

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION  
FUNDING, INC., et al. v. M. JODI RELL et al., SC 19768  
*Judicial District of Hartford*

**Education; Whether Plaintiffs Have Standing to Claim that Public School Students are Being Deprived of a Constitutionally Adequate Education; Whether Present System of Funding Public Education Denies Students Right to Receive Suitable and Substantially Equal Educational Opportunities.** The plaintiffs are public school students and their parents and the Connecticut Coalition for Justice in Education Funding, Inc. They brought this action against state officials alleging that the state's present system of funding public education deprives public school students of their right to receive suitable and substantially equal educational opportunities. The defendants argued that the plaintiffs lacked standing to bring the action and that their claims were meritless. The trial court determined that, as public school students and their parents, the individual plaintiffs had standing to bring this lawsuit because they alleged that the students are being deprived of a constitutionally adequate education. The court also decided that the plaintiff nonprofit organization had standing to bring this action because its members had standing to sue in their own right. As to the merits of the plaintiffs' claims, the trial court determined that the plaintiffs failed to prove that the state has not provided minimally adequate educational resources as required by the state constitution. It also found that the plaintiffs failed to establish that state funding supporting educational opportunities is distributed inequitably or in violation of equal protection requirements. The court reasoned that the state provides greater funding to the neediest districts than it does to the wealthiest. It nevertheless determined that the state's education spending and policies were required to be "rationally, substantially, and verifiably" connected to the creation of educational opportunities and that the state failed to meet that standard. It found that the state is defaulting on its constitutional duty to provide adequate public school opportunities because it has no rational, substantial, and verifiable plan to distribute money for education aid and school construction. The trial court ordered the state to: (1) create a new educational aid formula; (2) define elementary and secondary education objectively; (3) create new standards for hiring, firing, evaluating, and paying education professionals; and (4) end arbitrary spending

on special education. Upon certification by the Chief Justice pursuant to General Statutes § 52-265a that a matter of substantial public interest is at issue, the defendants appeal, arguing that the plaintiffs lacked standing to bring this action and that the trial court should have rendered judgment in their favor once it determined that the plaintiffs failed to prove that the state's schools do not offer minimally adequate educational resources or that state funding is not equitably distributed. The plaintiffs cross appeal, claiming that the court improperly found that the state was providing a bare minimum of educational resources and that there was no equal protection violation.

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GREGORY LEIGH *v.* DANIEL SCHWARTZ, M.D., et al., SC 19793  
*Judicial District of New Haven*

**Medical Malpractice; Whether Plaintiff Improperly Permitted to Present Res Ipsa Loquitor Theory Through Expert Testimony; Whether Trial Court Improperly Admitted Prior Patient Injury Evidence; Whether Court Erred in Denying Remittitur of \$4.25 Million Verdict.** The plaintiff brought this medical malpractice action claiming that the defendant surgeon negligently damaged his spinal accessory nerve while operating to excise a lymph node. The case was tried to a jury, which returned a \$4.25 million verdict in favor of the plaintiff. The defendants appeal, claiming that the trial court wrongly upheld the verdict where the plaintiff's expert, a surgeon, had testified that he inferred from the very occurrence of the injury to the plaintiff's spinal accessory nerve that the defendant surgeon had been negligent. Res ipsa loquitor is an evidentiary principle that permits a jury to infer negligence when no direct evidence of negligence has been introduced, and the defendants claim that, through the plaintiff's expert witness, the plaintiff was wrongly permitted to present res ipsa loquitor evidence in this medical malpractice case. The defendants also claim that the trial court improperly permitted the plaintiff to introduce evidence that the defendant surgeon had once before damaged a patient's spinal accessory nerve while performing the same procedure on concluding that the defendant had opened the door to the evidence by arguing about the risk inherent in the procedure that had been performed on the plaintiff. The defendants argue that the court thereby violated the general rule, codified in the Connecticut Code of Evidence, that evidence of prior wrongs or acts is inadmissible to prove propensity. Finally, the defendants claim that the plaintiff was wrongly permitted to present evidence that the plaintiff's surgery had been unnecessary where the plaintiff had not raised that claim in

his complaint and that the trial court erred in denying the defendants' motion for remittitur of the \$4.25 million dollar verdict.

