



2016 Edition

Answer, Special Defense, Counterclaim, and Setoff to a Civil Complaint

A Guide to Resources in the Law Library

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If you are looking for Answer forms available on the Connecticut Judicial Branch website, please see the official court forms page at <http://www.jud.ct.gov/webforms>.

This is a research guide to legal resources available at the Connecticut Judicial Branch Law Libraries, including links to court rules, statutes, cases, and forms available online.

*Prepared by Connecticut Judicial Branch, Superior Court Operations,
Judge Support Services, Law Library Services Unit*

lawlibrarians@jud.ct.gov

These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

View our other pathfinders at
<http://www.jud.ct.gov/lawlib/selfguides.htm#Pathfinders>

This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.
The online versions are for informational purposes only.

See Also:

- [Motion to Dismiss](#)
- [Motion to Strike](#)
- [Request to Revise](#)
- [Motion for Summary Judgment](#)

[Connecticut Judicial Branch Website Policies and Disclaimers](http://www.jud.ct.gov/policies.htm)
<http://www.jud.ct.gov/policies.htm>

Introduction

A Guide to Resources in the Law Library

- “The purpose of pleadings is to apprise the court and opposing counsel of the issues to be tried, not to conceal basic issues until after the close of the evidence.” [Biller v. Harris](#), 147 Conn. 351, 357, 161 A.2d 187 (1960).
- “Pleadings are intended to ‘limit the issues to be decided at the trial of a case and [are] calculated to prevent surprise.’” [Birchard v. City of New Britain](#), 103 Conn. App. 79, 83, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007).
- **The Answer; General and Special Denial:** “The defendant in the answer shall specially deny such allegations of the complaint as the defendant who intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. Any defendant who intends to controvert the right of the plaintiff to sue as executor, or as trustee, or in any other representative capacity, or as a corporation, or to controvert the execution or delivery of any written instrument or recognizance sued upon, shall deny the same in the answer specifically.” Conn. Practice Book [§ 10-46](#) (2016).
- “Generally speaking, facts must be pleaded as a **special defense** when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. Practice Book § 10-50.” [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- “A **counterclaim** arises out of the same transaction described in the complaint. A **set-off** is independent thereof.” [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943).
- **Time to Plead:** “Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that **there is good cause to suspend such time requirements.**” Conn. Practice Book [§ 10-8](#) (2016).
- **Penalty for Failing to Plead:** “Parties failing to plead according to the rules and orders of the judicial authority may be nonsuited or defaulted, as the case may be. (See General Statutes § 52-119 and annotations.)” Conn. Practice Book [§ 10-18](#) (2016).

Section 1: Admissions and Denials

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to admissions and denials in an answer to a complaint.

SEE ALSO:

- [Default Motions and Judgments](#) (Research Guide)

DEFINITIONS:

- "The defendant in the answer shall specially deny such allegations of the complaint as the defendant who intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally...." Conn. Practice Book [§ 10-46](#) (2016).
- **Evasive Denials:** "Denials must fairly meet the substance of the allegations denied. Thus, when the payment of a certain sum is alleged, and in fact a lesser sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to the defendant; and where any matter of fact is alleged with divers circumstances, some of which are untrue, it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted, and the rest only denied." Conn. Practice Book [§ 10-47](#) (2016).
- **Implied Admissions:** "Every material allegation in any pleading which is not denied by the adverse party [the Defendant] shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief." Conn. Practice Book [§ 10-19](#) (2016).
- "The plain and unambiguous language of Practice Book [§ 10-19](#) **does not apply to legal conclusions.**" [Sullo Investments, LLC v. Moreau](#), 151 Conn. App. 372, 384 (2014).
- "An admission in a defendant's answer to an allegation in a complaint is **binding as a judicial admission.** . . ." (Citations omitted; internal quotation marks omitted.) [Berty v. Gorelick](#), 59 Conn. App. 62, 65, 756 A.2d 856, cert. denied, 254 Conn. 933, 761 A.2d 751 (2000).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Conn. Practice Book (2016)
 - [Chapter 10: Pleadings](#)
 - [§ 10-1. Fact Pleading](#)
 - [§ 10-5. Untrue Allegations or Denials](#)
 - [§ 10-7. Waiving the Right to Plead](#)
 - [§ 10-12. Service of the Pleading and Other Papers...](#)
 - [§ 10-13. Method of Service](#)
 - [§ 10-14. Proof of Service](#)

- § 10-19. **Implied Admissions**
- § 10-39. Motion to Strike
- § 10-46. **The Answer**; General and Special Denial
- § 10-47. Evasive Denial
- § 10-48. Express Admissions and Denials to be Direct and Specific
- § 10-56. **Subsequent Pleadings; Plaintiff's Response to Answer**
- § 10-57. Matter in Avoidance of Answer
- § 10-58. Pleadings Subsequent to Reply
- § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

Chapter 17: Judgments

- § 17-32. Default for Failure to Plead

Chapter 24: Small Claims

- § 24-16. Answers; Requests for Time to Pay
- § 24-20. Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss

Chapter 25: Family Matters

- § 25-9. Answer, Cross Complaint, Claims for relief by Defendant
- § 25-10. Answer to Cross Complaint

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen Stat. (2015)

Chapter 898 - Pleading

- § 52-99. Untrue allegations or denials. Costs.
- § 52-119 Pleading to be according to rules and orders of court.
- § 52-120 Pleading filed by consent after expiration of time.
- § 52-121 Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
- § 52-123 Circumstantial defects not to abate pleadings.
- § 52-130 Amendment of defects, mistakes or informalities.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Sullo Investments, LLC v. Moreau](#), 151 Conn. App. 372, 384 (2014). "The defendant's final claim is that the court erred in holding that there was consideration to support the note because her first special defense regarding the lack of consideration was admitted under our rules of practice by virtue of the plaintiff's failure to reply to it in timely fashion. This claim is without merit....

"The defendant declares in her first special defense that Aurelien Moreau's obligation under the note and her obligation under the guarantee are **'unenforceable for want of consideration.'** These are legal conclusions and not factual allegations, however, **because '[t]he sufficiency of consideration is a question of law based upon the evidence'** *Middlebury v. Steinmann*, 189 Conn. 710, 716 n.3, 458 A.2d 393 (1983). The plain and unambiguous language of Practice Book § 10-19 does not apply to legal conclusions."
- [Industrial Mold & Tool, Inc. v. Zaleski](#), 146 Conn. App. 609, 615, 78 A.3d 218 (2013). "The defendant, in his answer, admitted the allegations of paragraph four. In so doing, the defendant conclusively established the fact that postjudgment interest was due and owing to the plaintiff. The defendant did not deny the truth of that allegation or offer any defense thereto; he admitted it and, therefore, is bound by that admission."
- [Bruno v. Whipple](#), 138 Conn. App. 496, 508, 54 A. 3d 184 (2012). "Practice Book § 10-19 provides as follows: **'Every material allegation in any pleading which is not denied by the adverse party shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief.'** Additionally, Practice Book § 10-48 provides in relevant part: **'[A]ny pleader wishing expressly to admit or deny a portion only of a paragraph must recite that portion; except that where a recited portion of a paragraph has been either admitted or denied, the remainder of the paragraph may be denied or admitted without recital. . . .'**"
- [Gianetti v. Connecticut Newspapers Pub. Co.](#), 136 Conn. App. 67, 75, 44 A.3d 191, 196, cert. denied, 307 Conn. 923 (2012). "Judicial admissions are voluntary and knowing concessions of fact by a party or a party's attorney occurring during judicial proceedings. They excuse the other party from the necessity of presenting evidence on the fact admitted and are conclusive on the party making them. Admissions, whether judicial or evidentiary, are concessions of **fact, not concessions of law.'** (Citations omitted; internal quotation marks omitted.) *Borrelli v. Zoning Board of Appeals*, 106 Conn.App. 266, 271, 941 A.2d 966 (2008)."
- [Thurlow v. Hulten](#), 130 Conn. App. 1, 6, 21 A.3d 535, cert. denied, 302 Conn. 925 (2011). "Section 47-31(d) provides that **in actions for quiet title**, '[e]ach defendant shall, in his answer,

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state whether or not he claims any estate or interest in, or encumbrance on, the property, or any part of it, and, if so, the nature and extent of the estate, interest or encumbrance which he claims, and he shall set out the manner in which the estate, interest or encumbrance is claimed to be derived.”

