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.* EDWIN FRANQUI, SC 21014
Judicial District of Hartford

Criminal; Whether Evidence Sufficient for Conviction of Conspiracy to Commit Murder, Accessory to Murder and Accessory to First Degree Assault with Firearm; Whether, Without Strong Collaboration, Due Process Permits Conviction Based on Prior Out of Court Inconsistent Statements Regarding Identification; Whether Excited Utterance Exception to Hearsay Rule Should Be Abrogated. The defendant was charged with conspiracy to commit murder, accessory to murder and accessory to assault in the first degree stemming from an incident in which Junny Lara-Velasquez was shot to death while driving his motor vehicle and his back seat passenger was also wounded. Lara-Velasquez's girlfriend, Dayzani Ortiz, was riding in the front seat. She grabbed the steering wheel and tried unsuccessfully to stop the vehicle, but it ultimately crashed into a building in West Hartford. Surveillance video showed an Infiniti driving in tandem with Lara-Velasquez's vehicle in the wrong lane just before Lara-Velasquez's vehicle veered off the road into the building. Minutes after the incident, Ortiz told responding West Hartford police officer Michael Rousseau that "ATM" and "Cama," which are the street names for the defendant and his brother, were responsible for the shooting and that they were in an Infiniti. Later that day, Ortiz gave a sworn written statement at the police station that she saw the defendant in the driver's seat of the Infiniti and that Cama was in the passenger seat pointing a gun at them. At trial, however, while Ortiz testified that she had told the police that the defendant and Cama were involved in the incident, she also stated at certain points that she could not see the gun and was not sure who the gunman was and, at other points, that Cama was the shooter and that she could not see the driver. Officer Rousseau was permitted to testify under the excited utterance exception to the hearsay rule as to the statement made by Ortiz at the crime scene. Rousseau also was permitted under *State* v. *Whelan*, 200 Conn. 743 (1986), to read Ortiz's written statement into the record. *Whelan* permits the substantive use of prior written inconsistent statements signed by a declarant who has personal knowledge of the facts stated, if the declarant is subject to cross-examination at trial. There was also testimony at trial that the Infiniti belonged to the defendant and Cama and that, in the hours before the shooting, there was a dispute between the defendant,

Cama and Lara-Velasquez, after which Cama stated that he was going to shoot Lara-Velasquez. A jury convicted the defendant as charged, and the defendant appealed his conviction directly to the Supreme Court pursuant to General Statutes § 51-199. On appeal, the defendant claims that there was insufficient evidence to convict him because Ortiz's *Whelan* statement and her excited utterance did not provide the factual support necessary to find that he was the driver of the car from which the murder was committed. The defendant claims, in the alternative, that the Supreme Court should (1) reverse his conviction either by holding that, without strong corroboration, due process does not permit a conviction based on prior out of court inconsistent statements regarding identification or by overruling *Whelan* or (2) exercise its supervisory authority to abrogate the excited utterance exception to the hearsay rule because its underlying assumption is not supported by empirical evidence and then reverse his conviction based on insufficient evidence.

STATE OF CONNECTICUT *v.* L.M., SC 21032
Judicial District of New Haven

Criminal; Whether Burden Improperly Placed on Defendant to Show That Joinder of Cases Was Inappropriate; Whether State Improperly Allowed to Bolster Lay Witness's Credibility Through Hypothetical Questions Posed to Expert Witness. The defendant was charged with both sexual assault in the first degree and risk of injury to a child in two separate informations. One case concerned allegations that, sometime between October, 2020, and June, 2021, the defendant engaged in inappropriate sexual contact with his daughter, I.C., during a visit at his home when she was eight years old. I.C. claimed that, when she was showering, the defendant washed her body even though she did not need or want him to do so and that he put his finger in her genital area under the guise of checking to see if it was clean. The other case concerned allegations that, sometime between February 2011, and December 2012, the defendant engaged in inappropriate sexual contact with J.P., a nonrelative, when he was visiting her mother at their home when J.P. was approximately eight years old. J.P. claimed that she was left alone with the defendant when her mother had to take a friend to the hospital after he was injured from a fall. J.P. claimed that she was sitting on the couch with the defendant when he asked to see her genital area, made a flattering remark regarding its appearance, and then put his fingers inside of it. The trial court granted the state's motion for joinder of the cases for trial, finding that the evidence in the cases was cross admissible as propensity evidence. The court found that there were highly pertinent similarities in the manner in which the alleged abuses

