STEPHEN T. COCHRAN *v.* DEPARTMENT OF TRANSPORTATION (SC 20940)

D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.*

Syllabus

The plaintiff appealed, on the granting of certification, from the judgment of the Appellate Court, which had reversed the decision of the Compensation Review Board. The board had upheld an award of statutory (§ 31-307 (a)) total incapacity benefits to the plaintiff in connection with injuries that he sustained during the course of his employment with the defendant. The plaintiff claimed that the Appellate Court had incorrectly concluded that he was not eligible for total incapacity benefits because his total incapacity

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

did not occur until after his voluntary retirement and because he did not intend to return to the workforce. *Held*:

This court concluded that, under the plain and unambiguous language of § 31-307 (a), a claimant who sustains a compensable workplace injury under the Workers' Compensation Act (§ 31-275 et seq.) is eligible to receive total incapacity benefits, regardless of whether the claimant's total incapacity occurs before or after his or her voluntary retirement from employment. Accordingly, this court reversed the Appellate Court's judgment and remanded the case to that court so that it could consider the defendant's alternative claim on appeal, which the Appellate Court did not reach in its decision.

Argued September 23—officially released December 24, 2024

Procedural History

Appeal from the decision of the workers' compensation commissioner for the third district awarding the plaintiff certain disability benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision; thereafter, the defendant appealed to the Appellate Court, *Alvord*, *Moll* and *Cradle*, *Js.*, which reversed the board's decision and remanded the case with direction to reverse the commissioner's decision, and the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *further proceedings*.

James H. McColl, *Jr.*, for the appellant (plaintiff).

Cynthia W. Sheppard, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Joshua Perry*, solicitor general, for the appellee (defendant).

Francis X. Drapeau filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

Donna Civitello filed a brief for the Connecticut Education Association et al. as amici curiae.

Nathan J. Shafner filed a brief for the Connecticut Counsel for Occupational Safety and Health as amicus curiae.

Dana M. Hrelic and *Meagan A. Cauda* filed a brief for the Connecticut Business and Industry Association et al. as amici curiae.

Opinion

ECKER, J. The sole issue in this certified appeal is whether an employee who sustained a compensable injury under the Workers' Compensation Act (act), General Statutes § 31-275 et seq., is eligible to receive total incapacity benefits pursuant to General Statutes § 31-307 (a) when the total incapacity occurred after the employee's voluntary retirement from the workforce. The Appellate Court held that an employee "who elected to retire from employment . . . and affirmatively conceded that he had no intention of returning to the workforce . . . was not entitled to [total incapacity] benefits pursuant to the [plain language of] the statute."[1] *Cochran* v. *Dept. of Transportation*, 220 Conn. App. 855, 868, 299 A.3d 1247 (2023). We disagree and reverse the judgment of the Appellate Court.

The plaintiff, Stephen T. Cochran, began working for the defendant, the Department of Transportation, in 1967. In 1994, in the course of his employment for the defendant, the plaintiff sustained an injury to his lumbar spine while lifting a 300 to 400 pound tractor-trailer tire over a barrier on Interstate 84. The plaintiff timely filed an accident report and sought medical treatment for his injury, which necessitated two surgeries and years of pain management. In 1995, the defendant issued a voluntary agreement form accepting the 1994 workplace injury as compensable under the act and acknowledging that the plaintiff was entitled to a permanent

[1] Total incapacity benefits are commonly referred to as temporary total disability benefits, which is the term the Appellate Court used. See *Cochran* v. *Dept. of Transportation*, 220 Conn. App. 855, 868, 299 A.3d 1247 (2023); see also id., 870–71. For ease of reference and consistency with the statutory terminology, we refer to these benefits as total incapacity benefits.

partial disability award of 29.5 percent to the lumbar spine. The plaintiff continued to work for the defendant until 2003, when he accepted an incentivized early retirement benefits package. He was fifty-four years old and had no intention of returning to the workforce at the time of his retirement.

Following his retirement, the plaintiff's back condition deteriorated. He continued to obtain medical treatment, including another surgery in 2013, this one in New York. It is undisputed that the plaintiff did not seek authorization or notify the defendant prior to seeking treatment or undergoing the out-of-state surgery. In 2015, the plaintiff requested a workers' compensation hearing to modify his award, seeking, among other things, total incapacity benefits pursuant to § 31-307 (a) retroactive to his retirement in 2003. The workers' compensation commissioner for the third district (commissioner) held a series of five formal hearings in 2019 and 2020, at which both the plaintiff and his wife testified. The parties also introduced several exhibits into evidence, including evaluations, reports, and deposition testimony from medical providers.

Following these formal hearings, the commissioner found that, as of December 30, 2017, the plaintiff was totally incapacitated and unable to work as a result of his 1994 workplace injury and, therefore, that he was entitled to total incapacity benefits pursuant to § 31-307 (a) retroactive to that date. The commissioner also found that the plaintiff was entitled to total incapacity benefits for the three month period following his 2013 surgery because the medical testimony demonstrated that he was totally disabled during the surgical recovery period and that the surgery was related to his 1994 workplace injury. Although the commissioner awarded the plaintiff total incapacity benefits beginning on December 30, 2017, and included the three month period after his 2013 surgery in the award, the commis-

sioner declined to award total incapacity benefits beginning on April 1, 2003, as the plaintiff had requested, finding that the plaintiff had not met his burden of demonstrating total incapacity going back to 2003.

The defendant appealed to the Compensation Review Board (board), claiming, among other things, that the "commissioner [had] misapplied the law when she ordered the payment of total [incapacity] benefits following unauthorized medical treatment from an out-of-network, out-of-state provider" and "when she ordered the payment of total [incapacity] benefits ad infinitum, despite the [plaintiff's] having taken a voluntary incentive retirement program in 2003 and not having suffered any loss of earning capacity." The board affirmed the commissioner's decision. The board concluded that "it was well within the [commissioner's] discretion to award" total incapacity benefits for the three months following the plaintiff's unauthorized surgery in 2013 because it could be reasonably inferred from the commissioner's decision that she had found the surgery to be "reasonable or necessary medical treatment." The board also concluded that the award of total incapacity benefits was legally proper because (1) the plain and unambiguous language of § 31-307 (a) imposes no limitations on the ability of a retired claimant to collect total incapacity benefits, and (2) the record provided an adequate evidentiary basis for the commissioner's award of such benefits commencing on December 30, 2017.[2]

The defendant next appealed to the Appellate Court, raising two claims. First, the defendant argued that the board erred in affirming the commissioner's decision awarding total incapacity benefits under § 31-307 (a) beginning on December 30, 2017, because the statute

[2] The defendant also raised additional claims of error not at issue in the present appeal.

does not permit total incapacity benefits for "voluntary retirees, like [the plaintiff], who have no wages to replace and whose departure from the workforce initially resulted from their own choice, not their disability." (Internal quotation marks omitted.) *Cochran* v. *Dept. of Transportation*, supra, 220 Conn. App. 865. Second, the defendant alternatively claimed that the board erred in affirming the commissioner's award of total incapacity benefits for the three month period following his 2013 surgery "because [such] [b]enefits are unavailable after unauthorized out-of-state treatment absent a . . . [commissioner's] determination that the treatment was reasonable, necessary, and unavailable in Connecticut . . . ." (Internal quotation marks omitted.) Id., 857 n.2. The Appellate Court agreed with the defendant's first claim and concluded that, under "the plain and unambiguous language of § 31-307 (a)," when an employee "elect[s] to take an incentivized early retirement benefits package and never intend[s] to reenter the workforce . . . it cannot be said that his injury *resulted* in his total incapacity to work." (Emphasis in original.) Id., 869. On this basis, the Appellate Court reversed the decision of the board without reaching the defendant's second claim. See id., 873–74; see also id., 857 n.2, 863–64 n.8 and 873 n.10.

We granted the plaintiff's petition for certification to appeal, limited to the issue of whether the Appellate Court correctly determined that the plaintiff was not eligible for total incapacity benefits pursuant to § 31-307 (a). *Cochran* v. *Dept. of Transportation*, 348 Conn. 919, 303 A.3d 1193 (2023).

Whether a voluntary retiree is eligible to receive total incapacity benefits under § 31-307 (a) presents "an issue of statutory construction that has not [previously] been subjected to judicial scrutiny," and we therefore will apply plenary review to the administrative decision determining that the award of such benefits is author-

ized by statute. (Internal quotation marks omitted.) *Bergeson* v. *New London*, 269 Conn. 763, 769, 850 A.2d 184 (2004). Our analysis is guided by General Statutes § 1-2z, which instructs us to ascertain the meaning of a statute in the first instance from its text and relationship to other statutes. If we conclude that the meaning of the statute's text and its relationship to other statutes "is plain and unambiguous and does not yield absurd or unworkable results," we may not consider extratextual evidence of meaning. General Statutes § 1-2z.

Section 31-307 (a) provides in relevant part: "If any injury for which compensation is provided under the provisions of this chapter *results in total incapacity to work*, the injured employee shall be paid a weekly compensation equal to seventy-five per cent of the injured employee's average weekly earnings as of the date of the injury, calculated pursuant to section 31-310 . . . . [T]he compensation shall not continue longer than the period of total incapacity." (Emphasis added.) Both parties interpret the meaning of the term "shall" to require the mandatory provision of total incapacity benefits to eligible workers. The crux of their disagreement lies in their conflicting interpretations of the terms "results in" and "total incapacity to work . . . ."

We construe statutory terms in accordance with General Statutes § 1-1 (a), which provides in relevant part that "words and phrases shall be construed according to the commonly approved usage of the language," whereas "technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." We also must be mindful that, "[i]n interpreting [statutory] language . . . we do not write on a clean slate, but are bound by our previous judicial interpretations of this language and the purpose of the statute." (Internal quotation marks omitted.) *Commissioner of*

Public Safety v. *Freedom of Information Commission*, 312 Conn. 513, 527, 93 A.3d 1142 (2014).

