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Overview of State of Connecticut Court System

A. Trial Courts

- Administrative Appeals
- Civil Jury
- Civil Non-Jury
- Landlord-Tenant, including evictions (called summary process)
- Small Claims

B. Appellate Courts

In 1818, the Connecticut Constitution established an independent judiciary, with the Supreme Court of Errors as the state's highest court. (The words "of Errors" were deleted in 1965.) Between September and June of each year, the Supreme Court hears oral arguments on pending cases in 8 two-week terms in the Supreme Court courtroom located at 231 Capitol Avenue in Hartford, CT. Oral arguments are open to the public and you are invited to attend. In the 1980s, a second, lower level appellate court was created.

The original legislation that implemented the Appellate Court's existence outlined the parameters of its jurisdiction. The original purpose of adding an intermediate constitutional court to the judicial spectrum was to alleviate the backlog in the Supreme Court, to provide appellate review to a larger number of litigants, to provide the bar with more published decisions relating to appellate motion practice, to reduce the time-lag between the filing of appeals and the publication of opinions, and to provide some litigants with a less expensive appellate procedure by eliminating the necessity of printed briefs.

Procedural

A. Venue

Venue in civil actions is governed by Conn. Gen. Stat. § 51-345. Generally, venue is proper in the judicial district where: (1) the plaintiff resides; (2) the defendant resides; or (3) the accident happened. There are some exceptions, and the statute should be reviewed where a question comes up.

B. Statute of Limitations

Personal Injury	2 years*
Property Damage	2 years
Written Contract	6 years
Wrongful Death	2 years**
Breach of Warranty	3 years
Fraud	3years
Oral Contract	3 years
Contract Under Seal	15 years
Product Liability	3 years
Libel/Slander	2 years

Workers' Compensation	1 year
Asbestos	3 years***
Dram Shop Claim	1 year
Sexual Molestation of a minor	30 years

* From date of incident or discovery, but not more than 3 years from date of Accident

** From date of death

*** From date of diagnosis. Note: Statute of Repose: Eligible to file asbestos related claim only if your last exposure was not more than 80 years from the date of your claim for personal injuries or 30 years for property damage

**** From the date the victim turns 18

C. Time for Filing an Answer

No later than 30 days from the "return date," which is the date by which the Marshal must return the complaint, along with proof of service of process, to the court clerk.

D. Dismissal Re-Filing of Suit

Connecticut has an "Accidental Failure of Suit" Statute. Section 52-592(a) provides: "If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits ... or if a judgment of nonsuit has been rendered ... the plaintiff ... may commence a new action ... for the same cause at any time within one year after the determination of the original action ..." C.G.S. § 52–72 is a remedial statute that must be liberally construed in favor of those whom the legislature intended to benefit.

Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which it was rendered or passed ... upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense.

A nonsuit is the name of a judgment rendered against a party in a legal proceeding upon his inability to maintain his cause in court, or when he is in default in prosecuting his suit or in complying with orders of the court.... The nonsuit forecloses the plaintiff from further prosecution of the action.

After the commencement of a hearing on an issue of fact in any such action, the plaintiff may withdraw such action, or any other party thereto may withdraw any ... counterclaim filed therein by him, only by leave of court for cause shown."

Liability

A. Negligence

The plaintiff must establish that: (1) the defendant owed a duty; (2) the defendant breached that duty; (3) the defendant's breach caused the plaintiff's injury; and (4) the plaintiff suffered an actual injury. In causes of action based on negligence to recover damages resulting from personal injury, wrongful death or property damage, contributory negligence shall not bar recovery if the plaintiff's negligence is not greater than the combined negligence of all persons against whom recovery is sought, including settled or released persons. Conn. Gen. Stat. § 52-572(h). Connecticut, by way of tort reform, has adopted a modified comparative negligence scheme. If a plaintiff is more than 50% at fault, then he/she cannot recover. If the plaintiff is found to be at fault, but is less than 50% at fault, then the amount of the verdict is reduced in direct proportion to the amount of negligence assigned by the jury to the plaintiff.

B. Negligence Defenses

(1) Lack of Duty; (2) Statute of Limitations; (3) Doctrine of Sudden Emergency; (4) Immunity under a Volunteer Protection Act; (5) Good Samaritan Defense; (6) Comparative responsibility of the plaintiff; and (7) Lack of notice of the Existence of a defect (premises liability cases).

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

Connecticut does not recognize a cause of action for gross negligence. Recklessness, willful and wanton misconduct are one and the same. The plaintiff must plead and prove a mindset that is the equivalent to an intent to cause harm. If proven, this can support an award of common law punitive damages (attorney's fees).

D. Negligent Hiring and Retention

A common-law claim in negligent hiring exists in any situation where a third party is injured by an employer's own negligence in failing to select an employee fit or competent to perform the services of employment. In any determination of whether even a special relationship should be held to give rise to a duty to exercise care to avoid harm to a third person, foreseeability plays an important role. Our courts have interpreted this foreseeability requirement as one in which the employer knew or should have known of the employee's propensity to engage in the alleged harmful conduct.

There are no cases on point, but that Connecticut law would not allow a tort plaintiff to recover both damages for negligent operation against the company's driver and additional damages against the carrier for negligent hiring because: (1) the plaintiff can only recover for his/her injuries once and a plaintiff's verdict against the employee/driver accomplishes that; and (2) an award for the same injuries against the carrier based upon a negligence claim against that carrier would be a "double recovery." As a practical matter, the carrier would likely also have had a verdict against it on a negligence/agency/vicarious liability theory. Its liability for the negligence of its employee would be no greater than the employee's. Another finding of negligence against the carrier for negligently hiring would result in no additional damages. This argument

could support a pretrial motion to strike the negligent hiring count in the complaint and also support motions in limine seeking to keep out the driver's history.