were committed, in the ages of the girls and in other important factors surrounding the conduct. The court found that the only factor that could even arguably weigh against joinder was remoteness, but that caselaw established that a period of eight "or so years" is not so remote as to warrant a conclusion that the evidence is not cross admissible. The court further found that the propensity evidence was not more prejudicial than probative and that the jury would be able to follow its instructions and handle the evidence fairly under all of the circumstances. At trial, a clinical psychologist testified as to the behavioral characteristics of sexually abused children and stated that there are common patterns that children may experience in relation to their abusers, one of which is "grooming" behavior in which the abuser seeks to ingratiate the child. The state asked the psychologist if, hypothetically, it would be considered grooming behavior if the sexual abuser (1) tried to engage a child into complying by referring to the same manner of sexual abuse of another child, e.g., a sibling, or (2) gave a child gifts with the condition that the child may only play with the gifts at the abuser's home. The psychologist answered in the affirmative as to the first question and, as to the second question, responded that such conduct could be an example of grooming but that there could also be an innocent explanation. There was testimony at trial from J.P. that the defendant told her that what they were doing was okay and that he had done the same thing with her sister and had told her mother about it, and I.C.'s mother testified that the defendant gave I.C. gifts that she could only use in his home. The jury found the defendant guilty as charged in both informations. The defendant appealed directly to the Supreme Court pursuant to General Statutes § 51-199. On appeal, the defendant claims (1) that, in granting the state's motion for joinder, the trial court improperly placed the burden on him to show that joinder was inappropriate and (2) that the trial court improperly permitted the state's expert to bolster the lay witnesses' credibility by commenting on purported hypothetical questions that specifically tracked the facts testified to by those witnesses.

STATE OF CONNECTICUT *v.* ANTHONY V., SC 21050
Judicial District of New Haven

Criminal; Whether Appellate Court Correctly Concluded That It Was Plain Error Not to Instruct on General Intent When Defendant Was Charged with Manslaughter in the First Degree with a Firearm and His Theory of the Case Was That His Conduct Was Accidental. On October 17, 2020, the victim sustained a fatal gunshot wound to the head in the bathroom of the apartment that she shared with the defendant, with whom she was romantically

involved. The defendant was arrested and charged with manslaughter in the first degree with a firearm in violation of General Statutes §§ 53a-55 (a) (3) and 53a-55a. General Statutes § 53a-55a provides in relevant part that "a person is guilty of manslaughter in the first degree with a firearm when he commits manslaughter in the first degree as provided in section 53a-55, and in the commission of such offense he uses, or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a . . . firearm," while § 53a-55 (a) (3) provides in relevant part that "a person is guilty of manslaughter in the first degree when . . . under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person." The defendant's theory of the case was that he was cleaning his loaded gun in the bedroom of the apartment when he decided to go to the bathroom to get napkins for the task and, while he was walking towards the bathroom with the gun in his hand, he tripped and fell forward, inadvertently striking the head of the victim, who was sitting on the toilet, and causing the gun to accidentally discharge. The state, however, claimed at trial that the defendant and the victim were having an argument when the defendant intentionally pressed the muzzle of the gun to the victim's head and that the defendant's reckless conduct, evincing an extreme indifference to human life, created a grave risk of death to the victim and thereby caused her death. The jury found the defendant guilty of manslaughter in the first degree with a firearm, and he appealed his conviction to the Appellate Court (227 Conn. App. 281), which reversed and remanded the case for a new trial. The Appellate Court did not agree with the defendant that the evidence was insufficient to support his conviction but did agree with him that the trial court's failure to instruct to instruct the jury on general intent constituted plain error. The Appellate Court observed that the mens rea element of the manslaughter in the first degree with a firearm charge required proof that the defendant had the general intent to engage in conduct that evinced an extreme indifference to human life, created a grave risk of death to the victim, and thereby caused her death and that the state accordingly bore the burden of proving that the defendant acted volitionally to use the gun in the commission of the offense by intentionally placing it against the victim's head. The jury instructions, however, made no express reference to the general intent requirement and in fact made no reference to intent at all. The Appellate Court agreed with the defendant that the jury could not have appreciated the significance of his theory of the case, and could have found him guilty of accidental or involuntary as opposed to volitional or intentional conduct, without an instruction regarding the general intent requirement. The Appellate Court further rejected the

