

## SUPREME COURT PENDING CASES

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

STATE OF CONNECTICUT *v.* DAREN Y., SC 20725  
*Judicial District of Tolland*

**Criminal; Admissibility and Sufficiency of Evidence; Statute of Limitations; Whether Evidence Was Sufficient to Prove Sexual Assault; Whether Defendant Waived Statute of Limitations Defense; Whether Evidence of Defendant’s Prior Misconduct Was Improperly Admitted; Whether Trial Court Erred in Declining to Review Psychiatric Records in Camera.** In separate cases later consolidated for trial, the defendant was charged with multiple counts of first- and fourth-degree sexual assault and risk of injury to a minor arising out of conduct vis-à-vis his now-adult children, D.Y., B.Y., and J.Y. Prior to trial, the defendant moved for an in camera review of his children’s psychiatric records. The trial court reviewed D.Y.’s records in camera but declined to release them on the ground that they were not relevant to D.Y.’s credibility. The court declined to review B.Y.’s and J.Y.’s records on the ground that the defendant had failed to offer any justification therefor other than the fact that B.Y. and J.Y. had been engaged in therapy. At the jury trial, the defendant’s children testified regarding the bases for the charged offenses. As proof of the defendant’s propensity for aberrant sexual behavior with respect to each child, the court admitted evidence of uncharged misconduct committed by the defendant, most of which consisted of the evidence of the allegations made by his children in the other consolidated cases. The defendant was convicted on all counts, but the court later vacated one of the charges of fourth-degree sexual assault as to J.Y., as it was a lesser included offense of the first-degree sexual assault conviction. Following sentencing, the defendant directly appealed to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). The defendant first claims that the state failed to present sufficient evidence to sustain his first-degree sexual assault conviction with respect to J.Y. or the vacated fourth-degree sexual assault conviction. At trial, J.Y. testified that the defendant used to blow “raspberries” against her belly and that on one occasion he instead “very deliberately blew in [her] crotch region over [her] clothes.” According to the defendant, the jury could not have reasonably concluded that he had made sexual contact with J.Y., as required to prove the assault charges. He next claims that the trial court should have dismissed, *sua sponte*, the charges relating to B.Y. because they were clearly time-barred and he

never expressly waived that defense. The defendant further claims that the court improperly admitted the uncharged misconduct evidence, arguing that the court failed to provide the jury with appropriate cautionary instructions and that the prejudicial effect of the evidence outweighed its probative value. Finally, the defendant claims that the court erred in declining to conduct an in camera review of B.Y.'s and J.Y.'s records in light of certain statements made by the children during forensic interviews, which he argues is sufficient to meet the low threshold required for in camera review. The defendant also requests that the Supreme Court conduct its own in camera review of D.Y.'s psychiatric records to determine whether the trial court properly declined to release them.

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STATE OF CONNECTICUT *v.* TREVOR M. OUTLAW, SC 20729  
*Judicial District of New Haven*

**Criminal; Jurors; Evidence; Prosecutorial Misconduct; Whether Trial Court Improperly Failed to Act after Observing Juror Asleep; Whether Evidence of Witnesses' Participation in Witness Protection Programs and of Coconspirator's Guilty Plea Were Improperly Admitted; Whether Prosecutor Improperly Commented on Defendant's Right to Jury Trial.** The defendant was charged with murder, conspiracy to commit murder, and two firearm offenses arising out of the shooting death of Gino Rodriguez in a hotel parking lot in Meriden. On the night of the shooting, Manasia Bennett and Freddy Hidalgo were dropped off at the hotel by Bennett's mother, Cheenisa Rivera and a man known as "Wolf." At trial, Hidalgo identified the defendant as Wolf and testified that, when he saw Rodriguez outside of the hotel, he told Bennett to call Rivera and warn her not to return because Rodriguez and the defendant were rival gang members and he was concerned about a potential altercation. Rivera also testified for the state, pursuant to a cooperation agreement whereby she agreed to plead guilty to conspiracy to murder Rodriguez in exchange for a fifteen-year prison sentence and the nolling of charges pending against her in several unrelated cases. She testified that, on the day of the shooting, she had asked Loretta Martin to book hotel rooms for her, the defendant, Bennett, and Hidalgo and that the defendant was in the car with Rivera when she dropped off Bennett and Hidalgo at the hotel. Martin, who also testified pursuant to a cooperation agreement, confirmed that she had booked the hotel rooms in exchange for crack. According to Rivera, as she began pulling out of the parking lot, the defendant suddenly fired a gun out of the

