KEYBANK, N.A. *v.* EMRE YAZAR ET AL.
(SC 20648)

Robinson, C. J., and McDonald, D'Auria,
Mullins and Ecker, Js.

Syllabus

Pursuant to statute (§ 8-265ee (a)), "a mortgagee who desires to foreclose upon a mortgage . . . shall give notice to each homeowner who is a mortgagor by registered, or certified mail, postage prepaid at the address of the property which is secured by the mortgage. No such mortgagee may commence a foreclosure of a mortgage prior to mailing such notice."

Pursuant further to statute (§ 8-265dd (b)), "no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action instituted by the mortgagee . . . for the foreclosure of an eligible mortgage unless . . . notice to the homeowner who is a mortgagor has been given by the mortgagee in accordance with section 8-265ee and the time for response has expired . . . ."

The plaintiff bank sought to foreclose a mortgage on certain real property owned by the defendants. The named defendant, E, had executed a promissory note in favor of the plaintiff's predecessor, F Co., that was secured by the mortgage. The defendant O, who is E's former spouse, was not a signatory to the note. E subsequently failed to make required payments on the note, and, in 2016, F Co. sent separate notices of default to both E and O. Pursuant to § 8-265ee (a), F Co. also sent E and O notices that advised them of the resources available under the state's Emergency Mortgage Assistance Program (EMAP), which is designed to assist homeowners in avoiding foreclosure by providing a mechanism and funding for emergency mortgage and lien assistance payments. Thereafter, the plaintiff became the payee of the note as successor by virtue of its merger with F Co., and it commenced a foreclosure action against E and O that was subsequently dismissed. The plaintiff then

commenced a second foreclosure action against E and O, the present action, which was based on the same default that was the subject of the earlier foreclosure action. The trial court subsequently granted the plaintiff's motion for summary judgment as to liability and rendered judgment of strict foreclosure. O appealed to the Appellate Court, claiming that the trial court lacked subject matter jurisdiction over the present foreclosure action because the plaintiff had failed to comply with the EMAP notice requirement contained in § 8-265ee. The plaintiff countered that § 8-265ee was satisfied when EMAP notices were sent to E and O in 2016. The Appellate Court agreed with O and concluded that, in accordance with its recent decision in *MTGLQ Investors, L.P.* v. *Hammons* (196 Conn. App. 636), the EMAP notice requirement is jurisdictional, the particular mortgagee that wishes to foreclose must be the same entity that sends the EMAP notice, § 8-265ee requires that each foreclosure action be preceded by the sending of an EMAP notice, and, accordingly, the plaintiff could not rely on the 2016 EMAP notice sent by F Co. before the earlier foreclosure action was commenced. The Appellate Court reversed the judgment of the trial court and remanded the case with direction to render judgment dismissing the action for lack of subject matter jurisdiction. On the granting of certification, the plaintiff appealed to this court. *Held*:

1. The Appellate Court incorrectly concluded that the EMAP notice requirement set forth in § 8-265ee (a) is subject matter jurisdictional, but, contrary to the plaintiff's claim, that requirement is a mandatory condition precedent to the filing of a foreclosure action:

a. This court concluded, after reviewing the language of § 8-265ee (a), that that statute creates a mandatory obligation, on the part of the mortgagee, to provide an EMAP notice to the homeowner prior to initiating a foreclosure action, and the mortgagee's failure to provide such notice means that the mortgagee has failed to satisfy a condition precedent and, therefore, has failed to allege a claim on which relief can be granted:

The plain language of § 8-265ee (a) provides that a mortgagee who seeks to foreclose a mortgage "shall" give notice to a homeowner, and, although the use of the word "shall" does not invariably create a mandatory duty, the language of § 8-265ee supported O's position that the statute creates a mandatory obligation that must be satisfied prior to the mortgagee's initiation of the foreclosure action, as the EMAP notice requirement is not merely one of convenience but, rather, relates to the substantive rights of and resources available to homeowners under the EMAP provisions, § 8-265ee and a related EMAP provision, § 8-265dd, both articulate the consequences for failing to give notice or for failing to allow the required waiting period to pass prior to initiating a foreclosure action, and the legislature made it clear that the burden rests with the mortgagee

to file an affidavit to demonstrate compliance with the EMAP notice requirement.

b. Contrary to the Appellate Court's conclusion, the EMAP notice requirement does not implicate a court's subject matter jurisdiction:

This court's prior case law has distinguished between conditions imposed on the commencement of a statutorily created right of action, which generally are deemed to be jurisdictional, and conditions imposed on a common-law action, which are deemed to be nonjurisdictional, a mortgage foreclosure is a common-law cause of action, even though Connecticut's foreclosure system is a combination of both statutory law and common law, foreclosure related statutes did not supplant the common-law cause of action itself, there was no intent on the part of the legislature to abrogate this common-law process or to change the jurisdiction of the courts in § 8-265ee, and, accordingly, the EMAP notice requirement in § 8-265ee is not jurisdictional.

Moreover, this court overruled the Appellate Court's decision in *MTGLQ Investors, L.P.*, to the extent that it held that the EMAP notice requirement is jurisdictional.

Furthermore, contrary to the claim of the amicus curiae, this court's determination that the EMAP notice requirement does not implicate subject matter jurisdiction did not frustrate the legislative intent of certain 2008 amendments to the EMAP notice requirement statute, as the public policy of informing homeowners of their rights and the resources available to them to assist in avoiding foreclosure is preserved by this court's holding that the EMAP notice requirement is a mandatory condition precedent.

2. The Appellate Court correctly concluded that the plaintiff had failed to satisfy its EMAP notice obligation under § 8-265ee because, even though F Co. sent an EMAP notice to O in 2016, prior to the commencement of the earlier foreclosure action, the plaintiff never sent a new EMAP notice prior to the initiation of the second, and wholly separate, present foreclosure action:

Although § 8-265ee was ambiguous as to whether a separate EMAP notice must be provided prior to the initiation of each foreclosure action, the legislative history surrounding the enactment of EMAP made clear that protections for homeowners was the impetus behind imposing more stringent requirements on lenders, EMAP notice serves a critical role in protecting homeowners by informing them of the resources available to assist in avoiding foreclosure and what rights homeowners have in accessing those resources, a homeowner's right to access EMAP does not end after a first foreclosure action is dismissed or withdrawn, and a homeowner must be provided with notice that the resources under EMAP are still available in subsequent foreclosure actions because it

would be unreasonable to expect lay homeowners to know that they continue to have access to this specialized program in the event that they are not provided with notice in a subsequent foreclosure action.

Moreover, the text of § 8-265ee supported the conclusion that a mortgagee must provide an EMAP notice for each foreclosure action initiated, insofar as the sending of the EMAP notice prompts the beginning of a timeline for receiving EMAP assistance, and, if a new notice were not required, and, therefore, a new timeline were not set, the remedies available would appear to have "expired" in light of when notice had been provided in a previously withdrawn or dismissed case.

Furthermore, the need for an EMAP notice prior to the commencement of any foreclosure action is especially evident when, as in the present case, the defendant homeowner was not a signatory to the note, did not actually receive an EMAP notice prior to the first foreclosure action, and was aware only that the first foreclosure action had been dismissed, and, accordingly, the plaintiff's failure to provide an EMAP notice to O prior to the commencement of the second foreclosure action impaired O's ability to take advantage of resources that may have helped her retain her interest in her property.

In addition, this court disagreed with the Appellate Court to the extent that it suggested that it is legally significant that different entities were required to send the EMAP notices because the plaintiff, as the successor to F Co., operated as the same "mortgagee," a term defined by statute (§ 8-265cc (4)) as "the original lender under a mortgage, or its agents, successors, or assigns," for purposes of the EMAP statutes, and, therefore, there was no substantive difference for the purposes of the statutory scheme between F Co. and the plaintiff.

Argued November 21, 2022—officially released August 1, 2023

Procedural History

Action to foreclose a mortgage on certain real property owned by the defendants, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendants were defaulted for failure to plead; thereafter, the court, *Genuario*, *J.*, granted the plaintiff's motion for summary judgment as to liability only; subsequently, the court, *Genuario*, *J.*, granted the plaintiff's motion for a judgment of strict foreclosure and rendered judgment thereon, from which the defendant Ozlem Yazar appealed to the Appellate Court, *Moll*, *Alexander* and *DiPentima*, *Js.*, which

reversed the trial court's judgment and remanded the case with direction to render judgment dismissing the action; thereafter, the plaintiff, on the granting of certification, appealed to this court. *Reversed in part*; *judgment directed*.

Geoffrey K. Milne, with whom, on the brief, was *Victoria L. Forcella*, for the appellant (plaintiff).

Ozlem Yazar, self-represented, the appellee (defendant).

Jeffrey Gentes, *Anika Singh Lemar*, *Zachary Shelley*, law student intern, and *Natasha Reifenberg*, law student intern, filed a brief for the Housing Clinic of Jerome N. Frank Legal Services Organization as amicus curiae.

Opinion

McDONALD, J. This certified appeal concerns this state's Emergency Mortgage Assistance Program (EMAP),[1] General Statutes §§ 8-265cc through 8-265kk,[2] which is designed to assist homeowners in avoiding foreclosure by providing a mechanism and funding for emergency mortgage and lien assistance payments, among other resources. See General Statutes §§ 8-265dd and 8-265ee. As part of EMAP, § 8-265ee (a) requires mortgagees to provide notice to homeowners to inform them of the resources available under the program. In this appeal, we must consider two questions relating to this notice requirement. First, we have to determine whether the EMAP notice requirement in § 8-265ee (a) is jurisdictional. Second, we must decide whether an EMAP

[1] The official title of the program is the Emergency Mortgage Assistance Payment Program; see General Statutes § 8-265dd; but, for convenience, we refer to the program by its more common name and acronym.

[2] Although §§ 8-265cc through 8-265kk were the subject of certain amendments since the events underlying this appeal; see, e.g., Public Acts 2021, No. 21-44, §§ 6 through 14; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of those statutes.

notice sent before the commencement of a prior foreclosure action by the predecessor mortgagee is valid for a subsequent action initiated by the successor mortgagee. We conclude that the EMAP notice requirement in § 8-265ee (a), although a mandatory condition precedent, is not jurisdictional in nature. Second, we conclude that § 8-265ee (a) requires that a mortgagee provide an EMAP notice for each foreclosure action initiated. Therefore, in the present case, the plaintiff, KeyBank, N.A., was required to provide an EMAP notice to the defendant Ozlem Yazar[3] prior to initiating a subsequent foreclosure action after a prior foreclosure action had been dismissed.

In June, 2014, Emre Yazar (Emre) executed and delivered a note in the principal amount of $580,000 to First Niagara Bank, N.A., to refinance an existing loan and to convert it from a fixed rate to a variable rate. The defendant, who is Emre's former spouse,[4] was not a signatory to the note. To secure the note, Emre and the defendant executed a mortgage on real property they jointly owned in Weston. Beginning in March, 2016, and for the months following, Emre failed to make required payments on the note. On August 22, 2016, First Niagara sent separate notices of default to both Emre and the defendant at the address of the mortgaged property. Accompanying each notice of default was a notice from First Niagara regarding EMAP. As required by § 8-265ee (a), the EMAP notices advised Emre and the defendant of the availability of EMAP and informed them of the resources available to help them avoid foreclosure. The

[3] The plaintiff initiated this action against the named defendant, Emre Yazar, and Ozlem Yazar. Emre Yazar was defaulted for failure to plead and has since filed no pleadings in this action and has not participated in this appeal. As such, all references to the defendant in this opinion are to Ozlem Yazar.

[4] The record indicates that the parties divorced pursuant to a Turkish divorce decree. The decree and any related Connecticut proceedings are not relevant to the issues on appeal.

notices informed them that, within sixty days of the date of the letter, they had the right to have a meeting with the mortgagee or a consumer credit counseling agency to attempt to resolve the default, and they had the right to contact the Connecticut Housing Finance Authority to obtain information and to apply for emergency mortgage assistance payments if the parties were unable to resolve the default. See General Statutes § 8-265ee (a). Lastly, the notices advised Emre and the defendant that a court may not render a foreclosure judgment prior to the expiration of a required waiting period.

In October, 2016, First Niagara merged with and into the plaintiff. The plaintiff is now the payee of the note as successor by virtue of merger with First Niagara. On January 16, 2017, the plaintiff commenced a foreclosure action against Emre and the defendant based on an alleged default on the note by Emre, beginning in March, 2016. *KeyBank, N.A.* v. *Yazar*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-17-6061930-S. On April 26, 2017, the trial court dismissed the action because of the plaintiff's failure to provide the foreclosure mediator with the forms and information required by General Statutes (Rev. to 2017) § 49-31*l* (c) (4) (now § 49-31*l* (d)) and its subsequent failure to comply with the court's order requiring submission of such forms by a date certain.

On or about August 24, 2017, the plaintiff commenced the present foreclosure action against Emre and the defendant based on the same default by Emre alleged in the first foreclosure action and on Emre's failure to cure such default.[5] Thereafter, the defendant attempted

[5] It is unclear on this record how the plaintiff can maintain a foreclosure action against the defendant when the defendant was not a borrower on the note that gave rise to the loan default. Emre was the only borrower listed on the note. Although both Emre and the defendant signed the mortgage deed, the record does not indicate what consideration, if any, the defendant received—as opposed to the consideration Emre received in the form of a $580,000 loan—from the plaintiff in exchange for the transfer of

to participate in foreclosure mediation on various occasions, to which the plaintiff and Emre both objected because the defendant was not the borrower on the note. The trial court denied the defendant's initial petitions to participate but eventually granted a subsequent petition to participate in mediation. The foreclosure mediation was assigned to a mediator but was terminated before mediation with the mortgagee was scheduled because Emre, the borrower, indicated he was not interested in keeping the property. Even though the defendant was the resident and a homeowner, the plaintiff did not allow for assumption of the note, and, therefore, the mediation was terminated because the borrower declined any further mediation proceedings. Thereafter, Emre and the defendant were defaulted for failure to plead. The defendant then filed an answer and special defenses. On September 13, 2018, the plaintiff filed a motion for summary judgment as to liability, arguing that it complied with the requisite EMAP notice provisions and established a prima facie case for foreclosure. The plaintiff argued that the EMAP notice[6] sent by First Niagara to the defendant prior to the commencement of the previous foreclosure action satisfied the EMAP notice requirement for the present action. The defendant argued in response that the August 22, 2016 EMAP notice did not satisfy the statutory requirements for the present foreclosure action and that, in any event, she never received the initial EMAP notice, which was

her property interest as security to the plaintiff. The defendant asserted a special defense in the trial court regarding her lack of obligation under the note, but the trial court did not specifically address that defense in its decision on the plaintiff's motion for summary judgment. The defendant, however, did not raise the issue on appeal. Therefore, it is not properly before us, and we do not address it. Should that special defense be raised in any subsequent foreclosure action, we would expect it to be specifically addressed by the trial court.

[6] Unless otherwise indicated, all subsequent references in this opinion to the August 22, 2016 EMAP notice are to the notice that First Niagara sent to the defendant.

returned to the "sender."[7] The trial court heard argument on the motion and, thereafter, granted the plaintiff's motion for summary judgment. The court determined that there was no genuine issue of material fact regarding the default of the note and that the plaintiff satisfied its notice obligations regarding default, acceleration of the mortgage, and EMAP. The court subsequently rendered judgment of strict foreclosure.