state's argument that the trial court's instruction on the element of recklessness was sufficient to inform the jury of the general intent requirement. It noted that the critical issue for the jury was whether the defendant intentionally pressed the muzzle of the gun against the victim's head before she was shot or whether the gun was accidentally discharged when the defendant tripped and fell, and it determined that, "when, as here, there is evidence to support the defendant's contention that the conduct resulting in the victim's death was accidental, an instruction on general intent that fully explains the requirement of volitional or deliberate conduct as distinguished from conduct that is inadvertent or accidental is vital to a fair trial lest the jury find the defendant guilty on the basis of such unintentional conduct." The Appellate Court concluded that the trial court's charge failed to meet the fundamental requirements of clearly, accurately, and completely instructing the jury on the pertinent principles of law and the essential elements of the crime, such that the defendant was deprived of a fair trial and a reasonable verdict. The Supreme Court granted the state certification to appeal from the Appellate Court's judgment, and it will decide whether the Appellate Court correctly concluded that it was plain error not to instruct on general intent when the state charged the defendant with manslaughter in the first degree with a firearm in violation of General Statutes §§ 53a-55 (a) (3) and 53a-55a (a), and the defendant's theory of the case was that his conduct was accidental.

STATE OF CONNECTICUT *v.* DAVID D. ROBERTS, SC 21061
Judicial District of New Britain

Criminal; Plea Canvass; Waiver of Constitutional Rights; Whether the Appellate Court Properly Held that Defendant Knowingly, Voluntarily, and Intelligently Waived His Constitutional Rights. In September, 2020, the defendant cocked and aimed a shotgun at a group of individuals renting his neighbor's property, called them racial slurs, and, using expletives, told them to leave. He subsequently left a voicemail message for the owner of the property "that the war was on if he found out that there would be more people of color renting at that residence." The defendant was arrested and charged with various crimes. In January, 2022, pursuant to a plea agreement, the defendant appeared in court and pleaded guilty to certain charges. During the plea canvass, the trial court asked him whether his attorney had explained the constitutional rights that he was waiving by pleading guilty, although the court did not identify any specific constitutional rights. The defendant responded in the affirmative but, prior to sentencing, filed a motion to withdraw his guilty pleas. The defendant

argued that he had not knowingly, voluntarily, and intelligently pleaded guilty because he had not expressly waived his constitutional rights against self-incrimination, to a jury trial, and to confront his accusers, as outlined by United States Supreme Court's decision in *Boykin* v. *Alabama*, (395 U.S. 238). In *Boykin*, the court held that a waiver of those three federal constitutional rights cannot be presumed by a "silent record." Here, the state argued that the plea canvass was sufficient under *Boykin* because it substantially complied with Practice Book § 39-19 and because the defendant affirmed during the canvass that his attorney had explained the constitutional rights that he would be waiving. The trial court denied the defendant's motion to withdraw on the ground that the plea canvass substantially complied with § 39-19, and he was sentenced to six years of incarceration, execution suspended after nine months, followed by three years of probation. The defendant subsequently appealed to the Appellate Court (227 Conn. App. 159), which affirmed the conviction after reasoning that *Boykin* does not require "any specific canvass, or talismanic words." The court reasoned that "the record as a whole" reflected that the defendant had knowingly, voluntarily, and intelligently waived his constitutional rights because he affirmed during the canvass that his attorney had explained to him "all the constitutional rights" that he was waiving. The Appellate Court concluded that the defendant therefore "understood all of the implications of his guilty plea[s]" such that they were knowing, intelligent, and voluntary. The Supreme Court granted defendant's petition for certification as to whether the Appellate Court correctly concluded that the trial court had properly determined the defendant's plea canvass adequately established that he knowingly, voluntarily, and intelligently waived his constitutional rights. The defendant argues that the Appellate Court incorrectly determined that his guilty pleas were knowing, voluntary, and intelligent because he was not specifically advised of the constitutional rights pursuant to *Boykin*, which the defendant argues sets a federal constitutional minimum that every defendant who pleads guilty be informed that he or she is waiving certain specific constitutional rights. The defendant further argues that the Appellate Court improperly placed the burden on him of proving that he did not knowingly, voluntarily, and intelligently waive his constitutional rights. He argues that "the record is literally silent" as to "what, if anything, the defendant had been told" about his constitutional rights, and, furthermore, that deficits in the defendant's plea canvass cannot be cured by his "willingness to plead guilty."

ROBERT S. WALTON, IV *v.* DEEPA B. WALTON, SC 21094
Judicial District of Stamford-Norwalk