passenger side window, killing Rodriguez. During a recess on the first day of trial, the court noted that one of the jurors appeared to have been sleeping earlier in the day and advised defense counsel to monitor the juror for the rest of the day. At the end of the day, the prosecutor remarked that the juror had again been asleep during testimony, and defense counsel concurred that the juror had appeared to be nodding off. The court ultimately decided not to take any action after defense counsel voiced concern that removing the juror would alter the racial composition of the jury. The jury subsequently convicted the defendant of murder and the firearm offenses, and the court sentenced him to sixty-five years in prison. The defendant now appeals directly to our Supreme Court pursuant to General Statutes § 51-199 (b) (3). The defendant first claims that the trial court abused its discretion by failing to take any action to determine whether the sleeping juror was competent to remain on the jury. The defendant next claims that the court improperly permitted the state to elicit testimony on direct examination that Rivera's family and Martin had been placed in witness protection programs, where the defense had not opened the door to such questioning. He also claims that the court erroneously admitted, as substantive evidence of the defendant's guilt, Rivera's testimony that she had pleaded guilty to conspiracy. Finally, the defendant claims that his constitutional and statutory rights to a jury trial were violated when the prosecutor remarked during closing arguments that Rivera had taken responsibility for her actions by pleading guilty to conspiracy, which, in the defendant's view, improperly suggested to the jury that he should have likewise waived his right to a trial and pleaded guilty.

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STATE OF CONNECTICUT *v.* JACQUES CARTER, SC 20779

*Judicial District of Danbury*

**Criminal; Whether Absence of Carbon Dioxide Canister in BB Gun Rendered Gun Inoperable as Matter of Law; Whether Jury Was Improperly Permitted to Consider Legally Invalid Alternative Theory of Guilt; Whether Defendant's Right to Jury Unanimity Was Infringed Where Criminal Liability for Each Offense Was Premised on Having Violated One of Multiple Statutory Elements.** On a night in 2016, the defendant broke into the Danbury apartment of Consuela Riley. Riley's son, Christopher Latham, confronted the defendant and noticed that he was holding a "revolver type gun," which turned out to be a BB gun. Latham chased the defendant outside, jumped on him, and pried the gun away from him,

but the defendant was able to flee before the police arrived. The police recovered the gun and found it was loaded with several BB pellets but was missing a carbon dioxide (CO<sup>2</sup>) canister. Sergeant David Cooney was able to successfully test fire the gun after loading it with a CO<sup>2</sup> canister. The defendant was subsequently charged with, inter alia, home invasion in violation of General Statutes § 53a-100aa (a) (2) and first-degree burglary in violation of General Statutes § 53a-101 (a) (1), which offenses required the state to prove that he had been “armed with . . . a deadly weapon or dangerous instrument.” At the defendant’s jury trial, Cooney testified that, to load a CO<sup>2</sup> canister into the gun, one must remove the gun’s handle and turn a screw to push the canister into place. According to Cooney, the gun could not have fired pellets without a CO<sup>2</sup> canister installed. After the close of evidence, the defendant moved for a judgment of acquittal on the ground that the BB gun was inoperable without a CO<sup>2</sup> canister and therefore did not constitute a “deadly weapon,” defined as “any weapon, whether loaded or unloaded, from which a shot may be discharged.” The state countered that the lack of the canister merely rendered the gun unloaded. The trial court denied the motion, concluding that there was sufficient evidence for the issue to be submitted to the jury. The jury returned a general verdict of guilt on both charges. Following sentencing, the defendant appealed his convictions directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). The defendant first claims that the trial court erroneously assumed that a CO<sup>2</sup> canister is an element of the gun’s ammunition rather than a component of the gun itself and improperly left it to the jury to determine whether the gun was operable. The defendant further claims that the trial court violated his due process rights by permitting the jury to convict the defendant on the basis of a legally invalid theory. He argues that, because the gun could not be deemed a deadly weapon, the court, by including the “armed with . . . a deadly weapon or dangerous instrument” language in its jury instructions, gave the jury a legally invalid alternative basis for finding him guilty. Finally, the defendant claims that the trial court violated his federal constitutional right to jury unanimity as to the elements of the charged offenses because each count was premised on multiple violations of the alternative types of conduct prohibited by §§ 53a-100aa (a) (2) and 53a-101 (a) (1). Specifically, he argues that the statutory requirement that the state prove that he was armed with either a “deadly weapon or dangerous instrument” are separate offenses constituting separate elements such that there is a risk that the general verdict resulted from different jurors concluding that he committed different criminal acts.