Thereafter, the defendant appealed to the Appellate Court, arguing that the trial court lacked subject matter jurisdiction over the foreclosure action because the plaintiff failed to comply with the EMAP notice requirements contained in § 8-265ee. *KeyBank, N.A.* v. *Yazar*, 206 Conn. App. 625, 627, 261 A.3d 9 (2021). The plaintiff countered that § 8-265ee was satisfied by the August 22, 2016 EMAP notice sent by First Niagara prior to the initiation of the first foreclosure action. Id., 629–30. The Appellate Court agreed with the defendant and concluded that, in accordance with its recent decision in *MTGLQ Investors, L.P.* v. *Hammons*, 196 Conn. App. 636, 638, 645, 230 A.3d 882, cert. denied, 335 Conn. 950, 238 A.3d 21 (2020), the EMAP notice is jurisdictional. See *KeyBank, N.A.* v. *Yazar*, supra, 629–32. The court reiterated its holding in *Hammons* that the particular mortgagee entity that wishes to foreclose on the mortgage must be the same entity that sends the EMAP notice. See id., 631–33. It also held that § 8-265ee requires that each foreclosure action stand on its own EMAP notice. Id., 633. As such, the court concluded that the plaintiff could not rely on the previous EMAP notice sent by First Niagara before the prior foreclosure action was commenced. See id., 634 and n.8. Accord-

[7] The EMAP notice provided to the defendant before the commencement of the first foreclosure action, which the plaintiff relies on and attached to its motion for summary judgment in the present action, was marked as "return to sender." The plaintiff was unable to provide any evidence that an EMAP notice was ever successfully delivered to the defendant.

ingly, the Appellate Court reversed the judgment of the trial court and remanded the case with direction to render judgment dismissing the action for lack of subject matter jurisdiction. Id., 634.

The plaintiff subsequently filed a petition for certification to appeal, which we granted, limited to the following issues: (1) "Did the Appellate Court correctly conclude that a mortgagee's failure to comply with the [EMAP] notice requirements set forth in . . . § 8-265ee (a) deprives the trial court of subject matter jurisdiction over the mortgagee's foreclosure action?" And (2) "[d]id the Appellate Court correctly conclude that an EMAP notice that had been sent by a mortgagee to a [homeowner] prior to a first foreclosure action, which was later dismissed, did not satisfy the notice requirements of § 8-265ee (a) in connection with a second foreclosure action subsequently commenced against the [homeowner] based on the same default under the same mortgage?" *KeyBank, N.A.* v. *Yazar*, 340 Conn. 901, 263 A.3d 100 (2021).

On appeal, the plaintiff contends that the Appellate Court incorrectly concluded both that the EMAP notice was jurisdictional in nature and that the August 22, 2016 EMAP notice did not satisfy the plaintiff's obligation under § 8-265ee. We disagree with the Appellate Court that the EMAP notice is jurisdictional in nature, but we agree that the plaintiff's EMAP notice obligation under the statute was not satisfied because the plaintiff never issued a new EMAP notice prior to the initiation of this second, and wholly separate, foreclosure action, which we conclude it was required to do under the statute.

I

We begin with the plaintiff's contention that the Appellate Court incorrectly concluded that the EMAP notice required by § 8-265ee (a) is subject matter jurisdictional in nature. The plaintiff argues that, notwith-

standing the use of the word "shall" in § 8-265ee (a), the EMAP notice requirement in § 8-265ee is directory rather than mandatory and that the Appellate Court incorrectly concluded that the requirement implicates subject matter jurisdiction. We address each contention in turn.

A

Whether the EMAP notice provision in § 8-265ee is directory or mandatory is a question of statutory interpretation, over which we exercise plenary review. See, e.g., *Day* v. *Seblatnigg*, 341 Conn. 815, 826, 268 A.3d 595 (2022). We review § 8-265ee in accordance with General Statutes § 1-2z and our familiar principles of statutory construction. See, e.g., *Wind Colebrook South, LLC* v. *Colebrook*, 344 Conn. 150, 161, 278 A.3d 442 (2022).

We begin with the text of the statute. Section 8-265ee (a) provides in relevant part: "[A] mortgagee who desires to foreclose upon a mortgage . . . *shall give notice to each homeowner* who is a mortgagor by registered, or certified mail, postage prepaid at the address of the property *which* is secured by the mortgage. *No such mortgagee may commence a foreclosure of a mortgage prior to mailing such notice.* Such notice shall advise the homeowner of his delinquency or other default under the mortgage and shall state that the homeowner has sixty days from the date of such notice in which to (1) have a face-to-face meeting, telephone or other conference acceptable to the authority with the mortgagee or a face-to-face meeting with a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise, and (2) contact the authority, at an address and phone number contained in the notice, to obtain information and apply for emergency mortgage assistance payments if the homeowner and

mortgagee are unable to resolve the delinquency or default." (Emphasis added.)

Relevant to this appeal, the plain language of § 8-265ee (a) provides that each mortgagee who desires to foreclosure on a mortgage "shall" give notice to homeowners by registered or certified mail, postage prepaid, at the address of the property secured by the mortgage. "[T]his court has often stated that the use of the word shall, though significant, does not invariably create a mandatory duty. . . . The usual rule, however, is that [t]he . . . use of the word shall generally evidences an intent that the statute be interpreted as mandatory." (Internal quotation marks omitted.) *1st Alliance Lending, LLC* v. *Dept. of Banking*, 342 Conn. 273, 282, 269 A.3d 764 (2022). "The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory." (Internal quotation marks omitted.) Id.

Here, the language of § 8-265ee militates in favor of the defendant's position that the statute creates a mandatory obligation of the plaintiff prior to initiating suit. The EMAP notice requirement is not merely one of convenience but, rather, relates to the substantive rights of and resources available to homeowners under the EMAP provisions. Section 8-265ee and a related EMAP provision, § 8-265dd, both articulate the consequences for failing to give notice or for failing to allow the required waiting period to pass prior to initiating suit. Specifically, § 8-265ee prohibits the initiation of a valid suit without providing the EMAP notice by affirmatively providing that "[n]o such mortgagee may commence a foreclosure of a mortgage prior to mailing such notice." General Statutes § 8-265ee (a). Section 8-265dd, which estab-

lishes EMAP, also prevents the court from rendering any judgment of foreclosure until the EMAP notice has been sent, the sixty day response time has expired, and, if relevant, a determination has been made on the application for emergency mortgage assistance payments. See General Statutes § 8-265dd (b); see also General Statutes § 8-265ee (a). Specifically, the statute pro vides in relevant part: "[N]o judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action instituted by the mortgagee . . . for the foreclosure of an eligible mortgage unless . . . notice to the homeowner who is a mortgagor has been given by the mortgagee in accordance with section 8-265ee and the time for response has expired . . . ." General Statutes § 8-265dd (b).[8]

As such, we conclude that the EMAP notice provision in § 8-265ee is a mandatory requirement. We also conclude that the EMAP notice is a condition precedent to the filing of a foreclosure action. To have a cause of action on which relief can be granted, the notice requirement must be fulfilled. The legislature has made it clear that the burden rests with the mortgagee to demonstrate compliance with the EMAP notice require-

[8] The plaintiff contends that, if the notice requirement in § 8-265ee (a) is jurisdictional, then it conflicts with § 8-265dd (b). The plaintiff contends that, under § 8-265dd (b), a court may exercise jurisdiction over a foreclosure action, even if a notice is not sent, so long as it does not render a judgment prior to issuance of the notice. We disagree that the two provisions conflict. "In reading these two statutes together, [w]e are . . . guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *LaFrance* v. *Lodmell*, 322 Conn. 828, 837, 144 A.3d 373 (2016). Section 8-265dd (b) requires that two conditions be satisfied prior to judgment being rendered: (1) notice to the homeowner in accordance with § 8-265ee, and (2) the sixty day time for response has expired. Notice to the homeowner in accordance with § 8-265ee requires that the notice be sent *prior* to the commencement of the foreclosure action. The two provisions are consistent with each other. Section 8-265dd (b) merely clarifies that both the notice must be sent *and* the time to respond must have expired prior to the court's rendering judgment.

ment. Specifically, subsection (b) of § 8-265ee requires the mortgagee to file an affidavit with the court stating that the notice provisions of subsection (a) have been complied with and that the relevant time period has expired. Only after the mortgagee files such an affidavit may the foreclosure suit continue. See General Statutes § 8-265ee (b). If a mortgagee fails to comply with § 8-265ee (a), it has failed to satisfy a mandatory condition precedent and, therefore, has failed to allege a claim on which relief can be granted.[9]

B

We next turn to the plaintiff's contention that the EMAP notice requirement does not implicate a court's subject matter jurisdiction. A determination regarding a trial court's subject matter jurisdiction is a question of law, over which our review is plenary. See, e.g., *Bank of New York Mellon* v. *Tope*, 345 Conn. 662, 677, 286 A.3d 891 (2022). It is well established that, in a common-law action, such as a foreclosure action, there is a presumption in favor of jurisdiction, and a strong showing of legislative intent is required to overcome this presumption. See *Neighborhood Assn., Inc.* v. *Limberger*, 321 Conn. 29, 45–46, 136 A.3d 581 (2016). Not all statutory conditions precedent are jurisdictional, and "our case law has distinguished between conditions

[9] The failure to state a claim on which relief can be granted is typically addressed through a motion to strike, and, if the motion is granted, the plaintiff is allowed an opportunity to replead the stricken claim. See Practice Book §§ 10-39 (a) (1) and 10-44. The failure to send an EMAP notice, however, cannot be cured, as the plaintiff must send the EMAP notice prior to initiating suit to have an actionable claim to relief. In these instances, we have stated "that the use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading." (Internal quotation marks omitted.) *Wilton Meadows Ltd. Partnership* v. *Coratolo*, 299 Conn. 819, 832, 14 A.3d 982 (2011). As such, either a motion to strike or a motion for summary judgment is an available procedural avenue to challenge the failure to send an EMAP notice.

imposed on the commencement of a statutorily created right of action and statutory conditions imposed on an action existing under the common law. The former generally is deemed to be jurisdictional, whereas the latter is not." Id., 46.

It is well settled that a mortgage foreclosure is a common-law cause of action. See, e.g., id., 48; see also, e.g., *Society for Savings* v. *Chestnut Estates, Inc.*, 176 Conn. 563, 568, 409 A.2d 1020 (1979) ("[mortgage] foreclosure is a common-law, nonstatutory process"). Mortgage foreclosures are distinguishable from other forms of foreclosure actions—for example, the right to foreclose a lien for common charges—that have been properly characterized as statutory rights of action, as they are grounded in the legislature's expansion of Connecticut foreclosure rights through statute. See, e.g., *Neighborhood Assn., Inc.* v. *Limberger*, supra, 321 Conn. 48. The Superior Court's equitable power to hear mortgage foreclosure cases, however, derives solely from the common law. See, e.g., *Society for Savings* v. *Chestnut Estates, Inc.*, supra, 568. Accordingly, because a mortgage foreclosure is a common-law process, the EMAP notice requirement in § 8-265ee is not jurisdictional unless the legislature clearly evidenced an intent to abrogate this common-law process.

"[Although] the legislature's authority to abrogate the common law is undeniable, we will not lightly impute such an intent to the legislature." (Internal quotation marks omitted.) *Matthiessen* v. *Vanech*, 266 Conn. 822, 838, 836 A.2d 394 (2003). "[T]he presumption that the legislature does not have such a purpose [to eliminate or alter a common-law right] can be overcome only if the legislative intent is clearly and plainly expressed." (Internal quotation marks omitted.) Id., 838–39. We see no such clear and plain expression of an intent to change the jurisdiction of the courts in § 8-265ee. But cf. *Spears* v. *Garcia*, 263 Conn. 22, 28–29, 818 A.2d 37

(2003) (holding that General Statutes § 52-557n (a) (1) "clearly and expressly abrogates the traditional common-law doctrine in this state that municipalities are immune from suit for torts committed by their employees and agents" by articulating statutory cause of action and liability for damages caused by municipalities' agents and employees). Therefore, we conclude that the EMAP notice requirement is not jurisdictional. Rather, it is a mandatory condition precedent to the commencement of a foreclosure action.[10]

The defendant contends that this court should conclude that the EMAP notice requirement is jurisdictional for the same reasons that led the Appellate Court to reach that conclusion in *MTGLQ Investors, L.P.* v. *Hammons*, supra, 196 Conn. App. 636. We decline to do so. In *Hammons*, the Appellate Court addressed the question of whether the EMAP notice requirement is jurisdictional as a matter of first impression. See id., 638. It concluded that "the EMAP notice requirement set forth in § 8-265ee (a), when applicable, is a condition precedent to the commencement of a foreclosure

[10] Pennsylvania passed the Homeowner's Emergency Mortgage Act (Act 91), which established a program similar to Connecticut's EMAP, called the Homeowner's Emergency Mortgage Assistance Program. See 35 Pa. Stat. and Cons. Stat. Ann. § 1680.401c et seq. (West 2012). Our legislature understood the similarities between these two programs when it enacted the 2008 amendments to EMAP. See Conn. Joint Standing Committee Hearings, Banks, Pt. 1, 2008 Sess., pp. 123–24. In 2013, the Pennsylvania Supreme Court addressed whether the notice requirement in that state's program was jurisdictional. Like we conclude in the present case, the Pennsylvania high court concluded that, although the mortgagee's notice requirement was a mandatory condition precedent to the commencement of a foreclosure action, it was not jurisdictional. *Beneficial Consumer Discount Co.* v. *Vukman*, 621 Pa. 192, 202–203, 77 A.3d 547 (2013). The court explained: "The failure to pay the mortgage according to its terms gave [the mortgagee] its cause of action. To act on that cause of action, it was required to give notice under Act 91. As the notice it gave did not meet the requirements of [Act 91], it was defective and the procedural requirements for enforcement were not met; that defect, however, did not affect the jurisdiction of the court to hear the matter." Id.

action. As such, the failure to comply with the notice requirement deprives the trial court of subject matter jurisdiction." Id., 645. In concluding that, because the EMAP notice requirement was a mandatory condition precedent, it must a priori be jurisdictional, the Appellate Court failed to consider the distinction between conditions legislatively imposed on statutory causes of action and those legislatively imposed on common-law causes of action. As previously noted, statutory conditions imposed on common-law actions, such as mortgage foreclosures, are generally not jurisdictional unless the legislature has made it clear that it wished to alter the court's jurisdiction or to abrogate the common-law right. See, e.g., *Neighborhood Assn., Inc.* v. *Limberger*, supra, 321 Conn. 46; *Matthiessen* v. *Vanech*, supra, 266 Conn. 838. As such, we disagree with and overrule the Appellate Court's decision in *Hammons* to the extent that it held that the EMAP notice requirement is jurisdictional.

The amicus argues that the Connecticut foreclosure system is a combination of both the common-law and statutory remedies provided by the legislature, and that the detailed statutory framework of EMAP indicates that the legislature intended the EMAP provisions to impose jurisdictional limitations. We agree with the amicus that our state foreclosure system is a combination of both statutory laws and common law; however, we disagree that the legislature has abrogated the common law or that the common-law process is now dominated by statute. The statutes enacted in this area merely supplement the common law and add requirements to carry out important public policies of the state as they relate to foreclosure; the statutes do not supplant the common-law cause of action itself. Mortgage foreclosure, especially, is a category of foreclosure actions that originated in and has remained a creature of the common law. See, e.g., *Neighborhood Assn., Inc.*

v. *Limberger*, supra, 321 Conn. 48 (distinguishing strict foreclosure of mortgage, which is common-law right, from right to foreclosure on common charges liens, which is "more properly characterized as a statutory right of action"); *Society for Savings* v. *Chestnut Estates, Inc.*, supra, 176 Conn. 568 (noting that, although strict foreclosure of mortgage is no longer separate proceeding in equity, it remains "common-law, nonstatutory process").