- [Birchard v. City of New Britain](#), 103 Conn. App. 79, 84-85, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007). “In response to each allegation of a complaint, a defendant has **three options. It may admit, deny, or plead that it ‘has not any knowledge or information thereon sufficient to form a belief.’** Practice Book § 10-19”
- [Birchard v. City of New Britain](#), 103 Conn. App. 79, 85, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007). “**The** question before us, then, is whether a trial court is bound by an implied admission pursuant to Practice Book § 10-19 that is not brought to its attention at any stage of the proceedings We think it is both unfair and unworkable to require the trial court, in each and every civil action before it, to scour the pleadings in search of implied admissions We therefore conclude that the burden rests with the parties to bring to the court’s attention an allegedly implied admission pursuant to Practice Book § 10-19.”
- [Rudder v. Mamasasco Lake Park Association](#), 93 Conn.App. 759, 769, **890 A. 2d 645 (2006)**. “**Accordingly, [t]he admission of the truth of an allegation in a pleading is a judicial admission conclusive on the pleader A judicial admission dispenses with the production of evidence by the opposing party as to the fact admitted, and is conclusive upon the party making it** *Solomon v. Connecticut Medical Examining Board*, 85 Conn.App. 854, 866, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005); see also 71 C.J.S. 246, supra, § 196 (admission in a plea or answer is binding on the party making it, and may be viewed as a conclusive or judicial admission). It is **axiomatic that the parties are bound by their pleadings.**” (Internal quotation marks omitted.)
- [Nationwide Mutual Ins. Co. v. Allen](#), 83 Conn. App. 526, 541, **850 A.2d 1047, cert. denied, 271 Conn. 907 (2004)**. “The distinction between judicial admissions and mere evidentiary admissions is a significant one that should not be blurred by imprecise usage. . . . While both types are admissible, their legal effect is markedly different; judicial admissions are conclusive on the trier of fact, whereas evidentiary admissions are only evidence to be accepted or rejected by the trier.” (Internal quotation marks omitted.)
- [Worden v. Francis](#), 153 Conn. 578, 583-84, 219 A.2d 442 (1966). “**On the eve of the second** trial, the plaintiff amended his complaint to claim permanent and total deafness on the left side as a result of the defendant’s negligence. The defendant did not join issue on this allegation, and, since he did not deny it, it is to

be taken as admitted.”

- [Postemski v. Watrous](#), 151 Conn. 183, 185, 195 A. 2d 425 (1963). “The answer pleaded no information to allegations that the state prevented the plaintiff from filling, grading and paving the land unless he eliminated the culvert in a manner proposed by the state, which he has done at considerable expense. The pleading of no knowledge or information to these allegations is in effect a denial.”

**WEST KEY
NUMBER:**

- *Pleading*, Key Number 129
 - Admissions by Failure to Traverse or Deny
- *Connecticut Judicial Branch Civil Jury Instructions (2008)*
 - Part 2.4 — Types of Evidence
 - [2.4-4 Admissions from Pleadings](#)
 - [2.4-6 Admissions from Superseded Pleadings](#)

**CIVIL JURY
INSTRUCTIONS:**

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
 - Chapter 8. The answer, counterclaim; subsequent pleadings
 - § 80. Determining Defense Strategy
 - § 81. The Answer: Structure and Service
 - § 82. Denials
 - § 83. Special Defenses
- Connecticut Practice Series, [Connecticut Civil Practice Forms](#), by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
 - General-Responsive Pleadings
 - Comments to Forms 105.1, 105.2, 105.2-A, 105.2-B, 105.2-C, 105.3
- Connecticut Practice Series, [Superior Court Civil Rules](#), by Wesley W. Horton and Kimberly A. Knox (2015-2016). [Vol. 1]
 - Chapter 10. Pleadings
 - Authors' Comments to §§ 10-46 et seq.
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont (2015-2016 ed.) [Vol. 1]
 - Chapter 10. Pleadings
 - Commentaries to §§ 10-46 et seq.
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998).
 - Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.

- Connecticut Practice Series, [Family Law and Practice with Forms](#), by Arnold H. Rutkin et al. (3d ed. 2010).
 - Chapter 19, Pleadings
 - § 19:9 Answer, cross-complaint and claims for relief by defendant
- [Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015).
 - Chapter 10 - Answer and Counterclaim
 - 10-000. Commentary
- [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#), by Jeanine M. Dumont (1998 ed.).
 - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

FORMS:

- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Family Forms – [Responding to a Divorce](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process (Eviction), Answer to Complaint, [JD-HM-5](#)
- Small Claims - Instructions to Defendant, [JD-CV-121](#)
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998). [Chapter 13, Defendant's Answer..., pp. 134-138]
- *Connecticut Practice Series*, [Connecticut Civil Practice Forms](#), by Joel M. Kaye et al. (4th ed. 2004).
- *Connecticut Practice Series*, [Connecticut Elements of an Action](#), by Thomas B. Merritt (2015-2016 ed.). [Vol. 16, 16A]
- [Connecticut Landlord and Tenant with Forms](#), 2d, Noble F. Allen (2014). [Form 2-009 – Answer and Defense to Action for Private Receivership of Tenement House]
- [Connecticut Law of Torts](#), by Douglass B. Wright et al. (3rd ed. 1991). [Form 8: Answer]
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont (2015-2016 ed.). [Vol. 1 & 2] [See index]
- [Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015). [Form 10-001: Answer and Special Defenses]
- [Library of Connecticut Family Law Forms](#), 2d, edited by Thomas Colin (2014). [Form 1-009: Answer and Cross-Complaint & Form 1-012 Answer and Cross-Complaint – in Avoidance of Premarital Agreement]

ENCYCLOPEDIAS:

- 61A [Am. Jur. 2d Pleading](#) (2010)
 - VI. Answers, Pleas, and Defenses

- § 211 – 290
 - VII. Denials and Admissions
 - § 352
- 32 [C.J.S. Evidence](#) (2008)
 - VIII. Admissions
 - § 626 Judicial Admissions
- 71 [C.J.S. Pleading](#) (2011)
 - III. Plea or Answer
 - § 158 – 208

Figure 1: Admissions and Denials (Form)

Form 105.1, Heading, and **Form 105.3**, Admissions and Denials, 2 Conn. Practice Book (1997).

No. _____	Superior Court
_____	Judicial District of _____
(First Named Plaintiff)	
v.	at _____
_____	_____
(First Named Defendant)	(Date)

ANSWER

1. Paragraph 1 of the plaintiff's complaint is admitted.
2. Paragraphs 2 and 3 of the plaintiff's complaint are denied.
3. As to paragraph 4 of the plaintiff's complaint, the defendant does not have sufficient knowledge or information upon which to form a belief, and therefore leaves the plaintiff to his proof.
4. So much of paragraph 5 of the plaintiff's complaint as alleges "a collision took place between the trucks" is admitted, and the re-maining portion of the paragraph is denied.
5. So much of paragraph 6 of the plaintiff's complaint as alleges the accident was "as a result of the negligence of the defendant" is denied, and the remaining portion of the paragraph is admitted.

Section 2: Special Defenses

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to special defenses to a complaint.