STATE OF CONNECTICUT *v.* OSAFA WILLIAMS, SC 20812  
*Judicial District of Hartford*

**Criminal; Whether Trial Court Properly Admitted Expert Testimony Concerning Gunshot Residue; Whether Trial Court Properly Precluded Admission of Expert Testimony Analyzing Street Camera Video Footage; Whether Evidence Was Sufficient to Prove That Defendant Murdered Victim.** The defendant was charged with murder and criminal possession of a firearm in connection with the shooting death of Derrick Nichols in Hartford on Pavilion Street near the intersection with Wooster Street. At the defendant's trial, a witness for the state testified that she heard a sound like firecrackers and saw a flash inside a blue car that was parked near the intersection. The witness claimed that Nichols was first shot inside of the blue car and then shot again as he exited the car and pulled out his gun. The defendant admitted in a videotaped police interview that he was parked in his blue Acura near the intersection at the time of the shooting and claimed that, when he heard gunshots from behind his car, he fled the scene for his own personal safety. The defense theory at trial was that Nichols was shot by someone other than the defendant near Nichols' silver Honda, which was parked almost 100 feet behind the defendant's car. In support of that theory, the defense noted that the victim's gun, three spent shell casings and a bullet projectile were found on the street near Nichols' car. Additionally, the defendant offered testimony from his private investigator to analyze video footage from a street camera in the area introduced by the state, which the defendant claimed was grainy and difficult for a layperson to understand, and to offer the witness' opinion that it shows the defendant entering a blue car and then Nichols getting shot after walking past the blue car. The trial court, however, refused to allow the evidence, finding that, although it was characterized as expert testimony, the witness had no special expertise because he lacked prior familiarity with the individuals involved. Over the defendant's objection, the trial court allowed an expert witness from the state to testify about gunshot residue. Specifically, the expert witness testified that gunshot residue consists of a single particle consisting of lead, barium, and antimony that become fused together during a reaction that occurs when a gun is fired. The expert witness further testified that no particles containing all three elements were found but two-element particles consistent with gunshot residue and one-element particles commonly associated with gunshot residue were found on the defendant's person and in his car. After trial, the defendant was convicted as charged and sentenced to fifty years of incarceration.

The defendant appealed from his conviction directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that (1) the trial court improperly admitted the gunshot residue evidence where the prejudicial impact far outweighed the probative value; (2) the trial court abused its discretion and deprived him of his constitutional right to present a defense when it precluded his expert from providing video analytics testimony; and (3) the evidence was insufficient to prove that he murdered Nichols.

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PPC REALTY, LLC *v.* CITY OF HARTFORD, SC 20826  
*Judicial District of Hartford*

**Uniform Relocation Assistance Act (URAA); Whether Trial Court Properly Discharged Lien Placed by Defendant City on Plaintiff Landlord’s Building to Secure Repayment of Relocation Assistance Benefits Provided to Tenants Pursuant to URAA Following Fire-Related Condemnation of Building.** In March 2019, a fire caused extensive damage to a residential apartment building owned by the plaintiff, PPC Realty, LLC. The fire was started intentionally by a third party without any fault or negligence by PPC. Following the fire, the defendant city (city) determined that the building no longer complied with the city’s building code. The city therefore condemned the building and ordered the tenants to vacate their apartments. Pursuant to General Statutes §§ 8-268 and 8-270 of the Uniform Relocation Assistance Act (URAA), a city is required to provide relocation assistance benefits to “displaced persons,” including reimbursement of expenses incurred in moving to replacement housing and rental assistance. General Statutes § 8-267 (3) defines a “displaced person” as, inter alia, “any person who . . . moves as the direct result of code enforcement activities.” Further, §§ 8-268 and 270 make a landlord liable for the relocation assistance benefits provided by a city to displaced tenants and empower a city to place liens “on any real property owned” by the landlord “to secure repayment” of those benefits. In addition, § 8-270a provides that, if a landlord “fails to reimburse” a city for the relocation assistance benefits, the city “may bring a civil action” against the landlord “for the recovery of such payments.” In any such action, the landlord has “an affirmative defense” that “the displacement was not the result of the landlord’s violation of” General Statutes § 47a-7, which requires a landlord to comply with all “building and housing codes materially affecting health and safety.” Here, the city placed a lien of \$274,564.95, the amount of the relocation assistance benefits provided to PPC’s displaced tenants, on the building pursuant

to §§ 8-268 and 8-270. PPC then filed this application to discharge the lien. The trial court granted the application, ruling that the lien was invalid under the URAA because the displacement of PPC's tenants was not caused by the city's "code enforcement activities" based on PPC's violation of any building code but rather by arson. In addition, it ruled that PPC was entitled to a discharge of the lien based on the affirmative defense predicated on § 47a-7 and set forth in § 8-270a. The court rejected the city's contention that the legislature did not intend to permit such a defense to a lien by not providing for the defense in §§ 8-268 and 8-270 and explained that permitting the defense in a civil action based on § 8-270a but barring the same defense in response to a foreclosure based on the same underlying liability would lead to "bizarre" results. The city appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the city claims that the trial court erred in concluding that its lien was invalid under the URAA and argues in support thereof that the court erroneously concluded that the displacement of PPC's tenants was caused by the fire and was not the "direct result" of the city's subsequent code-enforcement activities. Further, contrary to the trial court's determination, the city asserts that the affirmative defense based on § 47a-7 and set forth in § 8-270a, which is applicable only to civil actions, does not apply to §§ 8-268 and 8-270.