Our inquiry begins with the phrase "results in." As used in the statute, this phrase operates to require a causal nexus between a claimant's original compensable injury ("any injury for which compensation is provided under the [act]") and the claimant's subsequent total incapacity to work. General Statutes § 31-307 (a). The plaintiff's construction relies on the assumption that the causation requirement encompasses incapacity to work caused by the original compensable workplace injury, regardless of whether the employee voluntarily removed himself from the workforce prior to total incapacitation. In the defendant's view, however, "[a]n employee's injury cannot [result] in total incapacity to work if he voluntarily and permanently retires and willingly chooses not to follow his customary calling or any other occupation." (Internal quotation marks omitted.) The defendant characterizes voluntary, permanent retirement as an independent cause of total incapacity, suggesting that a claimant's voluntary departure from the workforce disrupts the required causal nexus between the original workplace injury and the subsequent total incapacity to work.

The term "result in" is a commonly used phrasal verb. Because it is not defined in § 31-307 (a) or the broader statutory scheme, we look to the dictionary to understand its ordinary meaning. See, e.g., *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 84–85, 282 A.3d 1253 (2022). Unsurprisingly, the term means the same thing in our time as it did when it first appeared in the statute[3] in 1913: "[t]o be a physical, logical, or legal consequence," or "to proceed as an outcome or conclusion . . . ." Black's Law Dictionary (12th Ed. 2024) p. 1576; cf. 8 The Century Dictionary and Cyclopedia

[3] Public Acts 1913, c. 138, pt. B, § 11.

(Rev. & Enlarged Ed. 1911) p. 5117 (defining "result" as "[t]o proceed, spring, or rise as a consequence from facts, arguments, premises, combination of circumstances, etc.; be the outcome; be the final term in a connected series of events, operations, etc."). These definitions require a causal nexus between the two events or circumstances; a workplace injury "results in" the total incapacity to work if that injury is a cause of the claimant's incapacity to work. Cf. *Abrahams* v. *Young & Rubicam, Inc.*, 240 Conn. 300, 306, 692 A.2d 709 (1997) (holding that private cause of action provided in Connecticut Unfair Trade Practices Act, General Statutes § 42-110g (a), to "[a]ny person who suffers any ascertainable loss . . . as a result of the use or employment of a [prohibited] method, act or practice" means that prohibited conduct must be proximate cause of such loss (internal quotation marks omitted)). It follows that total incapacity benefits must be paid under § 31-307 (a) if the original workplace injury is a proximate cause of the claimant's total incapacity to work.

Our decision in *Laliberte* v. *United Security, Inc.*, 261 Conn. 181, 801 A.2d 783 (2002), is instructive in the present case because it addressed the causation requirement under § 31-307 (a). In *Laliberte*, we considered whether a claimant's incarceration disrupted the requisite causal nexus between his original workplace injury and his subsequent total incapacity, such that he had become ineligible for benefits under § 31-307 (a) because his continuing inability to work was "caused by his incarceration" rather than by his workplace injury. Id., 184. Looking to the language of § 31-307 (a), we found no exclusion for benefits for incarcerated recipients. Id., 186. The sole eligibility criterion in the statute was that the compensable injury resulted in total incapacity to work. Id. We reasoned that "[t]he fact that a claimant is unemployable for reasons other than his

injury is not dispositive. The issue is whether a claimant has suffered some loss of earning capacity as a direct result of his work-related injury." (Internal quotation marks omitted.) Id. 188–89. Noting that the claimant "ha[d] been found to be, and remain[ed], totally incapable of working due to his disability," we concluded that he remained entitled to total incapacity benefits under § 31-307 (a). Id., 186. It was "his disability, and not his imprisonment, that preclude[d] him from working." Id., 184.

In arriving at our conclusion in *Laliberte*, we highlighted that the act was "an intricate and comprehensive statutory scheme" and that "it is not the court's role to acknowledge an exclusion when the legislature painstakingly has created such a complete statute." Id., 187. Whether total incapacity benefits should be discontinued for incarcerated claimants is a matter of policy "for the legislature to decide, not the courts." Id., 188. "If the legislature had intended to discontinue total disability benefits for those who are incarcerated, it easily could have done so." Id., 187. There is no such exclusion in the statutory scheme, and we would not create one by judicial fiat.

The defendant maintains that *Laliberte* is distinguishable because the claimant's compensable injury in that case was "the initial cause of his separation from the workforce" and because "he continue[d] to want to work" while incarcerated. This argument fails because it finds no support in the ratio decidendi of *Laliberte*. We said nothing there about the claimant's desire or willingness to work. Nor did our holding hinge on whether the claimant's injury was the initial reason for his separation from the workforce. We made no mention of when the claimant left the workforce or for what reason. See id., 184. Our holding instead was based on the absence of any indication in the statutory text or legislative history that "the legislature intended to per-

mit the discontinuance of total [incapacity] benefits for totally disabled recipients who are also unable to work as a result of incarceration." Id., 186. This reasoning applies with equal force to the initiation of benefits following a claimant's voluntary retirement. The statute does not require a causal nexus between the injury and the claimant's actual employment status; it requires only that the injury cause an incapacity to work. In the same way that the claimant in *Laliberte*, regardless of his incarceration status, had sustained a work-related injury that resulted in his incapacity to work, so, too, did the claimant in the present case, regardless of his retirement status, sustain an injury that resulted in his incapacity to work. The statute as written entitles all medically qualified claimants to receive total incapacity benefits, with no exception for those claimants who may also be voluntarily retired.

This understanding also disposes of the argument, contained in the decision of the Appellate Court, that *Laliberte* is distinguishable because it involved the discontinuance rather than the initiation of total incapacity benefits. See *Cochran* v. *Dept. of Transportation*, supra, 220 Conn. App. 872–73 (this court's "repeated use of the phrase 'discontinuance of benefits' in *Laliberte* summarizes the distinction between the claimant in that case and the plaintiff in the present case"). We used the term "discontinuance of benefits" in *Laliberte* because it accurately described the procedural posture of the claimant's workers' compensation case. See *Laliberte* v. *United Security, Inc.*, supra, 261 Conn. 186. Nothing in that opinion suggests that the result would have been different had the claimant been incarcerated immediately after sustaining his compensable workplace injury and sought total incapacity benefits for the first time while incarcerated. As the amici curiae the Connecticut Education Association and the Connecticut Alliance for Retired Americans point out, the stan-

dard of proof for establishing initial entitlement to total incapacity benefits is the same as the standard for maintaining the entitlement when discontinuance is sought. See *Dengler* v. *Special Attention Health Services, Inc.*, 62 Conn. App. 440, 454, 774 A.2d 992 (2001) ("total incapacity becomes a matter of continuing proof for the period claimed" (internal quotation marks omitted)); *Cummings* v. *Twin Tool Mfg. Co.*, 40 Conn. App. 36, 42, 668 A.2d 1346 (1996) (same). Likewise, our analysis of what a claimant must show to demonstrate initial eligibility for benefits is identical to what a claimant must show to demonstrate continuing eligibility for benefits. In both cases, the causal nexus is not disrupted by intervening circumstances, so long as the total incapacity results from the original compensable injury.

The legislature's use of the phrase "total incapacity to work," the other critical statutory language used to describe the condition triggering entitlement to benefits under § 31-307 (a), reinforces our conclusion that the plaintiff's voluntary retirement did not impair his right to receive those benefits. Although its definition does not appear in the statutory scheme, this court previously has defined the phrase "total incapacity to work" in considering § 31-307 (a) benefits. The plaintiff cites to *Osterlund* v. *State*, 135 Conn. 498, 66 A.2d 363 (1949), in which we defined total incapacity to work as "not the employee's inability to work at his customary calling, but *the destruction of his capacity to earn* in that or any other occupation [that] he can reasonably pursue." (Emphasis added.) Id., 505; accord *Clark* v. *Henry & Wright Mfg. Co.*, 136 Conn. 514, 516, 72 A.2d 489 (1950); see *Ferrara* v. *Clifton Wright Hat Co.*, 125 Conn. 140, 142–43, 3 A.2d 842 (1939) (defining total incapacity to work as "[the] destruction or impairment of earning capacity"); see also *Esposito* v. *Stamford*, 350 Conn. 209, 217, 323 A.3d 1066 (2024) ("[s]pecial benefits, such as temporary, total incapacity benefits, continue only as

long as there is an impairment of wage earning power" (internal quotation marks omitted)). Our cases have similarly defined total incapacity to work as "the inability of the employee, because of his injuries, to work at his customary calling or at any other occupation [that] he might reasonably follow." *Czeplicki* v. *Fafnir Bearing Co.*, 137 Conn. 454, 456, 78 A.2d 339 (1951); accord *Hart* v. *Federal Express Corp.*, 321 Conn. 1, 26, 135 A.3d 38 (2016); *Rayhall* v. *Akim Co.*, 263 Conn. 328, 350, 819 A.2d 803 (2003).

The defendant asserts that "the statutory 'incapacity' to work hinges on willingness to work" and asks us to construe § 31-307 (a) to require that a claimant must be unable, yet ready and willing, to work to establish eligibility for total incapacity benefits. In our view, the statutory text cannot fairly be read to contain such a requirement. The language of the statute focuses specifically and exclusively on the effect of the injury on the claimant's *capacity* to work. The term incapacity in this context means the claimant's *inability* to work,[4] not his willingness to work. See, e.g., *Czeplicki* v. *Fafnir Bearing Co.*, supra, 137 Conn. 456. If the legislature had intended instead to require the injury to result in the claimant's actual departure from the workforce, it could and would easily have so stated by providing that the benefits are available if the injury results in the claimant's loss of employment or involuntary separation from the workforce, or words to that effect. See, e.g., *Costanzo* v. *Plainfield*, 344 Conn. 86, 108, 277 A.3d

[4] The dictionary definition of incapacity is "the quality or state of being incapable: inability, incapability . . . ." Webster's Third New International Dictionary (2002) p. 1141. This mirrors the dictionary definition of incapacity when the statute was first enacted in 1913: "[l]ack of capacity; lack of ability or qualification; inability; incapability; incompetency." 5 The Century Dictionary and Cyclopedia (Rev. & Enlarged Ed. 1911) p. 3031. There is nothing in the dictionary definition suggesting that the word includes a volitional aspect, i.e., the incapacitated person's willingness to perform the undertaking.