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MACDERMID INCORPORATED *v.* STEPHEN LEONETTI, SC 19817  
*Judicial District of Waterbury*

**Torts; Workers' Compensation; Whether Employer's Unjust Enrichment Claim Barred by Collateral Estoppel or Res Judicata or as Improper Attempt to Circumvent Requirement that Agreements in Workers' Compensation Cases be Approved by Commissioner.** When MacDermid Incorporated (the employer) discharged Stephen Leonetti from his employment, it proposed a termination agreement in which it offered to pay him twenty-seven weeks of severance pay, amounting to \$70,228.51, in exchange for his promise to release the employer from all claims—including workers' compensation claims—that he might have against it. Leonetti did not want to release a preexisting workers' compensation claim, and he asked that the provision be removed. The employer refused, and Leonetti requested that the workers' compensation commission convene a hearing to address the propriety of the employer's attempt to obtain a waiver of his workers' compensation claim. Prior to the hearing, Leonetti received a letter from the employer stating that the offer would be withdrawn if he did not sign the termination agreement within ten days. Leonetti thereafter signed the termination agreement and the employer gave him \$70,228.51. The trial commissioner subsequently determined that the waiver of Leonetti's workers' compensation claim was unenforceable because it had not been approved by the workers' compensation commission as required by General Statutes § 31-296 and because it was not supported by adequate consideration. The commissioner's decision was affirmed by the Compensation Review Board and by the Supreme Court in *Leonetti v. MacDermid, Inc.*, 310 Conn. 195 (2013). The employer then brought this action seeking to recover the money it had paid Leonetti based on a theory of unjust enrichment, alleging that Leonetti signed the termination agreement and took the money despite having no intention of honoring the release of his workers' compensation claim. A jury found in favor of the employer and awarded it \$70,228.51 in damages, and the trial court rendered judgment on the verdict. Leonetti appeals, claiming that the employer's unjust enrichment claim is barred by the doctrines of collateral estoppel and res judicata because it was finally determined in *Leonetti v. MacDermid, Inc.* that the workers' compensation release on which this action is premised is unenforceable. Leonetti also argues

that the unjust enrichment claim must fail because it is an improper attempt to circumvent the approval requirements of § 31-296 and that the employer should not be allowed to recover based on allegations that he failed to honor an invalid agreement. Leonetti also claims that the trial court erred in its jury instructions and in making certain evidentiary rulings.

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DONNA L. SOTO, ADMINISTRATRIX (ESTATE OF VICTORIA L. SOTO) et al. v. BUSHMASTER FIREARMS INTERNATIONAL,

LLC, et al. SC 19832/19833

*Judicial District of Bridgeport*

**Torts; Whether Trial Court Properly Struck Negligent Entrustment and CUTPA Claims Brought Against Manufacturer and Sellers of Firearm.** Adam Lanza used a Bushmaster rifle to fatally shoot twenty-six people, including the plaintiffs' decedents, at Sandy Hook Elementary School in Newtown. The plaintiffs brought this action against the manufacturer and sellers of the Bushmaster rifle, claiming that they had violated the Connecticut Unfair Trade Practices Act (CUTPA) and seeking recovery under a theory of negligent entrustment. The plaintiffs alleged that the defendants were negligent in marketing and selling the rifle to the general public when they knew that members of the general public are unfit to operate the rifle, which the plaintiffs claimed was designed for military use and expressly engineered to kill quickly and efficiently. The trial court struck the complaint and rendered judgment for the defendants, finding that they were immune from liability for the plaintiffs' claims under the federal Protection of Lawful Commerce in Arms Act (PLCAA), which prohibits lawsuits against manufacturers, distributors and dealers of firearms for harm caused by their products. The court noted that, while the PLCAA provides an exception for negligent entrustment claims, the plaintiffs had failed to state a legally sufficient claim of negligent entrustment under Connecticut common law or as contemplated by the federal exception. The plaintiffs appeal, claiming that the trial court wrongly ruled that they had failed to state any cognizable claim against the defendants. They claim that they adequately stated a common-law negligent entrustment claim in their complaint and that the trial court wrongly ruled that they lacked standing to pursue their CUTPA claim because they failed to allege that they had a consumer, competitor, or other commercial relationship with the defendants.