Dissolution; Property; Discovery; Whether Spouse in Divorce Action Was Required to Disclose to Other Party Appraisal of Marital Residence Spouse Had Obtained. The parties were married in 2003 and thereafter purchased real property in Greenwich on which they built the marital residence. In 2019, the plaintiff filed the present dissolution action against the defendant. Pursuant to a stipulated court order, the defendant remained in possession of the residence during the pendency of the action. In June, 2021, the plaintiff filed a disclosure of expert witness stating his intention to introduce at trial the testimony of a real estate broker, James B. Hoffman, who would testify that the fair market value of the residence at that time was $1,500,000. Shortly thereafter, the defendant disclosed James J. Tooher, a real estate appraiser, who would testify to a fair market value of $1,160,000. At trial, Tooher provided an updated appraisal of $1,265,000. The trial was subsequently continued to a later date. Prior to the resumption of the proceedings, the plaintiff filed a motion seeking access to the marital residence to permit an appraiser, Stephen Correll, to perform an appraisal of the property, which the court granted. Following the appraisal, the defendant served the plaintiff a request to produce Correll's report. At the next trial date, the plaintiff objected to the request for production on the ground that it was protected work product. He relatedly argued that, because he did not seek to call Correll to testify or introduce his report into evidence and the defendant had not demonstrated a need for it, it was not subject to disclosure under Practice Book § 13-4 (f), which governs the discoverability in civil actions of information held by another party's nontestifying expert. The defendant countered that the report was subject to disclosure because the plaintiff had not established that it was protected work product. The trial court ruled from the bench that it was persuaded by the plaintiff's position and declined to order the plaintiff to produce the report. The plaintiff proceeded to present the testimony of Hoffman as his expert witness. In its memorandum of decision dissolving the parties' marriage, the court noted that Hoffman had testified at trial that the property's value had by that time increased to over $1.6 million and that Tooher had not provided an updated valuation. The court ultimately found the fair market value of the marital property to be $1.4 million and ordered that it be listed for sale and the proceeds split equally between the parties. On appeal to the Appellate Court (227 Conn. App. 251), the defendant claimed, inter alia, that the trial court improperly denied her request for production of Correll's report. In addition to disputing that the report constituted protected work product, the defendant argued that the trial court's ruling

was contrary to a long-standing policy in favor of full and frank financial disclosures in divorce cases as embodied in such rules of practice as Practice Book § 25-32, which provides in relevant part that, "upon request by a party involved in an action for dissolution of marriage . . . opposing parties shall exchange [certain documents] within sixty days of such request" including "any written appraisal concerning any asset owned by either party." The Appellate Court declined to address the defendant's arguments, concluding that she could not prevail on her claim because she failed to address in her appellate arguments "the basis of the [trial] court's ruling, namely, that the appraisal was protected from disclosure by Practice Book § 13-4 (f)." Accordingly, the Appellate Court affirmed the trial court's judgment. The Supreme Court thereafter granted the defendant certification to appeal, limited to the issue of whether the Appellate Court properly upheld the trial court's determination that the plaintiff was not required to disclose Correll's report to the defendant.

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
EX REL. WENDY PIZZOFERRATO et al. *v.*
THE MANSIONS, LLC, et al.,
SC 21111/SC 21113
Judicial District of Tolland

Discriminatory Housing Practices; General Statutes § 46a-64c; Whether Appellate Court Correctly Concluded That Trial Court Applied Incorrect Legal Standard for Determining Whether Accommodation is "Necessary" for Use and Enjoyment of Dwelling; Whether Plaintiff Had "Mental Disability" Within Meaning of General Statutes § 46a-51 (20). Wendy and Rudy Pizzoferrato (Pizzoferratos) applied to rent an apartment in a complex owned by The Mansions, LLC (Mansions). They sought a waiver of the Mansions' "no pets" policy for their two dogs as an accommodation for Wendy's anxiety disorder. The Mansions' director of operations approved the Pizzoferratos' accommodation request for only one dog and sought additional information from the Pizzoferratos, including an "explanation" from Wendy's therapist about "why [Wendy's] anxiety requires not one, but two support animals." The Pizzoferratos thereafter canceled their lease and, together with the Commission on Human Rights and Opportunities (commission), brought this action against, inter alia, the Mansions. The Pizzoferratos alleged that they were discriminated against on the basis of Wendy's disability and that the Mansions denied their request for a reasonable accommodation in violation of General Statutes § 46a-46c (a) (6) (C) (ii), which provides that "discrimination