E. Negligent Entrustment

Connecticut has long recognized the doctrine of negligent entrustment of automobiles. When the evidence proves that the owner of an automobile knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought reasonably to anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in such injury, a basis of recovery by the person injured is established. An automobile, while capable of doing great injury when not properly operated upon the highways, is not an intrinsically dangerous instrumentality ... and liability cannot be imposed upon an owner merely because he entrusts it to another to drive upon the highways. Nevertheless, the owner may be liable for injury resulting from the operation of an automobile he loans to another, when he knows or ought reasonably to know that the one to whom he entrusts it is so incompetent to operate it, by reason of inexperience or other cause, that the owner ought reasonably to anticipate the likelihood that in its operation injury will be done to others.

The elements of a claim for negligent entrustment are well established. The essential elements of the tort of negligent entrustment of an automobile [are] that the entrustor knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought to reasonably anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in injury ... Liability cannot be imposed on a defendant under a theory of negligent entrustment simply because the defendant permitted another person to operate the motor vehicle ... Liability can only be imposed if (1) there is actual or constructive knowledge that the person to whom the automobile is loaned is incompetent to operate the motor vehicle; and (2) the injury resulted from that incompetence.

When the evidence proves that the owner of an automobile knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought reasonably to anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in such injury, a basis of recovery by the person injured is established. That recovery rests primarily upon the negligence of the owner in entrusting the automobile to the incompetent driver.

Several Superior Court decisions have described the elements of the tort of negligent entrustment as follows: The essential elements of the tort of negligent entrustment of an automobile [are] that the entrustor knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought to reasonably anticipate the likelihood of injury to others by reason of that incompetence,

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F. Dram Shop

Notice

The statute requires that notice be given within 120 days of the accident and, in the case of death, within 180 days.

Conn. Gen. Stat. § 30-102 provides, in relevant part: "If any person, by such person or such person's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured. . ."

Damages Limitation

Damages are capped at $250,000 per person and per occurrence, unless the plaintiff can prove recklessness.

Interpretation

The act covers all sales of liquor that result in an intoxicated person causing injury, irrespective of the bar owner's knowledge or state of mind. The act thereby provides an action in strict liability, both without the burden of proving the element of scienter essential to a negligence action and without the benefit of the broader scope of recovery permitted under such an action.

The underlying premise of the act is that it is in the public interest to compensate citizens of this state for injuries received when a vendor sells alcohol to an intoxicated person who in turn brings about injuries as a result of such intoxication. The plaintiff has the burden of proving that the patron was visibly or perceivably intoxicated when he/she was served.

A plaintiff seeking to prevail under the dram shop statute must establish that there was: (1) a sale of intoxicating liquor; (2) to an intoxicated person; (3) who, in consequence of such intoxication, causes injury to the person or property of another.

An intoxicated adult patron cannot sue for his own injuries under the Dram Shop Act. If the sale is to a minor, then the statutory cap does not apply and the intoxicated minor can sue for his/her injuries.

G. Joint and Several Liability

The Connecticut Legislature abolished the common law doctrine of joint and several liability in negligence cases. The doctrine still exists among defendant in product liability cases in Connecticut.

H. Wrongful Death and/or Survival Actions

The wrongful death statute, General Statutes § 52-555, is the sole basis upon which an action that includes as an element of damages a person's death or its consequences can be brought. This rule, however, does not bar the plaintiff from advancing alternative theories of recovery, or causes of action, pursuant to the wrongful death statute.

That the wrongful death statute prevents a decedent's spouse from joining a claim of postmortem.

Where damages for death itself are claimed in action based on wrongful death statute, recovery of any antemortem damages flowing from same tort must be had, if at all, in one and same action.

Under the wrongful death statute, damages are allowed as compensation for destruction of decedent's capacity to carry on life's activities, including his capacity to earn money, as he would have if he had not been killed, and although destruction of earning capacity may well be the principal element of recovery resulting from the death, some damages are recoverable for death itself, even though instantaneous, without regard to earnings or earning capacity.

Although suit for damages for wrongful death must be brought by the executor or administrator and any recovery passes into decedent's estate for distribution, such damages are assessed on basis of loss to the decedent had he lived, and, except in that sense, not on basis of loss to his estate and in many respects, such damages are assessed in same way as in nonfatal case involving total and permanent destruction of capacity to carry on life's.

I. Vicarious Liability

C.G.S. Section 52–183 provides that, in any action for damages brought against the nonoperator owner of a motor vehicle “for the negligent or reckless operation of [that] motor vehicle,” the operator of the motor vehicle “shall be presumed to be the agent and servant of the owner of the motor vehicle and operating it in the course of his employment. Section 52–183 further provides that the defendant, that is, the owner of the vehicle, bears “the burden of rebutting the presumption. The statute expressly places upon the defendant the burden of introducing evidence to rebut the presumption created by the statute. Moreover, that presumption is not ousted simply by the introduction of any evidence to the contrary.