DEFINITIONS:

- “Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.” [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- “. . . Thus, accord and satisfaction, arbitration and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the **plaintiff’s own.**” Conn. Practice Book [§ 10-50](#) (2016).
- “We agree, however, with the plaintiff’s observation that the list of special defenses in § 10-50 is illustrative rather than **exhaustive.**” [Kosinski v. Carr](#), 112 Conn. App. 203, 962 A. 2d 836 (2009). [Footnote 6]
- “Where several matters of defense are pleaded, each must refer to the cause of action which it is intended to answer, and be separately stated and designated as a separate defense, as, *First Defense, Second Defense*, etc. Where the complaint or counterclaim is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count, Second Defense to First Count, First Defense to Second Count*, and so on. Any statement of a matter of defense resting in part upon facts pleaded in any preceding statement in the same answer may refer to those facts as thus recited, without **otherwise repeating them.**” Conn. Practice Book [§ 10-51](#) (2016).
- “No special defense shall contain a denial of any allegation of the complaint or counterclaim unless that denial is material to such defense. An admission of any allegation of the complaint or counterclaim in a special defense will be deemed to incorporate **such allegation in the defense.**” Conn. Practice Book [§ 10-52](#) (2016).
- “If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant and the defendant shall specify the negligent acts or omissions on which the defendant relies. (See General Statutes § 52-114 and annotations.)” Conn. Practice Book [§ 10-53](#) (2016).

- “A defendant's failure to plead a special defense precludes the admission of evidence on the subject. . . . It would be fundamentally unfair to allow any defendant to await the time of trial to introduce an unpleaded defense. Such conduct would result in trial by ambush to the detriment of the opposing party.” (Citations omitted; internal quotation marks omitted.) [Oakland Heights Mobile Park, Inc. v. Simon](#), 36 Conn. App. 432, 436-37, 651 A.2d 281 (1994).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Conn. Practice Book (2016)
 - [Chapter 10: Pleadings](#)
 - § 10-3. Allegations Based on Statutory Grounds
 - § 10-12. **Service of the Pleading and Other Papers...**
 - § 10-13. Method of Service
 - § 10-14. Proof of Service
 - § 10-39. Motion to Strike
 - § 10-46. The Answer; General and Special Denial
 - § 10-47. Evasive Denial
 - § 10-48. Express Admissions and Denials to be Direct and Specific
 - § 10-50. **Denials; Special Defenses**
 - § 10-51. **Several Special Defenses**
 - § 10-52. **Admissions and Denials in Special Defense**
 - § 10-53. **Pleading Contributory Negligence**
 - § 10-56. Subsequent Pleadings; Plaintiff’s Response to Answer
 - § 10-57. **Matter in Avoidance of Answer**
 - § 10-58. Pleadings Subsequent to Reply
 - § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015)
 - [Chapter 898 - Pleading](#)
 - 52-99. Untrue allegations or denials. Costs.
 - § 52-114. Pleading of contributory negligence.
 - § 52-119. Pleading to be according to rules and orders of court.
 - § 52-120. Pleading filed by consent after expiration of time.
 - § 52-121. Pleading may be filed after expiration of time

fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.

- o § 52-123. Circumstantial defects not to abate pleadings.
- o § 52-130. Amendment of defects, mistakes or informalities.

CASES:

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Note: Connecticut Practice Series, *Superior Court Civil Rules*, Vol. 1, section 10-50, includes an annotated "Table of Defenses," which lists many common defenses requiring the pleading of a special defense along with citations to case law.

- [Bruno v. Whipple](#), 162 Conn. App. 186, 207 (2015). "On the basis of the foregoing, we conclude that the trial court abused its discretion by permitting Heritage Homes to raise the special defense of waiver for the first time after the close of evidence at trial, as it had not been specially pleaded, the pleadings did not allege any facts supporting an inference of waiver, and the claim that the plaintiff knowingly relinquished her contractual rights was not fully litigated at trial without **objection by the plaintiff.**"
- [Flannery v. Singer Asset Finance Company, LLC](#), 312 Conn. 286, 301, 94 A.3d 553 (2014). "*Beckenstein Enterprises–Prestige Park, LLC*, does not, however, stand for the proposition that the pleading requirements are so rigid as to require that potentially meritorious claims in avoidance of the statute of limitations be categorically barred in all cases because of pleading lapses.... [I]t may be just to reach the merits of a plaintiff's claim to a toll of the statute of limitations, even when not properly pleaded pursuant to Practice Book § 10–57, if the issue is otherwise put before the trial court and no party is prejudiced by the lapse in pleading."
- [Mulcahy v. Hartell](#), 140 Conn. App. 444, 450, 59 A.3d 313 (2013). "**The decisive issue is the distinction between cases in which the defendant asserts that the plaintiff has been comparatively negligent, and thus the defendant's conduct could also be a proximate cause, and those cases in which the defendant claims that his conduct did not cause the plaintiff's injuries at all. An assertion of comparative negligence is consistent with the plaintiff's rendition of the facts, and therefore must be raised as a special defense. On the other hand, the claim that an actor other than the defendant caused the plaintiff's injuries is inconsistent with a prima facie negligence case, and, thus, can be pursued under a general denial. The essence of the defense at issue in the present case was that the plaintiff was entirely responsible for her injuries; therefore, the court correctly admitted it without the assertion of a special defense.**"
- [Parnoff v. Yuille](#), 139 Conn. App. 147, 167, 57 A.3d 349 (2012), cert. denied, 307 Conn. 956 (2013). "The teaching of these provisions is that matters of avoidance must be specially pleaded. Here, even though the defendant raised as a special defense that the fee agreement violated the fee cap statute, the plaintiff merely denied the special defense and made no claim that the defendant had ratified her obligation under the

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agreement. Thus, we agree with the trial court that by failing to specifically reply to the special defense regarding the fee cap statute, the plaintiff failed, as well, to put the question of ratification at issue at trial. Our conclusion in this regard does not reflect a rigid adherence to form over substance. Rather, it comports with the notion that parties to litigation should be adequately apprised of each other's claims in order to pursue and defend their causes properly. In this instance, if the plaintiff had replied to the defendant's special defense of the fee cap statute with a claim that the defendant had, nevertheless, ratified the agreement, the defendant could, in turn, have raised the issue of whether ratification applies to an agreement against public policy, and the court, in turn, could have confronted and resolved the issue away from the pressure of an ongoing trial."

- [Town of Stratford v. A. Secondino & Son, Inc.](#), 133 Conn. App. 737, 746, 38 A.3d 179 (2012). "Because the plaintiff did not object to waiver evidence on the ground that waiver had not been pleaded specifically, any insufficiency in the pleading was waived by the plaintiff at trial."
- [Bedrick v. Bedrick](#), 300 Conn. 691, 17 A.3d 17 (2011). "In fact, Practice Book § 25-9 is applicable to family relations cases, and **does not require that any defenses be pleaded specifically.**" [Footnote 3]
- [Singhaviroj v. Board of Education of Fairfield](#), 124 Conn. App. 228, 233, 4 A.3d 851 (2010). "It is well established that res judicata and collateral estoppel are affirmative defenses that **may be waived if not properly pleaded . . . ('[c]ollateral estoppel, like res judicata, must be specifically pleaded by a defendant as an affirmative defense');** cf. Practice Book § 10-50 ('res judicata must be specially pleaded' as defense). The defendants failed to comply with that requirement.

"That is not to say that the defendants are foreclosed from pursuing such a defense in every instance. As this court **explained years ago, '[t]here is, however, an exception to this general rule.** The defendants' failure to file a special defense may be treated as waived where the plaintiff fails to make appropriate objection to the evidence and argument offered in support of that defense. See *Tedesco v. Stamford*, 215 Conn. 450, 462-63, 576 A.2d 1273 (1990); *Pepe v. New Britain*, 203 Conn. 281, 286, 524 A.2d 629 (1987)."

- [Maltas v. Maltas](#), 298 Conn. 354, 2 A.3d 902 (2010). "On the basis of the foregoing analysis, we conclude that, in an action to enforce a foreign judgment, a challenge to the foreign court's jurisdiction properly is raised as a special defense."
- [Braffman v. Bank of America Corporation](#), 297 Conn. 501, 518-519, 998 A. 2d 1169 (2010). "As we embark on this exercise, we first turn to Practice Book § 10-50, which governs the pleading

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of special defenses.... This particular rule of practice as it applies specifically to nonpayment claims creates an atypical situation within our general jurisprudence on special defenses because '[i]t is axiomatic that [t]he purpose of a special defense is to plead facts that are **consistent** with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no **cause of action.**' (Emphasis added.) *New England Retail Properties, Inc. v. Maturo*, 102 Conn. App. 476, 489, 925 A.2d 1151, cert. denied, 284 Conn. 912, 931 A.2d 932 (2007). It is self-evident, of course, that a claim of payment by the defendant would be inconsistent with the plaintiffs' allegation of nonpayment. Because, however, the defendant had pleaded the special defense of payment, we need not address further this apparent anomaly."