The amicus also argues that a determination that the EMAP notice is not jurisdictional frustrates the legislative intent of the 2008 EMAP amendments. We disagree. Our holding that the EMAP notice is a mandatory condition precedent does nothing to dilute or impair the legislative intent or public policy underlying the 2008 amendments. The mortgagee is still mandated to provide the homeowner with the EMAP notice. Therefore, the public policy underlying the notice requirement—informing homeowners of their rights and the resources available to them to assist in avoiding foreclosure—is fulfilled. A foreclosure action may not proceed unless the EMAP notice requirement is carried out. If the plaintiff does not satisfy that condition, it has failed to allege a claim on which relief can be granted.

In summary, we conclude that § 8-265ee requires that a mortgagee plaintiff notify the homeowner of EMAP and the resources available under that program prior to initiating a foreclosure action against the homeowner. This requirement, although not jurisdictional, is a mandatory condition precedent that must be fulfilled for the plaintiff to have a proper cause of action on which relief can be granted. Therefore, compliance with the requirement must be affirmatively pleaded by the plaintiff. See General Statutes § 8-265ee (b).

II

Finally, we turn to the plaintiff's contention that, in the present case, the EMAP notice sent prior to the

initiation of the first foreclosure action by the plaintiff's predecessor satisfied the plaintiff's EMAP notice obligation for the present action. The plaintiff contends that the Appellate Court incorrectly concluded that the particular mortgagee foreclosing on the mortgage must be the entity that sent the EMAP notice and that each action, even if based on the same default, requires a new notice. See *KeyBank, N.A.* v. *Yazar*, supra, 206 Conn. App. 632–34. The plaintiff disagrees with the Appellate Court's conclusion that the EMAP notice sent by First Niagara in 2016 did not satisfy the plaintiff's obligation in this present action. It bases its argument both on the principles of merger—that First Niagara merged with and into the plaintiff and, therefore, the plaintiff held the same rights as First Niagara—as well as the fact that both foreclosure actions related to the same default, and therefore only one EMAP notice was needed. The defendant contends that the prior notice did not satisfy the plaintiff's EMAP notice obligation under § 8-265ee because the present action is a new and wholly separate action. The defendant argues that § 8-265ee requires that an EMAP notice be sent before the commencement of any foreclosure action—even subsequent actions based on the same default—and, therefore, a new notice must be mailed for each foreclosure action. We agree with the defendant and conclude that the EMAP notice sent in August, 2016, prior to the commencement of the initial foreclosure action, did not satisfy the plaintiff's notice obligation under § 8-265ee for the present action because that statute requires that a notice be sent prior to the commencement of each foreclosure action.

Whether § 8-265ee requires that an EMAP notice be sent prior to the initiation of each foreclosure action is a question of statutory interpretation, over which our review is plenary. See, e.g., *Day* v. *Seblatnigg*, supra, 341 Conn. 826. We again review § 8-265ee in accordance with § 1-2z and our familiar principles of statutory con-

struction. See, e.g., *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 45–46, 213 A.3d 1110 (2019). As previously discussed, § 8-265ee (a) provides in relevant part: "[A] mortgagee who desires to foreclose upon a mortgage which satisfies the standards contained in subdivisions (1), (9), (10) and (11) of subsection (e) of section 8-265ff, shall give notice to each homeowner who is a mortgagor by registered, or certified mail, postage prepaid at the address of the property which is secured by the mortgage. No such mortgagee may commence a foreclosure of a mortgage prior to mailing such notice. . . ." As we explained, the statute requires a mortgagee to send an EMAP notice prior to commencing a foreclosure action. It is unclear from the plain text of the statute, however, whether, in situations such as this, in which multiple foreclosure actions were commenced based on the same default, multiple EMAP notices must be sent. As such, we conclude that § 8-265ee is ambiguous as to whether a separate EMAP notice must be sent prior to the initiation of each subsequent foreclosure action. Therefore, we "look for interpretive guidance to the legislative history and circumstances surrounding [the statute's] 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 . . . ." (Internal quotation marks omitted.) *Hernandez* v. *Apple Auto Wholesalers of Waterbury, LLC*, 338 Conn. 803, 815, 259 A.3d 1157 (2021).

EMAP was enacted in 1993 to "assist homeowners in avoiding foreclosure by providing a mechanism whereby the mortgage could be reinstated over a period of up to [thirty-six] months." 1 D. Caron & G. Milne, Connecticut Foreclosures (11th Ed. 2021) § 17-2:4, pp. 1091–92. As we explained, the original program was at the lender's option, and the legislature stopped funding the program two years after its enactment. See id., p. 1092. In 2008,

when the need for foreclosure relief became evident, No. 08-176, §§ 5 through 10, of the 2008 Public Acts revised the original EMAP legislation to expand its scope and to enhance its availability for Connecticut homeowners. See id. It also removed the voluntary nature of the program. Id., § 17-2:4.1, p. 1094. Compliance with EMAP therefore became mandatory for all lenders of any qualifying mortgages. Id. The requirements of EMAP extended to both the original mortgagee as well as its successors and assigns. Id.

The legislature emphasized the remedial nature of the legislation during Senate discussions of the 2008 amendments. Specifically, Senator Eric D. Coleman stated: "[T]he bill, to me, is a very important piece of *remedial legislation*, at a time when real economic crisis for homeowners is occurring. It is my hope that the judges who hear foreclosure cases will apply this bill in a way that allows this *remedial purpose* to be carried out." (Emphasis added.) 51 S. Proc., Pt. 17, 2008 Sess., p. 5071.

It is a well established principle of statutory interpretation that "remedial statutes should be construed liberally in favor of those whom the law is intended to protect . . . ." (Internal quotation marks omitted.) *Hernandez* v. *Apple Auto Wholesalers of Waterbury, LLC*, supra, 338 Conn. 815. The legislative history surrounding the enactment of EMAP in this state makes clear that protections for homeowners was the impetus behind providing more stringent requirements on lenders under EMAP. The program provides assistance to eligible homeowners in bringing their mortgages current and retaining rights to their homes and properties. The EMAP notice is a crucial step in this process and serves to inform homeowners of the resources available to them to assist in avoiding foreclosure and what rights they have in accessing those resources. After all, if a homeowner does not know of the existence of EMAP, then the important protections afforded to homeowners

through the program would be rendered meaningless. A homeowner's right to access EMAP does not end after a first action is dismissed or withdrawn. Furthermore, the homeowners protected by EMAP are not necessarily individuals with particularized legal knowledge as to the mechanics of foreclosures, and the dismissal of a foreclosure action does not foretell that another action will always be filed in its place. The ability to access EMAP continues, and, therefore, a defendant homeowner must receive notice that the resources are still available in subsequent actions because it would be unreasonable to expect lay homeowners to know that they continue to have access to this specialized program, especially after they already had participated to some extent in EMAP during the pendency of the first foreclosure. Without a new notice being sent prior to the commencement of a subsequent foreclosure, it would be just as reasonable for homeowners to think that their prior participation in EMAP was their only opportunity to benefit from its objectives. Accordingly, we conclude that § 8-265ee requires mortgagees to provide a new EMAP notice upon initiation of *any* foreclosure action, including a successive foreclosure action predicated on the same default. This requirement is likely to have a remedial benefit for homeowners and their awareness of EMAP, while imparting a very minimal, if any, burden on mortgagees.

Although, as we previously acknowledged, the text of § 8-265ee does not itself provide this answer, it does provide support for our conclusion. For example, the sending of the EMAP notice prompts the beginning of a timeline for receiving EMAP aid. See General Statutes § 8-265ee. Once the notice is sent, the statute provides requisite deadlines for applying for assistance, meeting with the mortgagee, and ultimately proceeding with the foreclosure, each of which is based on a specified length of time from sending the notice. See General Statutes

§ 8-265ee. If a new notice is not required, and therefore a new timeline is not set, the remedies would appear to be "expired" based on the notice of a previously withdrawn or dismissed case, which is not how EMAP functions. The remedies remain available under each foreclosure; as such, the notice and accompanying timeline are reset at the initiation of each new foreclosure.

The particular facts of this case highlight the need for an EMAP notice prior to the commencement of any subsequent foreclosure action. First Niagara sent Emre and the defendant EMAP notices in August, 2016, prior to the initiation of the first foreclosure action. The record reflects that the defendant never received her EMAP notice. The initial foreclosure action was thereafter dismissed for disciplinary reasons related to the plaintiff. The defendant, who was not a signatory to the note, may not have been aware of whether the note was still in default, or whether a resolution had been reached between Emre and the plaintiff. The defendant was aware only that the foreclosure action had been dismissed. When the plaintiff initiated the second foreclosure action, it did so in a separate and distinct proceeding and in a different judicial district, where the action was assigned a different docket number. Had the defendant received a second EMAP notice, she would have been aware that a second foreclosure action was imminent and that EMAP was still available to her as a homeowner. The EMAP notice would have made the defendant aware that there were resources and means by which she may be able to retain her interest in the property. The plaintiff's failure to mail such a notice prior to the commencement of the second action impaired the defendant's ability to take advantage of these resources. Particularly concerning is that, in this case, the plaintiff knew or should have known that the defendant never received her initial EMAP notice but still failed to send a notice prior to initiating the second

foreclosure action. The only EMAP notice the plaintiff introduced as proof of compliance was a notice, envelope, and certified mail receipt that was marked "not deliverable" and "return to sender." We need not decide whether § 8-265ee (a) requires proof of delivery of the EMAP notice given that, in this case, there is no dispute that the plaintiff failed to send a subsequent notice prior to initiating the second foreclosure action.

Finally, we disagree with the Appellate Court to the extent that it suggested that it is legally significant that different entities were required to send the notices. See *KeyBank, N.A.* v. *Yazar*, supra, 206 Conn. App. 634. Shortly after First Niagara sent the August, 2016 EMAP notice, the plaintiff acquired First Niagara. The plaintiff, as the successor to First Niagara, operated as the same "mortgagee" for the purposes of the EMAP statutes. See General Statutes § 8-265cc (4). Section 8-265cc (4) defines "[m]ortgagee" as "the original lender under a mortgage, or its agents, *successors*, or assigns . . . ." (Emphasis added.) There is no substantive difference for purposes of the EMAP statutory scheme between First Niagara and the plaintiff. Our analysis does not turn on the particular entity that sent the EMAP notice; rather, what is of consequence is ensuring that an EMAP notice is sent prior to the initiation of any subsequent foreclosure action, as each foreclosure action must stand on its own EMAP notice.

CONCLUSION

The EMAP notice requirement in § 8-265ee is a nonjurisdictional requirement but is nonetheless a mandatory condition precedent that a plaintiff bears the burden of satisfying before it commences any mortgage foreclosure. Until the condition is satisfied, the plaintiff has not alleged a cause of action on which relief can be granted. The plaintiff, in the present case, could not rely on the EMAP notice sent prior to the commencement

of the initial foreclosure action that was dismissed. Accordingly, the plaintiff failed to satisfy its EMAP notice obligation when it failed to mail the defendant an EMAP notice before it initiated the present foreclosure action. Unless an EMAP notice is sent prior to the initiation of the foreclosure action, the plaintiff does not have a claim to relief.

The judgment of the Appellate Court is reversed with respect to its conclusion that the plaintiff's failure to comply with the EMAP notice requirement in § 8-265ee deprived the trial court of subject matter jurisdiction and the case is remanded to that court with direction to reverse the judgment of the trial court and to remand the case to the trial court with direction to render judgment dismissing the action for failure to comply with a mandatory condition precedent; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

WILLIAM L. ROACH *v.* TRANSWASTE, INC.
(SC 20718)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker and Alexander, Js.

Syllabus

The plaintiff sought to recover damages from the defendant for the allegedly wrongful termination of his employment, in violation of public policy and the statute ((Rev. to 2015) § 31-51q) prohibiting an employer from retaliating against an employee for exercising constitutionally protected speech. The plaintiff, who had been employed by the defendant as a commercial truck driver, alleged that the defendant terminated his employment after he raised complaints concerning the safety of its vehicles. At trial, the plaintiff testified that, following the termination of his employment, he was out of work for approximately 6 months, the defendant had paid him at a rate of 46 cents per mile, he had driven a little more than 2000 miles per week, and he had driven approximately 230,000 miles during his 2 years with the defendant. The plaintiff's testimony was the sole evidence presented with respect to his lost

wages, and the defendant offered no evidence to impeach his testimony. The jury returned a verdict for the plaintiff and awarded him $24,288 in damages for lost wages. The jury interrogatories indicated that the jury had found that the plaintiff was owed wages corresponding to 2200 miles per week at a rate of 46 cents per mile for a period of 24 weeks. The defendant filed a motion for remittitur, seeking to reduce the damages award to zero. The defendant asserted that there was no evidence to support the damages award because the plaintiff had failed to provide tangible evidence or to testify with sufficient specificity as to his lost wages. The trial court denied the defendant's motion for remittitur, concluding that the plaintiff had presented sufficient evidence to support the damages award and that, in light of the specific figures in the jury interrogatories, the award was a reasonable estimate of the plaintiff's lost wages. The trial court thereafter rendered judgment for the plaintiff in accordance with the jury's verdict. The plaintiff appealed and the defendant cross appealed to the Appellate Court. In its cross appeal, the defendant claimed, inter alia, that the trial court had erred by failing to set aside the damages award. The Appellate Court upheld the trial court's denial of the defendant's motion for remittitur, concluding that the trial court had not abused its discretion in declining to set aside the damages award. On the granting of certification, the defendant appealed to this court.

Held that the Appellate Court did not err in upholding the trial court's denial of the defendant's motion for remittitur:

Although the Appellate Court, in upholding the trial court's denial of the defendant's motion for remittitur, relied on the trial court's characterization of the damages award as a reasonable estimate without citing the applicable reasonable certainty standard of proof, this court's case law links the reasonable certainty standard to the ability to make a reasonable estimate, the reasonable estimate benchmark has consistently appeared in this court's cases assessing damages awards, and the term "reasonable certainty" in this context requires only evidence that is sufficient to enable the fact finder to arrive at a reasonable estimate and thereby remove the award from the realm of speculation.

Contrary to the defendant's claim that the plaintiff did not prove his lost wages with reasonable certainty because the only evidence he offered was his own generalized and nonspecific testimony, the fact that the damages award was premised exclusively on testimonial evidence did not, in and of itself, render the evidence insufficient to meet the reasonable certainty standard, and the plaintiff's testimony was sufficient to remove the damages award from the realm of speculation, as the plaintiff proved to the jury's satisfaction that the defendant wrongfully terminated his employment, that the defendant owed him lost wages for the subsequent period of approximately six months when he was unemployed, and that the distances and per mile amounts to which he testified accurately

represented his former workload and compensation, and the jury used these proven facts to calculate a reasonable estimate, consistent with the evidence before it, of the amount of the plaintiff's lost wages.

Moreover, there was no merit to the defendant's claim that the damages award was improperly speculative because it required the jury to guess at the number of miles that the plaintiff had driven for the defendant, the duration of his unemployment, and how any inclement weather could have affected his workload because, although the plaintiff could have provided a greater degree of specificity as to how many weeks he was unemployed, the jury apparently awarded damages on the low end of the range of a reasonable estimate, and the two year average from which the jury calculated the weekly mileage for lost wages was a sufficiently lengthy period to account for variances in the weather.

Furthermore, this was not a case in which it could not be determined how or why the jury arrived at its damages award or in which the award had been based on an unresolved contingency, as the jury based its award on figures drawn directly from uncontroverted testimony, and the method the jury employed for its calculations was set forth in its interrogatories form.

Accordingly, it was clear that the damages award was not based on speculation or guesswork, and the plaintiff proved his damages to a reasonable certainty by providing nonspeculative evidence from which the jury derived a fair and reasonable estimate.

