

SUPREME COURT PENDING CASES

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

USSBASY GARCIA *v.* ROBERT COHEN et al., SC 20285
Judicial District of Hartford

Negligence; Whether Appellate Court Properly Held that General Verdict Rule Precluded Review of Plaintiff's Claim on Appeal. The plaintiff sustained injuries when she fell on the stairs outside of her second floor apartment. She brought this action against the defendants, the owners of the building, alleging that her injuries were proximately caused by the defendants' negligence in that they failed to keep the stairs clear and safe. The defendants denied the claims and asserted, as a special defense, that the plaintiff's injuries were caused by her own negligence. At the end of the trial, the plaintiff submitted a request to charge and proposed jury interrogatories, but the trial court denied the request to charge and it did not submit interrogatories to the jury. The jury returned a general verdict for the defendants, and the plaintiff moved to set aside the verdict on the grounds that the court failed to properly charge the jury pursuant to the plaintiff's request to charge and that the court failed to submit the proposed interrogatories to the jury. The trial court denied the motion and the plaintiff appealed, claiming that the trial court erred in failing to instruct the jury that the possessor of real property has a nondelegable duty to maintain the premises. The Appellate Court (188 Conn. App. 380) affirmed the judgment, finding that the general verdict rule precluded review of the plaintiff's claim. Under that rule, an appellate court will presume that the jury found every issue in favor of the defendant where the jury returned a general verdict for the defendant, where the defendant had both denied the allegations of the complaint and pleaded a special defense, and where interrogatories were not submitted to the jury. The Appellate Court held that the plaintiff's failure to object to jury deliberation without interrogatories was the functional equivalent of a failure to request interrogatories. The Appellate Court also noted that the plaintiff did not claim on appeal that the court erred by failing to submit her interrogatories to the jury. The Supreme Court subsequently granted the plaintiff's petition for certification to appeal as to the following issues: (1) Did the Appellate Court properly hold that the general verdict rule applies when a plaintiff's proposed jury interrogatories are rejected by the trial court and the plaintiff thereafter does not object when the case is submitted to the jury without jury interrogatories? (2) Did the Appellate Court

correctly conclude that the plaintiff did not claim on appeal that the trial court improperly failed to submit her interrogatories to the jury?

JOHN STRANO et al. v. DARWYN AZZINARO et al., SC 20309
Judicial District of Middlesex

Negligence; Intentional Infliction of Emotional Distress; Whether Appellate Court Correctly Determined that Trial Court Properly Granted Motion to Strike Complaint for Failure to State Claim of Intentional Infliction of Emotional Distress. The plaintiffs, John Strano and his minor son, brought this action against the defendants, a Boy Scouts troop leader and the Boy Scouts of America Corporation, seeking damages for intentional infliction of emotional distress stemming from the minor plaintiff's expulsion from a Boy Scouts troop. The complaint alleged that after Strano asked the defendants to intervene to protect the minor plaintiff from bullying by a fellow troop member, the troop leader sent Strano a letter expelling the minor plaintiff from the troop for the stated reason that Strano's presence at troop meetings was disruptive. It also alleged that the minor plaintiff is autistic, that the defendants knew he required services at school to address deficits in his social skills, and that the defendants failed to take adequate disciplinary action against the bully. The plaintiffs claimed that the defendants punished Strano's son in order to cause Strano pain and distress and that the plaintiffs suffered extreme emotional distress as a result of the defendant's conduct. The defendants moved to strike the complaint, claiming that it failed to plead facts establishing that the defendants engaged in extreme and outrageous conduct. Under the "extreme and outrageous" standard, the alleged conduct must exceed the bounds of civilized behavior. The trial court granted the motion and subsequently rendered judgment on the stricken complaint. The plaintiffs appealed, and the Appellate Court (188 Conn. App. 183) affirmed the judgment, concluding that the plaintiffs failed to allege facts sufficient to support the conclusion that the defendants engaged in extreme and outrageous conduct towards them. The Appellate Court noted that the minor plaintiff's vulnerability and the defendants' position of authority were relevant to its analysis of the minor plaintiff's claim, but nevertheless concluded that neither the expulsion itself nor the manner in which it was carried out exceeded the bounds of civilized behavior. The court emphasized that there were no allegations that the son was expelled for being autistic, that the defendants encouraged bullying or that the expulsion letter was abusive or degrading. The plaintiffs appeal, and the Supreme Court

will decide whether the Appellate Court correctly determined that the trial court properly granted the defendants' motion to strike the plaintiffs' complaint for failure to state a claim of intentional infliction of emotional distress.