772 (2022) ("[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (internal quotation marks omitted)).

We need not speculate about whether the legislature, without saying so, nonetheless intended to require willingness to work as a precondition for total incapacity benefits under § 31-307 (a), because the statutory scheme demonstrates that the legislature knows exactly how to impose such a requirement when it desires to do so: a proviso requiring willingness to work was included as a condition to receive partial incapacity benefits under General Statutes § 31-308 (a).[5] By including this requirement in § 31-308 (a) but not in § 31-307 (a), the legislature left no doubt that the arrangement is deliberate. We are not at liberty to reach a contrary conclusion. See, e.g., *PPC Realty, LLC* v. *Hartford*, 350 Conn. 347, 358, 324 A.3d 780 (2024) (holding that statutory provision expressly permitting affirmative defense in one specific context demonstrated that the legislature did not intend to permit defense when it was not included in context controlled by different but closely related statute in same statutory scheme). "To agree with the [argument that the missing term should be supplied by construction], we would have to graft language onto

[5] General Statutes § 31-308 (a) provides in relevant part: "If any injury for which compensation is provided under the provisions of this chapter results in partial incapacity, the injured employee shall be paid a weekly compensation equal to seventy-five per cent of the difference between the wages currently earned by an employee in a position comparable to the position held by the injured employee before his injury . . . except that when (1) the physician, physician assistant or advanced practice registered nurse attending an injured employee certifies that the employee is unable to perform his usual work but is able to perform other work, (2) *the employee is ready and willing to perform other work in the same locality* and (3) no other work is available, the employee shall be paid his full weekly compensation subject to the provisions of this section. . . ." (Emphasis added.)

[the statute] that does not exist, which we decline to do." Id.

Equally unavailing is the defendant's argument that our precedent has already incorporated a willingness to work requirement into § 31-307 (a). The cases it relies on—*Clark* v. *Henry & Wright Mfg. Co.*, supra, 136 Conn. 516–17, *Osterlund* v. *State*, supra, 135 Conn. 505–506, *Ferrara* v. *Clifton Wright Hat Co.*, supra, 125 Conn.142–43, and *Reilley* v. *Carroll*, 110 Conn. 282, 285–86, 147 A. 818 (1929)—do not impose any such requirement.[6] The defendant misconstrues those cases by overlooking the distinction between *statutory* requirements and the different *evidentiary* options available to a claimant to meet those requirements. Each of the cases relied on by the defendant addressed factual scenarios in which the claimants were medically able to work but were nonetheless rendered unemployable by their injuries.[7] See, e.g., *Osterlund* v. *State*, supra, 506–507 ("[i]f, *though* [*the claimant*] *can do such work*, his physical condition due to his injury is such that he cannot in the exercise of reasonable diligence find an employer who will employ him, he is just as much totally incapacitated as though he could not work at all" (emphasis added)). The claim-

[6] The defendant also cites to *Hansen* v. *Gordon*, 221 Conn. 29, 39–41, 602 A.2d 560 (1992), in support of its claim that employees are eligible for total incapacity benefits only if their injury "involuntarily separates them from the workforce." *Hansen* is inapposite because it did not involve § 31-307 (a) benefits but, rather, the availability of partial incapacity benefits under § 31-308 (a).

[7] There are various reasons that an injured claimant who is medically able to work may nonetheless be rendered unemployable due to their injuries. In older cases, the reason was often the stigma associated with a claimant's disability. Our more recent jurisprudence assesses whether "a claimant is realistically employable" based on a holistic "analysis of the effects of the compensable injury [on] the claimant, in combination with [their] preexisting talents, deficiencies, education and intelligence levels, vocational background, age, and any other factors [that] might prove relevant." (Internal quotation marks omitted.) *Mikucka* v. *St. Lucian's Residence, Inc.*, 183 Conn. App. 147, 160, 191 A.3d 1083 (2018).

ants in those cases provided evidence of unemployability in the form of fruitless job searches. This court then determined whether the commissioner's findings of total incapacity were permissible based on the factual record. However, evidence of willingness to work has never been required to establish eligibility for total incapacity benefits. See, e.g. *Ferrara* v. *Clifton Wright Hat Co.*, supra, 143 ("[although an] inability to obtain work by the exercise of due diligence is evidential it is not so conclusive as to require a finding of incapacity"). Rather, "[t]he evidence must be such as to show that inability to obtain work and earn wages, or diminished earning capacity, exists not by reason of any change in market conditions, but because of a defect [that] is personal to [the worker] and [that] is the direct result of the injury that [the worker] has sustained." (Internal quotation marks omitted.) Id. In other words, as we have established in the foregoing analysis, the evidence must show that the claimant is unable to work as a result of their work-related injury. When a claimant is not medically incapacitated but is nonetheless rendered unemployable by their injury, various forms of evidence will often suffice, such as "nonphysician vocational rehabilitation expert or medical testimony that [the claimant] is unemployable . . . ." (Internal quotation marks omitted.) *Mikucka* v. *St. Lucian's Residence, Inc.*, 183 Conn. App. 147, 160, 191 A.3d 1083 (2018). In short, the defendant mistakenly construes one way to provide evidence of total incapacity as a generalized statutory requirement for establishing total incapacity. We reaffirm that there is no requirement under § 31-307 (a) that a claimant demonstrate a willingness to work, or an attempt to find a job, in order to obtain total incapacity benefits. In many cases, including the present case, such a requirement would be nonsensical: even if the plaintiff were willing to work, the record in this case establishes that he is unemployable.[8]

[8] In concluding that the plaintiff was unemployable as of December 30, 2017, the commissioner reviewed medical evidence, vocational reports, and

Our analysis is not complete without addressing the relationship between § 31-307 (a) and related statutes. First and foremost, as we observed previously in this opinion, the criteria for total incapacity benefits under § 31-307 (a) stand in stark contrast to the conditions required to obtain benefits under § 31-308 (a). The former statute contains no qualifications or conditions to eligibility for total incapacity benefits, outside of the sole criterion that the claimant's total incapacity be a "result" of their compensable injury. Section 31-308 (a), by contrast, requires that a partially incapacitated claimant either be earning a wage, or be "ready and willing to perform other work in the same locality" to establish eligibility for benefits. The defendant argues that this discrepancy is "an irrelevant distinction in the statutory language" but fails to provide any reason that would explain the difference between the statutes other than the most obvious one, which is that a claimant seeking total incapacity benefits need not show that he is ready and willing to work. "We presume that the legislature had a purpose for each sentence, clause or phrase in a legislative enactment, and that it did not intend to enact meaningless provisions." (Internal quotation

testimony. She was fully persuaded by the testimony of Phillip S. Dickey, a neurosurgeon, who attested that the plaintiff's 1994 workplace injury was a "substantial contributing factor" to his disability and that he had "the lightest of work capacities." (Internal quotation marks omitted.) She was also persuaded by the expert testimony of Albert J. Sabella, a vocational rehabilitation counselor, who attested that the plaintiff "lies down periodically during the day to help reduce and relieve exacerbations of severe pain. He reports much difficulty bending and lifting any weight from the floor level. From table height he rates his capacity [as fifteen] maybe [twenty] pounds; however, not repetitively and he can't carry any weight because of his use of [a] cane and [his] balance issues." (Internal quotation marks omitted.) The board agreed that "the evidentiary record in this matter provided an adequate basis" for the commissioner's findings, noting the statement in Sabella's report that "the combined and compounded effect of [the plaintiff's] employment barriers manifest to an extent that renders him unemployable for any practical vocational purpose." (Internal quotation marks omitted.)

marks omitted.) *Hall* v. *Gilbert & Bennett Mfg. Co.*, 241 Conn. 282, 303, 695 A.2d 1051 (1997).

General Statutes § 31-310, the act's wage calculation provision, provides further support for our construction of § 31-307 (a). The wage calculation formula for injured workers includes a provision that applies "[w]hen the period of employment immediately preceding the injury is computed to be less than a net period of two calendar weeks . . . ."[9] General Statutes § 31-310 (a). This formula applies to workers whose incapacity occurs after retirement. See *Green* v. *General Dynamics Corp.*, 245 Conn. 66, 75, 712 A.2d 938 (1998) ("[w]hen an employee is retired and unemployed at [the time of injury], the 'employment previous to injury' is necessarily less than two weeks and the contemporaneous prevailing weekly wage is considered the employee's weekly wage").[10] It would make no sense for the legislature to enact a wage calculation formula for benefits that do not exist. The enactment of a wage calculation formula that contemplates benefits being paid to workers whose incapacity occurs after retirement indirectly supports our conclusion that total incapacity benefits are available to that category of claimants under § 31-307 (a).

The causation requirement in General Statutes § 7-433c, governing eligibility for heart and hypertension benefits, is also instructive. Section 7-433c provides in relevant part that, if a uniformed and paid municipal

[9] For purposes of wage calculation, "the date of injury" in § 31-310 is construed to mean the date of incapacity. *Mulligan* v. *F. S. Electric*, 231 Conn. 529, 544–45, 651 A.2d 254 (1994).