Argued April 26—officially released August 1, 2023

Procedural History

Action to recover damages for, inter alia, the allegedly wrongful termination of the plaintiff's employment, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Noble*, *J.*; verdict for the plaintiff; thereafter, the court, *Noble*, *J.*, denied the defendant's motion for remittitur and rendered judgment in accordance with the verdict, and the plaintiff appealed and the defendant cross appealed to the Appellate Court, *Bright*, *C. J.*, and *Suarez* and *Vertefeuille*, *Js.*, which reversed the trial court's judgment in part and remanded the case for further proceedings, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Glenn L. Formica, for the appellant (defendant).

James V. Sabatini, for the appellee (plaintiff).

ALEXANDER, J. The sole issue in this certified appeal is whether the jury was presented with sufficient evidence to award the plaintiff, William L. Roach, lost wages in this wrongful termination action. The defendant, Transwaste, Inc., claims that the Appellate Court improperly upheld the trial court's denial of the defendant's motion for remittitur. We disagree with the defendant and affirm the judgment of the Appellate Court.

The record reveals the following undisputed facts and procedural history relevant to the damages issue in the present appeal.[1] The plaintiff was employed by the defendant as a commercial truck driver from 2013 through 2015. The defendant terminated the plaintiff's employment after the plaintiff raised several complaints to the defendant about the safety of its vehicles. The plaintiff thereafter commenced the present action, claiming that his employment was wrongfully terminated in violation of public policy and General Statutes (Rev. to 2015) § 31-51q.[2]

At trial, the sole evidence relating to lost wages was adduced through the plaintiff's testimony. The plaintiff testified that he had been out of work for "[a]bout six months" following the termination of his employment. He also testified that the defendant had paid him at a

[1] A more comprehensive discussion of the merits of the underlying case is set forth in the Appellate Court's decision. See *Roach* v. *Transwaste, Inc.*, 210 Conn. App. 686, 688–91, 697–99, 270 A.3d 786 (2022).

[2] General Statutes (Rev. to 2015) § 31-51q provides in relevant part: "Any employer . . . who subjects any employee to . . . discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such . . . discharge, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages. . . ."

rate of 46 cents per mile, that he always had driven a little more than 2000 miles per week, and that he had driven approximately 230,000 miles during his two years with the defendant. The defendant offered no evidence to impeach this testimony.

The jury returned a verdict in favor of the plaintiff and awarded him $24,288 in damages for lost wages. The jury interrogatories reflected that it had found that the plaintiff was owed wages corresponding to 2200 miles per week at a rate of 46 cents per mile for a period of 24 weeks.

The defendant filed several postverdict motions, including a motion for remittitur, seeking to reduce the award of damages to zero dollars. The defendant contended that there was no evidence to support the award because the plaintiff had neither provided tangible evidence nor testified with sufficient specificity about his lost wages. The trial court denied all of the defendant's postverdict motions.

With regard to the motion for remittitur, the trial court concluded that the plaintiff had presented sufficient evidence to support the award. The trial court pointed to the specific figures in the jury interrogatories and drew the following inferences. The jury had arrived at the 2200 mile per week figure by dividing the 230,000 miles that the plaintiff had driven in his 2 years with the defendant by the number of weeks in 2 years and rounding down the resulting figure of 2211 miles. The jury then had multiplied this weekly mileage by the payment rate of 46 cents per mile to yield a weekly income of $1012. By multiplying $1012 by 24 weeks (the trial court assumed that the jury had used an estimate of 4 weeks per month for a period of 6 months), the jury reached the final amount of $24,288 in damages for lost wages. The trial court determined that, although the calculations of damages were "not reflective of

absolute precision, they nevertheless arrive at a reasonable estimate derived from the trial evidence."

The plaintiff appealed from the trial court's judgment to the Appellate Court. The defendant cross appealed, claiming, among other things, that the trial court erred by failing to set aside the jury's damages award.[3] See *Roach* v. *Transwaste, Inc.*, 210 Conn App. 686, 694, 697, 270 A.3d 786 (2022). The defendant argued that the plaintiff had not produced any evidence to support his claim of lost wages because his testimony was speculative, and, thus, the jury's award of damages was not supported by sufficient evidence. Id., 697.

The Appellate Court concluded that the trial court did not abuse its discretion in declining to set aside the award. Id., 698. The Appellate Court cited the deferential standard of review of denials of motions for remittitur and the "clear evidence in the record from which the jury could have arrived at its verdict and the amount of the award of damages to the plaintiff." Id. The court also concluded that the trial court, "having observed the trial and evaluated the testimony firsthand," was in a better position to determine "that the jury could reasonably and legally have reached the verdict that it did." (Internal quotation marks omitted.) Id., 698–99. This certified appeal followed.[4]

[3] The plaintiff's appeal challenged the trial court's calculation of attorney's fees. The defendant's cross appeal challenged the judgment on the merits and as to damages. See *Roach* v. *Transwaste, Inc.*, 210 Conn App. 686, 688–89, 270 A.3d 786 (2022). The Appellate Court reversed the trial court's calculation of attorney's fees but affirmed the trial court's judgment as to liability and damages. See id., 689. Only the defendant's claim regarding damages is at issue in this appeal.

[4] This court granted certification, limited to the following issue: "Did the Appellate Court correctly conclude that the evidence was sufficient to allow the jury to award the plaintiff future lost damages?" *Roach* v. *Transwaste, Inc.*, 343 Conn. 924, 275 A.3d 1212 (2022). Although the plaintiff, in his brief to this court, challenges the framing of the issue in terms of "future" lost damages, we need not address this contention in light of our conclusion that the defendant cannot prevail on appeal.

On appeal to this court, the defendant claims that the Appellate Court erred in upholding the trial court's denial of its motion for remittitur. Specifically, the defendant claims that the plaintiff did not prove his lost wages with reasonable certainty because the only evidence he offered was his own "generalized and nonspecific" testimony. The defendant argues that, if we were to affirm the Appellate Court's judgment, we would be lowering the established legal standard for proving economic damages. The defendant asserts that the Appellate Court departed from the requirement that damages be proven with reasonable certainty by applying the less stringent standard of a reasonable estimate.[5] We disagree.

Our review is guided by the following principles. In considering the trial court's decision whether to order remittitur, a reviewing court must be mindful that "[t]he court's broad power to order a remittitur should be exercised only when it is manifest that the jury [has awarded damages that] are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions." (Internal quotation marks omitted.) *Ashmore* v. *Hartford Hospital*, 331 Conn. 777, 782, 208 A.3d 256 (2019). "[T]he decision whether to reduce a jury verdict because it is excessive as a matter of law . . . rests solely within the discretion of the trial court. . . . [Consequently], the proper standard of review . . . is that of an abuse of discretion. . . . [T]he ruling of the trial court . . . is entitled to great weight and every reasonable presumption should be given in favor of its correctness." (Internal quotation marks omitted.) Id., 783.

[5] The reasonable estimate language set forth in the Appellate Court's decision was a direct quote from the trial court's memorandum of decision. See *Roach* v. *Transwaste, Inc.*, supra, 210 Conn App. 698. The defendant made no claim in its cross appeal to the Appellate Court that the trial court had applied an incorrect legal standard. The defendant's insufficient evidence claim nonetheless requires us to assess the evidence against the proper legal standard.

In the present case, the trial court's denial of the motion for remittitur was based on its determination that the evidence was sufficient to support the damages award. The law governing a claim of evidentiary insufficiency in this context is well settled. "Damages are recoverable only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty. . . . [T]he court must have evidence by which it can calculate the damages, which is not merely subjective or speculative . . . but which allows for some objective ascertainment of the amount. . . . This certainly does not mean that mathematical exactitude is a precondition to an award of damages, but we do require that the evidence, *with such certainty as the nature of the particular case may permit, lay a foundation* [*that*] *will enable the trier to make a fair and reasonable estimate*." (Citations omitted; emphasis added; internal quotation marks omitted.) *Weiss* v. *Smulders*, 313 Conn. 227, 253–54, 96 A.3d 1175 (2014); see also *Gaudio* v. *Griffin Health Services Corp.*, 249 Conn. 523, 554, 733 A.2d 197 (1999) ("[d]amages are recoverable only to the extent that the evidence affords a sufficient basis for *estimating* their amount in money *with reasonable certainty*" (emphasis added)).

Although the Appellate Court relied on the trial court's characterization of the damages award as a "reasonable estimate" without citing the reasonable certainty standard of proof; (emphasis omitted; internal quotation marks omitted) *Roach* v. *Transwaste, Inc.*, supra, 210 Conn. App. 698; as the preceding discussion demonstrates, our case law links the standard of reasonable certainty to the ability to make a reasonable estimate. See, e.g., *Weiss* v. *Smulders*, supra, 313 Conn. 253–54 (using both terms); *Ulbrich* v. *Groth*, 310 Conn. 375, 441, 78 A.3d 76 (2013) (same); *American Diamond Exchange, Inc.* v. *Alpert*, 302 Conn. 494, 510–11, 28 A.3d 976 (2011) (same); see also Connecticut Civil Jury Instructions 4.5-

4, available at https://jud.ct.gov/JI/Civil/Civil.pdf (last visited July 26, 2023); Connecticut Civil Jury Instructions, supra, 4.5-8. The "reasonable estimate" benchmark has consistently appeared in our cases assessing damages awards since the early twentieth century. See, e.g., *Hicks* v. *State*, 287 Conn. 421, 463, 948 A.2d 982 (2008); *Hedderman* v. *Robert Hall of Waterbury, Inc.*, 145 Conn. 410, 414, 144 A.2d 60 (1958); *Ball* v. *T. J. Pardy Construction Co.*, 108 Conn. 549, 551, 143 A. 855 (1928). The term "reasonable certainty" in this context therefore requires only evidence that is sufficient to enable the fact finder to arrive at a reasonable estimate and thereby remove the award from the realm of speculation. See, e.g., *Carrano* v. *Yale-New Haven Hospital*, 279 Conn. 622, 650, 904 A.2d 149 (2006) ("[p]roof of damages should be established with reasonable certainty and not speculatively and problematically" (internal quotation marks omitted)); cf. *State* v. *Nunes*, 260 Conn. 649, 672, 800 A.2d 23 1160 (2002) (term "reasonable medical certainty" means "reasonable medical probability standard," which is standard that is applied to ensure that expert opinions are not based on mere speculation or conjecture).

The fact that a damages award is premised exclusively on testimonial evidence, as it was in the present case, does not, in and of itself, render the evidence insufficient to meet the reasonable certainty standard. Rather, "testimonial evidence is sufficient to support an award of economic damages, provided the jury's reliance on this evidence is reasonable." *Carrano* v. *Yale-New Haven Hospital*, supra, 279 Conn. 647. "[E]xcept in rare instances, there is no requirement that a [witness'] testimony be corroborated by other evidence." (Internal quotation marks omitted.) Id. "We [have seen] no reason why the traditional tests of credibility, testimony under oath and cross-examination, coupled with the claimant's burden of proof, are insufficient to measure the

accuracy and reliability of testimonial evidence concerning economic damages." (Internal quotation marks omitted.) Id., 647–48; see also *Duncan* v. *Mill Management Co. of Greenwich, Inc.*, 308 Conn. 1, 37, 60 A.3d 222 (2013) (concluding that it was reasonable for jury to credit plaintiff's unsubstantiated testimony on loss of earning capacity); *Keystone Ins. Co.* v. *Raffile*, 225 Conn. 223, 236–37, 622 A.2d 564 (1993) (testimony without corroborating evidence was sufficient to recover uninsured motorist benefits).

With these principles in mind, we turn to the issue of whether the plaintiff's testimony was sufficient to remove the damages award from the realm of speculation. We agree with the Appellate Court's endorsement of the trial court's explanation as to why the jury had sufficient evidence before it to meet this standard. See *Roach* v. *Transwaste, Inc.*, supra, 210 Conn. App. 698–99. The plaintiff proved to the jury's satisfaction that he was wrongfully terminated from his employment, that the defendant owed him lost wages for the subsequent period of roughly six months when he was unemployed, and that the distances and per mile amounts to which he testified accurately represented his former workload and compensation. The jury used these proven facts to calculate a reasonable estimate, consistent with the evidence before it, of the amount of the plaintiff's lost wages.

The defendant argues that the damages award was improperly speculative because it required the jury to guess at the number of miles that the plaintiff drove for the defendant, the duration of his unemployment, and how the weather may have affected his workload. We disagree. We make two additional comments to supplement the trial court's detailed explanation for how the jury likely arrived at the damages amount awarded. First, although it may have been possible for the plaintiff to have provided a greater degree of speci-

ficity as to how many weeks he was unemployed, rather than his approximation of six months, the jury appears to have awarded damages on the low end of the range of a reasonable estimate. The jury awarded lost wages for twenty-four weeks, whereas six months equates to twenty-six weeks. Second, the two year average from which the weekly mileage for lost wages was calculated was a sufficiently lengthy period to account for variances in the weather.

This is not a case in which "we cannot know how or why the jury arrived at its determination of damages." *Caruso* v. *Quickie Cab Co.*, 48 Conn. App. 459, 462, 709 A.2d 1154 (1998). Nor is the award based on an unresolved contingency, as the defendant contends.[6] Given that the plaintiff's pay was based on factors such as mileage that varied from week to week, it was not feasible to ascertain the exact amount he would have earned if not for the wrongful termination of his employment. The jury, however, based its award on figures drawn directly from uncontroverted testimony, and the method it employed for its calculations is set forth in the jury interrogatories form. Consequently, the damages award was not based on speculation or guesswork. But cf. *Bronson & Townsend Co.* v. *Battistoni*, 167 Conn. 321, 326–27, 355 A.2d 299 (1974) (rejecting claim for damages when there was no formula for calculating

[6] The defendant argues that, because the plaintiff acknowledged that the weather influenced the amount he drove from week to week and subsequently the amount he was paid, the award was impermissibly predicated on a contingency. The contingency cases that the defendant cites in support of its argument, however, are distinguishable from the present case because they involved questions whose *unresolved* outcomes necessarily required speculation as to damages. See, e.g., *Leisure Resort Technology, Inc.* v. *Trading Cove Associates*, 277 Conn. 21, 36, 889 A.2d 785 (2006) (rejecting award of damages based on market values that assumed incomplete sales agreement would be consummated); *Lewis* v. *Hartford Dredging Co.*, 68 Conn. 221, 234–37, 35 A. 1127 (1896) (rejecting award of damages based on projected market value of oyster beds, which, in turn, assumed successful cultivation thereof).

claimant's bonus and claimant "failed to allege or even to submit any testimony as to what constituted a reasonable bonus, leaving the trial court without basis by which to accord him relief"). Rather, the plaintiff proved his damages to a reasonable certainty by providing nonspeculative evidence from which the jury derived a fair and reasonable estimate.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

MARLINE ADESOKAN ET AL. *v.* TOWN OF BLOOMFIELD ET AL.
(SC 20753)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker and Alexander, Js.*

Syllabus

Pursuant to statute (§ 52-557n (a) (2) (B)) and the common law of this state, respectively, municipalities and their employees enjoy qualified immunity from liability, for their negligent acts or omissions in the performance of duties that require the exercise of judgment or discretion, "[e]xcept as otherwise provided by law . . . ."

Pursuant further to statute (§ 14-283 (d)), the privileges afforded to the operator of an emergency vehicle by § 14-283 (b), which include the right to disregard certain traffic laws, signals, and signs under certain conditions, "shall not relieve the operator of [the] emergency vehicle from the duty to drive with due regard for the safety of all persons and property."

