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Apparent Agency for Torts: A Viable Claim in CT?

By Erika L. Amarante and Lori A. Kmec

The Supreme Court will soon decide an important issue of agency law: whether the doctrine of apparent authority applies to actions sounding in tort.[1] This issue has been in flux ever since the Appellate Court stated in a 2012 decision that "the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent."[2] Since 2012, superior courts have differed on how to apply this broad pronouncement. For example, many courts have refused to dismiss or strike agency claims in negligence cases, such as medical malpractice claims.[3]

In the latest chapter of this dispute, *Cefaratti v. Aranow*,[4] the Appellate Court concluded for the first time that, as a matter of law, a hospital could not be liable for the alleged negligence of a non-employee physician under the doctrine of apparent authority, because that doctrine does not apply to torts in Connecticut. The Supreme Court granted plaintiff's petition for certification, and the case is ready for argument this fall/winter.[5] The final result in *Cefaratti* will have broad implications for defense counsel in all areas of practice.

The history of apparent agency in tort actions in Connecticut can be traced to a 1941 Supreme Court decision, *Fireman's Fund Indemnity Co. v. Longshore Beach & Country Club, Inc.*[6] In *Fireman's Fund*, plaintiff sued to recover for damage to his car, which an employee of the defendant yacht club drove into the basin when he was retrieving the car from a parking spot. The employee was not a parking attendant. The trial court issued judgment for the defendant, finding that the employee was not acting within the scope of actual or apparent authority when he retrieved the plaintiff's car. The Supreme Court affirmed. In doing so, the Court discussed the test for apparent authority,[7] but ultimately decided that the facts of the case did not meet the test. Accordingly, the Court never reached the issue of whether apparent authority is appropriate in tort cases.

More than fifty years later, the Appellate Court held, with very little analysis, that the doctrine of apparent authority was inapplicable to hold institutional church defendants liable for the intentional acts of an ordained priest and psychologist who provided counseling and spiritual services to a parishioner. In that case, *Mullen v. Horton*,[8] the Court devoted only two short paragraphs to the apparent authority claim, and concluded—without citing any precedent—that "the doctrine of apparent authority has never been used" in tort actions in Connecticut.[9] In 2011, the Court reaffirmed that holding, in *Davies v. General Tours, Inc.*, stating that "[a]s we noted in *Mullen*,

1 *Cefaratti v. Aranow*, 315 Conn. 919 (2015) (granting certification).

2 *L&V Contractors LLC v. Heritage Warranty Insurance Risk Retention Group, Inc.*, 136 Conn. App. 662 (2012).

3 *See, e.g., Passmore v. Day Kimball Hosp.*, No. CV 11-6004320, 2014 WL 3360851 (Conn. Super. Ct. May 29, 2014) (Boland, J.) (denying motion to dismiss apparent agency claim in medical malpractice case); *Carasone v. Gemma Power Systems, LLC*, No. CV 12-6033846-S, 2013 WL 1943800 (Conn. Super. Ct. Apr. 17, 2013) (Wilson, J.) (denying motion to strike apparent agency count in negligence complaint).

4 154 Conn. App. 1 (2014).

5 The Supreme Court granted plaintiff's petition for certification limited to the following question: "Did the Appellate Court properly conclude that the doctrine of apparent authority does not apply to actions sounding in tort?" 315 Conn. 919 (2015).

6 127 Conn. 493 (1941).

7 The Court held that apparent authority requires two important facts: (1) that the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question, or knowingly permitted him to act as having such authority, and (2) that the person dealing with the agent knew of the facts and acting in good faith had reason to believe, and did believe, that the agent possessed the necessary authority. 127 Conn. at 497.

8 46 Conn. App. 759 (1997).

9 *Id.* at 771-72.

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THE PRESIDENT'S COLUMN

by Victoria Metaxas

Back in 2008, I joined the CDLA because I wanted to learn more about issues of importance to the civil defense bar in the State of Connecticut. Since then, the CDLA has paid dividends. Our organization has been a true resource for any practicing attorney and for the entire civil defense bar. On a more individual level, any attorney who wants to improve his or her professional skills can take a seminar through the CDLA. On a broader level, the CDLA serves the entire civil defense bar, by having a seat on the Civil Commission and through the amicus process. The CDLA has come a long way, now that it is 25 years old.

This February, the CDLA will celebrate its 25th anniversary by hosting a celebration at the New Haven Lawn Club. Come one and all to honor and recognize the CDLA's past presidents, and to enjoy good company over delicious hors d'oeuvres and libations. Stay tuned for more details.

As 2016 approaches, the CDLA has been planning a range of activities and seminars. Our Fall Dinner will take place on November 12, 2015. We will start off with a seminar on structured settlements, "How Can a Structured Settlement Assist in Resolving Significant Damage Claims?" presented by Dan Weberg, of Galaher Settlements. Our keynote speaker will be Superior Court Judge Jon C. Blue, who will discuss his recently published book, *The Case of the Piglet's Paternity*. We will present our Rising Star Award to Julia Paridis.

In the spring, we will offer a three-part seminar on Trial Tactics. The topics will include motions in limine and evidentiary issues; the use of demonstrative evidence; and effective cross-examination and impeachment of expert witnesses. As in the past, we will offer these seminars live in New Haven, broadcasted simultaneously to locations in Hartford and Stamford. (see p. 16 for more details)

Our website has been updated and improved to feature a more user friendly broadcast e-mail system. We continue to grow our database of deposition transcripts, motions and expert recommendations. We encourage our members to send in relevant and useful content to our Executive Director, Kristen Mellitt, at ctdefenselawyers@gmail.com. Our database will continue to grow if we keep sending in our good work.