General Statutes § 52–182 provides as follows: “Proof that the operator of a motor vehicle ... was the husband, wife, father, mother, son, or daughter of

the owner shall raise a presumption that such motor vehicle ... was being operated as a family car ... within the scope of a general authority from the owner, and shall impose upon the defendant the burden of rebutting such presumption." The statute goes further than merely establishing a presumption "in that it expressly places upon the defendant the burden of introducing evidence to rebut the presumption created by the statute. Moreover, the presumption is not ousted simply by the introduction of any evidence to the contrary. Indeed, ... [t]he presumption ceases to be operative [only] when the trier finds proven facts which fairly put in issue the question ... if no evidence relevant to the issue is produced, or, if the countervailing evidence is produced but the trier does not believe it, the presumption applies and the plaintiff is entitled to have the issue found in his favor." Thus, not only must there be evidence which rebuts the presumption, but such evidence must be credited by the trier of fact.

An essential factor in an agency relationship is the right of the principal to direct and control the performance of the work by the agent.

49 U.S.C. § 30106 (the "Graves Amendment") bars vicarious liability of an owner engaged in the trade or business of renting or leasing motor vehicles in the absence of negligence or criminal wrongdoing. The Graves Amendment conflicts with and by its terms preempts state laws which impose vicarious liability on owners of leased or rented motor vehicles for damages as is the case with General Statutes § 14-154a.

J. Exclusivity of Workers' Compensation

Under Connecticut law, workers' compensation is an employee's exclusive remedy against his employer for injuries which arise out of an in-the-course-of employment. Conn. Gen. Stat. § 31-284. The Connecticut Supreme Court has recognized an exception to the exclusive remedy rule in cases in which an employer intentionally injures an employee. Another statutory exception is that a worker can sue a co-worker for injuries sustained in the negligent operation of a motor vehicle.

Damages

A. Statutory Caps on Damages

None.

B. Compensatory Damages for Bodily Injury

Compensatory damages for bodily injury include both economic and non-economic damages. Economic damages usually include past and future: (1) medical expenses; (2) out-of-pocket expenses for services; and (3) earnings losses. Non-economic damages include: (1) pain and suffering; (2) permanent injuries; (3) loss of life's enjoyment; and (4) loss of consortium.

Litigants have a constitutional right to have factual issues determined by the jury. This right embraces the determination of damages when there is room for a reasonable difference of opinions among fair minded people as to the amount to be awarded. The amount of a damage award is a matter peculiarly within

the providence of the trier of fact in this case, the jury and should not be tampered with by the court unless the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, mistake or corruption.

Proper compensation for non-economic damages cannot be computed by a mathematical formula and there is no precise rule for the assessment of damages.

An award of compensatory damages for pain and suffering is peculiarly within the province of the trier, and will be sustained, even though generous, if it does not shock the sense of justice. The test is whether the amount of damages awarded falls within the necessarily uncertain limits of fair and just damages.

C. Collateral Source

In personal injury or wrongful death actions, the plaintiff's award of economic damages (usually medical bills and lost wages) is reduced by the amount of collateral source payments made to or on behalf of the plaintiff. The amount of the reduction is offset by the amount paid by or on behalf of the claimant to secure collateral source benefits (usually insurance premiums). Conn. Gen. Stat. § 52-225a. Collateral source benefits include amounts paid pursuant to health insurance, automobile insurance medical benefits coverage, disability insurance and the like but do not include settlement payments. Conn. Gen. Stat. § 52-225b. The Connecticut Supreme Court has concluded that social security disability benefits are not a collateral source as that term is defined in §52-225b.

Sources of payments that are not treated by the courts as collateral sources under § 52-225:

Social Security Benefits
ERISA payments
Workers' Compensation Benefits
Wage Continuation plans
Example of Collateral Source Hearing: See Memorandum of decision in *Crawford v. Lugo*, 2007 WL 2390384 (Conn. Super.)

D. Pre-Judgment/Post-Judgment Interest

Section 37-3a. Rate recoverable as damages. Rate on debt arising out of hospital services. Statute providing for prejudgment interest as damages for detention of money after it becomes payable provides a substantive right that applies only to certain claims; it does not allow prejudgment interest on claims that are not yet payable, such as awards for punitive damages, or on claims that do not involve wrongful detention of money, such as personal injury claims, but applies only to claims involving wrongful detention of money after it becomes due and payable. Award of post judgment interest under this statute is discretionary, not mandatory.

Offer of Compromise

General Statutes § 52–192a provides in relevant part: "(a) After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain .... (c) After trial the court shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in the plaintiff's offer of compromise, the court shall add to the amount so recovered eight per cent annual interest on said amount.... The interest shall be computed from the date the complaint in the civil action ... was filed with the court...."

..."[I]nterest [under § 52–192a] is to be awarded by the trial court when a valid offer of [compromise] is filed by the plaintiff, the offer is rejected by the defendant, and the plaintiff ultimately recovers an amount greater than the offer of [compromise] after trial. ...

E. Damages for Emotional Distress

Under Connecticut law, a cause of action for emotional distress can fall into two categories: intentional or negligent infliction of emotional distress. To succeed on a claim for intentional infliction of emotional distress ("IIED") in Connecticut, a plaintiff must prove "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe."

To successfully prove a claim for negligent infliction of emotional distress ("NIED"), a plaintiff must prove "(1) that defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) that plaintiff's distress was foreseeable; (3) that her emotional distress was severe enough that it might result in illness or bodily harm; and (4) that defendant's conduct was the cause of the plaintiff's distress.

A bystander may recover damages for emotional distress under the rule of reasonable foreseeability if the bystander satisfies the following conditions: (1) he or she is closely related to the injury victim, such as the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the

victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response.