- [Kosinski v. Carr](#), 112 Conn. App. 203, 962 A. 2d 836 (2009). "The defendant notes that Practice Book § 10-50 'specifically does not require that the special defense of "unclean hands" be specially [pleaded]. . . .' We agree, however, with the plaintiff's observation that the list of special defenses in § 10-50 is illustrative rather than exhaustive." [Footnote 6]
- [Beckenstein Enterprises v. Keller](#), 115 Conn. App. 680, 688, 974 A. 2d 764 (2009), cert. denied, 293 Conn. 916, 979 A.2d 488. "This court has previously concluded that the continuing course of conduct doctrine is a matter that must be pleaded in avoidance of a statute of limitations special defense. *Bellemare v. Wachovia Mortgage Corp.*, 94 Conn.App. 593, 607 n. 7, 894 A.2d 335 (2006), aff'd, 284 Conn. 193, 931 A.2d 916 (2007); see also Practice Book § 10-57."
- [Ramondetta v. Amenta](#), 97 Conn. App. 151, 161-162, 903 A.2d 232 (2006). "They pleaded the defense as follows: 'The [d]efendant's claims are barred by the applicable [s]tatute of [l]imitations.' That pleading is inadequate. A similar situation arose in Avon *Meadow Condominium Assn., Inc. v. Bank of Boston Connecticut*, 50 Conn. App. 688, 719 A.2d 66, cert. denied, 247 Conn. 946, 723 A.2d 320 (1998), in which the defendant failed to plead specifically a statute of limitations defense. We held: 'Practice Book § 10-3 (a) provides that "[w]hen any claim made . . . in a . . . special defense . . . or other pleading is grounded on a statute, the statute shall be specifically identified by its number."'"
- [Parente v. Pirozzoli](#), 87 Conn. App. 235, 241, 866 A. 2d 629 (2005). "Relying on that principle, our Supreme Court has refused to find improper in a trial court's consideration of an unpleaded special defense that was first argued by the defendant in its posttrial brief when the evidence relied on in support of that defense was introduced at trial by the plaintiff in support of its claim. See *Web Press Services Corp. v. New London Motors, Inc.*, 203 Conn. 342, 349, 525 A.2d 57, following remand, 205 Conn. 479, 533 A.2d 1211 (1987). The court noted that in

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

introducing the evidence, the plaintiff did not request any limitation on its use, and the defendant did not object to its introduction. *Id.* Essentially, by introducing the evidence itself, the plaintiff effectively waived any objection to the defendant's reliance on it in support of a special defense."

- [Dow & Condon, Inc. v. Brookfield Development Corp.](#), 266 Conn. 572, 585, 833 A. 2d 908 (2003). "We do not condone the practice of waiting until the day of trial to raise an important legal issue for the first time. Under the circumstances of the present case, however, we conclude that it was well within the trial court's discretion to grant the defendant's request to amend its answer."
- [Bennett v. Automobile Ins. Co. of Hartford](#), 230 Conn. 795, 802, 646 A.2d 806 (1994). "Whether facts must be specially pleaded depends on the nature of those facts in relation to the contested issues."
- [Pawlinski v. Allstate Ins. Co.](#), 165 Conn. 1, 6, 327 A.2d 583 (1973). "If, however, a party seeks the admission of evidence which is consistent with a prima facie case, but nevertheless would tend to destroy the cause of action, the 'new matter' must be affirmatively pleaded as a special defense. *Biller v. Harris*, supra; James, loc. cit.; 1 Stephenson, op. cit., pp. 518-19, § 127. Practice Book § 120 lists some of the defenses which must be specially pleaded and proved. Historically, the special defense plea is an outgrowth of the common-law plea of 'confession and avoidance.' 1 Stephenson, op. cit., p. 521, § 127 (c), explains the plea with an apt illustration: D is liable to P if a, b, and c are true unless d is also true. If d contradicts a, b, or c, then evidence of d may be admitted under a denial. If, however, the existence of d does not negate the existence of a, b, or c, but independently destroys liability, then evidence of d may be admitted only under a special defense. The distinction is significant since pleading is more than a mere procedural formality. Generally, it allocates the burden of proof on a particular issue. *DuBose v. Carabetta*, supra, 262; 1 Stephenson, op. cit., p. 523, § 127 (e); James, op. cit. § 4.10."
- [DuBose v. Carabetta](#), 161 Conn. 254, 260, 287 A. 2d 357 (1971). "The inherent difficulty in drawing the line between what can be shown under a general denial and what must be specially pleaded is recognized by 1 Stephenson, Conn. Civ. Proc. (2d Ed.) § 126 (g)."

WEST KEY NUMBER:

CIVIL JURY INSTRUCTIONS:

- *Pleading*, Key Numbers 132 – 137
- *Connecticut Judicial Branch Civil Jury Instructions (2008)*
 - Part 2.6 — Burden of Proof

[2.6-2 Burden of Proof - Affirmative Defenses](#)

- o Part 3.3 – Torts — Defenses
 - [3.3-1 Statute of Limitation Defense - General](#)
- o [Part 3.5 – Torts — Comparative Negligence](#)
- o Part 3.9 – Torts — Premises Liability
 - [3.9-20 Plaintiff's Duty to Use Faculties](#)
- o Part 3.10 – Torts — Product Liability
 - [3.10-3 Product Liability - Comparative Responsibility \(Causation\)](#) (2009)
 - [3.10-4 Product Liability - Misuse of a Product](#)
- o Part 4.4 – Contracts — Legal Relationships
 - [4.4-1 Minors](#) (2009)
 - [4.4-3 Mental Illness or Defect](#) (2009)

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
 - o Chapter 8. The answer, counterclaim; subsequent pleadings
 - § 83. Special Defenses
 - § 84. Multiple Defenses
- *Connecticut Practice Series, Connecticut Civil Practice Forms*, by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
 - o General-Responsive Pleadings
 - Comments to Forms 105.1 and 105.4 et seq.
- *Connecticut Practice Series, Superior Court Civil Rules*, by Wesley W. Horton and Kimberly A. Knox (2015-2016 ed.). [Volume 1]
 - o Chapter 10. Pleadings
 - Authors' Comments to § 10-50, including "Table of Defenses" **[This table lists many common defenses requiring pleading of special defense.]**
 - Authors' Comments to § 10-57. Subsequent Pleadings.
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont, (2015-2016 ed.). [Vol. 1]
 - o Chapter 10. Pleadings
 - Commentaries to §§ 10-50 et seq.
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998).
 - o Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- [Connecticut Foreclosures: An Attorney's Manual of Practice and](#)

[Procedure](#), by Denis R. Caron and Geoffrey K. Milne (6th ed. 2016).