Our membership has increased this past year. Thank you for your continued support.

The Defense welcomes contributions and comments from members of the Connecticut Defense Lawyers Association. If you would like to submit an article, case review, verdict report, or news of interest to the defense bar, contact the editorial board at kirby.huget@thehartford.com.

LETTER FROM THE EXECUTIVE DIRECTOR

By Kristen N. Mellitt

In 2016 the Connecticut Defense Lawyers Association will celebrate its 25th Anniversary. To mark this milestone, we are planning a cocktail party that will be held in early February at The New Haven Lawn Club. We are still in the midst of planning and will make specifics about date, time, and registration available as soon as possible. What we do know is that it will be a lovely social event that will give us the chance to look back on our organization over the past quarter century, as well as to look forward to think about what we want to be in the future.

To recognize our past and the members who have built and sustained the CDLA, we will devote a portion of the evening to honoring past presidents, most of whom we hope will be in attendance. Many of these attorneys continue to be involved in our organization and to be leaders in the profession in the state. We will also acknowledge past recipients of the President's Award for Excellence, which has been presented at the CDLA annual meeting every year since 1999. In addition, we will look back on the variety of events and educational programs the CDLA has offered over the years. If you have a particular memory of the CDLA (or any old photos!) you would like to share, please contact me at ctdefenselawyers@gmail.com or 203-872-3007.

We have already begun to think about our future and how we will continue to be an active association and a resource to our members for the next 25 years and beyond. At our 2015 annual meeting, we voted to amend the by-laws to allow law students to join the CDLA for free. We are going to explore putting a mentoring program in place for students who join. We continue to offer a free one-year membership to attorneys who have just passed the bar to encourage new attorneys to get involved. We want to offer more programs that appeal to young lawyers, including opportunities to socialize, to participate in activities with a community service component, and to learn from more experienced attorneys (find information about our 2016 Trial Tactics Series on page 16). In 2014 we began presenting a Rising Star Award to recognize promising young civil defense attorneys. Looking forward could also mean establishing a scholarship to be presented annually by the CDLA. If you have any ideas about steering the CDLA toward a successful future, I would love to hear about those, too.

I look forward to seeing all of you at our 25th Anniversary party this winter. We have a lot to celebrate!

New Members

The Connecticut Defense Lawyers Association welcomes the following new members.

Jeffrey R. Babbin – *Wiggin and Dana*

Tamar Bakhbava – *McGivney & Kluger*

Eileen Reynolds Becker – *Loughlin FitzGerald, P.C.*

Thomas Blatchley – *Gordon & Rees, LLP*

Andrew Buchetto – *Mulvey Oliver, Gould & Crotta*

Lauren Casola – *Howard, Kohn, Sprague & FitzGerald*

Glenn B. Coffin, Jr. – *Gordon & Rees, LLP*

Beck S. Fineman – *Ryan Ryan Deluca, LLP*

Colleen Garlick – *Neubert, Pepe & Monteith, P.C.*

Kathleen Grover – *Fitzhugh & Mariani*

James D. Hine – *Mulvey, Oliver, Gould & Crotta*

Noah Kores – *Wall, Wall & Frauenhofer*

Nancy Marini – *Heidell Pittoni Murphy & Bach*

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Nadine Pare – *Nuzzo & Roberts, LLC*

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Anyone interested in serving on any of the CDLA committees should contact
Executive Director Kristen N. Mellitt at (203) 872-3007 or ctdefenselawyers@gmail.com.

Protecting the Ability to Bargain:
Why Connecticut courts should respect bargained for waivers, even where the waiver limits a strict liability claim

By Cullen W. Guilmartin

Over two years have passed since the Connecticut District Court denied, in part, a motion for summary judgment in *Associated Electric Gas Insurance Services, et al. v. Babcock & Wilcox Power Generation Group, Inc. Case No. 3:11-cv-00715-JCH* ("Associated Electric") and business should still be concerned with the potential implications of the Court's decision.[1] Although the court's ruling effectively trimmed the plaintiffs' claims by over ten (10) million dollars[2], the ruling is still troubling to the extent that it impacts the ability of sophisticated companies to conduct business in Connecticut. In particular, in *Associated Electric* the court ruled that commercial entities cannot, in any way, contract to impair a strict liability claim brought pursuant to the Connecticut Product Liability Act, Conn. Gen. Stat. § 52-572m *et seq.* ("CPLA"). This article discusses why such a hard and fast rule is inconsistent with Connecticut law, the law of other jurisdictions, and good policy.

Background of the *Associated Electric* Decision

In *Associated Electric*, the insured, Northeast Utilities Service Company ("NUSCO") and defendant Babcock & Wilcox Power Generation Group, Inc. ("Babcock & Wilcox") entered into a contract whereby Babcock & Wilcox would fabricate certain boiler tubes to be installed during a power generation plant retrofit. The sale of these tubes was pursuant to a previously agreed upon Master Purchase Agreement which was negotiated between NUSCO and Babcock & Wilcox. Critically, this contract limited the liability of Babcock & Wilcox's in regard to any transaction pursuant to the Master Purchase Agreement to the date of sale contract price for the goods furnished. Moreover, the parties agreed to a prescriptive limitations period of essentially two years (i.e. that any cause of action regarding Babcock & Wilcox's sale of the goods furnished be brought within one year after a one year warranty expired).[3]

After Babcock & Wilcox's tubes were installed at the NUSCO plant during an overhaul and the power generation unit was returned to operation, it was noted that the unit was not operating at full capacity. The turbines were opened and metallic debris was found caked on the turbine blades. Subsequent investigation revealed that the debris could have originated from a few locations; one being the tubes fabricated by Babcock & Wilcox (although it was later established during extensive discovery in *Associated Electric* that the debris did NOT originate from any Babcock & Wilcox product; hence the eventual dismissal with prejudice). NUSCO and its insurance carriers waited three years from the date the turbines were opened to file their lawsuits against Babcock & Wilcox seeking to recover nearly eighteen million dollars in replacement power costs and twenty million dollars in property damage. Babcock & Wilcox, in its initial motion for summary judgment, asserted, among other arguments, that the Plaintiffs' claims were barred by the bargained for prescriptive limitations period or should be limited to the date of sale contract price pursuant to the agreed upon terms of the contract.