includes . . . a refusal to make reasonable accommodations in . . . policies . . . when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." They asserted that Wendy has a mental disability within the meaning of General Statutes § 46a-51 (20), which defines someone with a "'[m]ental disability'" as "an individual who has a record of, or is regarded as having one or more mental disorders." After a trial, the court rendered judgment for the plaintiffs. The defendants appealed, claiming, inter alia, that the trial court improperly concluded that Wendy suffered from a disability under § 46a-51 (20) when the trial court found only that the defendants regarded her as being disabled. The Appellate Court (231 Conn. App. 121) concluded that the claim was without merit because the trial court also had found that the plaintiffs satisfied their burden of proving that Wendy had a "record of" having a mental disability within the meaning of § 46a-51 (20). Next, the defendants claimed that the trial court improperly concluded that two emotional support dogs were "necessary" for Wendy's equal use and enjoyment of the dwelling under § 46a-64c (a) (6) (C) (ii). The Appellate Court determined that the plain meaning of "necessary" in § 46a-64c (a) (6) (C) (ii) requires that the accommodation be "essential" to the equal enjoyment of the dwelling and not just preferable. It further determined that, in the present case, the trial court erred because the definition of "necessary" that it had applied was so broad as to include preference, thereby diluting the plaintiffs' burden of proof. The court proceeded to hold that the evidence submitted by the plaintiffs, viewed in the light most favorable to the plaintiffs, was insufficient as a matter of law to prove that both dogs were necessary to ameliorate the effects of Wendy's generalized anxiety disorder. Accordingly, it reversed the trial court's judgment and remanded the matter with direction to render judgment for the defendants. The Supreme Court granted both the commission and the defendants certification to appeal. In the commission's appeal, the Supreme Court will decide whether the Appellate Court properly concluded that the trial court had applied an incorrect legal standard for determining whether an accommodation is "necessary" for the use and enjoyment of a dwelling under § 46a-64c (a) (6) (C) (ii). In the defendants' appeal, the Supreme Court will decide whether the Appellate Court correctly concluded that the trial court had correctly determined that the plaintiff had a "mental disability" within the meaning of § 46a-51 (20).

VISTRA CORP. et *al. v.* PUBLIC UTILITIES REGULATORY AUTHORITY, SC 21120
Judicial District of New Britain

Administrative Appeal; General Statutes § 16-244c; General Statutes § 4-166; Renewable Energy Portfolio Standards; Whether Proceeding Was "Contested [C]ase"; Whether Plaintiffs Exhausted Administrative Remedies Prior to Seeking Declaratory Judgment Under General Statutes § 4-175. The plaintiff electric suppliers are required to meet renewable energy portfolio standards (RPS), and the defendant, the Public Utilities Regulatory Authority (PURA), is required under General Statutes § 16-244c (h) (1) to annually "conduct an uncontested proceeding" to determine compliance. In 2022, the parties entered into a settlement agreement to resolve an investigation into "billing, marketing and licensing." In exchange for the "full and final settlement of . . . all actual and/or potential claims, known or knowable," the plaintiffs paid certain amounts, relinquished their licenses, and withdrew from the energy market. The agreement also provided that the plaintiffs would "pay the full amount owed" if PURA determined as part of its annual 2022 RPS compliance review that "the amounts paid . . . as part of this [s]ettlement [a]greement . . . did not meet their full obligations." The plaintiffs made their 2021 and 2022 RPS compliance filings, as the agreement directed, and PURA returned their RPS security deposits. In 2023, PURA conducted its 2022 RPS annual review and directed all electric suppliers, including the plaintiffs, to submit a compliance report. The plaintiffs relied on their settlement filings, and PURA asked them to refile because "the amount paid under the settlement agreement was insufficient," as it was based on an estimated "load" and the actual amount was higher. Instead of refiling, the plaintiffs petitioned PURA for "an expedited declaratory ruling to confirm that [they] met their 2022 [RPS] obligations as negotiated in [the] settlement agreement." PURA did not issue a ruling and, thereafter, issued a final decision finding that the plaintiffs had failed to meet their 2022 RPS obligations and ordering them to pay over $1 million. In response, the plaintiffs filed a two count complaint in the Superior Court. In the first count, they brought an administrative appeal pursuant to General Statutes § 4-183 of the Uniform Administrative Procedure Act (UAPA), claiming that PURA violated the plain language of the agreement. In the second count, they seek a declaratory judgment pursuant to General Statutes § 4-175 that they satisfied their 2022 RPS obligations. PURA moved for dismissal, claiming that an RPS review is not a "contested case" under General Statutes § 4-166 (4) and, therefore, not an appealable "final decision" under § 4-166 (5). PURA also claimed that the plaintiffs failed to exhaust their administrative remedies with

respect to the declaratory judgment count, citing pending administrative proceedings regarding their RPS compliance. The trial court granted the motion to dismiss, finding that the 2022 RPS decision was an not a contested case and that the plaintiffs had failed to exhaust their administrative remedies, and the plaintiffs appealed to the Appellate Court. The Supreme Court transferred this appeal to itself pursuant to General Statutes § 51-199 (c), and the plaintiffs claim that the trial court erred because § 4-175 (a) (2) provides for a declaratory judgment action when an agency "decides not to issue a declaratory ruling," which the plaintiffs assert occurred here. Moreover, they claim that the "settlement agreement, and any interpretation of its language, requires adjudication in a contested case" such that their administrative appeal was improperly dismissed. PURA and the Office of Consumer Counsel, which is a party to the settlement agreement, argue that the dismissal was proper.