[10] Similarly, General Statutes § 31-310c provides a wage calculation formula for occupational diseases that manifest "at a time when the worker has not worked during the twenty-six weeks immediately preceding the diagnosis of such disease . . . ." This statute likewise applies to workers who are retired at the time the disease manifests. See *Green* v. *General Dynamics Corp.*, supra, 245 Conn. 79 (holding that, under § 31-310c, worker's complete retirement at time of incapacity did not bar award of weekly death benefits to his spouse for permanent loss of earning capacity).

police officer or firefighter "suffers . . . any condition or impairment of health caused by hypertension or heart disease *resulting in* his death or his temporary or permanent, total or partial disability," he is entitled to workers' compensation benefits. (Emphasis added.) Heart and hypertension benefits under § 7-433c are administered under the act. See *Bergeson* v. *New London*, supra, 269 Conn. 778 (recognizing that "the type and amount of benefits available pursuant to § 7-433c are the same as those under the [act]," which is "a procedural avenue for administration of the benefits under § 7-433c" (emphasis omitted; internal quotation marks omitted)). In a recent case, *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 224 A.3d 1161 (2020), we held that a firefighter who was not diagnosed with coronary artery disease until after he had retired from employment was nonetheless eligible for heart and hypertension benefits. See id., 866–67, 869. We reasoned that "a claimant may pursue claims for subsequent, related [heart and hypertension] injuries, regardless of whether he or she is still employed . . . . To conclude . . . that heart disease claims occurring after retirement are not compensable, even if such claims flow from a primary compensable claim—would run afoul of the clear legislative intent underlying § 7-433c."[11] (Citations omitted.) Id., 866–67. Although the legislative intent of § 7-433c is beyond the scope of our threshold § 1-2z analysis, we find it persuasive that such a closely related statute mirroring the language in § 31-307 (a) permits the receipt

[11] As we recognized in *Coughlin*, "§ 7-433c was intended to eliminate two of the basic requirements for coverage under [the act], namely the causal connection between hypertension and heart disease and the employment, and the requirement that the illness was suffered during the course of employment. . . . More specifically, the legislature's intent was to afford the named occupations with a bonus by way of a rebuttable presumption of compensability when, under the appropriate conditions, the employee suffered heart disease or hypertension." (Citation omitted; internal quotation marks omitted.) *Coughlin* v. *Stamford Fire Dept.*, supra, 334 Conn. 864.

of benefits by workers whose incapacity occurs after voluntary retirement.

Notwithstanding this textual evidence, the Appellate Court held, and the defendant maintains, that awarding total incapacity benefits to workers when their total incapacity occurs after their voluntary retirement would frustrate the purpose of the statute as expressed in our prior case law. See *Cochran* v. *Dept. of Transportation*, supra, 220 Conn. App. 870. The Appellate Court construes our precedent to mean that the purpose of § 31-307 (a) is to compensate for a worker's "wage loss" and that awarding such benefits to a claimant who has voluntarily retired with no intention of returning to the workforce "would not effectuate the statutory purpose" because such a claimant would not have any lost wages to replace. (Internal quotation marks omitted.) Id. The defendant cites to two cases in support of this reading of our precedent: *Rayhall* v. *Akim Co.*, supra, 263 Conn. 328, and *Pizzuto* v. *Commissioner of Mental Retardation*, 283 Conn. 257, 927 A.2d 811 (2007). See *Cochran* v. *Dept. of Transportation*, supra, 870 (relying on and quoting *Pizzuto*).

The flaw in this argument is that it does not take into account that our precedent recognizes two purposes served by total incapacity benefits. As the Appellate Court points out, the benefits function to replace lost wages that the claimant is unable to earn as the result of the incapacitating effects of the work-related injury. See id. However, our precedent has also characterized the purpose of total incapacity benefits as compensation for the loss of earning power or capacity. See *Esposito* v. *Stamford*, supra, 350 Conn. 218 (categorizing total and partial incapacity benefits as compensation for "the loss of earning capacity"); *Churchville* v. *Bruce R. Daly Mechanical Contractor*, 299 Conn. 185, 192, 8 A.3d 507 (2010) ("[c]ompensation for loss of earning power takes the form of partial or total incapacity bene-

fits" (internal quotation marks omitted)); *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 577, 986 A.2d 1023 (2010) (total and partial incapacity benefits are "designed to compensate for loss of earning capacity"); *Mulligan* v. *F. S. Electric*, 231 Conn. 529, 541, 651 A.2d 254 (1994) ("[c]ompensation under [the] [a]ct is based [on] incapacity, total or partial, and hence is based [on] loss of earning power" (internal quotation marks omitted)); *Rousu* v. *Collins Co.*, 114 Conn. 24, 31, 157 A. 264 (1931) ("[c]ompensation under [the] [a]ct is based [on] incapacity, total or partial, and hence is based [on] loss of earning power" (internal quotation marks omitted)); *Reilley* v. *Carroll*, supra, 110 Conn. 285 ("[t]he object of our statute was to give compensation for a total or partial loss of the capacity to earn wages" (internal quotation marks omitted)). Indeed, *Rayhall* itself uses this formulation in a different part of the opinion. See *Rayhall* v. *Akim Co.*, supra, 263 Conn. 349 ("[c]ompensation for *loss of earning power* takes the form of partial or total incapacity benefits" (emphasis added)). Awarding total incapacity benefits to a claimant who becomes incapacitated after retirement, and who therefore cannot earn a living should they need or desire to return to the workforce, serves the purpose of compensating for loss of earning power.

Our precedent does not prioritize one of these purposes over the other but, rather, demonstrates that total incapacity benefits under § 31-307 (a) serve a dual purpose: to compensate for both wage loss and loss of earning power. See, e.g., *Czeplicki* v. *Fafnir Bearing Co.*, supra, 137 Conn. 456 ("[*o*]*ne* purpose of the statute is to give compensation for loss of earning power" (emphasis added)). In most cases, these losses are coextensive. But, when the dual purposes do not align, we defer to the purpose that accomplishes the broader "humanitarian and remedial purposes of the act . . . ." (Internal quotation marks omitted.) *Gould* v. *Stamford*,

331 Conn. 289, 304, 203 A.3d 525 (2019). When a claimant's total incapacity occurs after their voluntary retirement, total incapacity benefits under § 31-307 (a) accomplish the purpose of compensating the claimant for their loss of earning power.

In light of the foregoing, we conclude that, under the plain and unambiguous language of § 31-307 (a), a worker who has sustained a compensable workplace injury under the act is eligible to receive total incapacity benefits when the total incapacity occurs after their voluntary retirement from the workforce. The text of the statute does not contain any exclusions for a worker whose incapacity occurs after retirement, and no such limitation is fairly implied by its context or other relevant components of the act. As we noted previously in this opinion, the text of § 31-307 (a) could have been drafted to entitle a claimant to benefits for a work-related injury resulting in an actual wage loss, or to require the claimant seeking such benefits to be ready and willing to work but for the injury (as § 31-308 (a) requires). But it was not. Instead, the statute, in plain and unambiguous terms, provides that the claimant is entitled to benefits for a work-related injury resulting in their *incapacity* to work. In this regard, the statute is not "susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Gonzalez* v. *O & G Industries, Inc.*, 322 Conn. 291, 303, 140 A.3d 950 (2016). The defendant makes no argument that our construction of the statute, permitting eligibility for total incapacity benefits when the incapacity occurs after retirement, is absurd or unworkable. Thus, pursuant to § 1-2z, having assessed the plain meaning of the text and its relationship to other statutes, we come to the end of our analysis.[12] "It is not the role of this court

[12] We decline the invitation to look to the precedent of other states, as the defendant urges, or to the interpretations of the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. (2018), by the United States Court of Appeals for the Fourth and Ninth Circuits, as amicus curiae the Connecticut Counsel for Occupational Safety and Health urges.

to engraft additional requirements onto clear statutory language." (Internal quotation marks omitted.) *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 346 Conn. 391, 410, 291 A.3d 64 (2023); see, e.g., *Hasychak v. Zoning Board of Appeals*, 296 Conn. 434, 441–42 n.8, 994 A.2d 1270 (2010).

We acknowledge the concerns expressed by the defendant that employers and their insurers may incur increased and more unpredictable costs if they are required to pay total incapacity benefits to claimants whose eligibility arises after retirement, and that benefits for lost earning capacity paid to retirees may be considered a windfall from one perspective. To the extent that these concerns are compelling, however, they emanate from the statute as written, and their amelioration lies in the hands of the legislature. "The complex nature of the [act] requires that policy determinations should be left to the legislature, not the judiciary." (Internal quotation marks omitted.) *McCullough* v. *Swan Engraving, Inc.*, 320 Conn. 299, 310, 130 A.3d 231 (2016). In this regard, we observe that the legislature, by existing legislation, appears to have considered and regulated the interplay between and among various sources of government benefits available to retirees, including workers' compensation benefits, and has affirmatively limited the benefits available to the plaintiff and similarly situated, retired workers.[13]

Even if it were proper for us to consider these materials under § 1-2z when the meaning of the statute is plain and unambiguous, they are of dubious value in the present context because legislation regulating workers' compensation systems typically involves a complex, multivariable, interrelated scheme of policy choices that differ from jurisdiction to jurisdiction. See, e.g., *Pokorny* v. *Getta's Garage*, 219 Conn. 439, 460–61 n.15, 594 A.2d 446 (1991) (noting that precedent of other states is often of "limited assistance, because the courts are construing the terms of their own [workers' compensation acts] which generally differ materially from our [a]ct" (internal quotation marks omitted)). The conclusion we reach in this case is based on the plain meaning of § 31-307 (a).

[13] Disability retirement payments under the State Employees Retirement Act, General Statutes § 5-152 et seq., the Municipal Employees Retirement

In summary, we agree with the board that § 31-307 (a) "imposes no constraints on a claimant's ability to collect temporary total disability benefits due to age or retirement status" and hold that a claimant who sustains a compensable injury under the act is eligible to receive total incapacity benefits regardless of whether their total incapacity occurs before or after their voluntary retirement.