The Court disagreed and denied, in part, Babcock & Wilcox's motion for summary judgment holding that even the most sophisticated parties could not contract in any way to limit a strict products liability claim in Connecticut.[4] In rendering this decision, the Court principally relied upon *Comind, Companhia de Seguros v. Sikorsky Aircraft*, 116 F.R.D. 397 (D. Conn. 1987) ("Comind"). The entirety of the *Comind* court's analysis regarding its holding that strict liability claims cannot be impaired by contractual disclaimers is as follows:

> Disclaimers of strict products liability in tort stand on somewhat of a different footing than disclaimers for negligence due to the acute differences in the natures of these very dissimilar theories of liability. *See Giglio v. Connecticut Light & Power*, 180 Conn. 230, 234, 429 A.2d 486 (1980) (listing the requirements for recovery under strict liability theory). As the

1 The decision can be found at Docket No. 83.

2 The matter was defended by Gordon & Rees partners John Robinson and Cullen Guilmartin while working at a prior. The case was later dismissed on its merits with prejudice, but only after costly litigation, including full discovery and motion practice.

3 The relevant terms of the agreement read as follows:
> [T]he total liability of the Seller and its subcontractors, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, shall not exceed the date of sale Contract Price.
> Except as to warranty of title to any goods furnished, all Seller liability shall terminate upon the expiration of the warranty period specified in the Contract, provided, however, that Purchasers may enforce a claim of such liability by an action timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or statute of repose, but in no event later than one (1) year after expiration of the warranty period.

4 The *Associated Electric* court did grant summary judgment in regard to the plaintiffs' claims for replacement power costs as those costs were deemed commercial losses governed by the Uniform Commercial Code and thus damages which fall outside of those recoverable under the CPLA.

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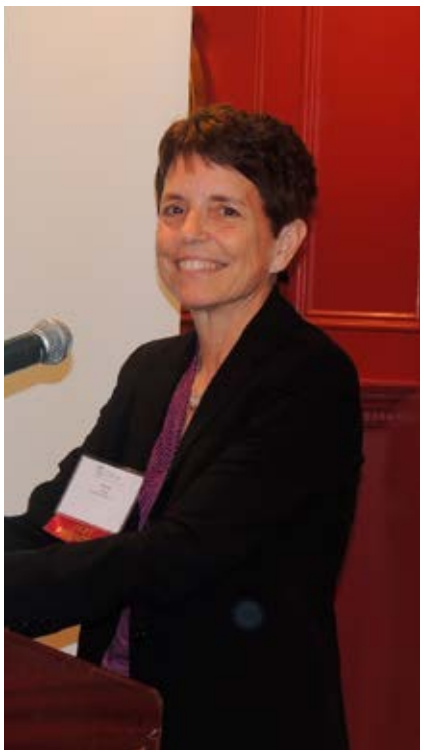
CDLA Hosts 2015 Annual Meeting

The Connecticut Defense Lawyers Association held its Annual Meeting at The Inn at Middletown on June 8, 2015. The event began with a seminar on Automobile EDR Data and Advanced Driver Assistance Systems, presented by Dr. John Zolock of Exponent. The educational program covered what Electronic Control Modules a vehicle might have and how they function as an Event Data Recorder to record crash data. Case studies of real world accidents demonstrated to the attorneys in attendance the benefits and cautions of using event data.

Guests then mingled, enjoyed hors d'oeuvres, and visited sponsor exhibit booths during the cocktail hour. The business portion of the meeting followed, during which David A. Post was inducted as a new member of the board of directors, James J. Noonan joined the executive committee as treasurer, and the by-laws were amended to allow for free CDLA memberships for law students. Victoria Metaxas is serving as the CDLA president for 2015–2016, during which the CDLA will celebrate its 25th Anniversary.

After dinner, Justice Richard A. Robinson and Judge Maria Araujo Kahn gave an engaging presentation on the topics of cultural competency and implicit bias, and the importance of being mindful of latent biases in working with clients and trying cases. The evening concluded with the presentation of the 2015 President's Award for Excellence to Karen Karpie of Murphy and Karpie in Bridgeport. The award was presented to Karpie by her partner Rob Sickinger.

The event was sponsored by platinum level sponsors Carmody ADR, Exponent, and Minnesota Lawyers Mutual, as well as gold level sponsors CED Technologies, MDD Forensic Accountants, and Pullman & Comley and their ADR Group.



Karen Karpie accepts the 2015 President's Award for Excellence.

From left to right: Keynote speakers Justice Richard A. Robinson and Judge Maria Araujo Kahn, CDLA president Victoria Metaxas, and outgoing CDLA president Rob Chomiak.

Agency for Torts

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that theory [apparent authority] is not a viable ground on which to premise liability against a defendant sued for the torts of an alleged agent."[10] Neither *Mullen* nor *Davies* mentions the Supreme Court's 1941 decision in *Fireman's Fund*.