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STATE OF CONNECTICUT *v.* RAIKES DELACRUZ-GOMEZ, SC 20828  
*Judicial District of Waterbury*

**Criminal; Whether Trial Court Correctly Admitted Uncharged Misconduct Evidence About Names of Outstanding Felony Charges from Unrelated Case in Defendant's Arrest Warrant; Whether Admission of Evidence that Violent Fugitive Task Force Arrested Defendant Was Not Unfairly Prejudicial.** The defendant was charged with assault of a public safety officer and interfering with an officer arising from an altercation between the defendant and officers from the Violent Fugitive Task Force (task force), who went to the defendant's residence to serve an arrest warrant for him that included charges of assault in the first degree and criminal possession of a firearm. As an officer attempted to handcuff the defendant, he lunged at the officer, causing him to fall into a nightstand and suffer serious injuries. During their testimony at trial, two of the officers identified by name the charges against the defendant contained in the arrest warrant. They also identified the name and purpose of the task force as the entity that executed the arrest warrant.

The jury found the defendant guilty on both counts, and the trial court sentenced him to eight years of incarceration followed by two years of special parole. The defendant appealed, claiming, *inter alia*, that the trial court improperly admitted uncharged misconduct evidence regarding the names of the felony charges in the arrest warrant, arguing that such evidence was unduly prejudicial because it was inflammatory, confusing, and would create a side issue about the facts underlying the charges in the warrant. He also claimed that the trial court improperly admitted testimony regarding the name and purpose of the task force, arguing that such evidence was unfairly prejudicial because it was likely to arouse the jurors' emotions and hostilities and portrayed the defendant as a violent and dangerous individual. The Appellate Court affirmed (218 Conn. App. 260) the judgment of conviction, finding that the trial court did not abuse its discretion by admitting the uncharged misconduct evidence regarding the names of the felony charges in the arrest warrant because such evidence was relevant to the jury's determination as to whether the officers were acting in the performance of their duties and whether the force used by the officers was reasonable. Moreover, the court determined that any prejudicial impact from the evidence was reduced by the fact that the trial court gave limiting instructions that evidence of the names of the felony charges could be considered only on the issue of the reasonableness of the force used by the officers and that the evidence was not admitted to demonstrate a criminal propensity on the part of the defendant. The Appellate Court also held that the trial court reasonably concluded that the evidence regarding the name and purpose of the task force was relevant to the issue of whether the officers were acting in the performance of their duties when they executed the arrest warrant. Moreover, the court found that the evidence was not unduly prejudicial as the name and purpose of the task force were not likely to arouse the emotions of the jurors any more than the officers' testimony about the nature of the felony charges contained in the arrest warrant. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that (1) the trial court had not erred in admitting uncharged misconduct evidence about the names of outstanding felony charges from an unrelated case in the defendant's arrest warrant and (2) the admission of evidence that the Violent Fugitive Task Force arrested the defendant was not unfairly prejudicial.

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D.S. v. D.S., SC 20830

*Judicial District of Stamford-Norwalk at Stamford*

**Dissolution; Alimony; Property Distribution; Whether Defendant’s Interest in Law Firm Retirement Plan Qualified as Marital Property Subject to Equitable Distribution; Whether Trial Court Abused Its Discretion in Awarding Alimony (1) Terminable at Defendant’s Sole Discretion and (2) Specific to Her Employment at Particular Law Firm.** The plaintiff husband commenced an action to dissolve his marriage to the defendant wife. At the time of the action, the plaintiff, despite his credentials and past employment, had not worked for an employer for over a decade and had no earned income. The defendant, in contrast, was a partner at a large international law firm, where the terms of her partnership agreement potentially entitled her to a future stream of retirement income. After years of litigation, the trial court rendered a dissolution judgment. It specifically determined in relevant part that the defendant’s potential stream of retirement income under her partnership agreement was not property subject to equitable distribution under General Statutes § 46b-81 because it was a mere expectancy and therefore did not meet the definition of property set forth in the statute. The trial court also concluded that the defendant was to pay alimony to the plaintiff but that her obligation “shall automatically terminate . . . when the defendant is no longer employed as an active partner of the [law firm].” The trial court further concluded that, if the defendant ceased to be employed by the law firm but received payments pursuant to her partnership agreement, she would instead pay 25 percent of her net after-tax income actually received to the plaintiff but that her obligation would “automatically terminate . . . when the defendant’s receipt of income . . . under the [partnership agreement] ceases.” The plaintiff appealed from the dissolution judgment, which the Appellate Court (217 Conn. App. 530) affirmed. The Appellate Court disagreed with the plaintiff that the trial court improperly excluded the defendant’s prospective interest in partnership agreement-based retirement benefits from the property distribution orders because it was “sufficiently concrete, reasonable, and justifiable” for purposes of § 46b-81. The court noted that the trial court had relied on the testimony of the defendant’s expert witness, who explained the variables and uncertainties on which the defendant’s receipt of retirement income would be conditioned and opined that the interest was “the epitome of a mere expectancy,” and concluded that it did not disagree with the trial court regarding the speculative nature of the interest in light of the facts adduced at trial. The Appellate Court further disagreed