- Chapter 32: Defenses to Foreclosure
- [Connecticut Landlord and Tenant with Forms](#), 2d, Noble F. Allen (2014).
 - Chapter 8 – Summary Process Litigation
 - 8-8:2. Tenant’s Defenses/Special Defenses
- [Connecticut Torts: The Law and Practice](#), by Frederic S. Ury and Neal L. Moskow (2nd ed. 2015)
 - Chapter 5 – Anticipating Special Issues Relating to Minors
 - Chapter 24 – Is the Action Time Barred? Asserting or Avoiding the Statute of Limitations Defense
- [Connecticut Summary Process Manual](#), by Paul J. Marzinotto (2002).
 - IX. Special Defenses, page 99
- [Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015).
 - Chapter 11 – Special Defenses
 - 11-000. Commentary—General and Special Defenses, page 630
- [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#), by Jeanine M. Dumont (1998 ed.).
 - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

FORMS:

- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process, Eviction (Connecticut Judicial Branch)
 - Answer to Complaint, [JD-HM-5](#)
 - Reply to Special Defenses, [JD-HM-16](#)
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998). [Chapter 13, Defendant’s Answer, Special Defenses..., pp. 134-138]
- *Connecticut Practice Series*, [Connecticut Civil Practice Forms](#), 4th, by Joel M. Kaye et al. (2004). [See index]
- *Connecticut Practice Series*, [Connecticut Elements of an Action](#), by Thomas B. Merritt (2015-2016 ed.) [See each chapter]
- *Connecticut Practice Series*, [Connecticut Environmental Protection Act](#), by David F. Sherwood and Janet P. Brooks (2006). [Form § 11:2—Special Defense, 22a-16 Action]
- [Connecticut Landlord and Tenant with Forms](#), 2d, Noble F. Allen

(2014). [Form 2-009 – Answer and Defense to Action for Private Receivership of Tenement House]

- [Connecticut Law of Torts](#), by Douglass B. Wright et al. (3rd ed. 1991). [Form 9: Special Defense & Form 10: Reply]
- [Connecticut Summary Process Manual](#), by Paul J. Marzinotto (2002). [Forms 9.3 - 9.13]
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont, (2015-2016 ed.)
 - [See [Table 1](#)]
- [Library of Connecticut Collection Law Forms](#), by Robert M. Singer (2009).
 - [See [Table 2](#)]

ENCYCLOPEDIAS:

- 61A [Am. Jur. 2d Pleading](#) (2010)
 - VI. Answers, Pleas, and Defenses
Affirmative Defenses, §§ 260, 270 – 289
- 71 [C.J.S. Pleading](#) (2011)
 - III. Plea or Answer
D. Matter in Avoidance, § 196 – 198

Table 1: List of Special Defense Forms in Dupont on Connecticut Civil Practice

[Dupont on Connecticut Civil Practice](#) (2015-2016 ed.)

(This title is available at each [Connecticut Judicial Branch Law Library](#).)

F.10-50 Accord and Satisfaction -- Unliquidated Claim

F.10-50(1) Accord and Satisfaction

F.10-50(2) Release of Guarantor Because of Impairment of Collateral

F.10-50(3) Release of Guarantor Because of Impairment of Collateral

F.10-50(4) Probate Appeal (Another Form); Special Defenses

F.10-50(5) Forged or Unauthorized Signature

F.10-50(6) Special Defenses (Commonly Pled)

F.10-50(7) Statute of Limitations

F.10-50(8) Adverse Possession of Real Estate

F.10-50(9) Title to Right of Way by Prescription

F.10-50(10) Insanity

F.10-50(11) Duress

F.10-50(12) Against Holder in Due Course

F.10-50(13) Misrepresentation as Regards to Insurance Policy

F.10-50(14) Note -- Induced by Fraud

F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief

F.10-50(16) Invalidity of Judgment

F.10-50(17) Usury

F.10-50(18) Note - Illegality

F.10-50(19) Truth-In-Lending Violation, in Action or Note

F.10-50(20) Res Adjudicata

F.10-50(21) Payment

F.10-50(22) Infancy

F.10-50(23) Contributory Negligence, Under Statute

F.10-50(24) Answer in Replevin by Officer, With Special Defense and Counterclaim

F.10-50(25) Mistake in Amount of Note

F.10-50(26) By Surety, Alleging Alteration of Agreement

F.10-50(27) To Action Against Carrier, That Injury to Goods Was by Plaintiff's Fault

F.10-50(28) That Loss of Goods by Common Carrier Was Due to Risk for Which Defendant

Was Not Liable

- F.10-50(30) Unauthorized Completion of Instrument
- F.10-50(31) Mistake in Amount of Note
- F.10-50(32) Alteration of Negotiable Instrument
- F.10-50(33) Failure to Make Presentment for Payment: Resultant Discharge of Endorser
- F.10-50(34) Defense Against Acceleration of Note Under Insecurity Clause
- F.10-50.35 F.10-50(35) Defense and Counterclaim in Action for Assault
- F.10-50(36) Defense Against Common Law Claim for Personal Injuries by an Employee of a Subcontractor Within the Workmen's Compensation Act
- F.10-50(37) By Sheriff to Complaint for Illegal Seizure
- F.10-50(38) Lien for Storage
- F.10-50(39) Defective Fence
- F.10-50(40) To Action for Waste
- F.10-50(41) Defense, in Action of Ejectment; License
- F.10-50(42) Equitable Title in Defendant
- F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments
- F.10-50(44) Discharge in Bankruptcy
- F.10-50(45) Tender
- F.10-50(46) Mutual Rescission of Contract
- F.10-50(47) Rescission After Repudiation by Plaintiff
- F.10-50(48) That Plaintiff Made Fraudulent Proof of Loss
- F.10-50(49) Transfer of Interest of Insured
- F.10-50(50) Failure to Make Proof of Loss
- F.10-50(51) Failure to Give Timely Notice of Dishonor: Resultant Discharge of Endorse

Table 2: List of Special Defense Forms in *Library of Connecticut Collection Law Forms*

[Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015).

(This title is available at each [Connecticut Judicial Branch Law Library](#).)

11-001 - Statute of Limitations—Negligence Claim

11-002 - Statute of Limitations—Breach of Contract Claim

11-003 - Lack of Capacity—Under the Age of Majority

11-004 - Lack of Capacity—Mental Incapacity

11-005 - Fraud

11-006 - Waiver

11-007 - Mutual Mistake

11-008 - Statute of Frauds—Answering for the Debt of Another

11-009 - Statute of Frauds—Work Taking Longer Than One Year to Perform

11-010 - Defective Goods

11-011 - Disputing Amount of Debt

11-012 - Failure to Perform Services

Table 3: Pleading Statute of Limitations Defense - Selected Recent Case Law

Pleading Statute of Limitations Defense - Selected Recent Case Law	
<p>Ferraiuolo v. Dean, Superior Court, Judicial District of New Haven, No. NNH-CV-14-6047444-S (Feb. 26, 2015) (59 Conn. L. Rptr. 829).</p>	<p>“[I]n assessing the sufficiency of . . . special defenses, a court may look not only to the few facts specifically alleged in the special defenses themselves but also to the abundant facts alleged in the counts of the complaint to which the special defenses are directed...” (Internal quotation marks omitted.) <i>East Greyrock, LLC v. OBC Associates, Inc.</i>, Superior Court, judicial district of Stamford-Norwalk at Stamford, Complex Litigation Docket, Docket No. X08-CV-04-4002173-S (June 6, 2008, Jennings, J.) (45 Conn. L. Rptr. 753, 754). When there are no facts alleged in the special defense, ‘there is no clear appellate authority on . . . whether a bald legal conclusion constitutes a legally sufficient special defense [and] . . . there has long been a split of authority on this issue at the Superior Court level.’ <i>U.S. Bank National Ass’n v. Ascenzia</i>, Superior Court, judicial district of New Haven, Docket No. CV-08-5022527 (July 30, 2009, Abrams, J.) (48 Conn. L. Rptr. 345, 346).”</p>
<p>Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 402, 119 A.3d 462 (2015).</p>	<p>“...based on these separation of powers and administrative concerns ... we conclude that the line between legal and equitable claims vis-á-vis laches is still sound, and we decline to disturb it. In cases at law, where the legislature has determined through a statute of limitations that the door for bringing suit should remain open for a predetermined period of time, it should not be left to a judge's discretion to close that door early.” (Internal quotation marks omitted.)</p>
<p>Sean O’Kane AIA Architect v. Puljic, 148 Conn. App. 728, 87 A.3d 1124 (2014).</p>	<p>“Laches may be available as a defense to an equitable cause of action, whereas the statute of limitations is applicable to legal causes.”</p>
<p>Gianetti v. Connecticut Newspapers Pub. Co., 136 Conn. App. 67, 75, 44 A.3d 191, 196 (2012).</p>	<p>“A statute of limitations defense is not subject to the limiting waiver rule. See Practice Book § 10–32. Generally, such defenses are appropriately raised as special defenses, as it was here, and not in motions to dismiss.”</p>
<p>Martino v. Scalzo, 113 Conn. App. 240, 966 A.2d 339, cert. denied, 293 Conn. 904, 976 A.2d 705</p>	<p>“An additional consideration informs the analysis when the pleading in question is a special defense raising a statute of limitations. In instances in which a limitations period is contained within the statute that establishes the underlying remedy, such a limitations period is jurisdictional and cannot be waived....</p>

