

---

# THE CONNECTICUT LAW REPORTER

---

February 23, 2004  
Volume 36, No. 8

Reporting Developments in  
Connecticut Law and the Full  
Text of Superior Court Decisions

## HIGHLIGHTS OF THE OPINIONS REPORTED IN THIS ISSUE

**A cumulative index, table of cases and table of statutes for all opinions reported to date in this Volume are presented in a separate removeable insert affixed to the centerfold of this issue.** The insert should be removed and filed at the back of the Volume 36 binder. Cumulative indexes and tables are now presented bimonthly. Cumulative indexes and tables for Volumes 1 through 35 are located at the back of each of those volumes.

### Arbitration

**Application to Compel – A Superior Court Holds that It Must Dismiss and May Not Stay an Action Involving a Dispute Subject to an Arbitration Agreement Which Provides that Arbitration Is a Condition Precedent to Litigation.** An action concerning a dispute which is subject to an arbitration agreement which includes a provision making arbitration a condition precedent to litigation must be dismissed and may not be stayed pending completion of the arbitration as otherwise authorized by CGS §52-409 (action subject to an arbitration agreement shall be stayed until the arbitration proceeding has been completed). In this action brought by a Connecticut resident after a California resident had initiated arbitration in California, the Connecticut resident was apparently attempting to preserve jurisdiction in Connecticut in the event of a judicial challenge to the California arbitration award. *Zymol Enterprises, Inc. v. Sheppard, Mullin, Richter & Hampton, LLP* (Silbert, J.) . . . . . 282

**Arbitrability – A Superior Court Holds that an Arbitration Clause of a Collective Bargaining Agreement Between a Board of Education and Its Employees Applies to a Claim by Employees to a Proportionate Share of Stock Received Upon the Conversion of Its Medical Insurer Into a Stock Company, Even Though the Town Rather than the Board Is the Policy Holder and the Town Is Not a Party to the CBA.** The arbitration clause of a collective bargaining agreement between a local board of education and its employees requires arbitration of the issue of whether the employees are entitled to a share of the stock issued to policyholders as part of the conversion of Anthem Blue Cross/Blue Shield from a mutual to a stock corporation, in an amount proportionate to employee contributions towards premium costs, even though coverage was under a policy issued to the town to cover all town employees rather than to the board of education to cover just board employees, and the town was not a party to the CBA. *North Haven v. North Haven Education Ass'n* (Berdon, J.T.R.) . . . . . 292

### Bankruptcy and Foreclosure

**Judgment Liens and PJR Attachments – A Superior Court Holds that a Failure to Comply with the Statutory Requirement for the Preservation of a PJR Attachment, that a Certificate of Judgment Lien Be Filed Within Four Months of Judgment, Causes a Loss of Priority with Respect to Intervening Lienholders But Does Not Invalidate the PJR Attachment with Respect to the Claim Against the Creditor.** See the discussion below under “Civil Procedure” of *Cornerstone Bank v. Hendrickson* (Tobin, J.) . . . . . 288

A cumulative index and tables for all opinions reported to date in this Volume are presented in a separate, removable insert temporarily affixed to the centerfold of this issue. *This insert should be removed and filed at the back of the binder for this Volume.* It may be discarded when the next cumulative index and tables are presented with Issue No. 16.

Civil Procedure

**Evidence – Prior Consistent Statements – The Supreme Court Holds that the “Suggestion of Recent Contrivance” Exception to the General Rule that Prior Consistent Statements by a Witness Are Inadmissible Does Not Require Proof that the Prior Statement Was Made At a Time When It Was Natural to Make It.** The exception to the normal rule that prior consistent statements are inadmissible to strengthen a witness’s own testimony, for prior statements offered to rebut evidence elicited to suggest that the witness may have recently contrived testimony given at trial, Conn. Code of Evidence §6-11(b)(3) (referred to as the “suggestion of recent contrivance” exception), does not require that the prior statement have been made “at a time when it was natural to make it.” The Court formally announces that, in spite of dicta to the contrary in prior cases, a party relying on the “suggestion of recent contrivance” exception need not establish that the statement was made at a time when it was natural to make it. *Daley v. McClintock*, 267 Conn. 399 (Norcott, J.) (CLJ 1/20/04) . . . . . 267 Conn. 399