with the plaintiff that the trial court's alimony order constituted an abuse of discretion. It noted the trial "court made several pertinent findings that find support in the record" regarding the parties' employment situations, the plaintiff's spending habits, and the basis for the breakdown of the parties' marriage and ultimately determined that the trial court "devised thoughtful and just alimony orders tailored to the parties' specific circumstances and abilities." The plaintiff has been granted certification to appeal from the Appellate Court's decision, and the Supreme Court will decide whether the Appellate Court correctly concluded (1) that the defendant's interest in her law firm's retirement plan was too uncertain to qualify as marital property subject to equitable distribution pursuant to § 46b-81 and (2) the trial court had not abused its discretion in awarding alimony that (a) was terminable at the defendant's sole discretion, and (b) was specific to the defendant's employment at one particular firm.

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FRANCES WIHBEY *v.* ZONING BOARD OF APPEALS OF THE PINE ORCHARD ASSOCIATION, SC 20839

*Judicial District of New Haven*

**Zoning; Nonconforming Use; Whether Short-Term Rentals of Single-Family Dwelling Constituted Permissible Use under 1994 Pine Orchard Association Zoning Regulations.** The plaintiff owns a single-family home (property) in a residential area in Branford to which the zoning regulations of the Pine Orchard Association (Pine Orchard) apply. The zoning regulations in effect at the time the plaintiff purchased the property (1994 regulations) provide for several permitted uses, including use as "[a] single-family dwelling." The 1994 regulations define a "single-family dwelling" as "[a] building designed for and occupied exclusively as a home or residence for not more than one family." The 1994 regulations in turn define "family" as "[o]ne or more persons related by blood, marriage or adoption." The terms "home" and "residence" are not defined. In 2018, Pine Orchard amended its zoning regulations (2018 regulations) to provide that "[a] single-family dwelling may not be used or offered for use as a [s]hort-[t]erm [r]ental [p]roperty," which is defined as "[a] residential dwelling unit that is used and/or advertised for rent for occupancy by guests for consideration for a period of less than thirty (30) continuous days." In 2019, a Pine Orchard zoning enforcement officer issued the plaintiff a letter ordering him to cease and desist from renting his property to short-term overnight guests in violation of the 2018 regulations. The plaintiff appealed to the defendant Pine Orchard Association Zoning

Board of Appeals (board), claiming that his use of the property for short-term rentals was a protected nonconforming use under the 1994 regulations. The board upheld the cease and desist order, concluding that short-term rentals were not permitted under the 1994 regulations and that, therefore, the plaintiff's use of the property was not a preexisting nonconforming use. The plaintiff then appealed from the board's decision to the trial court. The court sustained the plaintiff's appeal and reversed the board's decision, concluding that the plaintiff's use of the property was lawful under the 1994 regulations. Pine Orchard and two intervening homeowners appealed to the Appellate Court, arguing that the use of any property in Pine Orchard for short-term rentals has never been permitted and is inconsistent with the use of a property as a "home" or "residence," which terms the defendants argued implied some degree of permanence. The Appellate Court (218 Conn. App. 356) determined that the drafters of the regulations intended that these terms be accorded different meanings and that "residence" is best construed as meaning a place where someone lives for some period of time without the same sense of permanence associated with a home. According to the Appellate Court, so long as one family dwells in the property, any amount of time may constitute "some time" sufficient to make the property the family's residence. Consequently, the Appellate Court concluded that the trial court had properly held that short-term rentals were a lawful, permitted use consistent with the definitions of "single-family dwelling" and "family" in the 1994 regulations. Our Supreme Court thereafter granted the defendants certification to appeal, and it will now decide whether the Appellate Court correctly concluded that such short-term rentals constituted a permissible use of the subject property under the 1994 regulations.