The plaintiff, individually and on behalf of her two minor children, sought to recover damages from the defendants, the town of Bloomfield, its police department, and one of its police officers, J, in connection with injuries the plaintiff and her children sustained when the vehicle in which they were travelling was struck by J's police cruiser. At the time of the collision, J was responding to a report of a possible abduction

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Ecker and Alexander. Although Justice McDonald was not present at oral argument, he has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

and travelling in the southbound lane of traffic several vehicles behind the plaintiff's vehicle. The plaintiff arrived at an intersection and made a lefthand turn, but J, while traveling at a speed exceeding seventy miles per hour, moved into the northbound lane, attempted to pass, and collided with the plaintiff's vehicle. The plaintiff raised claims of negligence, negligent supervision, and respondeat superior, and the defendants moved for summary judgment on the ground that those claims were barred by discretionary act immunity under § 52-557n (a) (2) (B). The trial court granted the defendants' motion for summary judgment and rendered judgment for the defendants, concluding that J's operation of the police cruiser constituted a discretionary act that was subject to governmental immunity. In doing so, the court relied on this court's recent decision in *Borelli* v. *Renaldi* (336 Conn. 1), in which this court concluded that "the duty to drive with due regard" in § 14-283 (d) imposed a discretionary duty to act with respect to a police officer's decision to initiate and to continue a pursuit of a fleeing motorist. On appeal, the plaintiff claimed, inter alia, that the trial court improperly had relied on *Borelli* and incorrectly concluded that discretionary act immunity barred her claims, insofar as § 14-283 (d) imposes a ministerial duty on emergency vehicle operators "to drive with due regard for the safety of all persons and property."

Held that the trial court improperly granted the defendants' motion for summary judgment, as the defendants were not entitled to discretionary act immunity under § 52-557n (a) (2) (B) because such immunity does not apply to the manner in which an emergency vehicle is operated in light of the except as otherwise provided by law savings provision in § 52-557n (a) (2) (B) and the codified, common-law duty to drive with due regard for the safety of all persons and property set forth in § 14-283 (d):

This court previously has recognized that § 52-557n (a) was not intended to bar all civil actions arising from a municipal employee's discretionary acts and that the except as otherwise provided by law savings clauses in § 52-557n (a) encompass common-law exceptions to the discretionary act immunity provided by that statute, such that, if liability attaches to the discretionary act of a municipal employee under the common law, § 52-557n does not supersede the common-law doctrine, and discretionary act immunity does not apply.

This court concluded that §§ 14-283 and 52-557n (a) (2) (B) were ambiguous and looked to the legislative history of those statutes, which demonstrated that the legislature, having codified the reasonable care standard in § 14-283 (d) fifteen years before enacting § 52-557n as part of the Tort Reform Act of 1986, understood that negligence in the operation of motor vehicles was not intended to be shielded by governmental immunity, either before or after the passage of § 52-557n.

The existence of certain indemnification statutes also reflected the fact that, at common law, municipal employees were personally liable for negligently operating an emergency vehicle when they failed to exercise the due care of a reasonably prudent person under the circumstances, both before and after the enactment of § 52-557n.

Moreover, this court's decision in *Tetro* v. *Stratford* (189 Conn. 601), which was decided three years before the enactment of § 52-557n, also addressed the manner in which an emergency vehicle is operated, and *Tetro* squarely demonstrated that, prior to the enactment of § 52-557n, municipalities were not immune from suits arising from collisions of their vehicles engaged in emergency operation, that the legislature and the courts understood that municipalities could be held liable under then existing statutory and common law for the negligence of their emergency vehicle operators, and that, although § 14-283 (b) granted operators of emergency vehicles a privilege by relieving them from a presumption of negligence per se for violating ordinary traffic laws, such operators were not relieved from, and remained subject to, the existing, common-law duty of care to drive with due regard for the safety of all persons and property.

Accordingly, granting governmental immunity in this context would effectively permit operators of emergency vehicles to drive without regard for a codified, common-law duty, and that result would be inconsistent with the legislature's understanding of the reach of § 52-557n when it enacted that statute, which was, unless otherwise indicated, intended to reflect the current state of the law.

Further support for this court's conclusion that discretionary act immunity did not apply in this context could be found in the fact that the operation of an emergency vehicle is not one of the enumerated exceptions to liability provided in § 52-557n (b), which effectively confer governmental immunity in specific contexts, and, if the legislature had intended to include emergency vehicle operation within the specific conduct subject to immunity in that statutory provision, it could have done so.

Furthermore, although this court has applied the discretionary/ministerial framework in recent decisions, including *Borelli*, to determine the scope of § 52-557n (a) (2) (B) as it relates to claims of immunity for the consequences of certain types of vehicular negligence involving police officers, and the parties in the present case largely limited their arguments to that issue, those cases did not concern the direct conduct targeted by the legislature in § 14-283 (d), namely, the operation of an emergency vehicle with the concomitant "duty to drive with due regard for the safety of all persons and property," and it was unnecessary to decide whether the duty to drive with due regard required by § 14-283 (d) was ministerial or discretionary in nature in light of this court's conclusion

that the discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to the operation of emergency vehicles by virtue of the savings provision in § 52-557n (a) (2) (B).

In addition, this court's reading of §§ 14-283 and 52-557n was further supported by the legislature's choice, in enacting § 14-283 (d), to deviate from the Uniform Vehicle Code, on which § 14-283 (d) was based, and to impose only a negligence standard rather than a reckless disregard standard, and by recent legislative activity, which demonstrated the legislature's repeated attempts to ensure that governmental immunity does not apply in this context.

Argued January 13—officially released August 1, 2023

Procedural History

Action to recover damages for, inter alia, the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Noble*, *J.*, granted the defendants' motion for summary judgment and rendered judgment thereon, from which the plaintiffs appealed. *Reversed*; *further proceedings.*

John A. Sodipo, for the appellants (plaintiffs).

Dennis M. Durao, with whom was *Andrew J. Glass*, for the appellees (defendants).

Thomas R. Gerarde filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Aaron S. Bayer and *Nathan Guevremont* filed a brief for the Connecticut Defense Lawyers Association as amicus curiae.

James J. Healy filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

Opinion

ROBINSON, C. J. We now take up the issue, left open by our recent decisions in *Daley* v. *Kashmanian*, 344 Conn. 464, 280 A.3d 68 (2022), and *Borelli* v. *Renaldi*, 336 Conn. 1, 243 A.3d 1064 (2020), of whether the special defense of governmental immunity for discretionary

acts; see General Statutes § 52-557n (a) (2) (B);[1] bars claims of negligence against drivers operating an "emergency vehicle" pursuant to the privileges provided by the emergency vehicle statute, General Statutes § 14-283.[2] The plaintiff, Marline Adesokan, individually and

[1] General Statutes § 52-557n (a) (2) provides in relevant part: "Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." As we discuss subsequently in this opinion; see footnote 6 of this opinion and accompanying text; § 52-557n was amended by No. 23-83, § 1, of the 2023 Public Acts. Hereinafter, unless otherwise indicated, all references to § 52-557n in this opinion are to the current revision of the statute.

[2] General Statutes § 14-283 provides in relevant part: "(a) As used in this section, 'emergency vehicle' means (1) any ambulance or vehicle operated by a member of an emergency medical service organization responding to an emergency call or taking a patient to a hospital, (2) any vehicle used by a fire department or by any officer of a fire department while on the way to a fire or while responding to an emergency call but not while returning from a fire or emergency call, [or] (3) any state or local police vehicle operated by a police officer or inspector of the Department of Motor Vehicles answering an emergency call or in the pursuit of fleeing law violators . . . .

"(b) (1) The operator of any emergency vehicle may (A) park or stand such vehicle, irrespective of the provisions of this chapter, (B) except as provided in subdivision (2) of this subsection, proceed past any red light, stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle, (C) exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a, 14-219, or 14-307a as long as such operator does not endanger life or property by so doing, and (D) disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions.

"(2) The operator of any emergency vehicle shall immediately bring such vehicle to a stop not less than ten feet from the front when approaching and not less than ten feet from the rear when overtaking or following any registered school bus on any highway or private road or in any parking area or on any school property when such school bus is displaying flashing red signal lights and such operator may then proceed as long as he or she does not endanger life or property by so doing.

"(c) The exemptions granted in this section shall apply only when an emergency vehicle is making use of an audible warning signal device, including, but not limited to, a siren, whistle or bell which meets the requirements of subsection (f) of section 14-80, and visible flashing or revolving lights which meet the requirements of sections 14-96p and 14-96q, and to any state or local police vehicle properly and lawfully making use of an audible warning signal device only.

"(d) The provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property.

on behalf of her two minor children, appeals[3] from the judgment of the trial court in favor of the defendants, the town of Bloomfield (town), the Bloomfield Police Department, and one of its police officers, Jonathan W. Sykes. On appeal, the plaintiff claims that the trial court improperly granted the defendants' motion for summary judgment, in part because the court misapplied *Borelli* in determining that Sykes' "duty to drive with due regard for the safety of all persons and property" in accordance with § 14-283 (d) was discretionary in nature for purposes of governmental immunity under § 52-557n (a) (2) (B). We conclude that the defense of discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by § 14-283. Accordingly, we reverse the judgment of the trial court.

The record reveals the following relevant facts and procedural history. On August 10, 2017, Sykes responded

"(e) Upon the immediate approach of an emergency vehicle making use of such an audible warning signal device and such visible flashing or revolving lights or of any state or local police vehicle properly and lawfully making use of an audible warning signal device only, the operator of every other vehicle in the immediate vicinity shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the emergency vehicle has passed, except when otherwise directed by a state or local police officer or a firefighter. . . ."

Although § 14-283 was the subject of technical amendments in 2021; see Public Acts 2021, No. 21-28, § 11; Public Acts 2021, No. 21-106, § 34; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

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

After transferring the appeal, we granted the parties permission to file supplemental briefs, and invited amici curiae to file briefs, addressing the applicability of this court's recent decision in *Daley* v. *Kashmanian*, supra, 344 Conn. 464. The following amici curiae accepted our invitation and filed briefs: (1) the Connecticut Defense Lawyers Association; (2) the Connecticut Trial Lawyers Association; and (3) the Connecticut Conference of Municipalities. We are grateful to the amici for their skilled professionalism and contributions in response to our invitation.

to a dispatch call for a possible abduction in progress and headed southbound on Tunxis Avenue in Bloomfield, with his police cruiser's emergency lights and siren activated. The plaintiff also was traveling southbound on Tunxis Avenue, heading to daycare and summer camp, but was positioned several cars ahead of Sykes as he approached from behind. As Sykes approached in his cruiser, the three cars directly behind the plaintiff's vehicle yielded to the right. At the intersection of Tunxis Avenue and Mills Lane, where there was nearby road construction, Sykes attempted to pass the plaintiff's vehicle on the left side in the northbound lane. Traveling at 71.8 miles per hour on a roadway with posted speed limits of 30 and 40 miles per hour, Sykes' cruiser collided with the driver's side of the plaintiff's vehicle when the plaintiff made a left turn at the same time Sykes attempted to pass her in the northbound lane. The plaintiff and her children sustained personal injuries as a result of the collision.

The plaintiff brought this action against the defendants, claiming negligence, negligent supervision, and respondeat superior. The defendants subsequently moved for summary judgment, claiming that discretionary act immunity under § 52-557n (a) (2) (B) barred the plaintiff's claims. Relying on this court's interpretation of the phrase "due regard," as contained in § 14-283 (d), in *Borelli* v. *Renaldi*, supra, 336 Conn. 14–15, the trial court concluded that, "because no ordinance, regulation, rule, policy, or any other directive compelled Sykes in a prescribed manner, the operation of his police cruiser . . . constituted a governmentally immune discretionary act." The court, therefore, granted the defendants' motion for summary judgment and rendered judgment accordingly. This appeal followed.

On appeal, the plaintiff principally claims that the trial court incorrectly concluded that discretionary act immunity barred her claims. The plaintiff argues that

§ 14-283 (d) imposes a ministerial rather than a discretionary duty on emergency vehicle operators "to drive with due regard for the safety of all persons and property." Relying on *Daley* v. *Kashmanian*, supra, 344 Conn. 464, the plaintiff further contends that our trial courts uniformly have concluded that the operation of an emergency vehicle, at least in a manner beyond the privileges provided by § 14-283 (b) (1), is a ministerial function, and she urges us to conclude the same for emergency operation within the privileges provided by that statute. The plaintiff argues that our decision in *Borelli* v. *Renaldi*, supra, 336 Conn. 1, is distinguishable because the present case concerns only the manner in which Sykes operated his emergency vehicle, whereas *Borelli* concerned a police officer's decision to engage in pursuit. The plaintiff also relies on public policy and argues that our more recent decision in *Daley* recognized that conferring blanket immunity on the operation of an emergency vehicle would lead to unworkable results and essentially give municipal police officers "a blank check, without repayment, to act unreasonably without regard to the safety of the public."

The defendants argue in response that the driving maneuvers taken by a municipal employee who operates an emergency vehicle, so long as he or she is authorized by § 14-283, are discretionary, judgment based decisions to which governmental immunity applies. They view the privileges provided by § 14-283 (b) as vesting the emergency operator with discretion, and the limiting language in subsection (d) as demonstrating only that reckless conduct is not permitted in the operator's exercise of the privileges provided by subsection (b). The defendants argue that it would illogically contravene fundamental tenets of statutory interpretation to conclude that the "due regard" language of § 14-283 (d), as interpreted in *Borelli*, affords discretion to a police officer in deciding whether to engage

in a pursuit, but also imposes a ministerial duty with respect to the operation of the vehicle "when answering an emergency call." (Internal quotation marks omitted.) Furthermore, they maintain that, because the defense of discretionary act immunity is subject to three exceptions,[4] including the identifiable person, imminent harm exception, the plaintiff's "blank check" argument has no merit. We, however, disagree with the defendants and conclude that the defense of discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by § 14-283.[5]

As a preliminary matter, although § 52-557n (a) (1) was the subject of an amendment in 2023; see Public Acts 2023, No. 23-83, § 1 (P.A. 23-83);[6] the legislature did not expressly provide that P.A. 23-83 should apply retroactively, and we presume that statutory amendments affecting substantive rights apply prospectively.

[4] "First, liability may be imposed for a discretionary act when the alleged conduct involves malice, wantonness or intent to injure. . . . Second, liability may be imposed for a discretionary act when a statute provides for a cause of action against a municipality or municipal official for failure to enforce certain laws. . . . Third, liability may be imposed when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . ." (Citations omitted; internal quotation marks omitted.) *Doe* v. *Petersen*, 279 Conn. 607, 615–16, 903 A.2d 191 (2006).

[5] Given this conclusion, we need not reach the plaintiffs' arguments that we should reverse the trial court's decision to grant summary judgment because (1) the trial court did not give them a fair opportunity to make a meaningful factual showing that governmental immunity did not apply in light of these facts, and (2) they fall within the identifiable person subject to imminent harm exception to discretionary act immunity.

[6] P.A. 23-83, § 1, added the following language to § 52-557n (a) (1): "Notwithstanding the provisions of subparagraph (B) of this subdivision, governmental immunity shall not be a defense in a civil action for damages to person or property caused by the negligent operation of a motor vehicle owned by a political subdivision of the state. The elimination of the defense of governmental immunity as provided for in this subsection shall not be construed as limiting or expanding the rights, duties and exemptions granted to the operator of an emergency vehicle under section 14-283."

See, e.g., *Maghfour* v. *Waterbury*, 340 Conn. 41, 47–49, 262 A.3d 692 (2021); see also General Statutes § 55-3. Accordingly, we refer to the operative version of § 52-557n (a) (1), which does not expressly limit governmental immunity for emergency operators, for purposes of this appeal.