Fast forward to *L&V Contractors*, decided in 2012. There, plaintiff sued a transmission shop (Drive Train) and its franchisor (AAMCO) for statutory theft, conversion and alleged violations of the Connecticut Unfair Trade Practices Act (CUTPA), arising out of the transmission shop's failure to return plaintiff's vehicle. The trial court found for the plaintiffs, and held all defendants equally liable under agency theories. The Appellate Court reversed, concluding that the undisputed facts did not support an actual agency relationship between Drive Train and AAMCO. The Court also rejected the apparent authority allegations against AAMCO on the grounds that "the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent. . . ."[11] The Appellate Court noted that Connecticut "has yet to apply the doctrine of apparent authority to allow for a principal to be held liable to a third person who was harmed by the tortious conduct of a person held out as the principal's agent."[12]

The *L&V Contractors* decision also does not mention *Fireman's Fund*—and that absence has created uncertainty among Superior Courts about whether the Appellate Court has inappropriately contradicted Supreme Court precedent. Some Superior Courts have held that *Fireman's Fund* clearly recognized the doctrine of apparent authority in tort cases and cannot be overruled by the Appellate Court.[13] What these cases fail to recognize, however, is that *Fireman's Fund* did not adopt the theory of apparent authority into state law, since the facts of that case did not meet the test. The Supreme Court was neither presented with, nor did it decide, this issue.

This was the backdrop for *Cefaratti*, decided by the Appellate Court on December 9, 2014. In *Cefaratti*, plaintiff sued a surgeon, Jonathan S. Aranow, M.D., his employer Shoreline Surgical Associates, and Middlesex Hospital for injuries sustained as a result of a retained sponge following gastric bypass surgery. The plaintiff alleged that Dr. Aranow was "an [actual] agent, apparent agent, servant or employee" of Middlesex Hospital by virtue of his privileges at the Hospital and because the Hospital featured him on its Center for Weight Loss Website as a founder and staff member. The Hospital argued that the defendant was a private attending physician with medical staff privileges and offered evidence that he did not have an employment contract with the Hospital or receive compensation for his services. The trial court granted summary judgment for the Hospital finding that it could not be held vicariously liable under a theory of apparent agency and that the undisputed facts did not support a finding of actual agency.

The Appellate Court affirmed, finding that it was "bound" by the decision in *L&V Contractors*.[14] "It is settled policy . . . that one panel

10 *Davies v. General Tours, Inc.*, 63 Conn. App. 17, 31 (2001). In reaching that conclusion, the Court noted that several Superior Courts had permitted causes of action against hospitals for the acts or omissions or independent contractor physicians. *See id.* at 32, & n.8 (citing cases). The *Cefaratti* Court—considering the same issue—did not mention those trial court decisions, having determined that it was bound by the precedent from *L&V Contractors*. *See Cefaratti*, 154 Conn. App. at 45.

11 136 Conn. App. at 670.

12 *Id.* at 669 (citing *Mullen*, 46 Conn. App. at 771, and *Davies*, 63 Conn. App. at 31).

13 *See, e.g., Passmore v. Day Kimball Hosp.*, 2014 WL 3360851 (relying on *Fireman's Fund* to deny motion to dismiss apparent agency claim); *Carasone v. Gemma Power Systems, LLC*, 2013 WL 1943800 (same).

14 The Court reversed in part, however, on a statute of limitations issue; namely, whether the continuous treatment doctrine tolled the applicable statute of limitations for claims against the surgeon while the retained sponge was undiscovered. The Supreme Court granted defendants' petition for certification on this issue, and will consider the following question: "Did the Appellate Court properly apply the 'continuing course of treatment' doctrine in determining what constitutes an

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Ability to Bargain

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> Connecticut Supreme Court has pointed out, strict products liability is entirely independent from any liability or allocation of risk created by contract and is not governed by contractual creations. *Rossignol v. Danbury School of Aeronautics, Inc.*, 154 Conn. 549, 559–60, 227 A.2d 418 (1967) (citing 2 Restatement, Second, Torts § 402A comment m). Accordingly, a manufacturer's contractual disclaimer should have no effect on an appropriate party's products liability claim.
>
> In Connecticut, prior to the enactment of C.G.S.A. § 52–572n(c) (which does not apply retroactively to this case), strict products liability actions were permissible between commercial parties. *See Coe-Park Donuts, Inc. v. Robertshaw Controls Co.*, 1 Conn.App. 84, 86–87, 468 A.2d 292 (Conn. App. 1983) (suit for damages arising from a defective thermostat). In such cases, the strict products liability doctrine has been applied unchanged from its non-commercial context. *See Id.* at 86, 468 A.2d 292. Absent any indication from the Connecticut Courts that general contract principles underlying liability disclaimers (which in the negligence context are disfavored) are applicable in strict products liability situations, this Court is unwilling *sua sponte* to inject this alien legal theory into Connecticut's tort-based strict products liability law. The realms of contract and strict tort liability are conceptually and legally distinct, and the Court rejects the defendants' attempt to comingle the two.
>
> Because the defendants' disclaimer argument is inapposite in the context in which they seek to make it, it is of no effect with regard to Comind's products liability claim. *See Rossignol*, 154 Conn. at 559–60, 227 A.2d 418. The defendants' motion for summary judgment on this issue is therefore denied.

Id. at 420. The *Comind* court thus extended comment m to Section 402A of the Restatement (Second) of Torts to all disclaimers and waivers of strict liability solely predicated upon the Connecticut Supreme Court's acceptance of this comment in *Rossignol*, 154 Conn. 549 (1967); a decision which merely held that privity was not necessary for a strict liability claim and thus such a claim is a creation of tort, rather than contract law. This article posits three main points: 1) *Comind* is wrong; 2) even if it was correct at the time, *Comind* is no longer good law; and 3) if *Comind* is still good law, policy reasons justify changing the law.