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TENISHA O'REGGIO *v.* COMMISSION ON HUMAN RIGHTS AND  
OPPORTUNITIES et al., SC 20847  
*Judicial District of New Britain*

**Discrimination; Whether Framework Adopted in *Vance v. Ball State University*, 570 U.S. 421 (2013), For Deciding If Employer Is Vicariously Liable under Federal Law for Hostile Work Environment Created By Employee Applies to Claim Brought Under State Law.** The plaintiff appealed to the Appellate Court (219 Conn. 1) from the trial court's judgment affirming the decision of the Commission on Human Rights and Opportunities (CHRO) that her employer, the state Department of Labor (the depart-

ment), was not liable to her under the Connecticut Fair Employment Practices Act, General Statutes § 46a-51 et seq. (CFEPA), for the hostile work environment created by its employee, Diane Krevolin. The Appellate Court first assumed, without deciding, that the framework used to determine if an employer is liable for a hostile work environment created by its employee for claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Title VII), applies to claims brought under CFEPA. Under that framework, an employer is strictly liable for actions of a supervisor, which the United States Supreme Court defined in *Vance v. Ball State University*, 570 U.S. 421, 424 (2013), as one “empowered by the employer to take tangible employment actions against the victim,” but the employer can be held liable for the actions of a plaintiff’s coworker only if it was negligent. The plaintiff conceded on appeal that she could not prove negligence by the department to satisfy the coworker theory of liability or that Krevolin’s responsibilities met the *Vance* definition of supervisor, but she argued that a broader definition of supervisor should be used for CFEPA claims that includes employees such as Krevolin who control the day-to-day conditions of their subordinate’s work. The Appellate Court held that the *Vance* definition of supervisor is appropriate for distinguishing between the coworker and supervisor theories of liability for CFEPA claims. The Appellate Court noted that federal courts have applied the *Vance* definition of supervisor to CFEPA claims, and our state courts have consistently looked to federal precedent for guidance in interpreting antidiscrimination statutes and have interpreted CFEPA differently than Title VII only where there is clear evidence of a contrary legislative intent. The Appellate Court found that the plaintiff did not present any evidence to suggest that our legislature intended that the term supervisor be more broadly construed for CFEPA purposes, and the fact that CFEPA is remedial in nature and required to be construed to effectuate its beneficent purpose was not sufficient to reject federal guidance. The Appellate Court also noted that the plaintiff failed to address the reasons, which it found compelling, why *Vance* rejected the broader definition of supervisor set forth in the United States Equal Employment Commission’s Enforcement Guidance, which tied supervisor status to the ability to exercise significant direction over another’s daily work. The Appellate Court, accordingly, affirmed the trial court’s judgment in favor of the department. The plaintiff sought certification to appeal, which the Supreme Court granted as to the question of whether the Appellate Court correctly concluded that the legal standard adopted by the United States Supreme Court in *Vance* applied to the plaintiff’s claim brought under

CFEPA that the department was vicariously liable for the hostile work environment created by one of its employees.

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NEMS, PLLC *v.* HARVARD PILGRIM HEALTHCARE OF  
CONNECTICUT, INC., SC 20914  
*United States District Court for the District of Connecticut*

**Insurance; Whether Connecticut’s Surprise Billing Law (SBL) Requires Defendant to Reimburse Out-of-Network Health Care Providers at Greatest of Three Amounts Allowed and Recover Any Deductible, Copayment, or Coinsurance from Insured; If Not, Whether Defendant’s Reimbursement Practice Violates SBL; Whether CUTPA Claim Can Be Brought for Actions That Do Not Violate CUIPA but Purportedly Violate SBL.** The plaintiff provides emergency medicine physicians to hospitals throughout Connecticut. It brought this action asserting claims for CUTPA based on violations of Connecticut’s Surprise Billing Law (SBL), General Statutes § 38a-477aa, CUIPA, and violations of the Unfair Billing Practices Act, General Statutes § 20-7f (b), arising from the defendant insurer’s failure to properly pay for medical services provided to patients who were insured by the defendant. The plaintiff alleged that the defendant refused to pay the difference between the in-network rate and the customary and reasonable rate set forth in the FAIR Health database for services rendered and, instead, passed those differences on to the patient as amounts owed. The plaintiff further alleged that the defendant’s action has effectively prevented it from recovering the outstanding balance because any attempt to collect the balance would constitute an unfair trade practice under § 20-7f (b). After the defendant removed the action to the United States District Court for the District of Connecticut, the parties cross-moved for summary judgment. The district court observed after a hearing that this action “presents two . . . unsettled areas of Connecticut law. The first, how to interpret the [SBL] and what the statute requires of both insurance providers and healthcare providers . . . . The second is whether a party can maintain a CUTPA claim for a violation of a statute that has not expressly been designated a violation of CUIPA, but that nevertheless regulates insurance conduct.” Finding no binding Connecticut authority, the district court certified the following questions, which the Supreme Court accepted pursuant to General Statutes § 51-199b: 1. Does Connecticut’s SBL, § 38a-477aa (b) (3) (A), which provides that “[i]f emergency services were rendered to an insured by an out-of-network health care provider, such health care provider may

