

SUPREME COURT PENDING CASES

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

STEPHEN W. SCHOLZ *v.* JUDA J. EPSTEIN, SC 20492
Judicial District of Fairfield

Attorneys; Immunity; Whether Defendant Attorney Had Absolute Immunity from Statutory Theft Claim Arising from Conduct during Judicial Proceedings. The plaintiff brought this action seeking to recover damages from the defendant attorney for alleged statutory theft arising from his conduct during a prior action involving the foreclosure of the plaintiff's property. The plaintiff alleged that the defendant, who brought the foreclosure action on behalf of Benchmark Municipal Tax Services, Ltd. (Benchmark), made false representations to the court in the course of the proceedings with the intent to deprive him of his property and to appropriate the property to Benchmark. The trial court granted the defendant's motion to dismiss the action for lack of subject matter jurisdiction on the ground that the absolute immunity afforded by the litigation privilege applied to shield the defendant from the plaintiff's claim of statutory theft. The plaintiff appealed, and the Appellate Court (198 Conn. App. 197) affirmed the judgment. The Appellate Court found that the plaintiff's statutory theft claim was more akin to a claim of fraud or defamation, to which the litigation privilege applies, than to a claim of vexatious litigation or abuse of process, to which it does not, because the statutory theft claim does not challenge the underlying purpose of the litigation but, rather, concerns the defendant's role as an advocate for his client. The Appellate Court noted that, like a claim of fraud, a claim of statutory theft does not contain the inherent safeguards against inappropriate retaliatory litigation that are contained in claims of vexatious litigation and abuse of process and that a claim of statutory theft does not contain the same type of stringent elements found in the claim of vexatious litigation that provide adequate protection against unwarranted litigation. The Appellate Court also noted that its holding furthers the public policy underlying absolute immunity of encouraging participation and candor in judicial proceedings, while at the same time limiting the exposure of attorneys to harassing and expensive litigation that would likely inhibit their freedom in making good faith decisions and have a negative effect on their ability to advocate zealously for their clients. The Appellate Court also noted that an array of alternatives to civil liability exists to deter an attorney from engaging in misconduct or to provide relief to a dissatisfied litigant in connection

with an attorney's alleged misconduct. The plaintiff filed a petition for certification to appeal, which the Supreme Court granted as to the question of whether, under the circumstances of this case, the Appellate Court correctly concluded that the defendant attorney enjoyed absolute immunity from the plaintiff's claim of statutory theft arising from the defendant's conduct during prior judicial proceedings.

WILLIAM MALDONADO et al. v. KELLY C. FLANNERY et al., SC 20522
Judicial District of Hartford

Damages; Whether Appellate Court Correctly Concluded That Trial Court Abused its Discretion in Ordering Additurs in Favor of Plaintiffs. The plaintiffs, William Maldonado and Geovanni Hernandez, brought this action seeking damages for injuries sustained in an automobile accident. The jury returned a verdict in favor of the plaintiffs and awarded economic damages of \$19,028.38 to Maldonado and \$11,864.94 to Hernandez. The jury did not award the plaintiffs noneconomic damages. The trial court granted the plaintiffs' motion for additur on the grounds that the verdict awarding economic damages but no noneconomic damages was internally inconsistent and that the jury could not have properly found that the plaintiffs were not entitled to awards for pain and suffering caused by the accident. The trial court ordered an additur for noneconomic damages of \$8,000 to Maldonado and \$6,500 to Hernandez. The defendants appealed from the ruling. The Appellate Court (200 Conn. App. 1) reversed, holding that the trial court abused its discretion in granting the plaintiffs' motion for additur. The Appellate Court found that although the trial court's memorandum of decision on the motion for additur describes the facts that the parties offered during trial, it lacks the necessary identification of the specific facts that led to its decision to order the additurs. The Appellate Court also noted that there is appellate precedent rejecting the notion that a jury that awards a plaintiff economic damages for medical treatment must also conclude that the plaintiff experienced compensable pain and suffering. The Appellate Court further found that, even if the trial court sufficiently identified facts in the record to support its order of additurs, it must conclude after conducting its own fact intensive analysis in the light most favorable to sustaining the verdict that the jury reasonably could have found that the plaintiffs' economic damages were compensable and that they failed to prove that they suffered noneconomic damages. The Appellate Court noted that conflicting and inconsistent evidence was presented during trial and that the jury was not required to believe the plaintiffs' testimony but, rather, could have determined that the plaintiffs lacked credibility.

The plaintiffs filed a petition for certification to appeal, which the Supreme Court granted as to the issue of whether the Appellate Court correctly concluded that the trial court had abused its discretion in ordering additurs in favor of both of the plaintiffs.

TAMARA DORFMAN *v.* JOSCELYN M. SMITH et al., SC 20556
Judicial District of Hartford

Absolute Immunity; Whether Trial Court Properly Concluded That Plaintiff’s Claims Against Defendant Insurer Were Barred by Absolute Immunity Because They Arose Out of Communications Made in Course of Judicial Proceedings. The plaintiff brought this negligence action against the named defendant, Joscelyn Smith, seeking damages for injuries she sustained in a motor vehicle accident. Subsequently, she cited in her insurer, Liberty Mutual Fire Insurance Company (Liberty Mutual), as a defendant, alleging breach of contract for its violations of the underinsured motorist coverage provisions of her automobile insurance policy (“UIM claim”). The plaintiff later withdrew the action against Smith after settling her claims against him. The plaintiff then amended her complaint to add claims against Liberty Mutual sounding in breach of the implied covenant of good faith and fair dealing, negligent infliction of emotional distress, and violations of the Connecticut Unfair Trade Practices Act based upon unfair insurance practices (“extra-contractual claims”). In support thereof, the plaintiff alleged that, although Liberty Mutual’s independent investigation established that Smith was 100 percent at fault for the accident, it filed an answer that asserted a special defense of comparative negligence and failed to either admit liability or certain facts that it knew to be true. The plaintiff argued that these portions of the answer violated General Statutes § 52-99 because they were “made without reasonable cause” and ultimately found to be “untrue.” The claims were bifurcated, and the UIM claim was tried to a jury that returned a verdict in the plaintiff’s favor. Liberty Mutual then moved to dismiss the plaintiff’s extra-contractual claims as jurisdictionally barred by the doctrine of absolute immunity because they were premised on communications made in the course of judicial proceedings that were covered by the litigation privilege. The trial court agreed and granted the motion to dismiss. The plaintiff appeals, claiming that the trial court erred in concluding that her extra-contractual claims were barred by the doctrine of absolute immunity. She argues that immunizing Liberty Mutual for conduct that violates § 52-99 is contrary to the public policy embodied by the statute and inconsistent with case law holding that courts have the power to sanction parties for

violating § 52-99. The plaintiff also argues that, contrary to the trial court's determination, her extra-contractual claims are the functional equivalent of vexatious litigation claims and therefore not barred by absolute immunity. Additionally, the plaintiff argues that the doctrine of absolute immunity is not applicable to her extra-contractual claims because they seek to impose liability upon Liberty Mutual for its improper use of the judicial system.

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.

*Jessie Opinion
Chief Staff Attorney*