F. Wrongful Death and/or Survival Action Damages

Connecticut law measures damages based on the loss to the decedent rather than the loss to the survivors. Conn. Gen. Stat. § 52-555. The elements of recoverable damages include conscious pain and suffering, loss of earning capacity, loss of life's enjoyment, medical bills and funeral expense. A spouse may also pursue a claim for loss of consortium. Conn. Gen. Stat. § 52-555.

A spouse may recover for antemortem loss of consortium in her individual capacity where common-law claim has been joined with wrongful death action brought by decedent's estate. Conn. Gen. Stat. §§ 52-555, 52-599.

The surviving spouse has no statutory or common-law right to recover for postmortem loss of consortium. Conn. Gen. Stat. §§ 52-555, 52-599.

Punitive damages could be awarded in connection with a loss of consortium claim.

G. Punitive Damages

Common law punitive damages are recoverable under Connecticut law where the tortfeasor's conduct is willful, wanton or malicious. Common law punitive damages are limited to the actual costs of litigation which generally constitute attorney's fees and taxable costs.

Otherwise, punitive damages are only recoverable if they are statutorily authorized. For example, in motor vehicle accident cases, double or treble damages may be awarded by the trier of fact where the tortfeasor has deliberately or with reckless disregard violated certain enumerated motor vehicle laws and such violation was a substantial factor in causing the plaintiff's injury or damage. Conn. Gen. Stat. § 14-295. For causes of action accruing on or after October 1, 2003, the owner of a rental or lease motor vehicle shall not be responsible for such damages unless the damages arose from such owner's operation of the motor vehicle. Conn. Gen. Stat. § 14-154a.

In product liability cases, the court may award punitive damages not to exceed an amount equal to twice the compensatory damages if the trier of fact determines that the harm suffered by plaintiff was the result of the product seller's reckless disregard for the safety or product users, consumers or others who were injured by the product. Conn. Gen. Stat. § 52-240b.

H. Diminution in Value of Damaged Vehicle

The general rule is that the measure of damages is the lower of either the cost to repair the vehicle or the fair market value of the vehicle at the time of the loss. Connecticut may allow recovery for the value if the repairs made to the vehicle did not substantially repair the vehicle to its former condition.

I. Loss of Use of Motor Vehicle

Loss of use is an element of damage compensable as a separate item from the cost of repair. Such loss of use is compensable regardless of whether there is any proof of financial loss.

Evidentiary Issues

A. Preventability Determination

No law on point.

B. Traffic Citation from Accident

A guilty plea to citation may be admissible in evidence. The mere fact that a citation was issued is generally not admissible.

C. Failure to Wear a Seat Belt

Evidence or testimony about a plaintiff's failure to wear a seat belt is inadmissible. Conn. Gen. Stat. § 14-100a(c)(3) states failure to wear a seat safety belt shall not be considered as contributory negligence nor shall such failure be admissible evidence in any civil action.

D. Failure of Motorcyclist to Wear a Helmet

In Connecticut, the so-called 'Helmet Law' ... which required motorcycle operators and passengers to wear a helmet, was repealed effective June 1, 1976. Since that time, there is no duty, statutory or otherwise, for motorcycle operators in Connecticut to take the safety precaution to wear a protective helmet. Thus, since there is not even a duty to wear a motorcycle helmet, as there is to wearing a safety belt, it cannot be said that the failure to wear a motorcycle helmet amounts to negligence on the part of the rider. The same rationale applies to bicycle helmets. There being no statutory duty imposed on an adult ride to wear such protection, there can be no contributory negligence for an adult rider's failure to do so.

E. Evidence of Alcohol or Drug Intoxication

Evidence of a party's impairment related to alcohol or drug use may be admissible. Introduction of this evidence may, or may not, require expert testimony. Any inexperienced observer of reasonable intelligence may state an opinion formed from his observations as to the condition of a person due to consumption of intoxicating liquor.

Admission of expert toxicologist's testimony that, given average individual like defendant, he had to have consumed eight alcoholic beverages to reach blood alcohol content of .143 when tested at 1:04 a.m., was not abuse of discretion, in prosecution for operating a motor vehicle while under the influence of intoxicating liquor or drugs.

Expert testimony on effect that a trace amount of methadone in one's blood would have on driving impairment was required to admit evidence that victim motorist had a trace amount of methadone in his system at time of fatal accident giving rise to prosecution for second-degree manslaughter with a motor vehicle; effects of a trace amount of methadone on driving impairment was not a matter of common knowledge, experience, and common sense.

Certified field sobriety test instructor's testimony that if person failed field sobriety tests, emitted scent of alcohol, admitted to no medical issues and admitted to drinking, that he believed such person would be impaired as result of alcohol consumption, did not constitute impermissible testimony on ultimate issue of defendant's guilt, in trial for operating motor vehicle while under influence of intoxicating liquor.

Arresting officer's opinion testimony regarding a defendant's intoxication was admissible as expert testimony on the ultimate issue, where the office testified to extensive training which qualified him as an expert, and the jury required expert assistance on the issue of the defendant's state of intoxication and ability to drive.

A doctor's opinion as to whether observations made by a layman of the condition of the defendant as to his sobriety, without examination by a physician or benefit of chemical tests, were reliable to ascertain whether or not the defendant was under the influence of intoxicating liquor was inadmissible as calling for an opinion on a matter which was solely for the jury to determine.