<p>(2009).</p>	<p>However, when the right of action exists independently of the statute in which the limitations period is found, the statutory bar is considered personal and procedural and is <i>deemed waived if not specially pleaded</i>" (Internal quotation marks omitted.)</p>
<p>Ramondetta v. Amenta, 97 Conn. App. 151, 161-162, 903 A.2d 232 (2006).</p>	<p>"They pleaded the defense as follows: 'The [d]efendant's claims are barred by the applicable [s]tatute of [l]imitations.' That pleading is inadequate. A similar situation arose in Avon <i>Meadow Condominium Assn., Inc. v. Bank of Boston Connecticut</i>, 50 Conn. App. 688, 719 A.2d 66, cert. denied, 247 Conn. 946, 723 A.2d 320 (1998), in which the defendant failed to plead specifically a statute of limitations defense. We held: 'Practice Book § 10-3 (a) provides that [w]hen any claim made...in a...special defense...or other pleading is grounded on a statute, the statute shall be specifically identified by its number.'" (Internal quotation marks omitted.)</p>
<p>Beckenstein Enterprises v. Keller, 115 Conn. App. 680, 688, 974 A. 2d 764 (2009), cert. denied, 293 Conn. 916, 979 A.2d 488.</p>	<p>"This court has previously concluded that the continuing course of conduct doctrine is a matter that must be pleaded in avoidance of a statute of limitations special defense. <i>Bellemare v. Wachovia Mortgage Corp.</i>, 94 Conn.App. 593, 607 n. 7, 894 A.2d 335 (2006), aff'd, 284 Conn. 193, 931 A.2d 916 (2007); see also Practice Book § 10-57."</p>
<p>Flannery v. Singer Asset Finance Company, LLC, 312 Conn. 286, 301, 94 A.3d 553 (2014).</p>	<p>"<i>Beckenstein Enterprises–Prestige Park, LLC</i>, does not, however, stand for the proposition that the pleading requirements are so rigid as to require that potentially meritorious claims in avoidance of the statute of limitations be categorically barred in all cases because of pleading lapses.... [I]t may be just to reach the merits of a plaintiff's claim to a toll of the statute of limitations, even when not properly pleaded pursuant to Practice Book § 10–57, if the issue is otherwise put before the trial court and no party is prejudiced by the lapse in pleading."</p>
<p>Romprey v. Safeco Insurance Co. of America, 310 Conn. 304, 321-22, 77 A.3d 726 (2013).</p>	<p>"We acknowledge that, in the context of a motion for summary judgment based on a statute of limitations special defense, a defendant typically meets its initial burden of showing the absence of a genuine issue of material fact by demonstrating that the action had commenced outside of the statutory limitation period....</p> <p>"We never have addressed, however, the question of whether the burden should remain on the moving party to establish that a party did not act in a timely manner when the statute they are relying on specifically provides for tolling as an alternative method of timeliness."</p>

Figure 2: Discharge in Bankruptcy (Form)

Form 105.1, Heading and *Form 105.5*: Discharge in Bankruptcy, 2 Conn. Practice Book (1997)

No. _____ Superior Court

(First Named Plaintiff)
v. Judicial District of _____
at _____

(First Named Defendant) (Date)

SPECIAL DEFENSE

1. On _____ the defendant was adjudicated a bankrupt in the United States District Court for the District of _____.
2. On _____ that court granted the defendant a discharge in bankruptcy, a copy of which is annexed marked Exhibit A.
3. **The indebtedness alleged in the plaintiff's complaint accrued before the petition was filed.**

Section 3: Counterclaims and Setoffs

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to counterclaims and setoffs in a civil matter.

DEFINITIONS:

- “Under our rules of practice, a counterclaim, if proper, is an independent action.... It has been defined as ‘a cause of action existing in favor of a defendant against a plaintiff which a defendant pleads to diminish, defeat or otherwise affect a plaintiff’s claim and also allows a recovery by the defendant.’” [Home Oil Co. v. Todd](#), 195 Conn. 333, 341, 487 A.2d 1095 (1985).
- “In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim arises out of the transaction or one of the transactions **which is the subject of the plaintiff’s complaint; and if necessary**, additional parties may be summoned in to answer any such counterclaim or cross claim. A defendant may also file a counterclaim or cross claim under this section against any other party to **the action for the purpose of establishing that party’s liability to the defendant for all or part of the plaintiff’s claim against that defendant.**” Conn. Practice Book [§ 10-10](#) (2016).
- “In any case in which the defendant has either in law or in equity or in both a counterclaim, or right of setoff, against the plaintiff’s demand, the defendant may have the benefit of any such setoff or counterclaim by pleading the same as such in the answer, and demanding judgment accordingly; and the same shall be pleaded and replied to according to the rules governing complaints and answers. (See General Statutes §§ 52-139 to 52-142.)” Conn. Practice Book [§ 10-54](#) (2016).
- “Generally speaking, a counterclaim is a cause of action asserted by one or more defendants against one or more plaintiffs while a cross claim is asserted against one or more codefendants.... ‘Cross claims are litigated by parties on the same side of the main litigation, while counterclaims are litigated...between the opposing parties to the principal action.’” [Williams v. Dumais](#), 34 Conn. Supp. 247, 250, 385 A.2d 686 (1977). (Citations omitted.)
- “Although General Statutes § 52-139 et seq. specifically sets forth a procedure for setoff of mutual debts, ‘[l]ong before statutes of set-off were enacted, courts of equity recognized and enforced the right of set-off.’ *Sullivan v. Merchants’ National Bank*, 108 Conn. 497, 499, 144 A. 34 (1928);” [Cordero v. University of Connecticut Health Center et al.](#), 308 Conn. 215, 232, 61 A.3d 514 (2013).

COURT FEES:

- [Court Fees for Counterclaims](#) (Connecticut Judicial Branch)

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Conn. Practice Book (2016)

[Chapter 9: Parties](#)

- § 9-21. Counterclaim; Third Parties

[Chapter 10: Pleadings](#)

- § 10-1. Fact Pleading
- § 10-5. Untrue Allegations or Denials
- **§ 10-10. Supplemental Pleadings; Counterclaims**
- § 10-11. Impleading of Third Party by Defendant in Civil Action
- § 10-39. Motion to Strike
- § 10-46. The Answer; General and Special Denial
- § 10-47. Evasive Denial
- § 10-48. Express Admissions and Denials to be Direct and Specific
- **§ 10-54. Pleading of Counterclaim and Setoff**
- **§ 10-55. Withdrawal of Action after Counterclaim**
- § 10-57. Matter in Avoidance of Answer
- § 10-59. Amendments; Amendments as of Right by Plaintiff
- § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

[Chapter 17: Judgments](#)

- § 17-44. Summary Judgments; Scope of Remedy

[Chapter 18: Fees and Costs](#)

- § 18-12. Costs where Several Issues
- § 18-16. Costs on Complaint and Counterclaim
- § 18-17. Costs on Counterclaim

[Chapter 24: Small Claims](#)

- § 24-19. Claim of Setoff or Counterclaim
- § 24-20. Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss
- § 24-33. Costs in Small Claims

[Chapter 25: Family Matters](#)

- § 25-9. Answer, Cross Complaint, Claims for relief by Defendant
- § 25-10. Answer to Cross Complaint

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015)
 - [Chapter 898 - Pleading](#)
 - § 52-99. Untrue allegations or denials. Costs.
 - § 52-119. Pleading to be according to rules and orders of court.
 - § 52-120. Pleading filed by consent after expiration of time.
 - § 52-121. Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
 - § 52-123. Circumstantial defects not to abate pleadings.
 - § 52-130. Amendment of defects, mistakes or informalities.
 - **§ 52-139. Set-off of mutual debts; procedure.**
 - **§ 52-140. Set-off by defendant in suit by assignee.**
 - **§ 52-141. Set-off in action for trespass or tort.**
 - **§ 52-142. Joint debtors; discharge; set-off.**