CLEARVIEW ELECTRIC, INC. *v.* PUBLIC UTILITIES REGULATORY AUTHORITY, SC 21121
Judicial District of New Britain

Administrative Appeal; General Statutes § 16-41 (c); Whether Denial of Motion to Withdraw License Is "Contested [C]ase" Under General Statutes § 4-166 (4). In 2021, the defendant, the Public Utilities Regulatory Authority (PURA), issued to the plaintiff electric supplier a notice of violation, assessment of a $1 million civil penalty, and three year license suspension. PURA and the plaintiff resolved the matter in a November, 2021 settlement agreement, which provided that the plaintiff would withdraw from the energy market for six years and pay $500,000 to settle "all allegations and claims currently known and knowable." Meanwhile, PURA had opened a "cost allocation docket" in 2014 that was resolved by way of a July 26, 2023 final decision concluding that certain costs could be recovered from "all third-party electric suppliers who currently have a license." Because the plaintiff had not yet withdrawn its license as of July 26, 2023, PURA issued a $178,832.11 assessment. Two days later, on July 28, the plaintiff filed a motion withdraw its license, and PURA responded that the assessment must be paid beforehand. On August 17, 2023, the plaintiff filed a motion seeking a declaratory ruling and arguing that, when PURA had approved the November, 2021 settlement agreement, the proceedings leading to the July, 2023 assessment were "known or knowable" such that the plaintiff had no outstanding obligations. PURA denied the motion, and the plaintiff filed the underlying administrative appeal in the Superior Court pursuant to General Statutes § 4-183 (a) of the Uniform Administrative Procedure Act (UAPA), challenging the July, 2023 assessment and

asserting that PURA "did not address" the plaintiff's request for a declaratory ruling. PURA moved for dismissal on the ground that it "did not issue a declaratory ruling" and because the denial of the plaintiff's motion to withdraw was not appealable under the UAPA. Specifically, PURA argued that the order denying the motion to withdraw did not amount to a final decision in a "contested case," as defined by General Statutes § 4-166 (4), given that no hearing was held or required. The plaintiff contended that the order that it pay the assessment before withdrawing its license amounted to a "licensing" proceeding and, therefore, was "by definition" a contested case under § 4-166 (4). The trial court agreed with PURA's argument that the denial of the plaintiff's motion to withdraw its license was not a contested case and granted its motion to dismiss. The plaintiff appealed to the Appellate Court, and the Supreme Court transferred this appeal to itself pursuant to General Statutes § 51-199 (c). The plaintiff argues that PURA was required to hold a hearing pursuant to General Statutes § 16-41 (c), governing PURA's authority to the impose "civil penalties," and maintains that the trial court erred in concluding that the denial of its motion to withdraw was not a contested case and not appealable. The plaintiff also argues that the trial court erred because PURA purportedly issued a declaratory ruling "even though [PURA] did not call it such." PURA argues that the plaintiff is not aggrieved by the decision to deny its motion to withdraw its license and that the plaintiff waived its appellate claim that PURA issued a declaratory ruling, as the plaintiff had argued before the trial court that PURA did not issue a ruling. If there was a declaratory ruling, then PURA argues that the plaintiff's claim fails nonetheless because "the plaintiff's purported petition for a declaratory ruling did not meet the requirements of General Statutes § 4-176 (a)."

THE CONNECTICUT LIGHT & POWER CO. *v.* PUBLIC UTILITIES REGULATORY AUTHORITY, SC 21122

Judicial District of New Britain

Administrative Appeal; General Statutes § 4-166 (4); Whether Proceeding After Which Defendant Found that Plaintiff's Emergency Response Was "Imprudent" Amounted to "Contested [C]ase"; Whether Trial Court Properly Determined That Hearing Not Required by General Statutes § 16-14 or § 16-18. In January, 2023, a volunteer fire department responded to a car that had collided with an electric utility pole with two "seriously injured" occupants entrapped. The plaintiff, The Connecticut Light & Power Company doing business as Eversource Energy (Eversource), took about an hour to confirm that the area was deenergized so that firefighters could began an