**Joinder of Sewer Assessment Appeals – The Appellate Court Holds that Sewer Assessment Appeals by Multiple Owners Challenging the Amount of Individual Assessments May Not Be Joined.** See the discussion below under “Public Utilities” of *McCart v. Shelton*, 81 Conn. App. 58 (Schaller, J.) . . . . . 81 Conn. App. 58

◆ **Quasi-judicial Immunity – The Appellate Court Holds that an Attorney Appointed in a Marital Dissolution Proceeding to Represent a Child Is Protected by Qualified Quasi-judicial Immunity from Suit by the Child’s Parents.** See the discussion below under “Family Law” of *Carrubba v. Moskowitz*, 81 Conn. App. 382 (Schaller, J.) (CLJ 2/3/04) . . . . . 81 Conn. App. 382

**Equity – Rescission – The Appellate Court Holds that a Plaintiff Awarded Rescission Is Not Required to Credit the Defendant for the Income Tax Deduction Resulting from the Interest Paid on a Loan Taken Out to Finance the Purchase.** See the discussion below under “Contracts” of *Wallenta v. Moscowitz*, 81 Conn. App. 213 (Dranginis, J.) (CLJ 1/27/04). The opinion also holds that prejudgment interest for the wrongful detention of money pursuant to CGS §37-3a does not terminate upon the rendition of a jury verdict but rather continues to accrue until a final, appealable judgment is entered. Therefore in a matter in which liability was tried to a jury and damages were subsequently tried to the court, interest payable to the prevailing plaintiff continues to accrue until the court enters final judgment even though various scheduling conflicts resulted in a long delay between the jury verdict and the court’s determination of damages . . . . .81 Conn. App. 213

**Application to Compel Arbitration – A Superior Court Holds that It Must Dismiss and May Not Stay an Action Involving a Dispute Subject to an Arbitration Agreement Which Provides that Arbitration Is a Condition Precedent to Litigation.** See the discussion above under “Arbitration” of *Zymol Enterprises, Inc. v. Sheppard, Mullin, Richter & Hampton, LLP* (Silbert, J.) . . . . .282

◆ **Pleading Unjust Enrichment and Quantum Meruit Counts – A Superior Court Holds that Counts for Unjust Enrichment and Quantum Meruit May Not Incorporate Allegations from a Joined Breach of Contract Count If the Allegations Recognize the Existence of the Alleged Contract.** See the discussion below under “Contracts” of *Whitby School, Inc. v. Grenaille* (Lewis, J.T.R.) . . . . .285

The Connecticut Law Reporter (USPS 005-964) is published weekly, except the weeks of Thanksgiving and Christmas, by the Connecticut Law Book Company, Inc., P.O. Box 575, 39 Chaffinch Island Road, Guilford, CT 06437. Phone (203) 458-8000. The subscription price is \$290 per year. Second-class postage paid at Guilford, CT. POSTMASTER: Send address changes to Connecticut Law Book Co., P.O. Box 575, Guilford, CT 06437.

Civil Procedure (continued)

**Judgment Liens and PJR Attachments – A Superior Court Holds that a Failure to Comply with the Statutory Requirement for the Preservation of a PJR Attachment, that a Certificate of Judgment Lien Be Filed Within Four Months of Judgment, Causes a Loss of Priority with Respect to Intervening Lienholders But Does Not Invalidate the PJR Attachment with Respect to the Claim Against the Creditor.** Failure to comply with the statutory requirement for the preservation of a prejudgment attachment, the recording of a judgment lien certificate within four months of entry of a judgment, CGS §52-380a, does not invalidate the lien but rather merely disqualifies the lien from priority over other liens filed between the recording of the original PJR attachment and the entry of judgment. The opinion interprets the 1996 Supreme Court holding in *Mac’s Car City, Inc. v. DiLoreto* that the four-month time limit runs from the first entry of judgment even if the judgment is later reversed on appeal as applying only to priority claims among lienholders and not to the claim against the judgment debtor. This opinion rejects the property owner’s claim that a delay in filing the judgment certificate invalidates the original attachment for all purposes. *Cornerstone Bank v. Hendrickson* (Tobin, J.). The opinion also holds: (1) A certificate of judgment lien need not identify co-owners of the property who are not obligated under the judgment. (2) A scrivener’s error in a lien certificate resulting in an inaccurate reference to the location on the land records of a recorded prejudgment attachment, in violation of CGS §52-380a, does not invalidate the PJR attachment with respect to the claim against the judgment debtor. However, the error does result in loss of the judgment creditor’s claim of priority with respect to intervening liens filed by other creditors. (3) The statutory requirement that the certificate contain “a description” of the property is satisfied by giving the street address of the property. Furthermore, an accidental failure to include an attachment giving a metes and bounds description which is referenced in the certificate does not invalidate the lien if the street address is recited in the certificate . . . . . 288