In any criminal prosecution for a violation of subsection (a) of this section, evidence that the defendant refused to submit to a blood, breath or urine test requested in accordance with § 14-227b shall be admissible provided the requirements of subsection (b) of said section have been satisfied. If a case involving a violation of subsection (a) of this section is tried to a jury, the court shall instruct the jury as to any inference that may or may not be drawn form the defendant's refusal to submit to a blood, breath or urine test. Conn. Gen. Stat. Ann. §14-227a (West).

F. Testimony of Investigating Police Officer

A police report generally is admissible as a business record under General Statutes § 52-180. To qualify under this statute, the report must be based entirely upon the police officer's own observations or upon information provided by an observer with a business duty to transmit such information. For example, a report prepared by an officer in charge of an accident investigation is admissible in its entirety, despite the fact that it contains information received from other officers assisting in the investigation. Such a report is not admissible, however, if it contains information furnished by a mere bystander.

For an item contained in a police report to be admissible under statute relating to admissibility of business entries, it must be based on the entrant's own observations or on information of others whose business duty it was to transmit information to the entrant.

A police officer's conclusion about the cause of or responsibility for an injury is merely an opinion which the officer would not be permitted to give if he was on the witness stand. There is all the more reason for excluding such an opinion

when the officer is not under oath and subject to cross-examination.

Portion of police accident report containing statement that motorist had been arrested would not be admissible in civil court proceeding. Section 7–3(a) of the Connecticut Code of Evidence prohibits the consideration of witnesses' opinions both non-expert and expert, on the ultimate issue by the trier of fact. An ultimate issue is one that cannot reasonably be separated from the essence of the matter to be decided [by the trier of fact]. In that vein, a police officer's conclusions or the action he takes, by way of citation, arrest, or warning are not admissible even though contained in the police report. Those are opinions which he would not be able to make while on the witness stand. Accordingly, the portions of the police report pertaining to the investigating officer's conclusions regarding the cause of the collision and the citation for an improper lane change are inadmissible because they constitute impermissible opinions on the ultimate issue to be decided by the trier of fact.

Opinions contained in business records are admissible provided the person making the opinion would have been qualified to give such an opinion in oral testimony.

G. Expert Testimony

Connecticut follows the "Daubert" rules.

H. Collateral Source

In personal injury or wrongful death actions, the plaintiff's award of economic damages (usually medical bills and lost wages) is reduced by the amount of collateral source payments made to or on behalf of the plaintiff. The amount of the reduction is offset by the amount paid by or on behalf of the claimant to secure collateral source benefits (usually insurance premiums). Conn. Gen. Stat. § 52-225a. Collateral source benefits include amounts paid pursuant to health insurance, automobile insurance medical benefits coverage, disability insurance and the like but do not include settlement payments. Conn. Gen. Stat. § 52-225b. The Connecticut Supreme Court has concluded that social security disability benefits are not a collateral source as that term is defined in §52-225b.

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I. Recorded Statements

May be admissible as statement by party opponent, statement against interest and/or admission. In the case of a nonparty witness, it may be used to refresh

recollection, or to implead.

J. Prior Convictions

Sec. 6-7. Evidence of Conviction of Crime
(a) General rule. For the purpose of impeaching the credibility of a witness, evidence that a witness has been convicted of a crime is admissible if the crime was punishable by imprisonment for more than one year. In determining whether to admit evidence of a conviction, the court shall consider:

(1) the extent of the prejudice likely to arise,
(2) the significance of the particular crime in indicating untruthfulness, and
(3) the remoteness in time of the conviction.

(b) Methods of proof. Evidence that a witness has been convicted of a crime may be introduced by the following methods:

(1) examination of the witness as to the conviction, or
(2) introduction of a certified copy of the record of conviction into evidence, after the witness has been identified as the person named in the record.

(c) Matters subject to proof. If, for purposes of impeaching the credibility of a witness, evidence is introduced that the witness has been convicted of a crime, the court shall limit the evidence to the name of the crime and when and where the conviction was rendered, except that (1) the court may exclude evidence of the name of the crime and (2) if the witness denies the conviction, the court may permit evidence of the punishment imposed.

(d) Pendency of appeal. The pendency of an appeal from a conviction does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Conviction of crime, whether or not crime is felony, is admissible under statute providing that no person shall be disqualified as witness in any action by reason of his conviction of crime, only if maximum permissible penalty for crime be imprisonment for more than one year, and presence or absence of moral turpitude is not a consideration in admissibility of proof of conviction under statute.

Plea of guilty in criminal case would be admissible in civil action.

When determining whether to admit felony convictions that are more than ten years old, to impeach credibility of witness, court applies three-part test under *Nardini* and under Code of Evidence, which includes consideration of extent of prejudice likely to arise, but does not apply “substantially outweighs” test under federal rules of evidence, i.e., whether probative value substantially outweighs prejudicial effect.

K. Driving History

Evidence may be admissible to support claims of: negligent driving; negligent retention; negligent entrustment; and impeachment.

L. Fatigue

No expert testimony on fatigue in general was needed by the jury to determine a condition which is known to everyone.

M. Spoliation

Our case law recognizes two types of spoliation: intentional bad faith spoliation and intentional innocent spoliation. Intentional bad faith spoliation is a cause of action occurring after a separate and previous failed attempt at litigating an underlying cause of action. The Supreme Court held that a party may not be put out of court or effectively defaulted on the issue of liability for spoliation of evidence. Rather, an adverse inference may be drawn against a party who has destroyed evidence only if the trier of fact is satisfied that the party who seeks the adverse inference has proven the following. The spoliation must have been intentional. The destroyed evidence must be relevant to the issue or matter for which the party seeks the inference. The party who seeks the inference must have acted with due diligence with respect to the spoliated evidence. Finally, the jury, if it is the trier of fact, must be instructed that it is not required to draw the inference that the destroyed evidence be unfavorable but that it may do so upon being satisfied that the above conditions have been met.