bill the health carrier directly and the health carrier shall reimburse such health care provider the greatest” of three amounts, require an insurer to fully reimburse an out-of-network health care provider at the greatest of the three amounts for emergency services rendered to its insureds, and then later recover any applicable deductible, copayment, or coinsurance directly from the insured? 2. If not, is the defendant’s practice of paying the plaintiff only that amount that exceeds the insured’s in-network deductible, copayment, or coinsurance, and leaving the plaintiff to recover the remaining amount directly from the insured, regardless of whether such remaining amount is greater than the amount the insured would have been personally responsible to pay had they visited an in-network provider, a violation of the SBL? 3. Under any interpretation of the SBL, can a plaintiff successfully maintain an action under CUTPA, for actions that do not violate CUIPA, but purport to violate the Surprise Billing Law, because the Surprise Billing Law regulates a specific type of insurance related conduct, under *State v. Acordia*, 310 Conn. 1, 73 A.3d 711 (2013)?

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CENTRIX MANAGEMENT CO., LLC *v.* DONALD FOSBERG, SC 20927  
*Judicial District of New Britain*

**Summary Process; Attorney’s Fees; Whether Cap on Attorney’s Fees Recoverable by Landlord under Provision of Lease Agreement Also Applied to Tenant Seeking Prevailing Party Attorney’s Fees Under General Statutes § 42-150bb in Summary Process Action.** The plaintiff, Centrix Management Co., LLC, owns an apartment complex on Spring Street in New Britain that is comprised of 150 rental units. The plaintiff leases an apartment to the defendant, Donald Fosberg, who is an eighty-one year old veteran with mobility limitations, related health issues, and a limited income. The plaintiff brought this summary process action seeking to regain possession of the apartment based on allegations that the defendant violated the parties’ lease agreement by failing to properly remove waste and by creating a nuisance. The trial court rendered a judgment of possession in favor of the defendant, concluding that the plaintiff failed to meet its burden of proof as to the alleged violations. The defendant subsequently filed a motion for attorney’s fees pursuant to General Statutes § 42-150bb in which he requested \$6,622.15, consisting of approximately thirty hours of work by the Connecticut Veterans Legal Center at a rate of \$216.41 per hour. The statute allows a consumer to recover attorney’s fees from a commercial party when the consumer successfully defends an action based on a lease that provides for attorney’s

fees for the commercial party and provides that “the size of the attorney’s fee awarded to the consumer shall be based as far as practicable upon the terms governing the size of the fee for the commercial party.” The parties’ lease includes a provision that allows the plaintiff to recover “reasonable attorney’s fees, but only up to a maximum amount of \$750, and costs incurred.” The plaintiff acknowledged that the defendant is within his rights as the prevailing party to seek attorney’s fees under § 42-150bb because of the attorney’s fees provision contained in the lease but objected to the amount of the fees sought, arguing that the \$750 limitation on the amount of attorney’s fees that it may recover under the lease should also apply to the defendant. The trial court disagreed, finding that applying the limitation to the defendant as well might provide for reciprocity but would violate the intent of, and public policy behind, the statute by failing to bring true parity to the consumer and commercial parties. The trial court noted that the case involved a contested summary process matter that was tried to the court over two days and involved multiple witnesses and several special defenses. The trial court found reasonable counsel fees under the circumstances to be \$3,500 and awarded the defendant that amount payable to the Connecticut Veterans Legal Center. The plaintiff appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). On appeal, the plaintiff claims that the trial court erred in (1) awarding the defendant an amount of attorney’s fees under § 42-150bb that exceeded the \$750 limit in the parties’ lease, (2) considering extra-textual evidence and legislative history as to the meaning and the intent of § 42-150bb where the language of the statute is unambiguous, and (3) finding that an award of \$750 was impracticable.

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ROBERT ESPOSITO et al. v. CITY OF STAMFORD et al., SC 20928  
*Compensation Review Board*

**Workers’ Compensation; Whether Compensation Review Board Correctly Concluded Decedent’s Entitlement to Permanent Partial Disability Benefits Did Not Vest Before His Death; Whether Respondent is Entitled to Credit Against Permanent Partial Disability Benefits for Total Disability Benefits Already Paid to Decedent; Whether Decedent’s Wife is His Presumptive Dependent and Therefore Entitled to Permanent Partial Disability Benefits.** In 1982, Robert Esposito (decedent) was employed as a police officer by the respondent, the city of Stamford, when he sustained compensable injuries to both eyes from a fall. He subse-