The only remaining issue is the defendant's alternative claim that the board erred in affirming the commissioner's award of § 31-307 (a) benefits for the three month period following the plaintiff's 2013 surgery in the absence of a determination that the treatment was reasonable, necessary, and available in Connecticut. The Appellate Court did not reach the defendant's alternative claim, and the parties have not briefed or argued the issue before this court in the present certified

System, General Statutes § 7-425 et seq., and the Teachers' Retirement System, General Statutes § 10-183b et seq., are reduced by the amount of workers' compensation benefits, including total incapacity benefits. See General Statutes §§ 5-169 (g) (1) through (3) and 5-170 (b) and (c) (state employees); General Statutes § 7-436 (d) (municipal employees); General Statutes § 10-183bb (b) and (c) (public school teachers). Additionally, in 1993, the General Assembly enacted legislation reducing total incapacity benefits to retirees also receiving old age benefits under the federal Social Security Act. See Public Acts 1993, 93-228, § 16, codified at General Statutes (Rev. to 1995) § 31-307 (e). Although the legislature repealed this provision in 2006, both parties agree that it continues to apply to workers, including the plaintiff, who were injured prior to the date of repeal. See Public Acts 2006, No. 06-84, § 1. Finally, the statutory scheme provides a mechanism to discontinue benefits to individuals who are no longer eligible under General Statutes § 31-315. As the amici curiae the Connecticut Education Association and the Connecticut Alliance for Retired Americans highlight, this provision demonstrates that total incapacity benefits are not awarded "ad infinitum." All injured workers—including retirees—maintain the burden of proving eligibility throughout the life of their claim. See *Reilley* v. *Carroll*, supra, 110 Conn. 287 ("[i]t is at all times within the power of the defendant-employer, or his insurer, to terminate the period of total incapacity and end or reduce liability for compensation . . . under the express limitation of the award until it [is] shown that . . . [the plaintiff's] incapacity has diminished or ceased" (internal quotation marks omitted)).

appeal. See *Cochran* v. *Dept. of Transportation*, supra, 220 Conn. App. 857 n.2. We therefore reverse the judgment of the Appellate Court and remand the case to that court for consideration of that issue.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to consider the defendant's remaining claim on appeal.

In this opinion the other justices concurred.

LOUIS MARTINOLI *v.* STAMFORD POLICE DEPARTMENT ET AL.
(SC 20932)

D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.*

Syllabus

The plaintiff appealed, on the granting of certification, from the judgment of the Appellate Court, which had reversed the decision of the Compensation Review Board. The board had upheld an award of statutory (§ 31-307 (a)) total incapacity benefits to the plaintiff in connection with injuries that he sustained during the course of his employment with the defendant police department. The plaintiff claimed that the Appellate Court had incorrectly concluded that he was not eligible for total incapacity benefits because his total incapacity did not occur until after his voluntary retirement and because he did not intend to return to the workforce. *Held*:

The issue of whether a claimant is eligible to receive total incapacity benefits when the total incapacity occurred after the claimant's voluntary retirement from employment was resolved in the companion case of *Cochran* v. *Dept. of Transportation* (350 Conn. 844), in which this court held that a claimant who sustains a compensable workplace injury under the Workers' Compensation Act (§ 31-275 et seq.) is eligible to receive total incapacity benefits under § 31-307 (a) even when the total incapacity occurs after his or her voluntary retirement.

Insofar as the Appellate Court did not reach the defendants' two alternative claims in its decision, this court reversed the Appellate Court's judgment

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

and remanded the case to that court so that it could consider those claims on remand.

Argued September 23—officially released December 24, 2024

Procedural History

Appeal from the decision of the workers' compensation commissioner for the seventh district awarding the plaintiff certain disability benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision; thereafter, the defendants appealed to the Appellate Court, *Alvord*, *Moll* and *Cradle*, *Js.*, which reversed the board's decision and remanded the case with direction to reverse the commissioner's decision, and the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *further proceedings*.

Andrew J. Morrissey, for the appellant (plaintiff).

Scott Wilson Williams, for the appellees (defendants).

Francis X. Drapeau filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

Donna Civitello filed a brief for the Connecticut Education Association et al. as amici curiae.

Nathan J. Shafner filed a brief for the Connecticut Counsel for Occupational Safety and Health as amicus curiae.

Opinion

ECKER, J. In this certified appeal,[1] the plaintiff, Louis Martinoli, appeals from the judgment of the Appellate Court, which reversed the decision of the Compensation Review Board (board) upholding an award of total incapacity benefits to the plaintiff under General Stat-

[1] We granted the petition for certification to appeal filed by the plaintiff, Louis Martinoli, limited to the following issue: "Did the Appellate Court correctly determine that the plaintiff was not eligible for [total incapacity] benefits pursuant to General Statutes § 31-307 (a)?" *Martinoli* v. *Stamford Police Dept.*, 348 Conn. 918, 303 A.3d 1195 (2023).

utes § 31-307 (a). See *Martinoli* v. *Stamford Police Dept.*, 220 Conn. App. 874, 875–76, 881, 299 A.3d 1258 (2023). The Appellate Court reasoned that, in accordance with the holding it reached that same day in *Cochran* v. *Dept. of Transportation*, 220 Conn. App. 855, 868, 299 A.3d 1247 (2023), rev'd, 350 Conn. 844, A.3d (2024), the plaintiff was ineligible to receive benefits under § 31-307 (a) because, prior to the onset of his incapacity, he had voluntarily retired from the workforce with no intention of returning.[2] See *Martinoli* v. *Stamford Police Dept.*, supra, 880–81; see also *Cochran* v. *Dept. of Transportation*, supra, 868 (concluding that injured employee who elects to retire from employment voluntarily with "no intention of returning to the workforce, [is] not entitled to [total incapacity] benefits pursuant to" § 31-307 (a)).

In *Cochran* v. *Dept. of Transportation*, 350 Conn. 865, A.3d (2024), which we also decided today, we held that, under the plain and unambiguous language of § 31-307 (a), a claimant who has sustained a compensable workplace injury under the Workers' Compensation Act (act), General Statutes § 31-275 et seq., is eligible to receive total incapacity benefits when the total incapacity occurs after the claimant's voluntary retirement from the workforce. See id., 865. As we reasoned in *Cochran*, "[t]he text of the statute does not contain any exclusions for a worker whose incapacity occurs after retirement, and no such limitation is fairly

[2] The Appellate Court did not reach in its decision the two alternative claims raised by the defendants, the Stamford Police Department and PMA Management Corp. of New England, namely, that the board (1) erred in determining that the plaintiff's § 31-307 (a) benefits "shall be paid pursuant to a minimum compensation rate as of July 15, 2015, the date of total incapacity, as opposed to January 19, 1999, the date of injury," and (2) "failed to find that any [total incapacity] benefits paid to the [plaintiff] after the May 10, 2016 date of maximum medical improvement would be a credit against the increase in the permanent partial [disability] award." *Martinoli* v. *Stamford Police Dept.*, supra, 220 Conn. App. 875–76 n.3.

implied by its context or other relevant components of the act. . . . It is not the role of this court to engraft additional requirements onto clear statutory language." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id., 865–66. Consistent with *Cochran*, we hold in the present case that the plaintiff's voluntary retirement and lack of intent to return to the workforce does not render him ineligible to receive total incapacity benefits under § 31-307 (a). Cf. *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 869, 224 A.3d 1161 (2020) (holding that a firefighter was entitled to benefits pursuant to General Statutes § 7-433c for coronary artery disease that developed following his retirement, as his heart disease flowed from his compensable hypertension.)

We will not address the defendants' two alternative claims, which the Appellate Court did not reach in its decision below and which the parties have not briefed or argued before this court due to the narrow scope of the certified question. See footnotes 1 and 2 of this opinion. We therefore reverse the judgment of the Appellate Court and remand the case to that court for consideration of those issues.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to consider the defendants' remaining claims.

In this opinion the other justices concurred.

THOMAS NAPOLITANO *v.* ACE AMERICAN INSURANCE COMPANY ET AL.
(SC 20922)

McDonald, D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.*

Syllabus

The plaintiff appealed, on the granting of certification, from the judgment of the Appellate Court. The plaintiff had sought, inter alia, a judgment

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

declaring that the defendant workers' compensation insurance carrier was legally obligated to defend and indemnify the plaintiff in connection with a claim filed by the plaintiff's employee. In granting the plaintiff's motion for summary judgment, the trial court determined that the defendant did not effectively cancel a workers' compensation insurance policy that it had issued to the plaintiff because the purportedly conflicting notices the defendant had provided to the plaintiff prior to cancellation, including a notice that the plaintiff had failed to cooperate in connection with certain of the defendant's requests and a separate cancellation notice, did not constitute an unambiguous and unequivocal notice of cancellation. The Appellate Court reversed the trial court's judgment, concluding, inter alia, that the defendant effectively cancelled the policy prior to the employee's purportedly compensable injuries by virtue of the defendant's compliance with the statute (§ 31-348) governing the reporting of risks by workers' compensation insurance companies and the cancellation of workers' compensation insurance policies. The plaintiff claimed that the Appellate Court had incorrectly concluded that the cancellation notice effectively cancelled the policy. *Held*:

This court concluded that, although insurers must strictly comply with the requirements of § 31-348 when seeking to cancel a workers' compensation insurance policy, compliance with that statute does not supplant an insurer's obligations under otherwise applicable principles of contract law as they relate to the insurer and the insured, including the principle that a notice cancelling an insurance policy must be definite, certain, and unambiguous.

The Appellate Court incorrectly limited its analysis to whether there was a definite and certain notice of cancellation filed with the chairperson of the Workers' Compensation Commission pursuant to § 31-348; rather, when a court considers whether a notice of cancellation of a workers' compensation insurance policy is sufficiently definite and certain, it must consider all relevant communications between the parties.

In the present case, the defendant's notice of cancellation of the policy was not objectively definite and certain, as the conflicting noncooperation and cancellation notices provided indefinite and ambigous information concerning the status of the plaintiff's insurance converage, what was required to maintain that coverage, and what the consequences would be for not meeting the deadline to comply with the defendant's requests.

Accordingly, this court reversed the judgment of the Appellate Court and remanded the case to that court with direction to affirm the trial court's judgment.