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TOWN OF GLASTONBURY *v.* METROPOLITAN DISTRICT  
COMMISSION, SC 19843

*Judicial District of Hartford*

**Utilities; Whether Action Alleging Illegal Nonmember Town Surcharge Rendered Moot by Special Act Authorizing that Surcharge; Whether Genuine Issue of Material Fact Existed as to Laches Special Defense; Whether Trial Court Properly Denied Motion to Strike for Failure to Join Indispensable Parties.** The defendant is a political subdivision of the state that provides drinking water to “member towns” and “nonmember towns” in the greater Hartford area. The plaintiff is a nonmember town and brought this declaratory judgment action alleging that the defendant had imposed excessive nonmember town surcharges between 2011 and 2014 that were not authorized by the defendant’s charter, which consists of the special acts of the General Assembly that created and govern the defendant. The defendant moved to strike the complaint, citing the plaintiff’s failure to join other nonmember towns as indispensable parties, and the trial court denied that motion. While this action was pending before the trial court, the General Assembly passed Special Act 14-21, which became effective in 2015 and amended the defendant’s charter to provide that “[a]ny nonmember town surcharge imposed . . . shall not exceed the amount of the customer service charge.” The charter previously had not contained any express reference to a nonmember town surcharge. The defendant thereafter filed a motion to dismiss on the ground that the special act rendered this action moot by clarifying its existing right to impose a nonmember town surcharge and therefore resolving the issue of whether the surcharges imposed between 2011 and 2014 were illegal. The trial court denied the motion to dismiss and held that the surcharge language could not be interpreted to apply retroactively and subsequently granted the plaintiff’s motion for summary judgment, concluding that the nonmember town surcharges imposed by the defendant were illegal as a matter of law. The defendant appeals, claiming that (1) Special Act 14-21 rendered this action moot because it clarified that the defendant has always had a right to impose a nonmember town surcharge, (2) the trial court wrongly determined that there was no genuine issue of material fact as to its special defense of laches, and (3) the trial court wrongly denied its motion to strike the plaintiff’s complaint for failure to join the other nonmember towns as indispensable parties.

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MEADOWBROOK CENTER, INC. *v.* ROBERT BUCHMAN, SC 19878

*Judicial District of Hartford*

**Attorney’s Fees; Whether Appellate Court Properly Held that Thirty Day Time Limitation in Practice Book § 11-21 for Filing Motions for Attorney’s Fees is Directory Rather than Mandatory.** The plaintiff nursing care facility brought this action to recover damages from the defendant for breach of a contract that related to the care of his mother. The agreement provided that the plaintiff would collect reasonable attorney’s fees should it prevail in its collection efforts. The trial court rendered judgment in favor of the defendant and, thirty-five days later, the defendant filed a motion seeking attorney’s fees pursuant to General Statutes § 42-150bb, which allows a consumer to collect attorney’s fees from a commercial party when the consumer successfully defends an action based on a contract that provides for attorney’s fees for the commercial party. The trial court denied the motion for attorney’s fees, concluding that it was untimely under Practice Book § 11-21, which provides that “[m]otions for attorney’s fees shall be filed within thirty days following the date on which the final judgment of the trial court was rendered.” The Appellate Court (169 Conn. App. 527) reversed and remanded the case to the trial court for a hearing on the defendant’s motion for attorney’s fees, ruling that the trial court improperly failed to exercise its discretion to determine whether strict adherence to the thirty day limitation in § 11-21 would work a surprise or injustice. It reasoned that the thirty day limitation is procedural and intended to facilitate the progress of the case since the timing of the motion does not go to the essence of the right to reasonable attorney’s fees. It also determined that the purpose of the timing provision is to avoid a long period of delay between the judgment and a request for attorney’s fees. It therefore concluded that because the timing provision of Practice Book § 11-21 is a matter of procedure, it is directory and not mandatory. The court opined that to hold otherwise would undermine the objective of § 42-150bb to award attorney’s fees to a consumer who successfully defends an action brought by a commercial party. The plaintiff appeals, and the Supreme Court will decide whether the Appellate Court properly determined that the thirty day limitation in § 11-21 is directory and not mandatory.