Comind is Wrong and thus *Associated Electric* is Wrong

To establish that the decision in *Associated Electric* was wrong, one would need only establish that the underlying decision it relied upon, *Comind*, was also wrong. In this regard, it can be argued that

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of this court, on its own, cannot overrule the precedent established by a previous panel's holding."[15] The *Cefaratti* court went further, however, by distinguishing *Fireman's Fund*, as follows:

> *Fireman's Fund Indemnity Co.* held only that the facts of that case were insufficient to create apparent authority. Our Supreme Court did not hold or even mention the possibility that the doctrine of apparent authority applied only to actions in contract and was not available to actions in tort; of course, it did not hold to the contrary. The issue of whether vicarious liability could be used to hold a principal liable in tort was simply not an issue in the case.[16]

Accordingly, the only appellate level decisions to consider this issue directly—namely, *Mullen, Davies*, *L&V Contractors* and *Cefaratti*—have all held that apparent authority is not a viable basis for holding a principal liable in tort actions. As the Cefaratti trial court correctly noted in 2013, "no appellate court in the State of Connecticut has recognized apparent authority as a proper theory to find liability in tort actions."[17] Hopefully that statement will remain true, even after the Supreme Court decides *Cefaratti*.

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Lori Kmec is an attorney in the legal and regulatory department at AmTrust North America, Inc.

'identifiable medical condition' under that doctrine?" *Cefaratti v. Aranow*, 315 Conn. 919 (2015).

15 154 Conn. App. at 45.

16 *Id.*

17 *Cefaratti v. Aranow*, No. MMXCV106003280, 2013 WL 2278778, at *11 (Conn. Super. Ct. Apr. 29, 2013) *aff'd in part, rev'd in part*, 154 Conn. App. 1 (2014).

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Comind misinterpreted Connecticut law, is inconsistent with law in other jurisdictions on the same issue, did not consider public policy considerations, and misinterpreted a disclaimer as a waiver.

The *Comind* court misinterpreted *Rossignol*

In *Rossignol*, which *Comind* utilized to justify its holding, the Connecticut Supreme Court was tasked with defining the minimum essential allegations of a cause of action based on strict liability. *See* 154 Conn. at 558. Having previously ruled that privity was not an essential element of a strict tort liability claim the Court was asked to consider whether a strict liability action requires that a plaintiff rely on a representation or misrepresentation made by a seller. *Id.* Importantly, *Rossignol* involved a remote purchaser of a product, not a purchaser who bought a product directly from a manufacturer or that manufacturer's distributor. Specifically, the case involved an individual person as a buyer who purchased an airplane from a school, which purchased the airplane from a seller, which used an engine, which incorporated yet another manufacturer's allegedly defective exhaust valve. *Id.* at p. 551. Thus, the court was asked to determine whether such a remote purchaser (the individual person) could recover from the original manufacturer of the engine and valve, with whom the individual purchaser had never had any contact. In ruling that a buyer need not rely on any direct representation, the *Rossignol* court accepted the principles espoused in comment m. The *Rossignol* court did not perform an analysis as to when comment m applies, did not specifically address that portion of comment m related to disclaimers, and certainly stated nothing about comment m's applicability to waivers negotiated by sophisticated commercial parties. Despite the lack of analysis concerning comment m by the *Rossignol* Court, the *Comind* court interpreted *Rossignol*'s acceptance of comment m as standing for the general proposition that strict products liability is entirely independent from any liability or allocation of risk created by contract and is not governed by contractual creation.

Comind, furthermore, went too far when it further held that strict liability cannot be disclaimed or waived under any circumstance, including with regard to contracts negotiated between commercial entities at arm's length as opposed to consumers.[5] Such a sweeping interpretation was never discussed nor authorized by *Rossignol*, which merely held that a strict liability claim sounds in tort, not contract. The *Comind* court also did not address the underlying public policy which governs comment m, nor did it address its reading of comment m with respect to potential conflict with other Connecticut law, including this State's acceptance of the Uniform Commercial Code.

Comind did not look to similarly situated courts for guidance

The *Comind* court also failed to look to courts of appeal and district court decisions dealing with precisely the same issue: comment m's impact on sophisticated parties' ability to contract regarding allocation of risk, absent guidance from state law. Had the *Comind* court done so, it is reasonable to assume that the court would have held differently.

For example, a thoughtful opinion can be found in *Keystone Aeronautics Corp. v. R.J. Enstrom Corp.*, 499 F.2d 146 (3rd Cir. 1974). Interpreting Pennsylvania law, the court was confronted with the question of whether a seller may disclaim liability under § 402A and, if so, what conditions must be met. *Id.* at 147. The court first noted that Pennsylvania had adopted § 402A and assumed for the purposes of the decision that it had also adopted comment m. *Id.* at p. 148. In holding that business entities of equal bargaining strength can freely waive § 402A liability, the court reasoned as follows:

> If a disclaimer on the label of a product or in a printed form sales contract would be effective to limit liability under § 402A, then obviously sellers would utilize such devices to nullify their responsibility. And it is significant that the application of § 402A is limited to a '. . . product in a defective condition unreasonably dangerous . . .' A social policy aimed at protecting the average consumer by prohibiting blanket immunization of a manufacturer or seller through

5 *Comind* also ignored comment l's (the comment which precedes comment m) description of the "consumer" at issue in Section 402a of the Restatement (Second) of Torts:

