to each person listed in subsection (b) of section 45a-609, and such hearing *may be held* at the same time as

the hearing on the underlying petition for removal or appointment. *If the court grants the petition to remove the parent or other person as guardian or appoint a guardian or coguardian, the court shall make written findings on the following*: (1) The age of the minor child; (2) the marital status of the minor child; (3) whether the minor child is dependent upon the court; (4) whether reunification of the minor child with one or both of the minor child's parents is not viable due to any of the grounds sets forth in subdivisions (2) to (5), inclusive, of section 45a-610; and (5) whether it is not in the best interests of the minor child to be returned to the minor child's or parent's country of nationality or last habitual residence."[10] (Emphasis added.)

As the Appellate Court observed, the text of § 45a-608n (b) seemingly applies only to persons under the age of eighteen, insofar as it speaks to various court actions, such as the removal or appointment of guardians, or termination of parental rights, with respect to the "minor child," a term specifically defined by General Statutes § 45a-604 (4) to mean "a person under the age of eighteen . . . ." See *In re Henrry P. B.-P.*, supra, 171 Conn. App. 404; see also General Statutes § 45a-604 (5) ("'[g]uardianship' means guardianship of the person of a minor"). The authority conferred by § 45a-608n (b) with respect to the juvenile status findings specifically also reasonably may be read to be limited to

[10] We note that § 45a-608n (a) provides: "For the purposes of this section and section 45a-608o, a minor child shall be considered dependent upon the court if the court has (1) removed a parent or other person as guardian of the minor child, (2) appointed a guardian or coguardian for the minor child, (3) terminated the parental rights of a parent of the minor child, or (4) approved the adoption of the minor child."

Section 45a-608n (c) confers authority on the Probate Court and governs the procedure for making juvenile status findings for petitions filed after "the court has previously granted a petition to remove a parent or other person as guardian under section 45a-609 or 45a-610 or to appoint a guardian or coguardian under section 45a-616 . . . ."

persons under eighteen years old, insofar as it expressly requires the court to make those findings upon the grant of the "petition to remove the parent or other person as guardian or appoint a guardian or coguardian"—thus plausibly suggesting, consistent with the Probate Court's reading of the statute, that such a grant is a prerequisite to the juvenile status findings.

There is, however, another reading of the statute that is at least equally as reasonable; we, therefore, resort to extratextual sources to aid our construction of § 45a-608n (b). First, the petition for juvenile status findings may be filed "at any time during the pendency of a petition to remove a parent or other person as guardian" under General Statutes §§ 45a-609 or 45a-610, or during the pendency of a petition "to appoint a guardian or coguardian" under General Statutes § 45a-616. General Statutes § 45a-608n (b). The statute is similarly flexible with respect to the timing of the hearing on the juvenile status petition, insofar as it need not be held at the same time as the underlying petition. See General Statutes § 45a-608n (b) ("such hearing *may be held* at the same time as the hearing on the underlying petition for removal or appointment" [emphasis added]). Finally, the statute reasonably may be read merely to require the Probate Court to make the written findings with respect to juvenile status upon the grant of the underlying guardianship petitions, but not limit its authority to make such findings to cases involving such grants, insofar as there is no language expressly conditioning the Probate Court's authority to make juvenile status findings on the grant of the underlying petition.

Indeed, reading § 45a-680n to add such restrictive language would run afoul of the well established maxim that, "[a]s a general matter, this court does not read language into a statute. . . . [W]e are bound to interpret legislative intent by referring to what the legislative text contains, not by what it might have contained."