JOHN COUGHLIN *v.* CITY OF STAMFORD et al., SC 20319
Compensation Review Board

Heart and Hypertension Benefits Under General Statutes § 7-433c; Whether Plaintiff who Previously was Awarded § 7-433c Benefits for Hypertension was Required to File New Claim for Benefits for Coronary Artery Disease. General Statutes § 7-433c provides that members of municipal police or fire departments are eligible for benefits for death or disability caused by hypertension or heart disease, without needing to prove that the injury arose out of their employment. In 2011, while he was employed as a member of the defendant city of Stamford's fire department, the plaintiff was diagnosed with hypertension and his claim for § 7-433c benefits was accepted. In 2016, nearly three years after he retired from the fire department, the plaintiff was diagnosed with coronary artery disease, and he sought additional benefits under § 7-433c. The plaintiff, relying on a doctor's report, claimed that his coronary artery disease was a new manifestation of, or "flowed from," his hypertension, for which he had already filed a timely notice of claim. Accordingly, he claimed that he did not need to file another claim for benefits for the new injury. The Workers' Compensation Commissioner rejected the plaintiff's argument and denied his claim for § 7-433c benefits for coronary artery disease because it was a separate malady that was not diagnosed until after he had retired from the fire department. In reaching that conclusion, the commissioner relied on the Supreme Court's decision in *Holston v. New Haven Police Dept.*, 323 Conn. 607 (2016), in which the court held that hypertension and heart disease are treated as two separate diseases under § 7-433c. The plaintiff appealed to the Compensation Review Board (board), which disagreed with the commissioner's application of *Holston*, finding that the unchallenged medical report established that the plaintiff's coronary artery disease was compensable as a sequela, or subsequent manifestation, of his hypertension, as opposed to a distinct heart disease for which the plaintiff was obligated to file a timely new claim for § 7-433c benefits. The defendant city appeals, claiming that the board erred in finding that the plaintiff is entitled to benefits for his coronary artery disease as a sequela of his hypertension. The defendant argues that *Holston*

established that hypertension and heart disease are separate disease processes under § 7-433c and that other appellate precedent establishes that a plaintiff is not entitled to recover § 7-433c benefits for a condition or impairment of health that arose after the plaintiff's retirement.

KARLA WOLFORK, ADMINISTRATRIX (ESTATE OF DAEONTE WOLFORK-PISANI) *v.* YALE MEDICAL GROUP et al., SC 20344
Judicial District of New Haven

Torts; Medical Malpractice; Whether Trial Court Properly Granted Motion to Open Judgment of Dismissal; Whether Administrator of Estate Had Standing to File Motion to Open Judgment. Following her son's death, Karla Wolfork was appointed as the administratrix of his estate, and, thereafter, she commenced this medical malpractice action. Wolfork's attorney informed the trial court that their expert no longer supported the plaintiff's malpractice claims and, as a result, she would withdraw the case after obtaining permission from the Probate Court. The trial court ordered the parties to file all necessary paperwork by June 28, 2016, or the case would be dismissed. Also, around this time, the decedent's biological father, Damian Pisani, was appointed as co-administrator of the estate by the Probate Court. Wolfork successfully sought an extension of time to file the withdrawal to August 27, 2016, for purposes of scheduling a hearing with the Probate Court and Pisani to confirm that she could withdraw the action. When Wolfork did not withdraw the action by the extended deadline, the trial court dismissed it on September 29, 2016. On December 20, 2016, the Probate Court removed Wolfork as co-administrator and appointed Pisani as the sole administrator. Thereafter, on January 24, 2017, Pisani filed a motion to open the judgment of dismissal, arguing that, due to mistake, accident or fraud, he had been prevented from requesting a further extension of time to withdraw or pursue this action. He claimed that, after the Probate Court ordered Wolfork to turn over the case file to him for the hearing she requested, he expected Wolfork to ensure that the case remained open until the parties met with the Probate Court. He also asserted that he did not receive notice of the dismissal deadline and that he was not aware that Wolfork had failed to request further extensions of time. The defendants objected, claiming that Pisani did not have standing because he did not move to be added as a party or to be substituted as the plaintiff. The defendants also claimed that Pisani's motion to open should be denied because it was not "verified by the

oath of the complainant or his attorney,” as required by General Statutes § 52-212 (c). Pisani responded that § 52-212 was inapplicable because the court had not rendered a default judgment or a judgment of nonsuit. He claimed that General Statutes § 52-212a authorized the trial court to open the judgment within four months and did not require him to verify his motion to open. The trial court found that Pisani was prevented from filing the withdrawal by reasonable cause due to the proceedings in the Probate Court regarding the removal of Wolk as the co-administrator. As a result, the court granted Pisani’s motion to open the judgment and granted his motion to be substituted as the plaintiff in his capacity as administrator. The defendants appeal, claiming that the trial court improperly granted Pisani’s motion to open because he lacked standing, which deprived the trial court of jurisdiction, and because Pisani failed to verify his motion to open as was required by § 52-212. They further argue that Pisani failed to sufficiently demonstrate that a good cause of action existed at the time the action was dismissed and that he was prevented from prosecuting the action by mistake, accident, or other reasonable cause.

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*