We begin by setting forth the standard of review and background legal principles. It is well established that whether the trial court properly granted summary judgment in favor of the defendants on governmental immunity grounds is a question of law over which our review is plenary. See, e.g., *Daley* v. *Kashmanian*, supra, 344 Conn. 478 ("the ultimate determination as to whether the defendants are entitled to governmental immunity is a question of law" (internal quotation marks omitted)); *Ventura* v. *East Haven*, 330 Conn. 613, 634, 199 A.3d 1 (2019) (issue of governmental immunity is question of existence of duty of care). To the extent this appeal requires us to consider whether the legislature contemplated that municipalities would be immune from liability under § 52-557n (a) (2) (B) for negligence in the operation of an emergency vehicle pursuant to the privileges provided by § 14-283, that inquiry presents a question of statutory interpretation governed by well established principles under General Statutes § 1-2z.[7] See, e.g., *Daley* v. *Kashmanian*, supra, 478.

"The [common-law] doctrines that determine the tort liability of municipal employees are well established. . . . Generally, a municipal employee is liable for the misperformance of ministerial acts, but has a qualified

[7] Section 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. . . . 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.) *State* v. *King*, 346 Conn. 238, 247, 288 A.3d 995 (2023).

immunity in the performance of governmental acts. . . . Governmental acts are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature. . . . The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, [a ministerial act] refers to a duty [that] is to be performed in a prescribed manner without the exercise of judgment or discretion. . . .

"Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion. . . . This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts." (Internal quotation marks omitted.) Id., 479.

"Because this appeal concerns the actions of police officers and the [town's] police department, we also observe that [i]t is firmly established that the operation of a police department is a governmental function, and that acts or omissions in connection therewith ordinarily do not give rise to liability on the part of the municipality. . . . Indeed, this court has long recognized that it is not in the public's interest to [allow] a jury of lay[persons] with the benefit of 20/20 hindsight

to second-guess the exercise of a [police officer's] discretionary professional duty. Such discretion is no discretion at all. . . . Thus, as a general rule, [p]olice officers are protected by discretionary act immunity when they perform the typical functions of a police officer." (Internal quotation marks omitted.) Id., 481.

Our consideration of the issue in this appeal is informed by our recent application of these principles in *Borelli* v. *Renaldi*, supra, 336 Conn. 1, and *Daley* v. *Kashmanian*, supra, 344 Conn. 464. In *Borelli*, we held that the duty "to drive with due regard" provided by § 14-283 (d) requires the exercise of a police officer's judgment in determining whether to initiate and continue pursuit of a fleeing motorist and, in that respect, is entitled to discretionary act immunity. See *Borelli* v. *Renaldi*, supra, 9–10. The plaintiff in *Borelli* alleged that the defendant police officer was negligent in choosing to pursue the vehicle of a suspect law violator, which caused the law violator's vehicle to strike an embarkment, killing one of the passengers. Id., 6. Because the plaintiff's claims on appeal were confined to the officer's decision to initiate pursuit, we did not consider "the much broader question of whether and under what circumstances the duty to drive with due regard for the safety of others is discretionary or ministerial." Id., 9 n.5. We concluded that, because the "due regard" requirement of § 14-283 (d) imposed a "general duty" that required officers to exercise judgment in determining whether to pursue a fleeing motorist, the duty *to act* was discretionary and, thus, afforded immunity under § 52-557n (a) (2) (B). Id., 14–15; see id., 10, 20.

Subsequently, in *Daley* v. *Kashmanian*, supra, 344 Conn. 464, we held that a police officer's operation of an unmarked vehicle lacking emergency warning devices, known as a " 'soft car,' " was not entitled to governmental immunity because the operation of a nonemergency vehicle, outside the scope of § 14-283, is a

highly regulated activity that constitutes a ministerial function. Id., 468. In *Daley*, after surveilling a "group of motorcycles and quads," the defendant police officer, who was operating a soft car, initiated pursuit of the plaintiff, who was driving a motorcycle. Id., 469. During the pursuit, the officer struck the back tire of the plaintiff's motorcycle with the soft car and caused the plaintiff to be ejected from his bike. Id., 470. Because the officer was not engaged in emergency driving pursuant to § 14-283, we concluded that the applicable motor vehicle statutes imposed numerous ministerial duties that the officer had violated by operating the soft car with no lights or sirens. See id., 473–74, 478. In concluding that discretionary act immunity under § 52-557n (a) (2) (B) was inapplicable, we reviewed the motor vehicle statutory scheme and concluded that the relevant motor vehicle statutes established "a ministerial duty insofar as they contain[ed] mandatory statutory language that *itself* limit[ed] discretion in the performance of the mandatory act." (Emphasis in original; internal quotation marks omitted.) Id., 488.

We observe at the outset that the parties in this case largely limit their arguments to the issue of whether "the duty to drive with due regard" required by § 14-283 (d) is a discretionary or ministerial act for purposes of discretionary act immunity under § 52-557n (a) (2) (B). We have determined, however, that we do not need to address whether "the duty to drive with due regard" is ministerial or discretionary in nature, or the related question of whether the imminent harm to identifiable persons exception to discretionary act immunity applies in this case. See footnote 5 of this opinion. It is unnecessary to decide these issues in light of our conclusion that governmental immunity does not apply to emergency vehicle operation by virtue of the "[e]xcept as otherwise provided by law" savings provision in § 52-557n (a).

Pursuant to § 1-2z, we begin with the language of the governmental immunity statute, § 52-557n, which provides in relevant part: "(a) (1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . ." Section 52-557n (a) (2) provides in relevant part that, "[*e*]*xcept as otherwise provided by law*, a political subdivision of the state *shall not be liable* for damages to person or property caused by . . . (B) negligent acts or omissions which *require the exercise of judgment or discretion* as an official function of the authority expressly or impliedly granted by law." (Emphasis added.) Subsection (b) of § 52-557n then enumerates ten circumstances in which governmental immunity applies irrespective of the liability rule set forth in subsection (a).[8]

It is well settled that exceptions to the discretionary act immunity provided by § 52-557n (a) (2) (B) may be furnished by both statutory and common law. See, e.g., *Grady* v. *Somers*, 294 Conn. 324, 344–46, 984 A.2d 684 (2009). In *Grady*, this court reviewed the legislative

[8] General Statutes § 52-557n (b) provides in relevant part: "Notwithstanding the provisions of subsection (a) of this section, a political subdivision of the state or any employee, officer or agent acting within the scope of his employment or official duties *shall not be liable* for damages to person or property resulting from: (1) The condition of natural land or unimproved property; (2) the condition of a reservoir, dam, canal, conduit, drain or similar structure . . . (3) the temporary condition of a road or bridge . . . (4) the condition of an unpaved road, trail or footpath . . . (5) the initiation of a judicial or administrative proceeding . . . (6) the act or omission of someone other than an employee, officer or agent of the political subdivision; (7) the issuance, denial, suspension or revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization . . . (8) failure to make an inspection or making an inadequate or negligent inspection of [certain] property . . . (9) failure to detect or prevent pollution of the environment . . . or (10) conditions on land sold or transferred to the political subdivision by the state . . . ." (Emphasis added.).

history of § 52-557n and concluded that the phrase "[e]xcept as otherwise provided by law" encompasses the common-law, identifiable person, imminent harm exception to discretionary act immunity provided by § 52-557n (a) (2) (B). See id., 341–49. In so concluding, we recognized that the savings clauses in § 52-557n (a) included common-law exceptions because doing so operated to clarify the various terms of the governmental immunity statute at issue, rather than to nullify them.[9] Id., 343. We also noted in our analysis that "the legislature did not contemplate § 52-557n as a bar against *all* civil actions arising from employees' discretionary acts, despite the discretionary act immunity afforded by § 52-557n (a) (2) (B)." (Emphasis added.) Id., 345. Thus, if liability attached under the common law to any discretionary act, § 52-557n did not supersede that common-law doctrine, and discretionary act immunity did not apply.

With this understanding, we now consider the relationship between §§ 14-283 and 52-557n (a) (2) (B). Section 14-283 does not speak in terms of immunity or expressly designate any particular conduct as discretionary. Rather, that statute provides in relevant part that an "operator of any emergency vehicle may . . . proceed past any red light, stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle . . . exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a, 14-219 or 14-307a as long as such operator does not endanger life

[9] In *Grady*, we recognized that this court previously concluded in *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 191–92, 592 A.2d 912 (1991), and *Spears* v. *Garcia*, 263 Conn. 22, 29, 818 A.2d 37 (2003), that the phrase, " '[e]xcept as otherwise provided by law,' " as used in the savings clauses of § 52-557n (a), applies to state and federal statutes, but not to the common law, because it would have rendered the applicable "statutory language a meaningless nullity . . . ." *Grady* v. *Somers*, supra, 294 Conn. 341–43.

or property by so doing, and . . . disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions." General Statutes § 14-283 (b) (1) (B) through (D). Moreover, § 52-557n contains no express or implied reference to § 14-283, which reasonably calls into question whether § 52-557n, as the later enacted statute, was intended by the legislature to confer immunity. Finally, and significantly, § 14-283 (d) provides that "[t]he provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property," which typically is not seen in statutes conferring immunity.[10] See, e.g., *Centerplan Construction Co., LLC* v. *Hartford*, 343 Conn. 368, 410, 274 A.3d 51 (2022) ("[a]lthough it is generally true that silence alone does not [create § 1-2z] ambiguity . . . silence or a lack of detail *may* amount to ambiguity," especially "when the missing subject reasonably is necessary to effectuate the provision as written" (citation omitted; emphasis in original; internal quotation marks omitted)).

Taking all of these considerations into account, we conclude that the provisions at issue are ambiguous and turn to extratextual sources for their proper construction. In doing so, however, we are particularly mindful that "[i]nterpreting a statute to impair an existing interest or to change radically existing law is appropriate only if the language of the legislature plainly and unambiguously reflects such an intent." (Internal quotation marks omitted.) *Vitanza* v. *Upjohn Co.*, 257

[10] See, e.g., General Statutes § 52-556 ("[a]ny person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage *shall have a right of action against the state* to recover damages for such injury" (emphasis added)); see also General Statutes § 13a-149 ("[a]ny person injured in person or property by means of a defective road or bridge *may recover damages from the party bound to keep it in repair*" (emphasis added)).

Conn. 365, 381, 778 A.2d 829 (2001). In a similar fashion, "[w]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction." (Internal quotation marks omitted.) *Spears* v. *Garcia*, 263 Conn. 22, 28, 818 A.2d 37 (2003).

"[W]e must, if possible, construe two statutes in a manner that gives effect to both, eschewing an interpretation that would render either ineffective." (Internal quotation marks omitted.) *Dorry* v. *Garden*, 313 Conn. 516, 531, 98 A.3d 55 (2014). "Therefore, [w]e must, if possible, read the two statutes together and construe each to leave room for the meaningful operation of the other. . . . In addition, [i]f two constructions of a statute are possible, we will adopt the one that makes the statute effective and workable . . . ." (Citation omitted; internal quotation marks omitted.) Id., 532. Reading the two statutes together in light of their legislative purposes, we conclude that "the duty to drive with due regard" mandated by § 14-283 (d) functions as an exception "provided by law" under the savings clause applicable to discretionary act immunity in § 52-557n (a) (2) (B).

Numerous historical determinants lead us to this conclusion. When first enacted, § 14-283 simply granted ambulances, fire trucks and, later, police officers the right of way over all other traffic. See Public Acts 1925, c. 79, § 1; see also General Statutes (1930 Rev.) § 1595; General Statutes (Supp. 1947) § 386i. In 1971, the legislature enacted the relevant provision at issue, subsection (d) of § 14-283; see Public Acts 1971, No. 538; which codified the reasonable care standard articulated by this court in *Voltz* v. *Orange Volunteer Fire Assn., Inc.*, 118 Conn. 307, 311, 172 A. 220 (1934), and *Tefft* v. *New York, New Haven & Hartford Railroad Co.*, 116 Conn.

127, 134, 163 A. 762 (1933), to govern the operation of emergency vehicles, namely, fire apparatus, in response to emergencies.[11] See *Borelli* v. *Renaldi*, supra, 336 Conn. 39 (*Robinson*, *C. J.*, concurring); see also id., 129 (*Ecker*, *J.*, dissenting) (unlike current statute, 1925 act did not include duty of care, and it was not until 1971 that legislature added subsection (d), which expressly codified that duty).

Section 52-557n, which was enacted as § 13 of the Tort Reform Act of 1986 (act), "represents a complex web of interdependent concessions and bargains struck by hostile interest groups and individuals of opposing philosophical positions." *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 185, 592 A.2d 912 (1991); see *Borelli* v. *Renaldi*, supra, 336 Conn. 112 (*Ecker*, *J.*, dissenting) ("the provisions of § 52-557n were hammered out as part of a much larger legislative initiative"). Although the act was generally meant to both codify and limit municipal liability, "it also reflects confusion with respect to precisely what part of the preexisting law was being codified, and what part was being limited." *Sanzone* v. *Board of Police Commissioners*, supra, 188. Despite this general uncertainty, our recent, in-depth review of the legislative history of § 52-557n in *Daley*, and particularly the testimony of Representative Robert G. Jaekle, the bill's sponsor, demonstrated that "the legislature contemplated negligence in the opera-

[11] The plaintiff in *Voltz* fell from a fire truck as the defendant assistant fire chief began to drive the truck out of the firehouse. See *Voltz* v. *Orange Volunteer Fire Assn., Inc.*, supra, 118 Conn. 308–309. Relying on the applicable governmental immunity law at the time, the court acknowledged that "[t]he driver of a fire truck is liable to one injured by his negligent driving, [although] the municipality employing him is exempt from liability." Id., 310. Similarly, in *Tefft*, this court concluded that the trial court had correctly instructed the jury that a volunteer firefighter "was required to use the care of a reasonably prudent man under the circumstances," noting that a "driver of fire apparatus, proceeding to a fire, is bound to exercise the care and control for his own safety and that of others which is reasonable under the circumstances." *Tefft* v. *New York, New Haven & Hartford Railroad Co.*, supra, 116 Conn. 134.

tion of motor vehicles not to be subject to governmental immunity, both before and after the passage of § 52-557n." *Daley* v. *Kashmanian*, supra, 344 Conn. 485; see id., 484. As we observed previously in this opinion, the savings clauses in § 52-557n (a) preserve and incorporate both common-law and statutory exceptions to municipal immunity, including "the well established law imposing municipal liability for vehicular negligence at the time § 52-557n was enacted . . . ." Id., 487 n.17. Particularly because § 14-283 was enacted prior to § 52-557n, we find instructive the maxim that, "when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent and to know of all other *existing statutes* and the effect that its action or nonaction will have [on] any one of them." (Emphasis added; internal quotation marks omitted.) *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 155, 12 A.3d 948 (2011); see also 29 H.R. Proc., Pt. 16, 1986 Sess., pp. 5912–13, remarks of Representative Jaekle (responding to concerns that § 52-557n would not immunize certain "negligent or wilfully negligent acts" by police officers that were prohibited by recently enacted family violence law).