(Citation omitted; internal quotation marks omitted.) *State* v. *George J.*, 280 Conn. 551, 570, 910 A.2d 931 (2006), cert. denied, 549 U.S. 1326, 127 S. Ct. 1919, 167 L. Ed. 2d 573 (2017). Adding such a restriction also would be inconsistent with General Statutes § 45a-605 (a), in which the legislature directs that the statutory scheme that includes § 45a-608n "be liberally construed in the best interests of any minor child affected by them, provided the requirements of such sections are otherwise satisfied." Finally, the express mention of 8 U.S.C. § 1101 (a) (27) (J), the federal juvenile status statute, in § 45a-608n (b) calls to mind the maxim that, "[i]n cases in which more than one [statutory provision] is involved, we presume that the legislature intended [those provisions] to be read together to create a harmonious body of law . . . and we construe the [provisions], if possible, to avoid conflict between them." (Internal quotation marks omitted.) *Cardenas* v. *Mixcus*, 264 Conn. 314, 326, 823 A.2d 321 (2003); see also id., 322–23 ("[w]e presume that laws are enacted in view of existing relevant statutes . . . [and] we read each statute in a manner that will not thwart its intended purpose or lead to absurd results" [internal quotation marks omitted]).

Authorizing the Probate Court to make juvenile status findings with respect to a minor child who has turned eighteen years old during the pendency of the petition is entirely consistent with the overarching purpose of § 45a-608n (b), which is to facilitate our state courts' responsibilities with respect to juvenile status petitions brought to Immigration Services under 8 U.S.C. § 1101 (a) (27) (J), the federal statute that is expressly cited in the text of § 45a-608n (b). Given this statutory purpose, a review of the federal statutory scheme is instructive. "Congress created [juvenile status] to permit immigrant children who have been abused, neglected, or abandoned by one or both of their parents to apply

for lawful permanent residence while remaining in the United States. See [8 U.S.C. § 1101 (a) (27) (J) (2012)]; 8 C.F.R. § 204.11 (2009).[11] '[*C*]*hild' under the Federal statute is defined as an unmarried person under the age of twenty-one.* 8 U.S.C. § 1101 (b) (1) [2012]. Before an immigrant child can apply for [juvenile status], she must receive the following predicate findings from a 'juvenile court': (1) she is dependent on the juvenile court; (2) her reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (3) it is not in her best interests to return to her country of origin. 8 U.S.C. § 1101 (a) (27) (J) (i) [2012]. Once these special findings are made, an application and supporting documents may be submitted to [Immigration Services]. *An application for* [*juvenile status*] *must be submitted before the immigrant's twenty-first birthday.* 8 C.F.R. § 204.11 [2009]." (Emphasis added; footnotes added and omitted.) *Recinos* v. *Escobar*, 473 Mass. 734, 734–35, 46 N.E.3d 60 (2016).

"The [f]ederal statute requires a juvenile court to make special findings before an immigrant youth can apply for [juvenile status] and lawful permanent residence. . . . The [s]tate and [f]ederal proceedings are distinct from each other. The process for obtaining [juvenile status] is a unique hybrid procedure that directs the collaboration of state and federal systems. . . . Pursuant to 8 C.F.R. § 204.11, '[j]uvenile court' is defined as 'a court located in the United States having jurisdiction under [s]tate law to make judicial determinations about the custody and care of juveniles.' When determining which court qualifies as a juvenile court under the [f]ederal statute, it is the function of the [s]tate court and not the designation that is determina-

[11] We note that the history and genealogy of the federal juvenile status statute since its original enactment in 1990 are set forth in greater detail in *Recinos* v. *Escobar*, 473 Mass. 734, 735–39, 46 N.E.3d 60 (2016), and *H.S.P.* v. *J.K.*, 223 N.J. 196, 208–209, 121 A.3d 849 (2015).

tive."[12] (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 737–38; see *H.S.P.* v. *J.K.*, 223 N.J. 196, 209–11, 121 A.3d 849 (2015) (reviewing federal juvenile status statutes); see also *Marcelina M.-G.* v. *Israel S.*, 112 App. Div. 3d 100, 106–109, 973 N.Y.S.2d 714 (2013).

Significantly, although the federal implementing regulation, 8 C.F.R. § 204.11 (c), requires that the juvenile status "application must be submitted before the child's twenty-first birthday," federal law provides that "[t]he child will *not* 'age-out' of [juvenile status] on account of turning twenty-one while his or her application is under consideration with [Immigration Services]." (Emphasis added.) *Recinos* v. *Escobar*, supra, 473 Mass. 739, citing William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235 (d) (6), 122 Stat. 5044.