> "Consumers" include not only those who in fact consume the product, but also those who prepare it for consumption; and the housewife who contracts tularemia while cooking rabbits for her husband is included within the rule stated in this Section, as is also the husband who is opening a bottle of beer for his wife to drink. Consumption includes all ultimate uses for which the product is intended, and the customer in a beauty shop to whose hair a permanent wave solution is applied by the shop is a consumer. "User" includes those who are passively enjoying the benefit of the product, as in the case of passengers in automobiles or airplanes, as well as those who are utilizing it for the purpose of doing work upon it, as in the case of an employee of the ultimate buyer who is making repairs upon the automobile which he has purchased.
>
> Illustration:
>
> 1. A manufactures and packs a can of beans, which he sells to B, a wholesaler. B sells the beans to C, a jobber, who resells it to D, a retail grocer. E buys the can of beans from D, and gives it to F. F serves the beans at lunch to G, his guest. While eating the beans, G breaks a tooth, on a pebble of the size, shape, and color of a bean, which no reasonable inspection could possibly have discovered. There is satisfactory evidence that the pebble was in the can of beans when it was opened. Although there is no negligence on the part of A, B, C, or D, each of them is subject to liability to G. On the other hand E and F, who have not sold the beans, are not liable to G in the absence of some negligence on their part.

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> the use of standardized disclaimers engenders little resistance. But when the setting is changed and the buyer and seller are both business entities, in a position where there may be effective and fair bargaining, the social policy loses its raison d'etre. The transaction then tends to be more influenced by gravitational pull of the Uniform Commercial Code than by the consumer oriented § 402A.
>
> Since the Code is tolerant of disclaimers and limitation clauses within certain defined limits, that same philosophy would be equally approving of a negotiated waiver of § 402A. Such a limitation on comment m would avoid the not unfamiliar result of 'overkill' when a legal principle completely valid in its original context is extended so far that the mischief caused may be equal to the original disorder sought to be remedied.
>
> We have no reason to believe that the courts of Pennsylvania would not come to the same conclusion as we do. Exculpatory clauses to relieve a person of his own negligence have been enforced in less favorable circumstances, and it would appear that the advantages of freedom of contract would overcome any inclination to adopt a narrow and restrictive interpretation of comment m.
>
> We conclude therefore that Pennsylvania law does permit a freely negotiated and clearly expressed waiver of § 402A between business entities of relatively equal bargaining strength.

499 F.2d at 149 (citations and footnote omitted). The Fourth Circuit Court of Appeals reasoned similarly in *Purvis v. Consolidated Energy Products Co.*, 674 F.2d 217 (4th Cir. 1982) where it was called upon to interpret South Carolina law; a state which had, by statute, incorporated by declaration the comments to §402A:

> Because strict products liability arises from considerations of public policy rather than from the parties' intent, the notion that such liability can be avoided by contractual disclaimers is problematical. Where these policy considerations are inapplicable, however, the doctrine of strict products liability affords no basis for setting aside contractual limitations on the plaintiff's claim. Furthermore, there are strong positive reasons for courts to respect such limitations. The right to disclaim warranties and limit remedies enables commercial parties to allocate risks between the buyer and the seller in the most efficient manner and thereby to maximize their respective gains from a transaction. Furthermore, because that right is often embodied in statutory law, failure by the courts to give it due effect would flout a clear legislative mandate.

Id. at 221-22 (citations omitted). The *Comind* court could also have looked to the Ninth Circuit Court of Appeals' decision *Idaho Power Co. v. Westinghouse Elec. Corp.*, 596 F.2d 924 (9th Cir. 1979). In *Idaho Power*, the Ninth Circuit noted that Idaho had adopted § 402A and comment m. *Id.* at 927. The court further held that comment m suggests that strict liability cannot be disclaimed. However, the court went on to note that certain provisions of Idaho's Uniform Commercial Code are tolerant of disclaimers. In fact, the provisions at issue in Idaho Power are substantially the same provisions utilized by Connecticut's Uniform Commercial Code:

> Compare:
>
> Idaho Code s 28-2-719(1)(a): the agreement may . . . limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts;
>
> Idaho Code s 28-2-719(3): Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.
>
> With:
>
> Conn. Gen. Stat. § 42a–2–719(a): the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts . . .
>
> Conn. Gen. Stat. § 42a-2-719(3): Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable. Limitation of consequential damages where the loss is commercial is not.

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See id. at 927. After noting that the Idaho Supreme Court had not considered the issue regarding strict liability waivers in the commercial context, the court went on to hold: "the parties are two large corporations of relatively equal bargaining strength . . . [t]he disclaimer provisions were discussed by the parties and clearly limited Westinghouse's tort liability. We need not decide whether Westinghouse was subject to strict liability under 402A, but hold that under these circumstances the disclaimer was an effective defense to Idaho Power's strict liability action." *Id.* at 928.

Other federal courts, absent guidance from state law and faced with similar issues regarding the ability of commercial parties to waive strict liability by way of contract, have held similarly. *See e.g. ICI Australia Ltd. v. Elliot Overseas Co.*, 551 F. Supp. 265, 269 (D.N.J. 1982) (In contracts between business concerns "disclaimers have been held valid whether limiting liability for tortious injury, contract damage, or both.") (interpreting New Jersey law); *K-Lines, Inc. v. Roberts Motor Co.*, 541 P.2d 1378, 1384 (Or. 1975) ("When the parties are business concerns dealing in a commercial setting and entering into an unambiguous agreement with terms commonly used in commercial transactions, the contract will not be deemed a contract of adhesion in the absence of evidence of unusual circumstances."); *McDermott, Inc. v. Clyde Iron*, 979 F.2d 1068, 1076 (5th Cir. 1992) (contract provisions waiving strict liability claims are enforceable under New York law), rev'd & remanded on other grounds, 511 U.S. 202 (1994); *also see Velez v. Craine & Clark Lumber Corp.*, 305 N.E.2d 750, 754 (N.Y. 1973) ("We are then thrown back on broad principles of contract law. Although strict products liability sounds in tort rather than in contract, we see no reason why in the absence of some consideration of public policy parties cannot by contract restrict or modify what would otherwise be a liability between them grounded in tort."); *Chicago Steel Rule & Die Fabricators Co. v. ADT Security Systems Inc.*, 763 N.E.2d 839, 844 (Ill.App. 2002) ("In the context of this case, we do not believe that enforcing an exculpatory provision relieving a commercial party to the contract from strict liability based on damage to other property would threaten the public's physical safety by diminishing the incentive to manufacture and/or distribute safe products. Manufacturers and distributors would still be subject to strict products liability actions brought by remote parties and individual consumers who suffered personal injuries or property damage. Potential liability under such actions, in monetary terms, could be extremely high. Therefore, the incentive to manufacture and distribute safe products would remain."); *but see Florida Steel Corp. v. Whiting Corp.*, 677 F. Supp. 1140 (M.D. Fla. 1988) and *Potomac Plaza Terraces, Inc. v. QSC Products, Inc.*, 868 F. Supp. 346 (D.D.C. 1994).