**Accidental Failure Statute – A Superior Court Holds that the Rule that the Accidental Failure of Suit Statute Does Not Extend Contractual Limitations Periods, Including Those Statutorily Mandated for Fire Insurance Policies, Applies Regardless of the Reasons for the Dismissal of the Earlier Action.** See the discussion below under “Insurance Law” of *Collins v. Peerless Insurance Co.* (Lewis, J.T.R.) . . . . . 294

**Mandatory Court-referred Arbitration – A Superior Court Holds that an Otherwise Premature Demand Filed After a Court Has Denied an Objection to an Award in a Mandatory Court-referred Arbitration Proceeding and Has Scheduled a Fixed Trial Date, But Before the Referee’s Written Report Has Been Mailed, Is Valid.** Although a demand for a trial de novo following a decision in a court-referred arbitration normally is void if prematurely filed before notice of the decision is deposited by the clerk in the U.S. mail, as provided in P.B. §23-61 (an appeal by way of a demand for a trial de novo must be filed within 20 days after the deposit of the arbitrator’s decision in the U.S. mail), an otherwise premature demand filed immediately following the court’s denial of the plaintiff’s objection to an award and establishment of a fixed trial date is valid even though the referee’s written decision was not filed—and therefore not mailed—until later. *Kumiega v. Dodson* (Dewey, J.) . . . . . 297

**Apportionment – A Superior Court Holds that a 120-day Limitation Period for Filing an Apportionment Complaint Is Mandatory.** *Hoyt v. Geremia Development Corp.* (Devlin, J.) . . . . . 297

◆ This symbol indicates an opinion that is particularly recommended by the editor for reading. Opinions so indicated generally are ones which contain a novel application of law, a particularly clear discussion of a commonly encountered issue, a particularly significant holding that most readers will want to take note of, or a discussion of a commonly overlooked procedure.

**Contracts**

**Rescission – The Appellate Court Holds that a Plaintiff Awarded Rescission Is Not Required to Credit the Defendant for the Income Tax Deduction Resulting from the Interest Paid on a Loan Taken Out to Finance the Purchase.** A plaintiff seeking the equitable remedies of rescission or restitution is required to credit the defendant for income realized through the use of the property only with respect to “direct products” of the property, i.e. only to income derived without the intervention of an independent transaction, referred to in the opinion as the “Direct Product Rule.” This opinion holds that a plaintiff seeking rescission of the purchase of real estate need not credit the defendant/buyer for the income tax deduction resulting from the interest paid by the plaintiff on the loan taken out to purchase the property, even though the full amount of the interest is recoverable from the defendant. The opinion contains a useful discussion of what constitutes a “direct product” and gives as an example rent payments pursuant to a lease in existence at the time of the original transaction, as opposed to a lease negotiated solely by the plaintiff/buyer subsequent to the purchase. *Wallenta v. Moscovitz*, 81 Conn. App. 213 (Dranginis, J.) (CLJ 1/27/04), also noted above under “Civil Procedure” . . . . . 81 Conn. App. 213

◆ **Pleading Unjust Enrichment and Quantum Meruit Counts – A Superior Court Holds that Counts for Unjust Enrichment and Quantum Meruit May Not Incorporate Allegations from a Joined Breach of Contract Count If the Allegations Recognize the Existence of the Alleged Contract.** Claims for unjust enrichment and quantum meruit joined in a breach of contract action may not incorporate any allegations from the contract count which recognize the existence of the contract, because the availability of a remedy in contract is inconsistent with recovery under either equitable cause of action. The opinion contains a useful discussion of the distinction between unjust enrichment, which focuses on an unfair loss by the plaintiff, and quantum meruit, which focuses on an unfair gain by the defendant. *Whitby School, Inc. v. Grenaille* (Lewis, J.T.R.) . . . . .285