If, as a result of the innocent destruction of evidence, whether intentionally or inadvertently, the plaintiff as a matter of law could not sustain their burden of proving liability, then summary judgment may be appropriate.

An action can be brought for the intentional spoliation of evidence. The elements necessary for prima facie claim of the tort of intentional spoliation of evidence are: (1) the defendant's knowledge of a pending or impending civil action involving the plaintiff's; (2) the defendant's destruction of evidence; (3) intent to deprive the plaintiff of his cause of action; (b) the plaintiff's inability to establish a prima facie case without the spoliated evidence; and (5) damages.

Settlement

A. Offer of Judgment

Plaintiff's Offer of Compromise

General Statutes § 52–192a provides in relevant part: "(a) After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain .... (c) After trial the court shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the court

ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in the plaintiff's offer of compromise, the court shall add to the amount so recovered eight per cent annual interest on said amount.... The interest shall be computed from the date the complaint in the civil action was filed with the court.

..."[I]nterest [under § 52–192a] is to be awarded by the trial court when a valid offer of [compromise] is filed by the plaintiff, the offer is rejected by the defendant, and the plaintiff ultimately recovers an amount greater than the offer of [compromise] after trial. ...

§ 52–192a(a) finds that it provides, in relevant part: *after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain.

Within thirty days after being notified of the filing of the offer of compromise and prior to the rendering of a verdict by the jury or an award by the court, the defendant or the defendant's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer of compromise. Upon such filing and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action against the defendant accordingly. If the offer of compromise is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless reified. Any such offer of compromise and any acceptance of the offer of compromise shall be included by the clerk in the record of the case."

"[A]n award of interest under § 52–192a is mandatory, and the application of § 52–192a does not depend on an analysis of the underlying circumstances of the case or a determination of the facts ... The statute is admittedly punitive in nature ... It is the punitive aspect of the statute that effectuates the underlying purpose of the statute and provides the impetus to settle cases ... The purpose of § 52–192a is to encourage pretrial settlements and, consequently, to conserve judicial resources ... [T]he strong public policy favoring the pretrial resolution of disputes ... is substantially furthered by encouraging defendants to accept reasonable offers of judgment ... Section 52–192a encourages fair and reasonable compromise between litigants by penalizing a party that fails to accept a reasonable offer of settlement ... In other words, interest awarded under § 52–192a is solely related to a defendant's rejection of an advantageous offer to settle before trial and his

subsequent waste of judicial resources.

"After trial the judicial authority shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the judicial authority ascertains from the record the plaintiff has recovered an amount equal to or greater than the sum certain specified in that plaintiff's offer of compromise, the judicial authority shall add to the amount so recovered 8 percent annual interest on said amount ... The judicial authority may award reasonable attorneys fees in an amount not to exceed $350 and shall render judgment accordingly."

Defendant's Offer of Compromise

Practice Book § 17-13, concerning a defendant's offer of compromise which is not accepted, pertains to the plaintiff's recovery of and payment of costs, and provides, in relevant part, "If the plaintiff does not, within the time allowed for acceptance of the offer of compromise and before any evidence is offered at the trial, file the plaintiff's notice of acceptance, the offer shall be deemed to be withdrawn and shall not be given in evidence; and the plaintiffs, unless recovering more than the sum specified in the offer, with interest from its date, shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time.

B. Liens

Pursuant to § 31–293(a), an employer may assert a lien against an employee on that employee's settlement or judgment against third-party tortfeasors up to the amount of workers' compensation benefits that the employer made to the employee, even if the employer initially intervened in the employee's case against the tortfeasors and subsequently withdrew its appearance before the parties reached a settlement.

General Statutes § 31–293(a) provides in relevant part: "Notwithstanding the provisions of this subsection, when any injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in a third person other than the employer a legal liability to pay damages for the injury and the injured employee has received compensation for the injury from his employer or its workers' compensation insurance carrier pursuant to the provisions of this chapter, the employer or insurance carrier shall have a lien upon any judgment received by the employee against the third party or any settlement received by the employee from the third party, provided the employer or insurance carrier shall give written notice of the lien to the third party prior to such judgment or settlement." "[T]he scope of an employer's lien is coextensive with that of an employer's 'claim,' as defined by § 31–293(a) ... and, therefore, includes a credit for unknown, future workers' compensation benefits in the amount of the net proceeds that the injured employee recovers from a third party tortfeasor."

Health Insurance Anti-Subrogation Statute

"Unless otherwise provided by law, no insurer or any other person providing collateral source benefits as defined in section 52-225b shall be entitled to recover the amount of any such benefits from the defendant or any other person or entity as a result of any claim or action for damages for personal injury or wrongful death regardless of whether such claim or action is resolved by settlement or judgment." General Statutes § 52-225c.

There is, however, an important exception to Connecticut's anti-subrogation statute: ERISA's "deemer clause," 29 U.S.C. § 1144(b)(2)(B). The clause preempts state law, and provides that employee benefit plans covered by ERISA are not "deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies."