We likewise find instructive the existence of the indemnification statutes, such as General Statutes § 7-465,[12] which the legislature enacted because police officers

[12] General Statutes § 7-465 provides in relevant part: "(a) Any town, city or borough, notwithstanding any inconsistent provision of law, general, special or local, shall pay on behalf of any employee of such municipality, except firemen covered under the provisions of section 7-308, and on behalf of any member from such municipality of a local emergency planning district, appointed pursuant to section 22a-601, all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property, except as set forth in this section, if the employee, at the time of the occurrence, accident, physical injury or damages complained of, was acting in the performance of his duties and within the scope of his employment, and if such occurrence, accident, physical injury or damage was not the result of any wilful or wanton act of such employee in the discharge of such duty. . . ."

and other municipal workers were personally exposed to the risk of common-law negligence liability arising from the performance of their routine job functions. See *Borelli* v. *Renaldi*, supra, 336 Conn. 86 (*Ecker*, *J.*, dissenting) (noting that, if municipal employees were already protected by governmental immunity, "these indemnification statutes would have been largely unnecessary"). "Prior to the enactment of § 52-557n . . . [n]o serious questions appeared to have been raised as to whether a police officer might be liable for negligence in the operation of a motor vehicle . . . [but, rather] the municipal employer would be responsible for indemnification of an officer found to have been civilly liable, under the provisions of . . . § 7-465 . . . ." (Internal quotation marks omitted.) *Daley* v. *Kashmanian*, supra, 344 Conn. 496–97. These indemnification statutes reflect the fact that municipal employees faced personal liability for negligence in the operation of their emergency vehicles, when they failed to exercise the due care of a reasonably prudent person under the circumstances, both before and after the enactment of § 52-557n. See *Tefft* v. *New York*, *New Haven & Hartford Railroad Co.*, supra, 116 Conn. 134 ("[w]hen an alarm of fire is sent out, it is of great importance that it be answered with celerity; but the driver of fire apparatus, proceeding to a fire, is bound to exercise the care and control for his own safety and that of others which is reasonable under the circumstances").

Indeed, this court's decision in *Tetro* v. *Stratford*, 189 Conn. 601, 458 A.2d 5 (1983), provides a paradigmatic example of the law governing liability for negligence in the operation of emergency vehicles as it existed at the time the legislature enacted § 52-557n. This court's decision in *Tetro* captures the state of our law on the subject a mere three years prior to the enactment of § 52-557n but more than one decade after the 1971 amendments to § 14-283, thus answering the historical

question of whether immunity was conferred on emergency vehicles operators under Connecticut law before the legislature codified the municipal immunity doctrine. Operating as an emergency vehicle "with the police car's siren working and revolving dome light flashing," two police officers in *Tetro* conducted a high-speed pursuit of another vehicle, which then crashed into the plaintiff's car. Id., 603. This court held that, because the plaintiff's injury may have fallen within the scope of the risk created by the officers' act of conducting a police pursuit at high speeds while traveling in the wrong direction on a busy one-way street, the defendant municipality was vicariously liable for the negligence of its officers pursuant to § 7-465. Id., 605–606. In the course of our analysis, we identified other jurisdictions that had "similarly refused to limit police liability for negligent conduct of a [high-speed] chase, as a matter of law, to collisions involving the police vehicle itself"; id., 606; and rejected the defendants' argument that § 14-283 limited the scope of the duty to drive with due regard to incidents involving collisions with the emergency vehicle itself. See id., 607–609. We stated that, because "[t]he effect of [§14-283 was] merely to displace the conclusive presumption of negligence that ordinarily [arose] from the violation of traffic rules," the statute did "not relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others. . . . We . . . conclude[d] that § 14-283 provides no special zone of limited liability once the defendants' negligence has been established." (Citations omitted.) Id., 609–10.

Thus, this court's holding in *Tetro* reflects the understanding of the legislature and the courts that municipalities could be held liable under the existing statutory and common law for the negligence of their emergency vehicle operators prior to the enactment of § 52-557n. Although the 1971 amendment to § 14-283 granted emer-

gency operators a privilege by relieving them from a presumption of negligence per se for violating ordinary traffic laws while engaged in emergency operation; see General Statutes (Rev. to 1972) § 14-283 (b); such operators were not relieved from, and remained subject to, the existing, common-law duty of care to drive with "due regard for the safety of all persons and property." General Statutes § 14-283 (d). Thus, granting governmental immunity in this context would effectively permit emergency operators to drive without regard for this codified, common-law duty—a result that is inconsistent with the legislature's understanding of the reach of § 52-557n when it enacted that statute, which was, unless otherwise indicated, intended to reflect the current state of the law.[13] See, e.g., *Daley* v. *Kashmanian*, supra, 344 Conn. 487 n.17 (savings clauses in § 52-557n "preserve and incorporate common-law exceptions to municipal immunity"); *Doe* v. *Madison*, 340 Conn. 1, 19, 262 A.3d 752 (2021) (" '[t]he tort liability of a municipality has been codified in § 52-557n' "), quoting *Cole* v. *New Haven*, 337 Conn. 326, 337, 253 A.3d 476 (2020); *Durrant* v. *Board of Education*, 284 Conn. 91, 107, 931 A.2d 859 (2007) (recognizing codification of common law under § 52-557n); *Sanzone* v. *Board of Police Commissioners*, supra, 219 Conn. 188 (§ 13 of act generally was intended "both to codify and to limit municipal liability"); see also *Lenard* v. *Dilley*, 805 So. 2d 175, 181 (La. 2002) ("[t]o hold otherwise would have the effect of severely endangering the public safety, as emergency vehicle drivers could at all times engage in ordinarily negligent behavior and be shielded from the consequences of their actions"); cf. *Sanzone* v. *Board of Police Commissioners*, supra, 191–92 (to permit common-law nuisance actions would have rendered meaningless proviso in § 52-557n (a) (1) restricting highway

[13] We note that the legislative history of § 14-283 is silent with respect to that statute's relationship to the various governmental immunity doctrines.

defect actions to those brought under General Statutes § 13a-149).

Although a majority of this court did not find *Tetro* to be controlling authority in *Borelli* because it did not concern the officer's decision to pursue; see *Borelli* v. *Renaldi*, supra, 336 Conn. 24–26; we conclude that *Tetro* is persuasive in the present case because it similarly addressed the manner in which an emergency vehicle is operated. See id., 42 (*Robinson*, *C. J.*, concurring) (agreeing with Justice Ecker's dissenting opinion that *Tetro* "would be dispositive, if it [was] in fact on point"). Put differently, *Tetro* squarely demonstrates that, prior to the enactment of § 52-557n, municipalities were not immune from suits arising from collisions of their vehicles engaged in emergency operation. See *Daley* v. *Kashmanian*, supra, 344 Conn. 485 (observing that "the legislature's understanding of the liability of individual police officers—and of the municipalities that employ them pursuant to § 7-465—for the negligent operation of motor vehicles during law enforcement operations is implicitly confirmed by this court's nearly contemporaneous decision in *Tetro*" (footnote omitted)); *Borelli* v. *Renaldi*, supra, 134 (*Ecker*, *J.*, dissenting) (*Tetro* "confirms in plain terms that drivers of emergency vehicles owe the same duty to abstain from negligent conduct as they have always had under our emergency vehicle statute and at common law—that is, their general duty to exercise due care for the safety of others" (internal quotation marks omitted)). Indeed, in *Daley*, we found it telling that there was "a unanimous precedent, decided shortly before the enactment of § 52-557n, holding that a municipality is liable for its employee's negligent operation of an emergency vehicle engaged in a police pursuit. . . . The legislature thereafter codified the then-existing common law governing municipal liability *without so much as a whisper* of any intention to impact, modify, or even address the law of vehicular

negligence in general or the holding of *Tetro* in particular."[14] (Emphasis added; internal quotation marks omitted.) *Daley* v. *Kashmanian*, supra, 486.

Further support for our conclusion is found in the fact that the operation of an emergency vehicle is not one of the enumerated exceptions to liability provided in § 52-557n (b); see footnote 8 of this opinion; which effectively confer governmental immunity in specific contexts. See *Ugrin* v. *Cheshire*, 307 Conn. 364, 384, 54 A.3d 532 (2012) ("*Spears* merely observes that subsection (b) of § 52-557n, which references subsection (a), sets forth many exceptions under which an injured party may not pursue a direct action in negligence against a municipality" (internal quotation marks omitted)). Had the legislature intended to include emergency operation within the category of specific conduct subject to immunity, it could have done so. See, e.g., *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, 342 Conn. 25, 36, 268 A.3d 630 (2022); see also *Borelli* v. *Renaldi*, supra, 336 Conn. 109 (*Ecker*, *J.*, dissenting) (citing doctrine of expressio unius est exclusio alterius and noting that "the legislature manifestly paid very close attention to detail in fashioning subsection (b)").

We acknowledge that, in *Borelli* and *Daley*, we applied the discretionary/ministerial framework to determine the scope of § 52-557n (a) (2) (B) as it relates generally to claims of immunity for the consequences of certain types of vehicular negligence involving police

[14] By contrast, the legislative history of § 52-557n contains significant discussion on the extent that the act would change the existing common law to afford immunity, for example, to municipalities from claims of negligent supervision by their schoolteachers. See, e.g., 29 H.R. Proc., supra, pp. 5897–98, remarks by Representative John J. Woodcock III (Representative Woodcock urged a vote on an amendment to further study the bill and detailed how the bill "deviates from a long held standard of care that the supervisors of children have had [in Connecticut] . . . . It is a very serious, serious erosion of a standard of care that we have had in this state from day one.").

officers.[15] See *Daley* v. *Kashmanian*, supra, 344 Conn. 487 and n.17; *Borelli* v. *Renaldi*, supra, 336 Conn. 10. However, neither case concerned the direct conduct targeted by the legislature in § 14-283 (d), namely, the *operation* of the emergency vehicle with the concomitant "duty *to drive* with due regard . . . ." (Emphasis added.) In fact, in *Daley*, we assumed that, even if emergency driving "lies outside the ministerial/discretionary dichotomy altogether, we would conclude that the well established law imposing municipal liability for vehicular negligence at the time § 52-557n was enacted . . . illustrates that the legislature did not contemplate § 52-557n as a bar against *all* civil actions arising from employees' discretionary acts, despite the discretionary act immunity afforded by § 52-557n (a) (2) (B)." (Emphasis in original; internal quotation marks omitted.) *Daley* v. *Kashmanian*, supra, 487 n.17. As we previously have noted, "*Grady* and other decisions of this court recognize that the savings clauses in § 52-557n (a), which provide that the terms of the statute govern '[e]xcept as otherwise provided by law,' preserve and incorporate common-law exceptions to municipal immunity"; id.; including exceptions to immunity for personal injuries caused by the negligent operation of a motor vehicle, whether it is being operated for routine purposes or as an emergency vehicle. Therefore, because the legislature is presumed to be aware of all existing statutes, a conclusion that the savings clauses in § 52-557n (a) embrace the prevailing duty codified in § 14-283 (d) "would operate to clarify the various terms of

[15] Although this court stated in *Borelli* that the phrase "due regard" in § 14-283 (d) "imposes a general duty on officers to exercise their judgment and discretion in a reasonable manner" prior to initiating a pursuit; *Borelli* v. *Renaldi*, supra, 336 Conn. 14; we emphasize that the scope of *Borelli* is limited to the officer's *decision to act*, namely, to initiate a pursuit. See id., 3–4, 10. We expressly emphasized that *Borelli* did "not concern the much broader question of whether and under what circumstances the duty to drive with due regard for the safety of others is discretionary or ministerial." Id., 9 n.5.

§ 52-557n that are at issue, rather than to nullify them impermissibly." *Grady* v. *Somers*, supra, 294 Conn. 343; see id., 348 ("the legislature's intent, when it enacted § 52-557n, [was] to create a harmonious body of law governing municipal liability").

We also deem it significant that, by its own terms, § 14-283 (d) imposes only a negligence standard of care on emergency vehicle operators, rather than the recklessness standard set forth in the Uniform Vehicle Code (UVC) and followed by other sister state jurisdictions.[16] See *Borelli* v. *Renaldi*, supra, 336 Conn. 139–40 and nn. 63–64 (*Ecker*, *J.*, dissenting). Connecticut modeled its emergency vehicle statute on § 11-106 of the UVC, which provides in relevant part: "The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from *the duty to drive with due regard for the safety of all persons*, *nor shall such provisions protect the driver from the consequences of the driver's reckless disregard for the safety of others*." (Emphasis added.) National Committee on Uniform Traffic Laws and Ordinances, Uniform Vehicle Code (2000 Rev.) § 11-106 (d), p. 126. In doing so, the legislature meaningfully "chose to retain the 'due care' negligence standard with-

[16] See, e.g., *Blackwood* v. *Hanceville*, 936 So. 2d 495, 506–507 (Ala. 2006) (legislature removed protection of emergency vehicle statutory privilege if officer drives with reckless disregard for safety of others); *Morris* v. *Leaf*, 534 N.W.2d 388, 390 (Iowa 1995) (plain language of statute provided that police officer should not be civilly liable unless officer acts with reckless disregard for safety of others); *Robbins* v. *Wichita*, 285 Kan. 455, 469, 172 P.3d 1187 (2007) (statutory language established reckless disregard as standard of care); *Saarinen* v. *Kerr*, 84 N.Y.2d 494, 501, 644 N.E.2d 988, 620 N.Y.S.2d 297 (1994) (officer's conduct may not form basis of civil liability unless officer acts in reckless disregard for safety of others); *Burgin* v. *Leach*, 320 P.3d 33, 38 (Okla. Civ. App. 2014) (operator of emergency vehicle is liable only for conduct that is in reckless disregard of safety of others); *Roberts* v. *Kettelle*, 116 R.I. 283, 291, 356 A.2d 207 (1976) (statute denies protection to drivers who execute duties with reckless disregard); *Amarillo* v. *Martin*, 971 S.W.2d 426, 432 (Tex. 1998) (plaintiff must assert and establish that emergency vehicle operator was reckless as matter of law); *Rochon* v. *State*, 177 Vt. 144, 149–50, 862 A.2d 801 (2004) (higher standard of recklessness furthers legislative purpose).

out adding language contained in the UVC that could be interpreted to adopt a recklessness standard of care," and, "[a]s a general matter, courts find significance in a state's decision to adopt a model act but deviate from a particular provision thereof." *Borelli* v. *Renaldi*, supra, 140–41 (*Ecker*, *J.*, dissenting); see *Gonzalez* v. *O & G Industries*, *Inc.*, 322 Conn. 291, 310, 140 A.3d 950 (2016) ("the absence of a word in a portion of a statute is surely significant in interpreting [a] statute"). New York's emergency vehicle statute; see N.Y. Veh. & Traf. Law § 1104 (e) (McKinney 2011);[17] provides an instructive contrast. Unlike § 14-283 (d), which refers only to "due regard," § 1104 (e) refers to both "due regard" and "reckless disregard" for the safety of others. Thus, New York, like the UVC, requires that operators act in "reckless disregard for the safety of others" for the defense of governmental immunity not to apply. N.Y. Veh. & Traf. Law § 1104 (e) (McKinney 2011); accord National Committee on Uniform Traffic Laws and Ordinances, supra, § 11-106 (d), p. 126; see *Anderson* v. *Commack Fire District*, No. 16, 2023 N.Y. Slip Op. 02028 (April 20, 2023) (The court noted that § 1104 "expressly establishes a reckless disregard standard" for determining civil liability and that, "in the decades since *Saarinen* [v. *Kerr*, 84 N.Y.2d 494, 644 N.E.2d 988, 620 N.Y.S.2d 297 (1994)], the [New York] [l]egislature has not amended any of the relevant statutes in response to

[17] Section 1104 (e) of the N.Y. Vehicle & Traffic Law (McKinney 2011) provides: "The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

In *Saarinen* v. *Kerr*, 84 N.Y.2d 494, 644 N.E.2d 988, 620 N.Y.S.2d 297 (1994), which is recognized as New York's "seminal case on § 1104;" *Mfon* v. *Dutchess County*, Docket No. 14-CV-6922 (KMK), 2017 WL 946303, *6 (S.D.N.Y. March 9, 2017), aff'd, 722 Fed. Appx. 46 (2d Cir. 2018); the New York Court of Appeals reasoned that "[t]he fact that the [l]egislature went beyond [a negligence] formulation and invoked the 'reckless disregard' terminology demonstrates beyond question that something more exacting than that traditional [negligence] inquiry was intended." *Saarinen* v. *Kerr*, supra, 501.