**Contractual Limitations Period – A Superior Court Holds that a Contractual Time Limitation Requiring that an Action Be “Started” Within One Year Is Satisfied Only by the Successful Commencement of an Action; an Attempted Action Which Is Dismissed for Improper Service of Process Is Not Sufficient.** See the discussion below under “Insurance Law” of *Collins v. Peerless Insurance Co.* (Lewis, J.T.R.) . . . . .294

**Compensation for a Business Finder – A Superior Court Holds that a Generally Phrased “Noncircumvention Agreement” Between a Business Consultant and a Client Is Too Vague to Be Enforceable.** A generally phrased “noncircumvention agreement” between a consultant and a consulting client, pursuant to which the consultant agreed to provide proprietary information in contemplation of a long-term relationship, requiring that exchanged information be kept confidential and each party mutually agree “not to circumvent” the other party with respect to prospective customers brought to the client’s attention by the consultant, is too vague to be enforceable. This opinion refuses to award compensation to the consultant on a breach of contract theory for the acquisition of a company brought to the client’s attention by the consultant. The opinion contains a useful discussion of opinions from other jurisdictions which have enforced “noncircumvention agreements,” but distinguishes those opinions on the grounds that each involved an agreement which identified a specific prospective customer as the target of the noncircumvention clause. *Consumer Incentive Services v. Memberworks, Inc.* (Wolven, J.). The opinion also holds, however, that the consultant is entitled to remuneration on a theory of unjust enrichment. Furthermore, the appropriate measure of damages is the customary remuneration for business finders under the “Lehman” formula: 5% of the 1st million of purchase price, 4% of the second million, 3% of the third million, 2% of the fourth million and 1% of the balance . . . . .298

Highlight and Text sections separate here

**Corporations and Other Business Organizations**

**Compensation for a Business Finder – A Superior Court Holds that a Generally Phrased “Noncircumvention Agreement” Between a Business Consultant and a Client Is Too Vague to Be Enforceable.** See the immediately preceding discussion of *Consumer Incentive Services v. Memberworks, Inc.* (Wolven, J.) . . . . . 298

**Education Law**

**Demutualization of Anthem Blue Cross/Blue Shield – A Superior Court Holds that an Arbitration Clause of a Collective Bargaining Agreement Between a Board of Education and Its Employees Applies to a Claim by Employees to a Proportionate Share of Stock Received Upon the Conversion of Its Medical Insurer Into a Stock Company, Even Though the Town Rather than the Board Is the Policy Holder and the Town Is Not a Party to the CBA.** See the discussion above under “Arbitration” of *North Haven v. North Haven Education Ass’n* (Berdon, J.T.R.) . . . . . 292

**Employment Law**

**Infliction of Emotional Distress Claims Against an Employer – A Superior Court Holds that the “Extreme and Outrageous” Element of a Claim for Intentional Infliction of Emotional Distress Is Satisfied by Proof that an Employer Framed an Employee for Theft as Justification for a Termination.** See the discussion below under “Torts” of *White v. Thornton Oil Corp.* (Arnold, J.) . . . . . 279