Argued September 27—officially released December 24, 2024

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior

Court in the judicial district of Hartford, where the case was transferred to the Complex Litigation Docket; thereafter, the court, *Moukawsher, J.*, granted the plaintiff's motion for summary judgment and rendered judgment thereon, from which the named defendant appealed and the plaintiff cross appealed to the Appellate Court, *Bright, C. J.*, and *Moll* and *Vertefeuille, Js.*, which reversed the trial court's judgment and remanded the case for further proceedings, and the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Kristen Schultze Greene, with whom was *Michael Feldman*, for the appellant (plaintiff).

Brian M. Paice, for the appellee (named defendant).

Opinion

ALEXANDER, J. This certified appeal requires us to consider the relationship between General Statutes § 31-348,[1] which governs the cancellation of workers' compensation insurance policies, and traditional principles of contract law governing the cancellation of insurance policies. The plaintiff, Thomas Napolitano, doing business as Napolitano Roofing, appeals, upon our grant of his petition for certification,[2] from the judgment of

[1] Although § 31-348 was the subject of technical amendments since the events underlying this case; see Public Acts 2022, No. 22-89, § 28; 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.

[2] We granted the plaintiff's petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly conclude that the second notice sent to the plaintiff on April 5, 2018, constituted a definite, certain, and unambiguous notice of cancellation that effectively cancelled the plaintiff's workers' compensation policy under . . . § 31-348?" *Napolitano* v. *Ace American Ins. Co.*, 348 Conn. 916, 303 A.3d 914 (2023).

Our review of this case reveals that it presents issues concerning the relationship between basic contract law principles and the requirements of § 31-348. Accordingly, we exercise our discretion to rephrase the certified issue as follows: Does the valid cancellation of a workers' compensation insurance policy require only the filing of a single definite, certain, and unambiguous notice of cancellation that complies with § 31-348, or does it also consider the entirety of the insurer's communications and conduct

the Appellate Court reversing the trial court's judgment in favor of the plaintiff on his breach of contract claim. *Napolitano* v. *Ace American Ins. Co.*, 219 Conn. App. 110, 114, 137, 293 A.3d 915 (2023). The plaintiff claims that the Appellate Court incorrectly concluded that the named defendant, Ace American Insurance Company,[3] effectively cancelled the plaintiff's workers' compensation insurance by providing a cancellation notice that complied with § 31-348, notwithstanding the fact that the defendant, during the same time period, engaged in other conflicting conduct that the plaintiff contends rendered its notice of cancellation indefinite, uncertain, and ambiguous. We agree with the plaintiff and reverse the judgment of the Appellate Court.

The record reveals the following relevant facts and procedural history.[4] The plaintiff had obtained three workers' compensation insurance policies from the defendant. The first policy is not pertinent to this appeal. The second policy was effective from October 21, 2017, to February 9, 2018, and the third policy had effective dates of coverage from February 9, 2018, to February 9, 2019. The policies were serviced by Travelers Indemnity Company (Travelers) acting on behalf of the defendant. The cancellation provision of the third

during the transaction? See, e.g., *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005) (court may reformulate certified issue to reflect more accurately issues presented); *Stamford Hospital* v. *Vega*, 236 Conn. 646, 648 n.1, 674 A.2d 821 (1996).

[3] The plaintiff also named Lanza Insurance Agency, LLC (Lanza), Travelers Indemnity Company (Travelers), Chubb National Insurance Company (Chubb), and Jazmin Victoria Echevarria as defendants. Ace American Insurance Company indicated that it would assume liability and the financial responsibilities for Chubb and Travelers, who are its agents, and they were removed as defendants. Lanza and Echevarria are not participating in this appeal because separate claims against them remain pending in the trial court. We therefore refer in this opinion to Ace American Insurance Company as the defendant and to the other defendants by name.

[4] For a more detailed recitation of the facts and procedural history of this case, see *Napolitano* v. *Ace American Ins. Co.*, supra, 219 Conn. App. 114–19.

policy provided that either party could cancel the policy and required the defendant to "mail or deliver to [the plaintiff] not less than ten days advance written notice stating when the [cancellation] is to take effect." It also provided that "[t]he policy period [would] end on the day and hour stated in the [cancellation] notice."

On March 28, 2018, the defendant mailed notice of an audit noncompliance charge to the plaintiff, indicating that it had not received payroll and tax records that were required for the second policy premium audit and that the failure to provide access to those records would result in the imposition of a charge of $912. The defendant resent that letter to the plaintiff on April 3, 2018, but ultimately never imposed the noncompliance charge.

On April 5, 2018, the defendant mailed two separate notices to the plaintiff, both of which were dated April 5, 2018. There is no indication as to which notice was sent first or intended to be read first; nor did either notice expressly reference the other. One of the April 5, 2018 notices, titled "Notice of Noncooperation with Audit Current Coverage" (noncooperation notice), stated that the plaintiff had failed to comply with the defendant's requests in connection with the audit, that "[f]ailure to comply will result in cancellation of [the third] policy," and that, "[i]f the audit is not conducted prior to the effective date of cancellation, the cancellation will remain in effect." The noncooperation notice also stated: "If you have already complied with our request, please disregard this notice." The noncooperation notice did not include a cancellation date.

The other April 5, 2018 notice, titled "Workers Compensation and Employers Liability Policy Cancellation" (cancellation notice), without making any explicit reference to the noncooperation notice sent the same day, stated in relevant part: "We wish to inform you that [the third] policy . . . is cancelled in accordance with

its terms as of the effective date of cancellation indicated herein . . . . For any information concerning this cancellation, please contact your producer." The effective date of cancellation in the cancellation notice was April 25, 2018, and the producer was listed as Lanza Insurance Agency, LLC (Lanza). On April 6, 2018, the defendant sent the cancellation notice, but not the noncooperation notice, to the chairperson of the Workers' Compensation Commission (commission) via the National Council on Compensation Insurance (NCCI).[5]

On April 7, 2018, the plaintiff emailed the requested tax records to the defendant. Three days later, he emailed Jazmin Victoria Echevarria, a Lanza employee, to check his compliance status, pursuant to the directive in the cancellation notice that he contact his "producer" for any information. Echevarria contacted the defendant to inquire about the plaintiff's insurance coverage and, subsequently, emailed the plaintiff, informing him that "[the defendant] stated that you are compliant at this time." Lanza then issued two certificates of insurance to the plaintiff certifying that he had workers' compensation insurance coverage pursuant to the third policy.[6]

On April 16, 2018, the plaintiff received an email from Travelers advising him that it had received the tax records but that the plaintiff had failed to supply a policyholder audit report. The email made no reference to the April 25, 2018 cancellation date and requested that the plaintiff provide the additional documentation

[5] The commission requires that the cancellation of workers' compensation insurance policies be reported to its chairperson via the NCCI. "The NCCI acts as the insurer's 'duly appointed agent' pursuant to § 31-348 for the purpose of notice to the [chairperson] of the [commission] of policy cancellations." *Bellerive* v. *Grotto, Inc.*, 206 Conn. App. 702, 705 n.4, 260 A.3d 1228, cert. denied, 339 Conn. 908, 260 A.3d 483 (2021); see *Thibodeau* v. *Rizzitelli*, No. 3373, CRB 4-96-7 (October 14, 1997) ("[c]ommission has contracted with [the] NCCI to receive [cancellation] notices on behalf of the [chairperson]").

[6] Both certificates of insurance listed an incorrect policy number.

by April 21, 2018. The plaintiff dismissed this request as "noise" and did not provide the additional documentation.

On May 29, 2018, Joshua Arce, an employee of the plaintiff sustained injuries in the course of his employment and, thereafter, filed a claim for compensation benefits with the commission. The defendant denied Arce's claim and refused to defend or indemnify the plaintiff under the third policy, claiming that the policy had been terminated as of April 25, 2018.[7] The workers' compensation commissioner for the first district (commissioner)[8] ultimately found that Arce had suffered an injury in the course of his employment but determined that the plaintiff did not have workers' compensation insurance in effect on the date of loss because the third policy was "properly cancelled electronically with the [chairperson of the commission] . . . ." The commissioner stated that his inquiry as to whether the cancellation notice effectively cancelled the third policy was limited to whether the defendant had complied with the requirements of § 31-348, which required that the cancellation be reported to the chairperson of the com-

[7] Lanza, as the plaintiff's insurance producer, never received notice of the cancellation. As stated in Lanza's response to the plaintiff's complaint filed with the Connecticut Insurance Department: "We stated to . . . Travelers . . . that we believed the policy was still in force, as we never received a notice of cancellation or a cancellation, just a notice of a noncompliance charge. If we had received an actual notice of cancellation and or a cancellation, we would have endeavored to contact [the plaintiff], although we are not required to do so, but, being that we never received either, we still believed the policy was in force."

[8] "As a result of General Statutes § 31-275d (a) (1), the administrative adjudicators for the commission became known as administrative law judges, rather than their former title of workers' compensation commissioners." (Internal quotation marks omitted.) *Esposito* v. *Stamford*, 350 Conn. 209, 211 n.3, 323 A.3d 1066 (2024). Because this appeal includes decisions rendered both before and after October 1, 2021, which was the effective date of § 31-275d (a) (1), consistent with recent workers' compensation appeals, we refer to the commission's administrative adjudicators by their title at the time of the applicable decision. See id.

mission fifteen days before the effective date of cancellation. The commissioner, in other words, narrowly considered only the issue of whether the NCCI had reported the policy as terminated on the date of cancellation but not whether the notices complied with the defendant's contractual obligations.

The plaintiff and the Second Injury Fund (fund)[9] then entered into a settlement agreement with Arce, under which the plaintiff and the fund agreed to pay Arce $225,000 in compensation for his injuries and medical expenses. In exchange, Arce agreed to withdraw a pending civil action that he had filed against the plaintiff, and the fund withdrew its intervening complaint in that action. See *Arce* v. *Napolitano*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-19-6115160-S.