Although the federal age cap for juvenile status, namely, twenty-one years old, is greater than our state's relevant operative statutory definition of a minor child, namely, a person younger than eighteen years old; see General Statutes § 45a-604 (4); the legislative history of § 45a-608n further counsels in favor of a broader reading of that statute with respect to those persons eligible to obtain the predicate state court findings necessary

[12] "Because of the distinct expertise [s]tate courts possess in the area of child welfare and abuse, Congress has entrusted them with the responsibility to perform a best interest analysis and to make factual determinations about child welfare for purposes of [juvenile status] eligibility. . . . Therefore, the special findings a juvenile court makes should be limited to child welfare determinations. Immigration is exclusively a [f]ederal power. . . . It is not the juvenile court's role to engage in an immigration analysis or decision. . . . Special findings by a [s]tate court that determine that the child meets the eligibility requirements for [juvenile] status are not a final determination. . . . It is only the first step in the process to achieve [juvenile] status. . . . Once the child obtains the required special findings from a qualifying [s]tate court, the child may file an application with [Immigration Services]." (Citations omitted.) *Recinos* v. *Escobar*, supra, 473 Mass. 738–39.

to render available the federal immigration benefits of juvenile status. The legislature enacted § 45a-608n in Number 14-104, § 8, of the 2014 Public Acts.[13] Although floor debate about this provision was virtually nonexistent, our review of the testimony submitted to the Joint Standing Committee on the Judiciary in support of the bill ultimately enacted as § 45a-608n indicates that the legislature intended to address discrepancies in the state statutory scheme that were frustrating the availability of the federal immigration benefit. See, e.g., *Butts* v. *Bysiewicz*, 298 Conn. 665, 687, 5 A.3d 932 (2010) ("testimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation" [internal quotation marks omitted]). For example, Attorney Edwin Colon testified, on behalf of the Center for Children's Advocacy, that the proposed "statutory changes will provide children with increased access to protection under existing federal law [by] expressly authorizing the court to make these findings . . . ." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 2014 Sess., pp. 1221–22. Attorney Colon emphasized that the bill allowed children to file a motion seeking the necessary findings even after the issuance of a decree, and advised the legislature that it "should apply retroactively to any child who can still benefit from [juvenile status] federal protection." Id., p. 1222. Testifying in further support of the bill, Judge Paul Knierim, Probate Court Administrator, made clear his desire that the legislation be inclusive and "cautious." Id., pp. 904–907. Judge Knierim stated that "probate courts have been seeing [juvenile status] petitions under this statutory framework and the intent . . . would be to make it clear that Connecticut probate courts have legislative authorization when handling these types of

[13] We note that the legislature subsequently made minor technical changes to § 45a-608n (c) in 2015. See Public Acts 2015, No. 15-14, § 11.

children's matters to also make these findings."[14] Id., p. 906. Similarly, Megan R. Naughton, an immigration attorney in private practice, described to the legislature the necessity of using "the appropriate language . . . in the special findings" from the Probate Court in a case in which she had to refile for juvenile status shortly before her client turned twenty-one years old. Id., p. 1223. In the absence of clear and unambiguous statutory language to the contrary, we decline to frustrate the purpose of § 45a-608n, namely, to facilitate access to the state court findings necessary as a predicate step toward federal juvenile status, and we conclude that the Probate Court was not divested of statutory authority to make those findings when Henrry turned eighteen years old during the pendency of the petition.[15]

[14] In response to a jurisdictional question from Representative Rosa Rebimbas, Judge Knierim testified that the Superior Court has, "like the [Probate Court, been] seeing petitions [like] this and as a court of general jurisdiction, my understanding is that they wouldn't need specific statutory authority to exercise that jurisdiction" because "[t]he framework is available under federal law and because of the broad jurisdiction of [the Superior Court] they are able to make [these] findings." Conn. Joint Standing Committee Hearings, supra, p. 907.