extrication. The fire chief sent a letter to Eversource complaining that response was "completely unacceptable." Eversource filed mandatory accident reports with the defendant, the Public Utility Regulatory Authority (PURA), which issued a decision on August 9, 2023, concluding that Eversource's response was "imprudent" and that its report violated certain statutes and regulations, which "potentially subject[ed] [Eversource] to notice of violation." The August 9 decision required that Eversource have "a 30 minute target" for certain "priority 1 calls" and that it "review and revise its accident response procedures to ensure compliance." PURA also imposed additional reporting requirements on Eversource "to ensure [it] is fully informed of all accidents." Under a new docket number, PURA issued a notice of violation and assessment of civil penalty, and Eversource requested a hearing, after which PURA concluded that Eversource violated certain reporting requirements, assessing a $12,500 penalty. The parties agree that "the penalty decision" was conducted as a contested case that was not appealed. Eversource, however, appealed from PURA's earlier August 9, 2023 decision to the Superior Court pursuant to General Statutes § 4-183 of the Uniform Administrative Procedure Act (UAPA), claiming that there were errors during the investigation, that PURA improperly "changed the existing accident reporting regulations without notice, due process, or an evidentiary record," and that PURA erred by failing to conduct the proceedings as a "[c]ontested case" under General Statutes § 4-166 (4). It argued that PURA had "made it clear" that the August 9 "imprudent" finding would be used "in future proceedings as a presumptive fact," which improperly distorts the burden of proof. The trial court determined that the administrative proceeding was not a contested case and, consequently, dismissed Eversource's appeal for lack of jurisdiction under the UAPA. The court reasoned that a hearing was not required by either General Statutes § 16-18, which pertains to the relocation of a utility pole, or General Statutes § 16-14, which pertains to written complaints from "[a]ny town, city or borough." The court found that § 16-14 was "inapplicable" because the fire chief had complained to Eversource and not to PURA directly. The court also recognized that Eversource cited "no statutory authority" that required PURA to institute a contested case before directing a utility to shorten its emergency response time. Eversource appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). Eversource argues that the trial court improperly found that the administrative proceeding was not a contested case because an "investigation was noticed and [a] hearing was conducted pursuant to multiple statutes," including § 16-18. Moreover, Eversource argues that the trial court erred in its analysis under § 16-14 by relying on the fact that the fire chief had complained to Eversource. Finally, it argues that

the "imprudent" finding confirms the "contested nature" of the proceedings given that Eversource was "adjudged liable." The Office of Consumer Counsel, who intervened, and PURA argue that §§ 16-14 and 16-18 "are factually inapplicable" and that a hearing was not required to determine whether Eversource's response was imprudent.

THE CONNECTICUT LIGHT & POWER CO. *v.* PUBLIC UTILITIES REGULATORY AUTHORITY et al., SC 21123
Judicial District of New Britain

Administrative Appeal; Rate Setting Pursuant to General Statutes § 16-19e; Interpretation of Settlement Agreement; Whether Settlement Agreement Provides for Recovery of Storm Related Costs as "Core Capital Projects." In 2018, the plaintiff, The Connecticut Light and Power Company, doing business as Eversource Energy (Eversource), sought to amend its electric distribution rates. Around that same time, Eversource incurred costs related to storm damage. Eversource and the defendant, the Public Utilities Regulatory Authority (PURA), entered into a 2018 settlement agreement to resolve the rate case. That agreement provided that Eversource, after spending a certain amount on capital projects, could recover through its base electric rates the cost of improving certain infrastructure that was part of a "core capital program." The agreement further provided that Eversource could recover storm costs incurred after December 16, 2016, either during the next rate review or earlier, if Eversource initiated a separate contested case. Eversource initiated a contested case to recover those costs but failed to seek review of over $17 million in capital costs that it presumed would be recovered through the base rate adjustment under the 2018 settlement agreement. PURA disallowed those costs and rejected Eversource's claim after finding that the storm costs "did not constitute core capital additions" under the 2018 settlement agreement. In support of its argument that those costs were recoverable, Eversource relied on a footnote in the settlement agreement referencing certain expert testimony that Eversource claims supports its position that the storm costs can be recovered as part of the "core capital program." The trial court disagreed, dismissed Eversource's appeal in part, and remanded the matter to PURA. The court concluded that "PURA has the discretion" under General Statutes § 16-19e, which pertains to rate setting, "to resolve this matter as it has done" and, moreover, that "there is substantial evidence to sustain PURA's final decision." The court remanded the case to PURA with respect to the appropriate interest rate for certain charges, and Eversource appealed to the Appellate Court (223 Conn. App. 136). That court dismissed Eversource's appeal for lack of a final judgment, and, on remand, PURA issued a supplemental decision

regarding the interest rate. Eversource withdrew the remaining count of its complaint, appealed again to the Appellate Court, and the Supreme Court transferred this appeal to itself pursuant to General Statutes § 51-199 (c). Eversource argues that PURA "ignore[ed] the plain language of the contractual terms" and "did not have discretion to violate the settlement agreement," which it maintains allows for the recovery of these storm related costs. Eversource contends that the parties specifically had anticipated the recovery of "storm related capital work" in the settlement agreement and that a proper interpretation of that agreement, which Eversource asserts is plain and unambiguous, leads to the same conclusion. Moreover, Eversource highlights that "PURA never found [that] any of the storm related capital projects [were] imprudent."