Our Supreme Court has recognized that "[t]he preemption provision of ERISA ... preempts any state law that may now or hereafter *relate* to any employee benefit plan."

C. Minor Settlement

Settlements for less than $10,000 are exempt from Probate Court approval.

Connecticut has long recognized the common-law rule that a minor child's contracts are voidable ... Under this rule, a minor may, upon reaching majority, choose either to ratify or to avoid contractual obligations entered into during his minority ... The traditional reasoning underlying this rule is based on the well established common-law principles that the law should protect children from the detrimental consequences of their youthful and improvident acts, and that children should be able to emerge into adulthood unencumbered by financial obligations incurred during the course of their minority ... The rule is further supported by the policy of protecting children from unscrupulous individuals seeking to profit from their youth and inexperience.

General Statutes § 45a–631, titled "Limitation on receipt or use of minor's property by parent, guardian or spouse. Release" states: (a) A parent of a minor, guardian of the person of a minor or spouse of a minor shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor, except that such parent, guardian or spouse may hold property as a custodian under the provisions of sections 45a–557 to 45a–560b, inclusive, without being so appointed. (b) A release given by both parents or by the parent who has legal custody of a minor or by the guardian or spouse shall, if

the amount does not exceed ten thousand dollars in value, be valid and binding upon the minor.

In enacting § 45a–631, our legislature sought to retain the spirit of the common-law rule to protect the financial interests of minors by requiring Probate Court application and approval in cases in which the funds to be received on behalf of the minor child exceeds $10,000. Section 45a–631 further seeks to protect minors in connection with settlement agreements made on their behalf by providing that amounts resulting from claims of minors greater than $10,000 cannot be received or used on behalf of a minor unless application by a parent or guardian of the minor child was made and approved by the Probate Court.

D. Negotiating Directly with Attorneys

Permitted.

E. Confidentiality Agreements

Confidentiality agreements are permitted.

F. Releases

Pre-accident waivers and releases between a commercial entity and a consumer/private citizen are generally unenforceable.

General release that provides for the release of "any and all other persons, firms and corporations," discharges only those joint tort-feasors whom contracting parties actually intended to release.

G. Voidable Releases

See Minors, above.

Transportation Law

A. State DOT Regulatory Requirements

The Commissioner of the Department of Transportation may adopt regulations which incorporate by reference the standards set forth in 49 CFR ¶390.

The Commissioner of Motor Vehicles may grant variations or exemptions from, or approve equivalent or alternate compliance with, particular provisions of 49 CFR Parts 382 to 397, inclusive, as amended, when strict compliance with such provisions would entail practical difficulty or unnecessary hardship or would be otherwise adjudged unwarranted, provided any such variation, exemption, approved equivalent or alternate compliance shall, in the opinion of the commissioner, secure the public safety.

The following parts of the Code of Federal Regulations, Title 49, are incorporated by reference thereto as regulations of the Department of Motor Vehicles:

(1) Part 382, "Controlled Alcohol Use and Testing", as amended;
(2) Part 383, "Commercial Driver's License Standards; Requirements and Penalties," inclusive, as amended;

(3) Part 384, “State Compliance with Commercial Driver's License Program,” inclusive, as amended;
(4) Part 385, “Safety Fitness Procedures,” inclusive, as amended;
(5) Part 386, “Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings,” inclusive, as amended;
(6) Part 387, “Minimum Levels of Financial Responsibility for Motor Carriers,” inclusive, as amended;
(7) Part 388, “Cooperative Agreements with States,” inclusive, as amended;
(8) Part 390, “Federal Motor Carrier Safety Regulations; General,” inclusive, as amended;
(9) Part 391, “Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors,” inclusive, as amended, except as provided in subsection (b) of this section;
(10) Part 392, “Driving of Commercial Motor Vehicles,” inclusive, as amended;
(11) Part 393, “Parts and Accessories Necessary for Safe Operation,” inclusive, as amended;
(12) Part 394, “Removed and Reserved,” inclusive, as amended;
(13) Part 395, “Hours of Service of Drivers,” inclusive, as amended;
(14) Part 396, “Inspection, Repair and Maintenance,” inclusive, as amended; and
(15) Part 397, “Transportation of Hazardous Materials; Driving and Parking Rules,” inclusive, as amended.

(b) The incorporation of the Code of Federal Regulations, Title 49, Part 391, Subpart E--“Physical Qualifications for Drivers,” Sections 391.41 through 391.49, inclusive, does not include the exemptions that are provided by federal law for individuals who do not operate a commercial motor vehicle in interstate commerce.

Conn. Agencies Regs. § 14-163c-1

B. State Speed Limits

65 m.p.h.

C. Overview of State CDL Requirements

“Commercial driver's license” or “CDL” means a license issued by a state which has enacted into law legislation in conformity with the Commercial Motor Vehicle Safety Act of 1986, Title XII, P.L. 99-570, which has been issued to an individual in accordance with the standards specified in the Code of Federal Regulations Title 49, Part 383, as amended, and which authorizes such individual to operate a class of commercial motor vehicle.

(11) “CDL equivalent license” means a license issued by a state which has not enacted into law legislation in conformity with the Commercial Motor Vehicle Safety Act of 1986, Title XII, P.L. 99-570, but which, in the judgment of the Commissioner of Motor Vehicles, has been issued to an individual in accordance with standards no less stringent than those specified in the Code of Federal Regulations Title 49, Part 383, as amended, with respect to the knowledge, skills and driving record necessary for the individual to safely operate a commercial vehicle combination.