[15] We note that the petitioner and Henrry rely on *In re Matthew F.*, 297 Conn. 673, 691–93, 4 A.3d 248 (2010), and argue further that § 45a-186, the probate appeal statute, conferred continuing jurisdiction upon the Superior Court, which was not divested solely because Henrry reached the age of majority, insofar as juvenile status relief remained available under § 45a-608n "at any time" during the pendency of the petition. Like Judge Lavine in his opinion dissenting from the judgment of the Appellate Court, we conclude that the Superior Court's authority tracked that of the Probate Court in this matter. See *In re Henrry P. B.-P.*, supra, 171 Conn. App. 423–24. Specifically, we conclude that the Probate's Court's statutory authority under § 45a-680n (b) extends to the Superior Court, deciding a probate appeal pursuant to § 45a-186, insofar as "[w]hen entertaining an appeal from an order or decree of a Probate Court, the Superior Court takes the place of and sits as the court of probate. . . . In ruling on a probate appeal, the Superior Court exercises the powers, not of a constitutional court of general or common law jurisdiction, but of a Probate Court." (Citations omitted.) *Kerin* v. *Stangle*, 209 Conn. 260, 264, 550 A.2d 1069 (1988); see also id. ("[t]he function of the Superior Court in appeals from a Probate Court is to take jurisdiction of the order or decree appealed from and to try that issue de novo").

We disagree with the Appellate Court's conclusion that our decisions in *In re Jose B.*, supra, 303 Conn. 569, and *In re Jessica M.*, supra, 303 Conn. 584, dictate a contrary result. In *In re Jose B.*, the minor child filed a petition with the trial court pursuant to § 46b-129 (a), "seeking to have himself adjudicated as neglected and as an uncared-for youth," along with an order of temporary custody and an emergency commitment to the custody of the department. Id., 570–71. The trial court dismissed the petition as moot because "two days after he filed it, he reached his eighteenth birthday." Id., 571. On appeal, we determined that *In re Jose B.* presented the question of "whether the trial court has statutory authority pursuant to § 46b-129 (a) to adjudicate a person who has reached the age of eighteen years as neglected or uncared-for, and to commit such a person to the care of the department pursuant to § 46b-129 (j)." Id., 580.

Reading together the relevant statutory provisions, namely, § 46b-129 (a), and the definitions of "[c]hild" or "[y]outh" in General Statutes (Rev. to 2009) § 46b-120 (1) and (2), and "neglected" or "uncared for" in General Statutes (Rev. to 2009) § 46b-120 (9) and (10),[16] we concluded that "it is clear that the legislature intended that the trial court would have statutory

[16] We discussed the relevant statutes, noting: "Section 46b-129 (a) provides in relevant part that certain enumerated parties having information that a child or youth is neglected, uncared-for or dependent, may file with the Superior Court . . . a verified petition plainly stating such facts as bring the child or youth within the jurisdiction of the court as neglected, uncared-for or dependent, within the meaning of section 46b-120 . . . . General Statutes (Rev. to 2009) § 46b-120 (9), provides in relevant part that a *child or youth* may be found neglected. . . . General Statutes (Rev. to 2009) § 46b-120 (10), provides in relevant part that 'a *child or youth* may be found uncared for . . . . General Statutes (Rev. to 2009) § 46b-120 (1) provides in relevant part: Child means any person under sixteen years of age. . . . General Statutes (Rev. to 2009) § 46b-120 (2) provides in relevant part: [Y]outh means any person sixteen or seventeen years of age . . . ." *In re Jose B.*, supra, 303 Conn. 580–81.