Chapter 926 – Statute of Limitations

- [§ 52-584](#). Limitation of action for injury to person or property caused by negligence, misconduct or malpractice.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [State v. Bacon Construction Co.](#), 160 Conn. App. 75, 87-88, 124 A.3d 941, cert. denied, 319 Conn. 953 (2015). “Thus, the defendant's argument regarding the plaintiff's failure to assert a counterclaim in the arbitration proceeding would be valid in a compulsory counterclaim jurisdiction. Connecticut, however, is a permissive counterclaim jurisdiction. See Practice Book § 10-10; *Gattoni v. Zaccaro*, 52 Conn. App. 274, 280, 727 A.2d 706 (1999); *Hansted v. Safeco Ins. Co. of America*, 19 Conn. App. 515, 520 n. 4, 562 A.2d 1148, cert. denied, 212 Conn. 819, 565 A.2d 540 (1989). In Connecticut, the fact that a defendant in a prior action did not assert a related cause of action in that prior action does not foreclose the defendant from asserting those claims in a new action filed in the future.”
- [CitiMortgage, Inc. v. Rey](#), 150 Conn. App. 595, 608, 92 A.3d 27 (2014) “The question to decide is whether the subject of the defendant's counterclaim is sufficiently intertwined with the complaint that it arises from the same transaction. In this instance, it would be an abuse of discretion to answer that question in the negative.”
- [Chief Information Officer v. Computers Plus Center, Inc.](#), 310 Conn. 60, 94, 74 A.3d 1242 (2013). “Furthermore, the

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

defendant's contention in the present case that the procedures for obtaining permission to bring a claim against the state as a plaintiff are inapplicable to the assertion of a counterclaim by a defendant is inconsistent with the nature of counterclaims under Connecticut law. Our rules of practice and case law make clear that, although counterclaims arise only in response to an action initiated by another party, they are essentially independent actions brought by the defendant against the plaintiff, which courts entertain concurrently simply in the interest of judicial economy."

- [Cordero v. University of Connecticut Health Center et al.](#), 308 Conn. 215, 232, 61 A.3d 514 (2013). "Although General Statutes § 52-139 et seq. specifically sets forth a procedure for setoff of mutual debts, '[I]ong before statutes of set-off were enacted, courts of equity recognized and enforced the right of set-off.' *Sullivan v. Merchants' National Bank*, 108 Conn. 497, 499, 144 A. 34 (1928)"
- [Morgan Chase Bank, Trustee v. Rodrigues](#), 109 Conn. App. 125, 131, 952 A. 2d 56 (2008). "A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim . . . *Fairfield Lease Corp. v. Romano's Auto Service*, 4 Conn. App. 495, 496, 495 A.2d 286 (1985); see also Practice Book § 10-39. Accordingly, we conclude that a motion to strike was the proper procedural vehicle to test the sufficiency of the defendants' counterclaim. (Citations omitted; internal quotation marks omitted.)"
- [Morgera v. Chiappardi](#), 74 Conn. App. 442, 449, 813 A. 2d 89 (2007). "The 'transaction test' is one of practicality, and the trial court's determination as to whether that test has been met ought not be disturbed except for an abuse of discretion. . . . Where the underlying purposes of Practice Book § [10-10], to wit, judicial economy, avoidance of multiplicity of litigation, and avoidance of piecemeal disposition of what is essentially one action, are thwarted rather than served by the filing of a cross claim, the cross claim may properly be expunged. . . ."

"We conclude, therefore, that the necessary nexus existed such that the complaint and counterclaim were so related that they satisfied the practical test of our transaction rule stated in Practice Book § 10-10. Having satisfied the transaction test, the defendant also is entitled legitimately to invoke equitable relief." (Citation omitted; internal quotation marks omitted.)

- [Urich v. Fish](#), 97 Conn. App. 797, 802-803, 907 A. 2d 96 (2006). "The plaintiff cites no case law, statute or rule of practice that supports his position. Here, prejudgment interest was awarded on the defendant's counterclaim. A counterclaim is an independent action. Practice Book §§ 10-10, 10-54, 10-55; *Ceci Bros., Inc. v. Five Twenty-One Corp.*, 81 Conn. App. 419, 428, 840 A.2d 578, cert. denied, 268 Conn. 922, 846 A.2d 881 (2004).

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

In its discretion, the court declined to award the plaintiff prejudgment interest on his claims but granted the defendant's request to award prejudgment interest on his claims. The court properly refused to set off the defendant's award against the plaintiff's award. To set off one claim against the other before calculating interest would, in effect, award § 37-3a interest to the plaintiff when the plaintiff had not been awarded such interest and was not entitled to such interest."

- [Mulcahy v. Mossa](#), 89 Conn. App. 115, 126, 872 A. 2d 453 (2005). "Section 52-584 expressly provides that a counterclaim may be filed at any time prior to the close of pleadings, irrespective of whether the statute of limitations governing the counterclaim has run."
- [OCI Mortgage Corp. v. Marchese](#), 255 Conn. 448, 463-464, 774 A. 2d 940 (2001). "In Connecticut, a setoff may be legal or equitable in nature. See *Connecticut Bank & Trust Co. v. Winters*, 225 Conn. 146, 162, 622 A.2d 536 (1993); *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943). Legal setoff is governed by General Statutes § 52-139 et seq. and involves mutual debts between parties in any action: (1) to recover on a debt pursuant to § 52-139; (2) by an assignee of a nonnegotiable chose in action pursuant to General Statutes § 52-140; (3) for trespass to real or personal property or other tort committed without force pursuant to General Statutes § 52-141; or (4) involving joint debtors pursuant to General Statutes § 52-142. See also Practice Book § 10-54.

"When the statutes governing legal setoff do not apply, a party may be entitled to equitable setoff, nonetheless, 'only to enforce the simple but clear natural equity' in a given case. *Connecticut Bank & Trust Co. v. Winters*, supra, 225 Conn. 162, quoting *Spurr v. Snyder*, 35 Conn. 172, 174 (1868)."

- [225 Associates v. Connecticut Housing Finance Authority](#), 65 Conn. App. 112, 121, 782 A. 2d 189 (2001). "'Traditionally, the distinction between a setoff and a counterclaim centers around whether the claim arises from the same transaction described in the complaint. If the claim involves a debt which is mutual and liquidated, even though it arises from separate transactions, it is characterized as a setoff. See General Statutes § 52-139. If the claim arises out of the same transaction described in the complaint, it is characterized as a counterclaim. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, [210], 33 A.2d 126 (1943). The title of the pleading is not controlling. The issue is, rather, whether sufficient facts are pleaded that would allow recovery either as a setoff or as a counterclaim. *Peters Production, Inc. v. Dawson*, 182 Conn. 526, 528, 438 A.2d 747 (1980).' *Northwestern Electric, Inc. v. Rozbicki*, 6 Conn. App. 417, 426, 505 A.2d 750 (1986)."
- [Hope's Architectural Products, Inc. v. Fox Steel Co.](#), 44 Conn.

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

App. 759, 761-762, 692 A. 2d 829 (1997). "A defendant is in the position of a plaintiff with respect to a set-off or a counterclaim. See Practice Book § 168; *Yale University School of Medicine v. McCarthy*, 26 Conn. App. 497, 499 n.2, 602 A.2d 1040 (1992). The law of set-off is governed by General Statutes § 52-139 (a), **the relevant portion of which provides that '[i]n any action brought for the recovery of a debt, if there are mutual debts between the plaintiff ... and the defendant ... one debt may be set-off against the other.'** 'A condition precedent to the application of § 52-139 is that the defendant's claim arise from a **debt due by the plaintiff.'** *Elis v. Rogers*, 15 Conn. App. 362, 365, 544 A.2d 633 (1988). While a counterclaim arises out of the same transaction described in the complaint, a set-off is independent thereof. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 210, 33 A.2d 126 (1943)."