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FIRSTLIGHT HYDRO GENERATING COMPANY *v.*  
ALLAN STEWART et al., SC 19891  
*Judicial District of Danbury*

**Trespass; Whether Trial Court Properly Concluded that Plaintiff Proved That it Owned the Land on Which Defendants had Constructed Improvements; Whether Trial Court Properly Ordered that Defendants' Improvements be Removed.** The plaintiff operates a hydroelectric power generating facility on Candlewood Lake and owns the shoreline surrounding the lake. The defendants own property that is directly adjacent to the shoreline. The plaintiff brought this action claiming that the defendants had trespassed on its property by constructing improvements on the plaintiff's land. The trial court ruled in favor of the plaintiff, finding that the plaintiff had proved that it owns all the property immediately contiguous to the southerly border of the defendants' property and that the defendants had wrongfully intruded onto the plaintiff's property by constructing permanent improvements that are located partially or entirely on the plaintiff's land. The court granted the plaintiff relief in the form of a permanent injunction requiring the defendants to remove, among other improvements, a patio and a retaining wall. The defendants appeal, claiming that the trial court wrongly determined that they had trespassed because the plaintiff failed to prove that it is the owner of all property immediately contiguous to the southerly border of the defendants' property. The defendants also claim that the injunctive relief ordered by the trial court is overbroad in that it exceeds the relief sought by the plaintiff and in that it is inequitable under the facts here.

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STATE *v.* DELANO JOSEPHS, SC 19900  
*Judicial District of New Britain*

**Criminal; Animal Cruelty; Whether General Statutes § 53-247 (a), Which Proscribes Unjustifiably Injuring an Animal, Requires Specific Intent to Injure; Whether Unjustifiably Injuring Language Unconstitutionally Vague.** The defendant was charged with cruelty to an animal in violation of § 53-247 (a) in connection with the allegation that he shot his neighbor's cat, Wiggles, with a BB gun and injured the cat. Section 53-247 (a) prohibits any person from "unjustifiably injur[ing]" any animal, and the state's charging document alleged that the defendant had intentionally discharged the BB gun and unjustifiably injured the cat. The case was tried to the court and, after the state had presented its case, the defendant moved

for a judgment of acquittal, claiming that § 53-247 (a) required the state to prove that he had the specific intent to injure the animal and that the state had failed to prove that element of the crime beyond a reasonable doubt. The trial court denied the defendant's motion, ruling that the state was not required to prove that the defendant intended to injure the cat but, rather, that the state bore only the burden of proving that the defendant intentionally discharged the BB gun, that the cat was injured as a result, and that the injury was not justified. The defendant was subsequently convicted of cruelty to an animal in violation of § 53-247 (a). He appeals, claiming that the trial court improperly construed the "unjustifiably injures" language of § 53-247 (a) as requiring the state to prove only the general intent to engage in the action that resulted in an animal's injury. He points out that § 53-247 (a) is silent as to the applicable mental state, or mens rea, required for the offense, and that a look to the broader animal cruelty statutory scheme supports his contention that unjustifiably injuring an animal is a specific intent crime. For example, the defendant points to § 53-247 (b), which prohibits a person from "maliciously and intentionally wounding" an animal, as a clearly delineated specific intent crime and posits that the legislature did not intend to establish two different standards of proof for what is essentially the same conduct. The defendant also claims that § 53-247 (a) is unconstitutionally vague because it does not indicate when an injury to an animal is unjustifiable and thereby give fair warning to the public as to what conduct is prohibited, leading to arbitrary and standardless law enforcement. Finally, the defendant claims that the evidence presented at trial was insufficient to support his conviction of cruelty to an animal in violation of § 53-247 (a). He claims that none of the state's witnesses saw him shoot Wiggles or any other cat and that the state failed to connect the BB that hit Wiggles to the BB gun owned by the defendant.