[the court's] holdings applying the [§] 1104 (e) reckless disregard standard to vicarious liability claims. The fact that the recklessness standard has for decades been understood by courts and the legal community to benefit municipalities is telling.").

Recent legislative activity further indicates that our reading of §§ 14-283 and 52-557n is consistent with the legislature's understanding of the relationship between those statutes. As we recently observed in *Daley*, the split among Superior Court decisions with respect to whether discretionary act immunity under § 52-557n (a) (2) (B) applies to emergency operation[18] and a broad reading of *Borelli*'s holding resulted in the legislature's nearly unanimous passage of Senate Bill No. 204, 2022 Sess., as No. 22-22 of the 2022 Public Acts, "An Act Concerning Damages to Person or Property Caused by the Negligent Operation of a Motor Vehicle Owned by a Political Subdivision of the State," which would have amended General Statutes (Rev. to 2021) § 52-557n (a) (1) (B) but for Governor Ned Lamont's veto of the bill. See *Daley* v. *Kashmanian*, supra, 344 Conn. 493–94 n.22. Senate Bill No. 204 would have added the following language as the last sentence of § 52-557n (a) (2): "Notwithstanding the provisions of subparagraph (B) of this subdivision, governmental immunity shall not be a defense in a civil action for damages to person or property caused by the negligent operation of a motor vehi-

[18] Judge Povodator's decision in *Torres* v. *Norwalk*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-16-6029691-S (May 2, 2018) (66 Conn. L. Rptr. 548, 556–59), aptly collects and describes the discretionary versus ministerial lines of Superior Court decisions. See *Daley* v. *Kashmanian*, supra, 344 Conn. 494 n.22. In *Torres*, Judge Povodator concluded that, rather than imposing a duty that is discretionary or ministerial, § 14-283 itself did not afford immunity in connection with the negligent operation of an emergency vehicle. *Torres* v. *Norwalk*, supra, 559. But see *Albarran* v. *Blessing*, Docket No. 3:17-CV-2157 (SRU), 2020 WL 1169401, *8 (D. Conn. March 11, 2020) (applying Connecticut law and noting that "the duty to drive with 'due regard' for the safety of all persons and property . . . necessarily requires the exercise of judgment, which is the 'hallmark' of a discretionary duty" (citation omitted)).

cle owned by a political subdivision of the state." Public Acts 2022, No. 22-22, § 1.

In vetoing the bill, Governor Lamont explained that it "could entail, for example, that a police officer's *decision to pursue* a fleeing law violator is not a discretionary act and therefore governmental immunity does not apply. In that regard, I am concerned that the bill may inadvertently have gone too far." (Emphasis added.) Letter from Governor Ned Lamont to Denise W. Merrill, Secretary of the State (May 26, 2022) p. 2, available at https://portal.ct.gov/-/media/Office-of-the-Governor/Bill-notifications/2022/Bill-Notification-2022-13.pdf (last visited July 26, 2023); see *Maturo* v. *State Employees Retirement Commission*, 326 Conn. 160, 184–85, 162 A.3d 706 (2017) (relying on veto message accompanying gubernatorial veto of statutory amendment). Although the legislature did not attempt to override Governor Lamont's veto of the bill, a nearly identical bill unanimously was passed by the House of Representatives and the Senate and subsequently was signed into law by Governor Lamont in June, 2023. See P.A. 23-83, § 1; see also footnote 6 of this opinion. Thus, our conclusion that § 14-283 (d) precludes discretionary act immunity only for *the operation* of an emergency vehicle appears to be consistent with both Governor Lamont's concerns and the legislature's repeated attempts to ensure that governmental immunity does not apply in this context.

"Interpreting a statute to impair an existing interest or to change radically existing law is appropriate only if the language of the legislature plainly and unambiguously reflects such an intent." (Internal quotation marks omitted.) *Vitanza* v. *Upjohn Co.*, supra, 257 Conn. 381. Accordingly, there is a strong presumption, applicable in this case, against construing § 52-557n to override the well established common-law and statutory liability for the negligent operation of an emergency vehicle without a clear and plainly expressed legislative direc-

tive to do so. See, e.g., *Ames* v. *Commissioner of Motor Vehicles*, 267 Conn. 524, 532–33, 839 A.2d 1250 (2004). Rather, the plain language of § 14-283 (d), the historical treatment of vehicular negligence claims under common-law precedent and our indemnification statutes, including claims of negligent operation of emergency vehicles, and our decision in *Tetro* v. *Stratford*, supra, 189 Conn. 601, lead us to conclude that the legislature did not intend for either §§ 14-283 or 52-557n to displace the well established duty of those operating emergency vehicles to drive with reasonable care. See *Daley* v. *Kashmanian*, supra, 344 Conn. 485 ("we presume that the legislature is aware of the common law on a particular subject and, further, that it knows how to abrogate common-law rules, as it deems appropriate").

Although we previously have observed that "[t]he adoption of a rule of liability where some kind of harm may happen to someone would cramp the exercise of official discretion beyond the limits desirable in our society"; (internal quotation marks omitted) *Haynes* v. *Middletown*, 314 Conn. 303, 317, 101 A.3d 249 (2014); we have also rejected the argument that "[p]ersonal and municipal liability for an officer's use of discretion on patrol would hamper [officers'] ability to perform their duties as caretakers of the public," stating that, "[although] often necessary, police pursuits by definition are emergency situations, jeopardizing the safety and lives of those involved, as well as innocent bystanders." (Internal quotation marks omitted). *Cole* v. *New Haven*, supra, 337 Conn. 347. Thus, we have repeatedly rejected the proposition that all police conduct in emergencies is afforded discretionary act immunity.[19] See

[19] We recognize that an overarching criticism of a limited governmental immunity in this context is that the potential for liability may hamper emergency response procedures for police, fire, and emergency services. See footnote 20 of this opinion and accompanying text. In particular, the Connecticut Conference of Municipalities and the Connecticut Defense Lawyers Association have expressed concerns in their amicus briefs that police officers will be hindered in timely responding to emergencies while complying with applicable motor vehicle laws, with the Connecticut Defense Law-

id.; see also *Daley* v. *Kashmanian*, supra, 344 Conn. 500–502.

Although there are considerable public policy considerations supporting the characterization of the statutory duty of care in the operation of an emergency vehicle as either ministerial or discretionary in nature,[20] it is

yers Association noting that "research shows that even a few minutes can matter greatly when responding to police, fire, and medical emergencies." However, "[t]his state has a strong public policy in favor of encouraging the safe operation of motor vehicles and discouraging police officers from initiating [high-speed] chases for minor vehicular infractions." *Borelli* v. *Renaldi*, supra, 336 Conn. 167 (*Ecker*, *J.*, dissenting); see General Statutes § 14-283 (b) (1) (C) ("[t]he operator of any emergency vehicle may . . . exceed the posted speed limits or other speed limits . . . *as long as such operator does not endanger life or property by so doing*" (emphasis added)). The legislature, by virtue of General Statutes § 52-556**,** has waived sovereign immunity for actions against state police officers for the negligent operation of their emergency vehicles; see *Babes* v. *Bennett*, 247 Conn. 256, 260, 721 A.2d 511 (1998); and there is no evidence proffered that our state police officers respond to emergencies any less efficiently or swiftly as a result. Further, General Statutes § 7-465 (a) requires that municipalities indemnify their employees for liability for physical damages to persons or property, and General Statutes §§ 7-308 (b) and § 7-101a (a) require that municipalities hold harmless any volunteer firefighter, ambulance member, or police officer, as well as municipal officer, respectively, for liabilities arising out of negligence claims. See *Borelli* v. *Renaldi*, supra, 86 n.21 (*Ecker*, *J.*, dissenting) (citing various municipal employee indemnification statutes).

[20] On the one hand, in its amicus brief supporting the plaintiffs, the Connecticut Trial Lawyers Association argues that granting, in essence, blanket immunity to emergency operation violates legislative command and judicial precedent, and would serve to threaten the lives and safety of the public. See 4 Restatement (Second), Torts § 895C, comment (d), p. 408 (1979) (noting that governmental immunity recently has been criticized on ground "that it is better that the losses due to the tortious conduct of officers and employees should fall [on] the municipality rather than [on] the injured person and that torts of public employees are properly to be regarded, as in other cases of vicarious liability, as a cost of the administration of government and should be borne by the public"); see also *Torres* v. *Norwalk*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-16-6029691-S (May 2, 2018) (66 Conn. L. Rptr. 548, 557) ("[T]he risk of panicky conduct by the pursued operator creates risks not only to the pursued operator (and [the] occupants of his/her vehicle), but also to innocent third parties who may be the victims of the [out of control] conduct of pursued operators, and the consequences of the conduct of the pursued driver appears to be of greater concern. [*Tetro*] was a prime example of that problem.").

On the other hand, in its amicus brief supporting the defendants, the Connecticut Conference of Municipalities argues that characterizing the

well established that "the primary responsibility for formulating public policy must remain with the legislature." (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 340, 222 A.3d 83 (2019) (*Ecker*, *J.*, concurring); see, e.g., *Daley* v. *Kashmanian*, supra, 344 Conn. 502 (recognizing that it was inappropriate for this court to extend limited relief from compliance with traffic laws provided by emergency vehicle statute to nonemergency surveillance operations); *Durrant* v. *Board of Education*, supra, 284 Conn. 107 (since codification of common law under § 52-557n, court is not free to expand or alter scope of governmental immunity). Once the legislature has made its policy choice through statute, we are constrained to interpret the statutory language, not to decide on and implement our own policy choices.[21] Cf. C. Sherer, "Respondeat

duty of care in the operation of an emergency vehicle as ministerial in nature would be poor public policy because it would substantially restrict the ability of Connecticut's cities and towns to provide emergency fire, medical, and police services. The Connecticut Defense Lawyers Association similarly argues in its amicus brief that considering the act of operating an emergency vehicle to be ministerial in nature would prevent operators from making difficult assessments as they drive and that "society benefits from having government officials exercise judgment unhampered by fear of second-guessing and retaliatory judgments . . . ." (Internal quotation marks omitted.)

[21] In reaching this conclusion today, we also emphasize that retaining a negligence standard for emergency vehicle operation is consistent with the law in several sister states. See, e.g., *Little Rock* v. *Weber*, 298 Ark. 382, 388, 767 S.W.2d 529 (1989) ("the city should be held to a standard of ordinary care"); *Torres* v. *Los Angeles*, 58 Cal. 2d 35, 47, 372 P.2d 906, 22 Cal. Rptr. 866 (1962) (statute did not exempt from liability negligence attributable to failure by driver of emergency vehicle to maintain common-law standard of care); *Pogoso* v. *Sarae*, 138 Haw. 518, 525–26, 382 P.3d 330 (App. 2016) (emergency vehicle statute imposes negligence standard of care), cert. dismissed, Docket No. SCWC-12-0000402, 2017 WL 679187 (Haw. February 21, 2017); *Gonzalez* v. *Johnson*, 581 S.W.3d 529, 535 (Ky. 2019) (officer can be cause of damages inflicted on third party as result of negligent pursuit); *Lenard* v. *Dilley*, supra, 805 So. 2d 181 (legislature's intent was to set forth both ordinary negligence and reckless disregard standards of care depending on circumstances); *Baltimore* v. *Fire Ins. Salvage Corps of Baltimore*, 219 Md. 75, 82, 148 A.2d 444 (1959) (under emergency vehicle statute, operator's failure to exercise reasonable care under circumstances rendered him liable for ordinary negligence); *Stenberg* v. *Neel*, 188 Mont. 333, 338, 613 P.2d 1007 (1980) ("[t]he driver of an emergency vehicle is charged with a duty of due

Superior Liability in Missouri for Injuries Sustained as a Result of Police Pursuits: § 537.600 and *Stanley* v. *City of Independence*," 68 UMKC L. Rev. 115, 135 (1999) ("[w]hen the emergency is such that the officer must choose between the lesser of two evils—the proverbial Scylla and Charybdis—it is this sort of executive [decision making] to which courts should defer" (footnote omitted)).

care" and "must use ordinary care under the circumstances"); *LaVista* v. *Andersen*, 240 Neb. 3, 8, 480 N.W.2d 185 (1992) (in negligence actions, actions of "the driver of an emergency vehicle . . . are measured against those of a reasonable person exercising due care under the same emergency circumstances"); *Lowrimore* v. *Dimmitt*, 310 Or. 291, 297, 797 P.2d 1027 (1990) (court could not "say, as a matter of law, that there [was] no evidence of negligence on the part of the pursuing officer," which was "[an issue] best left to [the] jury"); *Jones* v. *Chieffo*, 549 Pa. 46, 52, 700 A.2d 417 (1997) ("governmental party is not immune from liability when its negligence, along with a third party's negligence, causes harm"); *Haynes* v. *Hamilton County*, 883 S.W.2d 606, 609 (Tenn. 1994) (emergency vehicle drivers participating in high-speed chases are required to exercise due regard for safety of all persons, including third parties); *Day* v. *State ex rel. Utah Dept. of Public Safety*, 980 P.2d 1171, 1181 (Utah 1999) (emergency vehicle statute imposes duty of reasonable care under circumstances to third parties on police officer engaged in pursuit); *Mason* v. *Bitton*, 85 Wn. 2d 321, 325, 327, 534 P.2d 1360 (1975) (genuine issues of fact existed regarding whether statutory duty of due regard was breached); *Legue* v. *Racine*, 357 Wis. 2d 250, 298, 849 N.W.2d 837 (2014) (duty of due regard imposed ministerial duty, precluding defense of governmental immunity); see also P. O'Connor & W. Norse, "Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law," 57 Mercer L. Rev. 511, 517 (2006) (noting "[a] dramatic shift" in reluctance of courts to displace responsibility from officers who violate standard police conduct during course of pursuit).

Because we limit our conclusion in this appeal to the *duty to drive with due regard for the safety of persons and property*, we emphasize that, in the absence of legislative action, discretionary act immunity for *the decision to pursue* a fleeing law violator remains intact under *Borelli* v. *Renaldi*, supra, 336 Conn. 10. See *Caddo Valley* v. *George*, 340 Ark. 203, 210, 9 S.W.3d 481 (2000) (once officers exercised discretion and made decision to pursue stolen vehicle, any subsequent actions were required by law to be taken with ordinary care). We also emphasize that emergency operators remain entitled to the presumption against negligence per se inherent in § 14-283 (b) for the violation of certain motor vehicle statutes when responding to an emergency. See General Statutes § 14-283 (b). However, our legislature evidenced, in the 1971 amendment to § 14-283, the general public's significant interest in not being subject to *unreasonable* risks of injury as emergency operators carry out their duties. See *Haynes* v. *Hamilton County*, supra, 883 S.W.2d 611; see also *Borelli* v. *Renaldi*, supra, 130–31 (*Ecker*, *J.*, dissenting) ("[§] 14-283 (d) reflects an explicit and unequivocal statement by

Accordingly, we conclude that the discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply to the manner in which an emergency vehicle is operated by virtue of the codified, common-law duty to drive with "due regard" pursuant to § 14-283 (d). The trial court, therefore, should not have granted the defendants' motion for summary judgment.

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

In this opinion the other justices concurred.

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the legislature that considerations of public safety on our roads must always remain superior and paramount").