As shown above, there was ample authority on which the *Comind* court could have relied for guidance in rendering its decision; but it did not. The issue before the *Comind* court should not have been decided in a three (3) paragraph analysis. Instead, the underlying policies behind § 402A and comment m ought to be considered thoroughly in such a decision. Courts faced with the exact same question and similar statutory background, have, in an overwhelming majority, held that comment m's restrictions on disclaimers should not apply to commercial parties.

The *Comind* court did not assess the impact of its decision

In addition to not performing any analysis regarding the public policy behind § 402A or comment m and not looking to other courts for guidance, the *Comind* court did not assess its decision's potential conflict with Connecticut law and policy. First, the *Comind* court did not consider Connecticut's preference for freedom of contract. *John T. Brady & Co. v. Stamford*, 220 Conn. 432, 449-50, 599 A.2d 370 (1991) ("Contracting parties are free to impose conditions upon contractual liability."); *Gibson v. Capano*, 241 Conn. 725, 730-731, 699 A.2d 68 (1997) ("It is established well beyond the need for citation that parties are free to contract for whatever terms on which they may agree. This freedom includes the right to contract for the assumption of known or unknown hazards and risks that may arise as a consequence of the execution of the contract. Accordingly, in private disputes, a court must enforce the contract as drafted by the parties and may not relieve a contracting party from anticipated or actual difficulties undertaken pursuant to the contract, unless the contract is voidable on grounds such as mistake, fraud or unconscionability.") "Especially in the context of commercial contracts, we assume that definite contract language is the best indication of the result anticipated by the parties in their contractual arrangements." *Tallmadge Bros., Inc. v. Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 500, 746 A.2d 1277 (2000). Clearly, Connecticut courts rightly favor the freedom of contract, but *Comind* ignored this maxim.

Furthermore, the *Comind* court did not consider its decision's impact on Connecticut's adoption of the Uniform Commercial Code. Two provisions are pertinent:

> Conn. Gen. Stat. § 42a–2–719(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts…

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> Conn. Gen. Stat. § 42a-2-719(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable. Limitation of consequential damages where the loss is commercial is not.

Section 42a–2–719 is seen to provide contracting parties with considerable freedom to determine amongst themselves the remedial rights that will exist upon a breach. *Mack Fin. Corp. v. Crossley*, 209 Conn. 163, 168, 550 A.2d 303 (1988). Absent some cogent reason, such as mistake or unconscionability, there is no reason why the bargain that the parties made should not be enforced. *Id.* (citing *Leonard Concrete Pipe Co. v. C.W. Blakeslee & Sons*, 178 Conn. 594, 598, 424 A.2d 277 (1979)). The *Comind* court's overly broad reading of *Rossignol*, combined with and the breadth of comment m would severely impair commercial parties' freedom of contract and the purpose of § 42a–2–719; which is tolerant of waivers. These conflicts were not considered by *Comind*, and should have been addressed in its decision.

Comind incorrectly interpreted a disclaimer as a waiver.

Comind also misconstrued comment m as disallowing both "disclaimers" and bargained-for "waivers". The distinction between a unilateral disclaimer and agreements contained in a contract of adhesion are much different than bargained for waivers, such as the one held invalid in *Comind* and later in *Associated Electric*. The Supreme Court of Arizona aptly stated the difference between a waiver and disclaimer when analyzing whether a strict liability waiver is invalid pursuant to Arizona's acceptance of comment m:

> Although tort law does not recognize "disclaimers" and will not give them effect, it will recognize waivers. A waiver will be given effect when it represents 'an intentional relinquishment of a known right.' That relinquishment will be permitted where commercial parties have equal bargaining positions so that the choice was freely and fairly made and not forced by the circumstances. Further, the parties must have negotiated the specifications of the product and have knowingly bargained for the waiver. Under these circumstances our courts will enforce the bargain, even if it turns out to have been a bad bargain for one party or the other. The agreement will not be enforced, however, when it is the product of coercion or inadvertence. Tort remedies may not be waived in an unknowing exchange of forms between shipping clerk and order clerk. An actual bargain must be made by those responsible for the transaction.

Salt River Project Agr. Imp. And Power Dist. v. Westinghouse Elec. Corp., 694 P.2d 198, 215 (Ariz. 1984) (internal citations omitted). The distinction between a waiver and a disclaimer was also noted by the Supreme Court of Oregon in its decision in *K-Lines, Inc.* discussed above. There the court noted that disclaimers grew up as a contractual modification of warranties which would otherwise flow, by operation of law or interpretation of the agreement, to the purchaser and that, "Comment m to Restatement (Second) § 402A was meant to explain that such garden variety disclaimers were not sufficient to disclaim the strict liability established by 402A because 402A was not based on warranty. It means simply that a disclaimer of 'warranties' is not sufficient to affect strict liability in tort. We do not take it to mean that an agreement to bar all tort remedies is treated the same, regardless of whether such agreement is denominated a disclaimer, exclusion or limitation." 541 P.2d at 1381.