LESLIE B. DANIELS, EXECUTOR OF THE ESTATE OF JACK ANDERSON *v.* COMMISSIONER OF REVENUE SERVICES, SC 21150

Judicial District of New Britain

Taxation; Whether Trial Court Properly Held That Defendant Properly Assessed Taxes Against Decedent's Estate Where Plaintiff Executor Claimed That Decedent Was Not Domiciled in Connecticut; Whether Trial Court Properly Denied Executor's Due Process Claim Because Trial Court Decided Executor's Appeal under De Novo Standard of Review. The decedent, Jack Anderson, passed away in Florida in 2015. The decedent was a successful businessman who, between 2006 and 2015, divided his time between Arizona, Connecticut, and Florida. Every year, the decedent spent approximately three months in Arizona, three and a half months in Florida, and five and a half months in Connecticut. The defendant's residence in Florida was a 9700 square foot property that he built around 1991. The defendant's residence in Connecticut was a 4000 square foot condominium that he purchased in 1984; he purchased two additional condominiums in the same complex, a 3000 square foot one in 2010 and a 2000 square foot one in 2014. After the decedent passed away, his estate filed a Connecticut domicile declaration form with the defendant, which resulted in an audit. In 2018, the defendant's auditor determined that, for estate tax purposes, the decedent was a Connecticut resident when he passed away. In 2021, the defendant issued a final determination that the estate owed $13,198,544.60 in Connecticut estate taxes because the plaintiff had failed to prove that the decedent was not domiciled in Connecticut at the time of his death. The plaintiff appealed the defendant's determination to the trial court

and claimed (1) that the decedent was domiciled in Florida at the time of his death, such that his estate did not owe Connecticut taxes, and (2) that the defendant had committed due process violations because its examiners had improperly applied the 28-factor test set forth in Section 12-701 of the Regulations of Connecticut State Agencies to determine domicile in Connecticut for estate tax purposes and had used an undisclosed system to "weigh" the factors. As to the first claim, the trial court observed that the decedent held a Florida driver's license, was registered to vote in Florida, maintained a Florida banking account, and declared himself to be domiciled in Florida, but it concluded that such factors were "one-time, administrative tasks accomplished with little more than an afternoon's or a day's effort and carr[ied] little practical significance in or impact on [the decedent's] day to day life." The trial court also determined that the decedent's Connecticut and Florida residences were "equally 'grand,' or important" and noted how the decedent spent more time in Connecticut than Florida on an annual basis and "lived a full and complete life in Connecticut for the part of the year that he was in Connecticut." The trial court accordingly held that, based on its weighing of the relevant factors, the plaintiff had "failed to meet his burden of demonstrating by clear and convincing evidence that the [defendant]'s assessment was erroneous or unreasonable because [the decedent] was not a Connecticut domiciliary at the time of his death." The trial court also was unpersuaded by the plaintiff's due process claim. It observed that a similar claim had been raised in *Orange Street Armory Associates, Inc.* v. *New Haven*, 17 Conn. App. 166, 172 (1988), and that the Appellate Court had decided there that, because the trial court heard the case de novo in accordance with the applicable standard of review, "the appellant [was] afforded the opportunity to present its case anew . . . [and] any error occurring in the course of a prior adjudication that [was] not repeated present[ed] a moot question." The trial court held in the present action that it had also tried the case de novo in accordance with the applicable standard of review for tax appeals and that the plaintiff "was deprived of no procedural due process because this court trie[d] this case de novo and . . . made its own, independent determinations of the facts, without regard to whatever determinations may have been made by" the defendant. The trial court accordingly rendered judgment in favor of the defendant. The plaintiff appealed the trial court's judgment to the Appellate Court, and the Supreme Court transferred the appeal to its docket under General Statutes § 51-199 (c) and Practice Book § 65-2. The Supreme Court will decide whether the trial court properly sustained the defendant's assessment, where the plaintiff argues that the trial court misapplied the test for domicile and made contradictory and erroneous findings. The Supreme Court will also decide whether the trial court improperly

denied the plaintiff's due process claim, where the plaintiff argues that the trial court's holding improperly treats de novo review as a panacea for the due process violations committed by the defendant.

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