**Family Law**

◆ **Quasi-judicial Immunity – The Appellate Court Holds that an Attorney Appointed in a Marital Dissolution Proceeding to Represent a Child Is Protected by Qualified Quasi-judicial Immunity from Suit by the Child’s Parents.** Because the role of an attorney appointed by the court to represent a child in a marital dissolution proceeding is obligated to act in the child’s best interest, and because a child is often not sufficiently mature to make decisions on the child’s own, such an attorney’s role is not strictly that of an advocate. Rather, a court-appointed attorney in a family relations matter plays a hybrid role in which the attorney must make representations to the court as to the attorney’s view of what is in the child’s best interest, even though that view may differ from the child’s personal wishes. Furthermore, the attorney serves at the discretion of the court rather than at the discretion of the child/client. The attorney, therefore, plays a role similar to that of a guardian ad litem and is similarly protected by quasi-judicial immunity. That immunity, however, is limited to *qualified* rather than the *absolute* immunity. This opinion holds that a child’s court-appointed attorney is immune from civil liability for an infliction of emotional distress claim by a parent unless it can be established that the attorney acted with malice. The opinion contains an important discussion of the unique, hybrid role played by a court-appointed attorney representing a child in a family relations matter. The opinion affirms the trial court opinion reported at 31 CONN. L. RPTR. 477 (Hale, J.T.R.). *Carrubba v. Moskowitz*, 81 Conn. App. 382 (Schaller, J.) (CLJ 2/3/04). The opinion also holds: (1) The proper procedure to assert a claim of quasi-judicial immunity is through a special defense followed by a motion to strike or a motion for summary judgment. (2) A parent’s emotional involvement in a dissolution action generally creates a conflict of interest with a child of the marriage. A parent, therefore, lacks standing to bring a legal malpractice action on behalf of the child against an attorney appointed by the court to represent a child in matters related to the dissolution . . . . . 81 Conn. App. 382

Highlight and Text sections separate here

**Insurance Law**

**Contractual Limitations Period – A Superior Court Holds that a Contractual Time Limitation Requiring that an Action Be “Started” Within One Year Is Satisfied Only by the Successful Commencement of an Action; an Attempted Action Which Is Dismissed for Improper Service of Process Is Not Sufficient.** A contractual time limitation contained in an insurance policy requiring that any action against the insurer on an alleged covered loss be “started” within one year of the date of loss is satisfied only by “commencement” of an action through proper service of process; an attempted action which is dismissed for lack of proper personal service is not sufficient. *Collins v. Peerless Insurance Co.* (Lewis, J.T.R.). The opinion also holds that the rule that the Accidental Failure of Suit Statute does not apply to limitations periods established by contract is not limited to situations in which the first action was dismissed because of negligence on the part of the plaintiff, but rather applies regardless of the reason for the dismissal . . .294

**Law of Lawyering**

◆ **Quasi-judicial Immunity – The Appellate Court Holds that an Attorney Appointed in a Marital Dissolution Proceeding to Represent a Child Is Protected by Qualified Quasi-judicial Immunity from Suit by the Child’s Parents.** See the discussion above under “Family Law” of *Carrubba v. Moskowitz*, 81 Conn. App. 382 (Schaller, J.) (CLJ 2/3/04) . . . . . 81 Conn. App. 382

**Fees for Pending Collection Cases – A Superior Court Opinion Establishes a Method for Valuing Services Provided in Connection with a Large Number of Pending Collection Cases Transferred from One Law Firm to Another.** The opinion in *Brown & Welsh, P.C. v. Midstate Medical Center* (Beach, J.) establishes as fair compensation for work performed by a law firm on pending collection cases, upon the termination of a long-term relationship with a hospital pursuant to which the firm provided services for collecting the hospital’s unpaid invoices for services to patients, the average monthly compensation to the firm for a six-month period. The opinion notes the difficulty in establishing a value for pending collection work because of the large number of relatively low-value cases, the often extended time gap between judgment and recovery, the fact that the amount of work on each file may be disproportionate to the potential recovery and the fact that the firm was paid on an hourly rather than on a per file basis . . . . .286

**Public Utilities**

**Joinder of Sewer Assessment Appeals – The Appellate Court Holds that Sewer Assessment Appeals by Multiple Owners Challenging the Amount of Individual Assessments May Not Be Joined.** Sewer assessment appeals by multiple property owners may not be joined in a single action pursuant to P.B. §9-4, where evidence would be required concerning the cost to connect each home or the impact on the value of each home. The opinion notes that the plaintiffs had abandoned the assertion in the complaint that the assessment was based on the use of an improper formula applied to each plaintiff’s residence, pursuing instead a claim that the method used was improperly applied to each plaintiff’s residence. The holding, therefore, does not resolve the issue of whether challenges to the method of valuation could be joined in a single action. The opinion reported here affirms the trial court opinion reported at 32 CONN. L. RPTR. 707 (Sequino, J.). For a trial court opinion holding that joinder would be permitted in such circumstances see *Bertelson v. Norwich*, 34 CONN. L. RPTR. 664 MacLachlan, J.). *McCart v. Shelton*, 81 Conn. App. 58 (Schaller, J.) . . . . . 81 Conn. App. 58