quently began receiving total disability benefits under General Statutes § 31-307. In 1998, the respondent filed a form 36 seeking to contest the decedent's continued entitlement to total disability benefits. On June 9, 1998, the trial commissioner issued a decision finding that the decedent was still totally disabled and ordered the respondent to continue to pay total disability benefits (1998 award), which the respondent did until the decedent passed away on November 7, 2020. Roseann Esposito (claimant) and the decedent were married in 1974, divorced in 1992, remarried in 2010, and remained married until his death. The claimant filed a claim for permanent partial disability benefits pursuant to General Statutes § 31-308 (b) as the surviving spouse and sole presumptive dependent of the decedent. In adjudicating this claim, the administrative law judge (ALJ) construed the 1998 award as a finding of maximum medical improvement and therefore determined that the decedent's permanent partial disability benefits vested no later than June 9, 1998. The ALJ also determined, however, that the respondent was entitled to a credit for the total disability payments made to the decedent after the June 9, 1998 award against the permanent partial disability benefits owed to the claimant, and he found that the credit was greater than the permanent partial disability benefits owed. The ALJ therefore concluded that no permanent partial disability benefits were owed and dismissed the claim. The claimant appealed to the Workers' Compensation Review Board (board), and the board affirmed the dismissal on the alternative ground that the decedent's entitlement to permanent partial disability benefits never vested. The board noted that the 1998 award was devoid of any findings pertaining to the decedent's entitlement to permanent partial disability benefits, as there was no evidence that a permanency rating was ever sought or that a medical professional ever deemed the decedent to have reached maximum medical improvement. The board therefore concluded that it was improper to construe the 1998 award as a finding that the decedent had reached maximum medical improvement and that his permanent partial disability benefits thereby vested in June 1998. The claimant appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the claimant alleges that the board erred in rejecting the ALJ's conclusion that the decedent's entitlement to permanent partial disability benefits vested before his death. If she prevails on that claim, the claimant also alleges that the board erred in failing to reverse the ALJ's conclusion that the respondent was entitled to a credit against the vested permanent partial disability benefits for the total disability benefits that it paid after the June 9, 1998 award. Finally, the claimant alleges that the board erred



by failing to address the issue of whether the claimant is the decedent's presumptive dependent and therefore entitled to the vested permanent partial disability benefits.

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SEAN MURPHY *v.* BETH ROSEN, SC 20950  
*Judicial District of Waterbury*

**Defamation; Whether Trial Court Properly Granted Anti-SLAPP Special Motion to Dismiss Plaintiff's Defamation Claim Based on Defendant Calling Plaintiff a "White Supremacist" on Town Facebook Page Because Defendant Proved That She Was Exercising Her Rights of Free Speech and Association and Plaintiff Failed to Demonstrate Probable Cause That He Would Prevail.** The parties engaged in contentious political discussion on the town of Southbury's Facebook page after town officials published a joint statement on the page on June 3, 2020, in response to the killing of George Floyd. In the course of their exchange of comments on the page, the defendant called the plaintiff a "white supremacist." The plaintiff thereafter filed this defamation action, alleging that the defendant's comments were false, made with actual malice, and harmful to his personal and political reputation. In response, the defendant filed a special motion to dismiss this action under General Statutes § 52-196a, the anti-strategic lawsuit against public participation (anti-SLAPP) statute. The statute provides in relevant part that a trial court shall grant a special motion to dismiss an action if the defendant can prove by a preponderance of the evidence that the complaint is based on the defendant's exercise of their federal or state constitutional right of association, free speech, or to petition the government in connection with a matter of public concern, unless the plaintiff can demonstrate that there is probable cause that they will prevail on the merits of the complaint. The trial court granted the special motion to dismiss. It determined that the defendant had proven by a preponderance of the evidence that she had been exercising her rights of free speech and association where "it is uncontested that the defendant made her comments as part of a heated political debate taking place in real time on an online public forum regarding an official statement issued by three town officials following the tragic and highly publicized death of George Floyd." The trial court also determined that the plaintiff had not demonstrated that there was probable cause that he would prevail on the merits of his defamation claim because the comments at issue were nonactionable statements of opinion rather than actionable defamatory statements of fact. The trial court posited that the exchange

between the parties was “quintessentially political” and “extremely heated and hyperbolic” in nature, such that “no reasonable jury could conclude that the defendant’s comments constituted anything other than an expression of her opinion of the plaintiff based on her own observations and interactions with him.” It also determined “the overall tone and tenor of the online debate . . . negates the conclusion that the defendant was intending to convey an objective fact about the plaintiff . . . or . . . implying the existence of other undisclosed facts that supported her opinion.” The plaintiff filed this appeal from the trial court’s judgment of dismissal in the Appellate Court, and the Supreme Court transferred this appeal to its docket in accordance with General Statutes § 51-199 (c). The Supreme Court will decide whether the trial court properly granted the defendant’s special motion to dismiss under the anti-SLAPP statute where the plaintiff makes claims challenging the trial court’s conclusions that the defendant proved by a preponderance of the evidence that the comments at issue were based on her exercise of her rights of free speech and association and that the plaintiff failed to demonstrate probable cause that he would prevail on his defamation claim against the defendant.

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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.*

*Jessie Opinion  
Chief Staff Attorney*

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