authority to adjudicate a person neglected or uncared-for only if the person is a child or youth, i.e., the person is under the age of eighteen years. There is no indication in the statutory scheme that the legislature contemplated that, as long as the petition was filed before the subject of the petition reached his eighteenth birthday, the trial court could render a 'retroactive' adjudication after that date. As the [2009] revision of § 46b-120 (1) indicates, when the legislature intends that a person will be considered a child for certain purposes after the person has reached the age of eighteen years, it knows how to make that intention clear. See General Statutes [Rev. to 2009] § 46b-120 (1) (defining "'[c]hild'" differently for different circumstances). Accordingly . . . the trial court lacked statutory authority to adjudicate the petitioner neglected or uncared-for after his eighteenth birthday. It necessarily follows that the trial court lacked statutory authority to provide the petitioner with dispositional relief pursuant to § 46b-129 (j) . . . ." (Footnote omitted.) *In re Jose B.*, supra, 303 Conn. 581–82. We further concluded that, "because the trial court lacked such statutory authority, that court properly concluded that the petitioner's petition was rendered moot when he reached his eighteenth birthday." (Emphasis omitted.) Id., 582.

Similarly, in *In re Jessica M.*, supra, 303 Conn. 588, the companion case to *In re Jose B.*, this court rejected the petitioner's claim that "an adjudication of neglect pursuant to § 46b-129 (a) would enable her to seek . . . juvenile status from the federal government," meaning that, under the collateral consequences doctrine, "her claim for an adjudication of neglect was not moot even if the trial court could not grant dispositional relief pursuant to § 46b-129 (j)." The court emphasized that, "not only did the trial court lack statutory authority to provide dispositional relief to the petitioner after she reached her eighteenth birthday, it also lacked statutory

authority to adjudicate the petitioner neglected or uncared-for. The collateral consequences doctrine cannot confer statutory authority on the trial court that is otherwise lacking." Id., 588–89.

We agree with the petitioner and Henrry that *In re Jose B.* and *In re Jessica M.* are not controlling in the present appeal. We acknowledge that this court observed in *In re Jose B.* that the legislature can use a more expansive definition of the term "child" to broaden the court's statutory authority in certain areas; *In re Jose B.*, supra, 303 Conn. 581; which was a point that the Appellate Court found persuasive in the present case. See *In re Henrry P. B.-P.*, supra, 171 Conn. App. 412. Nevertheless, *In re Jose B.* and *In re Jessica M.* predate the enactment of § 45a-608n in 2014, with its specific grant of authority to make the findings factual incident to juvenile status and its express acknowledgment of the federal juvenile status scheme, which has age eligibility that extends beyond the age of eighteen years old that typically demarks the end of the court's authority over the guardianship of minors. Accordingly, the Appellate Court improperly deemed *In re Jose B.* and *In re Jessica M.* dispositive of the present case,[17] insofar as the Probate Court's authority to make the juvenile status findings under § 45a-608n does not terminate on the minor's eighteenth birthday.[18] The Appellate

[17] We note that, in *In re Pedro J.C.*, supra, 154 Conn. App. 543, the Appellate Court expedited proceedings on remand "to ensure that the requisite [juvenile status] findings can be made before . . . the petitioner's eighteenth birthday." In expediting proceedings on remand, the Appellate Court cited *In re Jessica M.*, supra, 303 Conn. 588, for the proposition that, "[i]f the court does not issue the requisite findings before the date that the petitioner attains the age of eighteen, the court will lack statutory authority to provide him his requested relief." *In re Pedro J.C.*, supra, 543 n.22. We note that the petition underlying *In re Pedro J.C.* was brought prior to the enactment of § 45a-608n (b). Accordingly, we overrule *In re Pedro J.C.* to the extent it stands for the proposition that, even when a petition is brought prior to the minor's eighteenth birthday, the minor's eighteenth birthday divests the court of its authority to make juvenile status findings.

[18] We emphasize that our conclusion in this opinion is limited to cases brought when the subject of the petition is under the age of eighteen years,

given that § 45a-608n (b) contemplates proceedings with respect to guardianship of a minor. We do not consider in this appeal whether our courts have the authority to afford relief to a petitioner who is eighteen years old or older at the time the petition is filed, notwithstanding the "gap" that this creates with respect to the federal benefit. Cf. *Recinos* v. *Escobar*, supra, 473 Mass. 739–40 (equity jurisdiction of state probate and family court authorized it to consider juvenile status petition filed by twenty year old).