(12) “Endorsement” means an authorization to the commercial driver's license required to permit the individual to operate a commercial vehicle combination pursuant to the Code of Federal Regulations Title 49, Section 383.93, as amended.

(13) “Endorsed commercial driver's license” or “endorsed CDL” means a commercial driver's license as defined in subdivision (10) of this section with an endorsement as defined in subdivision (12).

Conn. Gen. Stat. Ann. § 14-260n (West)

Insurance Issues

A. State Minimum Limits of Financial Responsibility

$20,000 per person/$40,000 per accident. Conn. Gen. Stat. § 14-112.

B. Uninsured Motorist Coverage

At least $20,000 per person/$40,000 per accident. Conn. Gen. Stat. § 38a-336.

A description of underinsured motorist conversation coverage must be provided to the insured.

Conn. Gen. Stat. Section 38a-336 requires each automobile insurer to provide UM/UIM coverage with bodily injury and death limits equal to the liability limits the insured purchased, ***unless*** the named insured requests in writing a lesser amount but not less than the limits specified in Conn. Gen. Stat. Section 14-112(a). Currently, Section 14-112(a) requires that an insured purchase coverage of ***at least*** $20,000 (for injury or death of one person) and $40,000 (for injury or death of more than one person in any accident).

Pursuant to Conn. Gen. Stat. Section 38a-336, any request for a lesser amount will not be effective unless the named insured signs an ***Informed Consent Form*** containing the following:

an explanation of uninsured and underinsured motorist insurance approved by the Commissioner;

a list of uninsured and underinsured motorist coverage options available from the insurer; and

the premium cost for each of the coverage options available from the insurer.

The Informed Consent Form is required to contain the following statement in 12-point type:
“WHEN YOU SIGN THIS FORM, YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE

COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE AGENT OR ANOTHER QUALIFIED

C. No Fault Insurance

Connecticut is no longer a "no –fault" state.

D. Disclosure of Limits and Layers of Coverage

Policy limits and declarations must be disclosed in response to Superior Court mandated "standard" interrogatories and requests for production.

E. Unfair Claims Practices

The Second Circuit has held that there is no private cause of action under CUIPA. A plaintiff, however, may bring a CUTPA claim based on CUIPA, also known as a "CUIPA through CUTPA claim." In order to sustain a CUIPA cause of action under CUTPA, a plaintiff must allege conduct that is proscribed by CUIPA.

Conn. Gen. Stat. Sec. 38a-815 states that "[n]o person shall engage in this state in any trade practice which is defined in section 38a-816 as… an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

Conn. Gen. Stat. Sec. 38a-816(6) specifically defines the ways in which an insurer may violate CUIPA. The statute reads as follows: "Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following: (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; (B) failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; (C) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (D) refusing to pay claims without conducting a reasonable investigation based upon all available information; (E) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (F) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; (G) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; (H) attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; (I) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured; (J) making claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made; (K) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of

compelling them to accept settlements or compromises less than the amount awarded in arbitration; (L) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; (M) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; (N) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; (O) using as a basis for cash settlement with a first party automobile insurance claimant an amount which is less than the amount which the insurer would pay if repairs were made unless such amount is agreed to by the insured or provided for by the insurance policy."

A claim under CUIPA predicated upon alleged unfair claim settlement practices in violation of § 38a–816(6) requires proof that the unfair settlement practices were committed or performed with such frequency as to indicate a general business practice. It is well settled that a denial of a single claim cannot form the basis of a CUTPA/CUIPA claim, even if the denial involved multiple unfair acts. A mere breach of an insurance contract, or even a breach of the covenant of good faith and fair dealing, is not sufficient to make out a CUTPA claim.

Federal Courts have addressed the question of whether an independent CUTPA claim can survive dismissal of a CUIPA through CUPTA claim based on the same underlying conduct. In order for such a CUTPA claim to survive, a plaintiff must elaborate on that conduct to show an independent violation of CUTPA.

F. Bad Faith Claims

Under Connecticut law, a plaintiff pursuing a bad faith claim must show that: (1) two parties entered into a contract under which the plaintiff reasonably expected to benefit; (2) the benefit was denied or obstructed by the other party's actions; and (3) the other party's actions were taken in bad faith. The plaintiff must allege that the acts by which a defendant allegedly impeded the plaintiff's right to receive benefits that it expected to receive under the contract were undertaken in bad faith. Where a plaintiff alleges unreasonable withholding of payment on an insurance policy, in order to prove bad faith, the plaintiff must show a reckless indifference to the rights of the insured; egregious conduct is required. A mere coverage dispute, or even simple negligence on the part of the insurer, does not constitute bad faith on the insurer's part.

A finding of bad faith cannot be based on a simple breach of contract. Instead, the plaintiff must show that there is no reasonable basis to have denied the claim and that the insurer knew this to be the case. The reason for this requirement is that insurers have the right to fairly dispute a claim

made under the policy. A majority of trial courts have held that plaintiffs must plead facts that go beyond a simple breach of contract claim and enter into the realm of tortuous conduct which is motivated by a dishonest or sinister purpose. Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of wrong because of dishonest purpose or moral obliquity. It contemplates a state of mind affirmatively operating with furtive design or ill will.

G. Coverage – Duty of Insured

In Connecticut, the insured's duty to cooperate is based upon the obligations stated in the insurance policy.

H. Fellow Employee Exclusions

In Connecticut, a worker can sue a co-worker for injuries caused by the co-worker's negligent operation of a motor vehicle.