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IN RE MARIAM E., et al., SC 19913

IN RE EGYPT E., et al., SC 19914

*Judicial District of Middlesex, Juvenile Matters,  
Child Protection Session*

**Termination of Parental Rights; Whether Parents' Rights Properly Terminated under General Statutes § 17a-112 (j) (3) (C); Whether Termination in Best Interests of Children; Whether There was Clear and Convincing Evidence of Reasonable Reunification Efforts.** The respondent mother and father brought their minor daughter Mariam to the hospital for a swollen



shoulder, and a medical examination revealed that she had six recent fractures. When the parents were unable to explain the cause of the injuries to investigating authorities, the petitioner, the Department of Children and Families (DCF), filed neglect petitions and termination petitions with respect to Mariam and the parents' other minor child, Egypt. The trial court consolidated the neglect petitions and the termination petitions and granted them after a trial. In *In re Egypt E.*, 322 Conn. 231 (2016), the Supreme Court reversed the trial court's judgment as to the termination petitions and remanded the matters for a new trial on the ground that a clerical error by the trial court implicated the parents' due process rights to appeal from the termination judgments. After a trial on remand, the trial court again granted the termination petitions. It found that the most likely explanation for Mariam's injuries was that the father had hurt her. It further found that DCF had proven that the parents' rights to their children should be terminated under General Statutes § 17a-112 (j) (3) (C), which provides that a termination petition may be granted when a child has been denied the care, guidance, or control necessary for his or her well-being by acts of parental commission or omission. In terminating the parents' rights as to Egypt under § 17a-112 (j) (3) (C), the trial court incorporated its findings as to Mariam, determined that Egypt was "similarly situated" to Mariam, and concluded that Egypt had been denied the care, guidance, or control necessary for her well-being by virtue of the father's "failure to . . . admit fully what he did" and the mother's "failure to come to terms with what has happened to [Mariam] and [the father's] culpability." The parents now bring these appeals. The Supreme Court will decide whether the trial court properly terminated the parents' parental rights to Egypt under § 17a-112 (j) (3) (C) where the parents argue that there was no evidence that Egypt had suffered actual harm and that the trial court improperly shifted the burden of proof to them after finding that they had denied Egypt the care, guidance, or control necessary for her well-being. The Supreme Court will also decide whether the trial court erred in finding that terminating the parents' rights was in Mariam and Egypt's best interests. Finally, the Supreme Court will decide whether the trial court properly terminated the mother's parental rights to Mariam and Egypt where the mother claims that there was no clear and convincing evidence of reasonable efforts by DCF to reunify her with the children as required under General Statutes § 17a-112 (j) (1).

**The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.**

JILL K. LEVIN, ADMINISTRATRIX OF THE ESTATE OF MARGARET  
ROHNER *v.* STATE OF CONNECTICUT, SC 19935  
*Judicial District of Hartford*

**Negligence; Medical Malpractice; Whether Trial Court Properly Struck Non-Patient's Claim Against State-Operated Mental Health Facility on Ground that it Sounded in Medical Malpractice and not Ordinary Common-Law Negligence.** Margaret Rohner was stabbed to death by her son, Robert Rankin, during his release on a visitation pass from a mental health residential treatment facility operated by the state of Connecticut. Rohner's estate brought this wrongful death action against the state claiming that the facility's employees were negligent in their care and treatment of Robert Rankin in that, among other things, they permitted him to visit his mother without supervision even though they knew that he was severely mentally ill and presented a danger to her and to others. The state moved to strike the complaint, citing Connecticut law establishing that a non-patient plaintiff cannot recover against a health care provider in medical malpractice. The plaintiff countered that she was not asserting a medical malpractice claim, but rather one sounding in ordinary common-law negligence. The trial court granted the motion to strike and rendered judgment for the state, noting that the plaintiff specifically alleged that the state was negligent in its diagnosis and treatment of Rankin and that it failed to exercise the standard of care that is exercised by similar health care providers. It determined that the language of the complaint reflected that the state was being sued as a health care professional, that there was a medical professional-patient relationship between the state and Rankin, and that the negligence arose out of and was substantially related to the state's diagnosis and treatment of Rankin. The court also noted that, in permitting the plaintiff to sue the state, the claims commissioner specifically limited the action to the plaintiff's medical malpractice claim. The court thus decided that, had the complaint had actually asserted an ordinary common-law negligence claim, it would have been without subject matter jurisdiction to consider it because the claims commissioner had not authorized the plaintiff to bring such a claim against the state. The plaintiff appeals, and the Supreme Court will determine whether the trial court properly granted the state's motion to strike.

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys'*

*Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

*John DeMeo  
Chief Staff Attorney*

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