We acknowledge, however, that this "gap" created by state laws that restrict access to the courts for the preliminary findings may pose a significant obstacle to the availability of federal juvenile status relief. See *M.B.* v. *Quarantillo*, 301 F.3d 109, 115–16 (3d Cir. 2002) (Immigration Service district director's denial of consent to apply for juvenile status was not arbitrary and capricious when based, inter alia, on New Jersey "juvenile court's [eighteen] year age limitation," because "the statute and the regulation implicitly require an alien applying for special immigrant juvenile status to be young enough to qualify for a dependency order under state law"); *In re Guardianship of Guardado*, Docket No. 68524, 2016 WL 606034, *1–2 (Nev. February 12, 2016) (affirming dismissal of guardianship petition filed when subject was twenty years old in order to obtain predicate findings for juvenile status petition). This "gap" presents a public policy concern with respect to our state courts' role in the hybrid juvenile status system, and we urge the General Assembly to consider legislation to clarify our state courts' authority to provide relief in this area. See H. Knoespel, "Special Immigrant Juvenile Status: A 'Juvenile' Here Is Not a 'Juvenile' There," 19 Wash. & Lee J. Civil Rts. & Soc. Just. 505, 532 (2013) ("[T]he federal government has done its part to ensure age-out protections are in place. Accordingly, it is important for states to take action and set age-out protections for the part of the [juvenile status] process that the state controls. Because the federal government cannot infringe state sovereignty, state legislatures must act independently to extend juvenile court jurisdiction over all [juvenile status] eligible youth."); D. Page, "Closing the Age-Out Gap? Assessing Maryland's Recent Expansion of Equity Court Jurisdiction for Potential Special Immigrant Juveniles," 22 Geo. J. on Poverty L. & Policy 33, 40 (2014) (noting that "dissonance between state and federal law has the perverse effect of limiting [juvenile status] in many states to children under the age of eighteen and effectively guts a meaningful form of immigration relief for youth between the ages of eighteen and twenty-one in those same states"); J. Pulitzer, "Fear and Failing in Family Court: Special Immigrant Juvenile Status and the State Court Problem," 21 Cardozo J.L. & Gender 201, 215 (2014) ("[M]many [juvenile status]-eligible youths over eighteen, but younger than twenty-one, are prevented from even applying to [Immigration Services] because they lack access to local, family and/or juvenile state court. Even if the state court can be accessed, the child always runs the risk of 'aging out' of the family court's jurisdiction, thereby precluding the child from applying for [juvenile status]." [Footnote omitted.]); see also *Recinos* v. *Escobar*, supra, 473 Mass. 740 n.8 (describing legislative responses, including Md. Code Ann., Fam. Law § 1-201, which expanded definition of "child" to "unmarried individual under the age of twenty-one" with respect to juvenile status petitions); H. Knoespel, supra, 522–32 (describing legislative

Court, therefore, improperly affirmed the judgments of the Superior Court dismissing the probate appeals.[19]

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the judgments of the Superior Court and to remand the case to the Superior Court for further proceedings according to law.

In this opinion the other justices concurred.

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responses in Florida, Texas, New York, and California and endorsing amendment to Texas statute specifically addressing persons between ages of eighteen and twenty-one seeking juvenile status).

[19] Consistent with the suggestion of Judge Lavine in his dissenting opinion; see *In re Henrry P. B.-P.*, supra, 171 Conn. App. 426–28; we note that the petitioner and Henrry ask us to exercise our supervisory authority over the administration of justice to direct probate courts to handle applications for juvenile status findings pursuant to § 45a-608n expeditiously. Although we agree that probate courts should handle such petitions as rapidly as possible, we believe that our conclusion with respect to the breadth of § 45a-608n eases time constraints beyond those imposed by the federal filing deadline under 8 C.F.R. § 204.11 (c). Accordingly, we leave the promulgation of specific rules intended to expedite the handling of juvenile status petitions to the office of Probate Court Administration in the first instance.