**Railroad Grade Crossings – A Superior Court Holds that a Contract Authorizing the Use of a Grade Crossing by the Owner of an Otherwise Landlocked Parcel Constitutes a License Rather Than a Lease and Therefore Is Terminable at the Will of the Railroad.** See the discussion below under “Real Property” of *Morgan Whitney, Inc. v. Providence & Worcester Railroad Co.* (Scholl, J.) . . . . .305

**Real Property**

**Judgment Liens and PJR Attachments – A Superior Court Holds that a Failure to Comply with the Statutory Requirement for the Preservation of a PJR Attachment, that a Certificate of Judgment Lien Be Filed Within Four Months of Judgment, Causes a Loss of Priority with Respect to Intervening Lienholders But Does Not Invalidate the PJR Attachment with Respect to the Claim Against the Creditor.** See the discussion above under “Civil Procedure” of *Cornerstone Bank v. Hendrickson* (Tobin, J.) . . . . . 288

**Railroad Grade Crossings – A Superior Court Holds that a Contract Authorizing the Use of a Grade Crossing by the Owner of an Otherwise Landlocked Parcel Constitutes a License Rather Than a Lease and Therefore Is Terminable at the Will of the Railroad.** A contract authorizing the owner of an otherwise landlocked parcel to use a railroad grade crossing constitutes a license rather than a lease, regardless of the nomenclature used in the agreement, because the agreement merely grants a right to use the property without ousting the grantor of possession. Therefore the right to use the crossing may be terminated at any time for any reason. *Morgan Whitney, Inc. v. Providence & Worcester Railroad Co.* (Scholl, J.). The opinion also holds: (1) The fact that the owner of the landlocked parcel has expended funds to maintain the crossing in anticipation that the license would continue indefinitely does not render the license irrevocable. (2) The statute precluding the acquisition through adverse possession of any interest in railroad land used for corporate purposes, CGS §47-27(a), applies to claims for an easement by necessity as well as easements by prescription. (3) The statutory authority granted to the Commissioner of Transportation to “make all necessary orders for the closing of any private crossing if he finds that the necessity for such crossing has ceased,” CGS §13b-292(e), is limited to crossings which have an impact of public interest and not to a private crossing involving only the rights of a single private landowner . . . . . 305

**Social Services**

**Asset Eligibility Limitations for Medicaid Benefits – The Appellate Court Holds that a Comatose Applicant’s Incompetency Renders Assets “Inaccessible” and Therefore Not Includible for Purposes of Determining Eligibility for Title XIX Benefits.** Assets held by a comatose applicant unknown to the applicant’s caretakers are considered to be “inaccessible assets” within the meaning of the exclusion for assets for purposes of determining eligibility for Title XIX benefits as established by the Department of Social Services’ Uniform Policy Manual. The opinion reverses the trial court opinion reported at 32 CONN. L. RPTR. 747 (Cohn, J.). *Evans v. Department of Social Services*, 81 Conn. App. 58 (Dranginis, J.) (CLJ 1/13/04) . . . . . 81 Conn. App. 58

**State and Local Government**

**Joinder of Sewer Assessment Appeals – The Appellate Court Holds that Sewer Assessment Appeals by Multiple Owners Challenging the Amount of Individual Assessments May Not Be Joined.** See the discussion above under “Public Utilities” of *McCart v. Shelton*, 81 Conn. App. 58 (Schaller, J.) . . . . . 81 Conn. App. 58

**Shifting Municipal Liability for Failure to Remove Ice and Snow to Abutting Property Owners – A Superior Court Holds that the Statute Authorizing Municipal Ordinances that Shift Liability for Failure to Remove Ice and Snow to Abutting Property Owners Does Not Apply to Property Owned by the State.** The adoption of an ordinance shifting liability for failure to remove snow and ice from a municipality to abutting land owners pursuant to the authority granted by CGS §7-163a does not apply to property owned by the state, because the authorizing statute does not contain an express waiver of state sovereign immunity. Therefore the City of New Haven remains responsible for injuries incurred in a fall on ice and snow on the sidewalk in front of the state-owned New Haven train station, even though by ordinance any other owner of the property would have been liable. The plaintiff argued that the adoption of the authorizing statute constitutes an implied waiver of sovereign immunity. *Logan v. New Haven* (Devlin, J.) . . . . . 284