The plaintiff then commenced the present action by way of an eight count complaint,[10] seeking, inter alia, a judgment declaring that the defendant was legally obligated to defend and indemnify the plaintiff in connection with Arce's workers' compensation claim and damages for breach of contract. Both parties moved for summary judgment on those two counts. The plaintiff argued that he was entitled to summary judgment because the defendant's cancellation of the third policy was not effective because "[t]he cancellation notice was

[9] The fund became a party to the workers' compensation proceedings pursuant to General Statutes § 31-355 (b), which renders it liable to pay an award of compensation "against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award . . . and whose insurer failed, neglected, refused or is unable to pay the compensation . . . ."

[10] The plaintiff's complaint contained five counts directed against the defendant. Count one sought a declaratory judgment regarding the parties' respective rights and obligations under the third policy. Counts two, three, four, and eight alleged breach of contract, bad faith, negligent misrepresentation, and promissory estoppel, respectively. Having found in the plaintiff's favor on counts one and two, the trial court concluded the plaintiff's other claims were moot. Only the declaratory judgment and breach of contract claims are at issue in this appeal.

not definite, certain, and unambiguous based on the undisputed facts in this case . . . .'' The trial court concluded that the cancellation of workers' compensation insurance must be '' 'unambiguous and unequivocal' '' and that the court must consider all communications that directly related to the issue of cancellation when making that determination. The trial court granted the plaintiff's motion for summary judgment after concluding that the third policy was not cancelled on April 25, 2018, and that it remained in full effect when Arce was injured because the multiple notices, when considered together, were not unambiguous and unequivocal.

The defendant appealed from the trial court's judgment to the Appellate Court, claiming, inter alia, that the trial court improperly granted the plaintiff's motion for summary judgment on the ground that the cancellation of the third policy was not effective because the cancellation notice was not ''unambiguous and unequivocal.'' (Internal quotation marks omitted.) *Napolitano* v. *Ace American Ins. Co.*, supra, 219 Conn. App. 120. The Appellate Court held that the cancellation notice served to cancel the third policy because ''it was . . . certain and unequivocal under § 31-348 and complied with the requirements thereof, and . . . [it] cancelled [coverage] in accordance with [the terms of] the third policy.'' (Footnote omitted.) Id., 124. The Appellate Court relied on its decision in *Dengler* v. *Special Attention Health Services, Inc.*, 62 Conn. App. 440, 774 A.2d 992 (2001), for the proposition that ''[w]hat an employer policyholder subjectively interprets from reading various notices sent by an insurer is not a consideration in the determination of whether a cancellation notice is certain and unequivocal in the pursuit of compliance with § 31-348.'' *Napolitano* v. *Ace American Ins. Co.*, supra, 127; see *Dengler* v. *Special Attention Health Services, Inc.*, supra, 461. The Appellate Court reasoned that the noncooperation notice was not relevant to its

analysis because there was no evidence that it would have provided conflicting information to the chairperson of the commission or to a prospective employee, as the defendant had sent the chairperson only the cancellation notice. *Napolitano* v. *Ace American Ins. Co.*, supra, 127–28. The Appellate Court also determined that the defendant also complied with its contractual obligations when it sent the cancellation notice "not less than ten days" before the cancellation date, as required under the third policy. (Internal quotation marks omitted.) Id., 129. Accordingly, the Appellate Court reversed the trial court's judgment. Id., 137.

On appeal to this court, the plaintiff claims that the Appellate Court incorrectly concluded that the cancellation notice effectively cancelled the plaintiff's workers' compensation coverage under the third policy by operation of § 31-348. The plaintiff argues that, although the defendant sent the cancellation notice to the chairperson of the commission in compliance with § 31-348, such notice did not effectively cancel his coverage because the defendant was required but failed to give definite, certain, and unambiguous notice of cancellation, as required by law. He contends that the Appellate Court should have considered whether the defendant gave him definite, certain, and unambiguous notice of cancellation by looking at all of the relevant communications between the parties, not just the single cancellation notice sent to the chairperson. We agree with the plaintiff and conclude that the defendant's communications to the plaintiff did not provide him with definite, certain, and unambiguous notice of cancellation, despite the defendant's having complied with the requirements of § 31-348.

It is well established that whether the trial court properly granted a motion for summary judgment presents a question of law over which our review is plenary. See, e.g., *Recall Total Information Management, Inc.*

v. *Federal Ins. Co.*, 317 Conn. 46, 51, 115 A.3d 458 (2015). We begin our analysis by setting forth the legal principles that govern our review of the certified issue.[11]

Insurers "must comply strictly with policy provisions and statutory mandates" when cancelling insurance policies. *Majernicek* v. *Hartford Casualty Ins. Co.*, 240 Conn. 86, 95, 688 A.2d 1330 (1997). It is well settled that notices cancelling insurance policies must be "construed in favor of the insured . . . [and] be definite and certain," and "[a]ny uncertainty as to the meaning of a notice from an insurer to its insured must be resolved against the insurer and in favor of the insured." (Citations omitted.) *Travelers Ins. Co.* v. *Hendrickson*, 1 Conn. App. 409, 412, 472 A.2d 356 (1984); see, e.g., *Bessette* v. *Fidelity & Casualty Co.*, 111 Conn. 549, 556, 150 A. 706 (1930) (concluding that defendant's claim contradicted language of policy and "violate[d] the rule that a notice of cancellation must be definite and certain"); *21st Century North America Ins. Co.* v. *Perez*, 177 Conn. App. 802, 823, 173 A.3d 64 (2017) ("[t]he cancellation notice . . . meets [the] standard, as it plainly apprised the insured . . . that the policy would

[11] In connection with its response to the plaintiff's claim on appeal, the defendant argues that, because the certified issue was limited to whether the *cancellation notice* "constituted a definite, certain, and unambiguous notice of cancellation," the court and the plaintiff cannot look beyond the actual cancellation notice. (Internal quotation marks omitted.) As we noted previously in footnote 2 of this opinion, we rephrased the certified issue to more accurately reflect the issue presented.

The appellate briefs of both parties also address the issue of whether Lanza was the defendant's agent. The Appellate Court addressed this issue as an alternative ground on which to affirm the trial court's judgment and concluded that there was a genuine issue of material fact as to whether Echevarria, as Lanza's employee, "was acting as an agent of the defendant when she told the plaintiff that he was compliant with his policy . . . ." *Napolitano* v. *Ace American Ins. Co.*, supra, 219 Conn. App. 128. Because the trial court denied Lanza and Echevarria's motion for summary judgment, and Lanza's agency status is not an issue certified for review, we decline to consider further the relationship between the defendant and Lanza, as other factual issues concerning Lanza remain pending before the trial court.

be cancelled due to their nonpayment of the June installment unless they tendered payment . . . before July 4, 2012"), cert. denied, 327 Conn. 995, 175 A.3d 1246 (2018); *Travelers Ins. Co.* v. *Hendrickson*, supra, 413 ("[because] neither of the notices mentioned cancellation, [the court] cannot say that they were clear and unambiguous; they must be resolved against the plaintiff and . . . cannot be taken, either separately or together, as an effective notice of cancellation"). Whether a cancellation notice is definite and certain is an objective analysis, and "the policyholder's expectations should be protected as long as they are objectively reasonable from [a] layman's point of view." (Internal quotation marks omitted.) *Allstate Ins. Co.* v. *Tenn*, 342 Conn. 292, 299, 271 A.3d 1014 (2022).

In the context of the cancellation of workers' compensation insurance policies, insurers must strictly comply with the requirements of § 31-348.[12] Section 31-348 provides that the notice of cancellation of workers' compensation insurance policies must be in writing and that the cancellation is not effective until fifteen days after the notice is filed with the chairperson of the commission. To comply with § 31-348, the cancellation notice must specify "an ascertainable date and time when cancellation will occur, not a specific date and time when cancellation might become effective if certain events do or do not transpire." *Dengler* v. *Special*

[12] General Statutes § 31-348 provides: "Every insurance company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairperson of the Workers' Compensation Commission, in accordance with rules prescribed by the chairperson, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy. The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairperson. Any insurance company violating any provision of this section shall be fined not less than one hundred nor more than one thousand dollars for each offense."

Attention Health Services, Inc., supra, 62 Conn. App. 460. Cancellation notices furnished to the chairperson under the statute likewise must be definite and certain in their communication of the cancellation.[13]

Whether compliance with § 31-348 supplants an insurer's obligations under otherwise applicable and basic principles of contract law when there is a cancellation of a workers' compensation insurance policy is informed by the text and purpose of the statute. In accordance with General Statutes § 1-2z, we begin our analysis[14] with the relevant text of § 31-348, which provides: "The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairperson." The clear and unambiguous language of § 31-348 obligates insurers to provide written notices of cancellation of workers' compensation insurance policies to the chairperson of the commission. The statute, however, does not purport to dictate or otherwise regulate the content of the cancellation notice that must be sent to the insured and contains no suggestion that the required notice to the chairperson satisfies the insurer's obligation to properly and unambiguously notify its insured of the cancellation.

[13] The standard of clarity required of communications that cancel workers' compensation insurance policies has been framed in various ways. The standard set forth in *Travelers Ins. Co.* v. *Hendrickson*, supra, 1 Conn. App. 409, requires the cancellation to be "definite and certain." Id., 412. Similarly, the standard set forth in *Dengler* requires a cancellation to be "certain and unequivocal . . . ." *Dengler* v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 460. Both standards require the same bar of clarity necessary to cancel a policy.

[14] In their appellate briefs, the parties have not expressly framed the issue before this court as a question of statutory construction governed by § 1-2z. Nevertheless, because the issue before this court; see footnote 2 of this opinion; concerns the scope of § 31-348 with respect to an insurer's obligations in cancelling a workers compensation insurance policy, we treat it as a question of statutory construction.