- [Northeast Sav., F.A. v. Plymouth Commons Realty Corp.](#), 229 Conn. 634, 642, 642 A.2d 1194 (1994). "The plaintiff relies on dictum in *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943), for the proposition that the defendants, by raising their legal claims as a counterclaim in the plaintiff's equitable action rather than filing a separate suit, have waived their right to a jury trial. To the extent that our dictum in *Savings Bank of New London* is inconsistent with the principles set forth in our subsequent cases; see, e.g., *Texaco, Inc. v. Golart*, supra, 206 Conn. 458-59; *United States Trust Co. v. Bohart*, supra, 197 Conn. 44-45; we decline to follow it."
- [Northern Homes Distributors, Inc. v. Grosch](#), 22 Conn. App. 93, 96, 575 A.2d 711 (1990). "The defendant first asserts that the prior pending action doctrine cannot be applied in this situation. Contrary to the defendant's contention, the prior pending action doctrine applies with equal force to counterclaims. *Cole v. Associated Construction Co.*, 141 Conn. 49, 53, 103 A.2d 529 (1954). In this instance, the court must compare the allegations made in the counterclaim with those contained in the complaint brought by the party bringing the counterclaim. Id. If the **counterclaim and the party's complaint contain 'essentially the same allegations,' the latter of the two must be dismissed.**"
- [Colonial Bank & Trust Co. v. Matoff](#), 18 Conn. App. 20, 29, 556 A. 2d 619 (1989). "It was ... [defendant's] burden to demonstrate his right of setoff by affirmatively and adequately alleging **his claim in his pleadings.**"
- [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943). "A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof."
- *Pleading*, Key Numbers 138 – 149

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- Connecticut Appellate Court Records And Briefs (April 2006). [Ramondetta v. Amenta](#), 97 Conn. App. 151 (2006).
 - Answer and Counterclaim [See [Figure 3](#)]
- *Connecticut Judicial Branch Civil Jury Instructions* (2008).
 - Part 2.6 — Burden of Proof
 - [2.6-1 Burden of Proof - Claims](#)
- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
 - Chapter 8. The answer, counterclaim; subsequent pleadings
 - § 85. Recoupment, Setoff, Counterclaim
 - § 86. Cross-Claims and Third Parties
- *Connecticut Practice Series, Connecticut Civil Practice Forms*, by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
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 - Chapter 10. Pleadings
 - Authors' Comments to §§ 10-10, 10-54, 10-55
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- [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998).
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- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), by Denis R. Caron and Geoffrey K. Milne (6th ed. 2016).
 - Chapter 32
 - § 32-6: Counterclaims
- [Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015).
 - Chapter 10 - Answer and Counterclaim
 - 10-000 Commentary—Counterclaims

- [*Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*](#), by Jeanine M. Dumont (1998 ed.).
 - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

FORMS:

- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Small Claims - Instructions to Defendant, [JD-CV-121](#)
- [*Civil Litigation In Connecticut: Anatomy of a Lawsuit*](#), by Kimberly A. Peterson (1998).
- Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- *Connecticut Practice Series*, [Connecticut Civil Practice Forms](#), by Joel M. Kaye et al. (4th ed. 2004).
- Form 105.8 (Setoff, with Prayer for Affirmative Relief)
- Form 105.9 (Answer, and Set-Off)
- Form 105.10 (Reply—Denial)
- *Connecticut Practice Series*, [Connecticut Elements of an Action](#), by Thomas B. Merritt (2015-2016 ed.).
- Sample answers containing counterclaims
 - Chapter 4: Contract Actions — Breach of Contract, § 4: 26
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont, (2015-2016 ed.). [Vol. 1]
- F.8-1(9) Answer in Replevin by Officer, Special Defense, Counterclaim
- F.8-1(12) Prejudgment Remedy by Defendant After Filing Set-Off or Counterclaim
- F.10-10 Counterclaim in Action on Building Contract
- F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief
- F.10-50(35) Defense and Counterclaim in Action for Assault
- F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments
- F.10-56(3) Reply and Answer to Counterclaim for Assault
- F.10-58 Defendant's Rejoinder to Answer to Counterclaim
- [Library of Connecticut Collection Law Forms, 2016](#), by Robert M. Singer (2015).
 - Chapter 10 - Answer and Counterclaim
 - 10-002 Counterclaim for Fraud
 - 10-003 Counterclaim for Unfair Trade Practices

10-005 Counterclaim on Consumer Collection—Outside
of Proper Federal District Suit Under FDCPA

ENCYCLOPEDIAS:

- 20 [Am. Jur. 2d](#) Counterclaim, Recoupment, Etc. (2015)
 - I. In General,
Counterclaim, §§ 1 – 4
Recoupment and Setoff, §§ 5 – 7
- 61A [Am. Jur. 2d](#) *Pleading* (2010)
 - VIII. Cross Complaints and Cross Claims, §§ 355 – 362
- 71 [C.J.S.](#) *Pleading* (2011)
 - III. Plea or Answer
E. Setoffs, Counterclaims, and Cross-Claims, §§ 199 –
206

Figure 3: Answer and Counterclaim (Form)

Connecticut Appellate Court Records and Briefs (April 2006).
Ramondetta v. Amenta, 97 Conn. App. 151, 903 A.2d 232 (2006).

NO. CV-03-0825102-S

JOSEPH J. RAMONDETT A II, ET AL.

v.

SALVATORE AMENTA

SUPERIOR COURT

JUDICIAL DISTRICT OF
HARTFORD

AUGUST 12, 2003

ANSWER AND COUNTERCLAIM

Defendant Salvatore Amenta, Trustee hereby Answers the Complaint of the plaintiffs as follows.

FIRST COUNT

1. Admitted.
2. Admitted.
3. Trustee Amenta admits that all expenses and obligations incurred by him as Trustee in maintaining the Trust premises or in connection with the improvement, sale, lease or mortgage of the Trust premises by the Trustee would be borne equally by the parties to the Trust in their individual capacities. Trustee Amenta denies the remainder of the allegations in paragraph 3.
4. Trustee Amenta lacks sufficient information to form a response to the allegations in paragraph 4 and therefore leaves the plaintiffs to their proof.

5. Trustee Amenta lacks sufficient information to form a response to the allegations in paragraph 5 and therefore leaves the plaintiffs to their proof.

6. Admitted.

7. Denied.

8. Denied.

THIRD COUNT

1. —7. Trustee Amenta hereby repeats and realleges his responses to paragraphs 1 through 7 of the First Count as his responses paragraphs 1 through 7 of the Third Count as if fully set forth herein.

8. Admitted.

9. Trustee Amenta admits that he undertook the responsibilities of a Trustee with respect to the Trust referred to in the Complaint. Trustee Amenta denies the remainder of the allegations in paragraph 9.

10. Denied.

11. Denied.

COUNTERCLAIM

Trustee Amenta hereby asserts the following Counterclaim against the plaintiffs and in support thereof alleges as follows:

COUNT ONE: Unjust Enrichment

1. By way of Trust Agreement dated May 4, 1970, Salvatore J. Amenta, Jack Cannarelle, Sebastian Ramondetta, Nicholas J. Cecere, Joseph Ramondetta and Sarino Garafolo entered into a Trust Agreement ("Trust").
2. Pursuant to the Trust, Salvatore J. Amenta ("Amenta") agreed to act as the Trustee for and in behalf of all parties to the Trust.
3. Upon information and belief, plaintiffs Joseph J. Ramondetta., II and John Ramondetta may own portions and/or may be beneficiaries of the Trust.
4. Since 1970, Trustee Amenta has acted as Trustee to the Trust thereby providing significant benefit to all parties to the Trust and, upon information and belief, the plaintiffs.
5. As a result of Trustee Amenta's efforts on behalf of the Trust over a period of 30 years, the plaintiffs have been enriched.
6. To the extent Trustee Amenta has not been paid a reasonable fee for his services as Trustee, the plaintiffs have been unjustly enriched at the expense of the Trustee.

WHEREFORE, Trustee Amenta respectfully requests:

1. Monetary damages.
2. Interest.
3. Costs.
4. Such other relief as the Court deems just and equitable.

DEFENDANT -
SALVATORE AMENTA, TRUSTEE

By _____

His Attorneys