**State and Local Government** (continued)

**Demutualization of Anthem Blue Cross/Blue Shield – A Superior Court Holds that an Arbitration Clause of a Collective Bargaining Agreement Between a Board of Education and Its Employees Applies to a Claim by Employees to a Proportionate Share of Stock Received Upon the Conversion of Its Medical Insurer Into a Stock Company, Even Though the Town Rather than the Board Is the Policy Holder and the Town Is Not a Party to the CBA.** See the discussion above under “Arbitration” of *North Haven v. North Haven Education Ass’n* (Berdon, J.T.R.) . . . . .292

**Torts**

**Proximate Cause – The Appellate Court Holds that a Physician’s Failure to Warn that a Prescribed Medication May Cause a Patient to Fall Asleep While Driving Is the Not the Proximate Cause of Injuries to a Third Party in an Accident Which Occurred After the Patient Became Aware of the Medication’s Impact.** A physician is not liable to a third party injured in a motor vehicle accident for failing to warn the patient/operator that a prescribed medication may cause the patient to fall asleep while driving if the patient was independently aware that the medication was having that effect, because the patient’s rather than physician’s conduct is the proximate cause of the accident. The court reasoned that the physician should not be required to anticipate the patient’s poor judgment in continuing to drive after becoming aware of the impact of the medication. The opinion affirms on other grounds the trial court opinion reported at 32 CONN. L. RPTR. 468 (Sferrazza, J.), which held that a physician owes no duty to warn third parties of the risk that a prescribed medication may inhibit a patient’s ability to drive safely. *Weigold v. Patel*, 81 Conn. App. 347 (Dranginis, J.) (CLJ 2/3/04) . . . . . 81 Conn. App. 347

◆ **Quasi-judicial Immunity – The Appellate Court Holds that an Attorney Appointed in a Marital Dissolution Proceeding to Represent a Child Is Protected by Qualified Quasi-judicial Immunity from Suit by the Child’s Parents.** See the discussion above under “Family Law” of *Carrubba v. Moskowitz*, 81 Conn. App. 382 (Schaller, J.) (CLJ 2/3/04) . . . . . 81 Conn. App. 382

**Infliction of Emotional Distress Claims Against an Employer – A Superior Court Holds that the “Extreme and Outrageous” Element of a Claim for Intentional Infliction of Emotional Distress Is Satisfied by Proof that an Employer Framed an Employee for Theft as Justification for a Termination.** The opinion in *White v. Thornton Oil Corp.* (Arnold, J.) expresses the author’s concurrence, on a motion for summary judgment, with the holding of an earlier-reported opinion on a motion to strike in the same case by another author (Booth, J.) that the “extreme and outrageous” element of a claim for intentional infliction of emotional distress is satisfied by evidence that an employer framed an employee for theft by deliberately removing money from the employee’s cash drawer as justification for terminating the employee. The opinion denies the defendants’ motion for summary judgment . . . . .279

**Dram Shop Act – A Superior Court Holds that the 2003 Public Act Increasing the Limits of Liability for Personal Injury Claims Under the Dram Shop Act from \$20,000 to \$250,000 Is Not Retroactive to Actions Pending on the Effective Date.** The 2003 public act increasing the maximum liability for a personal injury claim under the Dram Shop Act against a seller of alcoholic liquor from \$20,000 to \$250,000 is not retroactive to actions pending on the effective date of June 3, 2003. *DeBonne v. Lalumiere* (Aurigemina, J.) . . . . .281

**Shifting Municipal Liability for Failure to Remove Ice and Snow to Abutting Property Owners – A Superior Court Holds that the Statute Authorizing Municipal Ordinances that Shift Liability for Failure to Remove Ice and Snow to Abutting Property Owners Does Not Apply to Property Owned by the State.** See the discussion above under “State and Local Government” of *Logan v. New Haven* (Devlin, J.) . . . . .284

**Apportionment – A Superior Court Holds that a 120-day Limitation Period for Filing an Apportionment Complaint Is Mandatory.** *Hoyt v. Geremia Development Corp.* (Devlin, J.), also discussed above under “Civil Procedure” . . . . .297