More than ninety years ago, this court held that the narrow purpose of the statute now codified at § 31-348 is "to make an authentic record of the insurance policies in existence, so that any employee or prospective employee may ascertain whether the employer is insured and if so [by] what company." *Piscitello* v. *Boscarello*, 113 Conn. 128, 131, 154 A. 168 (1931); see *Rossini* v. *Morganti*, 127 Conn. 706, 708, 16 A.2d 285 (1940) (in every workers' compensation policy, "each employee of the insured is in a very real sense a party"). Section 31-348, narrowly construed and limited in scope, does not require or suggest a follow-up notice of cancellation to the insured because "an employer's understanding as to when coverage terminated is largely irrelevant . . . ." *Dengler* v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 461; see *Yelunin* v. *Royal Ride Transportation*, 121 Conn. App. 144, 149, 994 A.2d 305 (2010) (holding that only precondition of § 31-348 is to give notice of cancellation to chairperson of commission because statute lacks independent requirement to provide notification directly to insured).

Consistent with the Appellate Court's analysis in this case; see *Napolitano* v. *Ace American Ins. Co.*, supra, 219 Conn. App. 126–27; the defendant relies on *Dengler* and argues that § 31-348 requires this court to consider the cancellation notice standing by itself, without regard to the defendant's other conduct or communications, because workers' compensation is a creature of statute that requires a court to look to the statutory scheme to determine the requirements governing workers' compensation insurance and its cancellation. In *Dengler*, the Appellate Court held that, when insurers cancel workers' compensation insurance policies, the cancellation notices must be "certain and unequivocal"; *Dengler* v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 460; and must "do more than merely threaten to cancel." (Internal quotation marks

omitted.) Id., 461. The insurer in *Dengler* claimed that it had cancelled a workers' compensation insurance policy and was not liable to pay benefits to an employee of its insured. Id., 457. The insurer had sent its insured employer a letter stating that it would cancel the policy in thirty days if the employer did not pay past due premiums and sent a copy of that letter to the chairperson of the commission. Id., 457–58. Approximately one month later, the insurer sent another letter to the employer, stating that the policy would be cancelled the following day because the employer had failed to pay the premiums. Id., 458. The insurer also sent a copy of that letter to the chairperson. Id. The Appellate Court held that the first letter was not a valid cancellation notice because "it was merely a warning that cancellation might occur" and that the coverage nevertheless remained in effect for fifteen days after the filing of the second letter per § 31-348, despite it being a valid cancellation notice. (Emphasis omitted; internal quotation marks omitted.) Id., 461. Acknowledging that § 31-348 is intended to "[protect] employees' interests by affording them access to accurate records filed in the [chairperson's] office about an employer's compensation coverage"; id., 460; the court concluded that, because a third party would not have been able to ascertain whether the cancellation occurred given the insurer's ambiguous language in the first notice, the first notice was not certain and unequivocal. Id., 460–61. The court observed that "an employer's understanding as to when coverage terminated is largely irrelevant . . . ." Id., 461. After analyzing both notices sent to the chairperson to determine whether the insurer had satisfied § 31-348, the court held that the employer had workers' compensation insurance in effect at the time of its employee's accident, despite the employer's subjective understanding of the status of the insurance coverage. Id., 461–62.

In our view, *Dengler* is inapposite to the present case. The Appellate Court's analysis in *Dengler* was limited to the requirements governing notices of cancellation provided by the insurer *to the chairperson of the commission*; the case, in no respect, involved or addressed the requirements for cancellation governing the contractual relationship between the employer and its insurer. See id., 457–62. As the Appellate Court recognized in the present case, "[a]t issue in *Dengler* was not that each notice could have communicated conflicting messages to the employer; rather, the gravamen was that each notice was filed with the *chairperson of the commission*, less than one month apart, attempting to effectuate the cancellation of the employer's insurance policy pursuant to § 31-348." (Emphasis altered.) *Napolitano* v. *Ace American Ins. Co.*, supra, 219 Conn. App. 125. There is no indication that the court in *Dengler* intended to suggest that the requirements in § 31-348 had any impact on the contractual relationship between the insurer and the insured employer, or that the court intended to fashion any rules for determining the legal or contractual validity of the insurer's putative cancellation vis-à-vis its insured. *Dengler* established nothing more than a requirement that the notice of cancellation provided to the chairperson of the commission must be certain and unequivocal to satisfy the statute.

The Appellate Court incorrectly limited its analysis in the present case to whether there was a definite and certain notice of cancellation under § 31-348 and then applied that circumscribed inquiry to determine the contractual obligations between the plaintiff and the defendant. See id., 124, 129. As a result, the Appellate Court concluded that, because the chairperson of the commission received only the cancellation notice, the court needed to consider only that notice to determine whether the notice of cancellation was definite and certain as between the insurer and insured. See id.,

127–28, 129. We conclude, instead, that, when a court considers whether notice of cancellation made under a workers' compensation insurance policy was sufficiently definite and certain, it must consider all relevant communications between the parties, rather than limit its analysis to the notice received by the chairperson under § 31-348.[15] The defendant argues that, even if we were to consider all of the communications relating to cancellation in addition to the cancellation notice itself, those documents and communications referenced by the plaintiff "unambiguously notified him that [the third] policy '[was] cancelled' effective April 25, 2018," in accordance with the terms of the policy. We disagree.

Under the guiding principles of contract law, the defendant's notice of cancellation was not objectively definite and certain under the cancellation provision of the third policy for three reasons. First, the plaintiff received two conflicting notices on the same day, April 5, 2018; one that stated that the policy was cancelled, and the other state that failure to comply with the defendant's requests in connection with the audit would result in cancellation of the policy. Second, the plaintiff communicated with Lanza, in accordance with an instruction in the cancellation notice, to inquire about

[15] Although the defendant argues that the Appellate Court's analysis is supported by Connecticut case law, it has failed to point to any workers' compensation insurance cancellation case in which the claim at issue concerned a breach of contract, as opposed to whether the insurer complied with § 31-348 or the workers' compensation statutory scheme. See *Dengler* v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 459–61; see also *Bellerive* v. *Grotto, Inc.*, 206 Conn. App. 702, 706, 260 A.3d 1128 (defendant employer claimed that insurer's "notice of cancellation to the NCCI pursuant to § 31-348 was ineffective because it did not meet the requirements of [General Statutes] § 31-321"), cert. denied, 339 Conn. 908, 260 A.3d 483 (2021); *Yelunin* v. *Royal Ride Transportation*, supra, 121 Conn. App. 148–49 (when defendant claimed that insurer must give insured notice of cancellation, court held that "§ 31-321 does not . . . independently require workers' compensation insurance providers to provide notice in any particular circumstance").

his compliance status and was told that he was compliant. Third, the effective date of cancellation was stated only in the cancellation notice and did not appear in any other form of communication received during the relevant time period, whereas other documents relating to the alleged noncompliance and conditional cancellation referred to other dates. For example, the email sent by Travelers on April 16, 2018—only days after the plaintiff was told by Lanza that the defendant considered him in compliance—appeared to create a new, April 21, 2018 deadline for compliance, without explaining what had changed since he was told that he was compliant or the consequence that could result if the new deadline was not met, and without any reference, direct or indirect, to the April 5, 2018 cancellation notice. When considered in its entirety, the plaintiff received indefinite and ambiguous information concerning the status of his insurance coverage, what was required to maintain that coverage, and what the consequences would be for not meeting the compliance deadline. See, e.g., *Johnson* v. *Acadian Contractors & Consultants, Inc.*, 590 So. 2d 623, 626 (La. App. 1991) (concluding that "sending . . . two notices [with different effective dates of cancellation] created an ambiguity as to the exact date of cancellation, particularly [when] both notices were received by the insured on the same date"), cert. denied, 591 So. 2d 700 (La. 1992).

Relying on *21st Century North America Ins. Co.* v. *Perez*, supra, 177 Conn. App. 802, the defendant argues that, even if we consider the other communications, the sending of a "notice 'warning of cancellation' does not invalidate a subsequent cancellation notice." We disagree with the premise that the cancellation notice dated April 5, 2018 was a notice that was "subsequent" to the other communications at issue. To the contrary, there were simultaneous and later communications that muddled the meaning and significance of the cancella-

tion notice. We also do not concur with the defendant's reading of *21st Century North America Ins. Co.*, which is factually distinguishable from the present case. The cancellation notice in that case, which included an opportunity to cure and a cancellation date that would become operative if the defendant did not cure in time, was not inherently confusing or ambiguous. See *21st Century North America Ins. Co.* v. *Perez*, supra, 811. It plainly stated that the insurance would be cancelled if the insured did not comply by a specified date. Id. The notice was not rendered uncertain or indefinite by a confusing series of prior, simultaneous, and subsequent communications.

The defendant also asserts that, if we compare multiple communications issued by an insurer, the resulting analysis will be "untenable," leading to an increase in "disingenuous claims by a party who would want to take all measures necessary to remain covered by insurance." We disagree. As a matter of law, employers are required to have workers' compensation insurance; see General Statutes § 31-284 (a); but insurers are the parties that typically write these contracts and largely decide what is required to maintain coverage. Given the leverage insurers have over insured parties, as the Appellate Court stated in *Travelers Ins. Co.* v. *Hendrickson*, supra, 1 Conn. App. 409, we resolve all doubts in favor of coverage and require that insurers give objectively definite and certain notices of cancellation to insured parties. Id., 412. With no indication from the legislature that it intended § 31-348 to eliminate the insurer's common-law obligation to provide the insured employer with definite and certain notice of cancellation in the context of a workers' compensation insurance policy, we decline to adopt the defendant's position, which conflicts with basic principles of insurance law. See, e.g., *Dorfman* v. *Smith*, 342 Conn. 582, 609, 271 A.3d 53 (2022) ("[a]lthough the legislature may

eliminate a [common-law] right by statute, the presumption that the legislature does not have such a purpose can be overcome only if the legislative intent is clearly and plainly expressed" (internal quotation marks omitted)). Insurers must both provide definite, certain, and unambiguous cancellation notices as a matter of contract law between the insurer and the insured and comply with the statutory requirements of § 31-348 when seeking to cancel a workers' compensation insurance policy. Because the defendant did not do so in the present case, we conclude that the Appellate Court improperly reversed the trial court's judgment in favor of the plaintiff.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the trial court's judgment.

In this opinion the other justices concurred.