The *Comind* and *Associated Electric* courts misconstrued waivers as warranty disclaimers. As stated by the *Salt River* court, a strict liability "waiver" should be upheld when the waiver is knowingly negotiated for between two sophisticated commercial parties. As stated above, the policy behind comment m is simply inapplicable where parties to the contract are highly sophisticated.

Comind Is No Longer Good Law

It should be noted that Judge Clarie, in authoring the *Comind* decision, took great pains to suggest that future courts should not rely upon its reasoning with respect to strict liability waivers because the claims preceded changes to the CPLA. This is evidenced both in the decision ("In Connecticut, prior to the enactment of C.G.S.A. § 52–572n(c) (which does not apply retroactively to this case), strict products liability actions were permissible between commercial parties."), and in its order regarding the defendants' motion for reconsideration ("However, applying Connecticut law to the facts of this case (excluding consideration of section 52–572n(c) which has no retroactive effect)…") *Comind*, 116 F.R.D. at 420 and 429. Therefore, the *Comind* court did not assess the impact of the Uniform Commercial Code, which was not applicable to the claims in that case, when a CPLA dispute is between commercial parties.

Furthermore, Judge Clarie, cited certain legislative history related to § 52-572n(c) in a later decision suggesting that his understanding was that this statutory subsection allows commercial entities to "contractually appropriate the risk of loss associated with the use of the product." *Utica Mut. Ins. Co. v. Denwat Corp.*, 778 F. Supp. 592, 595 (D.Conn. 1991) citing S.R. 578, P.A. 84–509 § 2, (1984). In fact, no Connecticut state court has ever cited to or relied upon the

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Comind decision when determining the applicability of a disclaimer, a waiver, or a prescriptive limitations period.

Moreover, more recent Connecticut decisions hold that Connecticut courts will allow sophisticated commercial parties to appropriate risk, even if a clause is exculpatory in nature in the face of *Comind*. *See Comind* 116 F.R.D. at 420 (noting that Connecticut law "strongly disfavors" disclaimers and that there is no law "which involve transactions between commercial parties.") For example, in *B & D Associates, Inc. v. Russell*, 73 Conn. App. 66, 807 A.2d 1001 (2002), the Connecticut Appellate Court held that commercial parties could enter into contracts relieving a negligent party from liability. *Id.* at 73. The court went further, however, to note that "when applied to contracts to which the parties are sophisticated business entities, 'the law, reflecting the economic realities, will recognize an agreement to relieve one party from the consequences of his negligence on the strength of a broadly worded clause framed in less precise language than would normally be required, though even then it must evince the unmistakable intent of the parties.'" *Id.* (internal citations and quotations omitted); *see also Dow–Westbrook, Inc. v. Candlewood Equine Practice, LLC*, 119 Conn. App. 703, 712, 989 A.2d 1075 (2010) ("In modern commerce, indemnity clauses are no longer so unusual as to require such specific mention of the indemnitee's conduct as being within the scope of the indemnifying obligation… Indemnity clauses in contracts entered into by businesses… should be viewed realistically as methods of allocating the cost of the risk of accidents apt to arise from the performance of the contract.") (internal quotation marks omitted.)

In addition, the Connecticut Supreme Court has issued decisions which further define when Connecticut courts should enforce exculpatory clauses in contracts and agreements. *See Hyson v. White Water Mountain Resorts of Connecticut, Inc.*, 265 Conn. 636, 829 A.2d 827 (2003) and *Hanks v. Powder Ridge Restaurant Corp.*, 276 Conn. 314, 885 A.2d 734 (2005). In *Hyson*, the court held that, in the consumer recreational context of snowtubing, any release from tort liability must expressly refer to negligence to be valid. 265 Conn. at 643. Subsequently, in a case with very similar facts, the court held that even releases from liability in consumer contracts that explicitly refer to negligence are void as against public policy. *Hanks*, 276 Conn. at 335–36. Both of those cases, however, involve a plaintiff who was forced to sign a contract of adhesion before engaging in a public recreational activity and are distinguishable from B & D Associates, Inc. *See Empire Fire & Marine Ins. Co. v. Lang*, No. 3:07CV1325 (SRU) (D.Conn. Sept. 15, 2009) ("The only contracts of adhesion the Connecticut Supreme Court has invalidated are contracts that seek 'release of liability for future negligence' by a service provider, i.e., exculpatory releases required prior to participation in sporting events.").

As such, it is clear that Connecticut courts are favorable to exculpatory clauses contained in commercial contracts. It is also evident that commercial parties can contract to impair tort liability. The *Comind* court did not have the benefit of this law as it admittedly cautioned in its decision. Given that Connecticut courts certainly allow commercial parties to appropriate risk for tort liability and otherwise, it logically follows that the *Comind* court, given today's legal landscape, would have upheld the liability waiver at issue in that case.

Sound Public Policy Weighs Against Courts Following *Comind*

Perhaps most concerning is that, if *Comind* is still considered good law as it was by the court in *Associated Electric*, it could negatively impact commerce in Connecticut. Companies like Babcock & Wilcox and NUSCO enter into agreements where allocation of risk is negotiated and accepted by those parties and costs for goods are adjusted accordingly. As an example, the *Comind* court did not consider its decision's impact on manufacturers and distributors of small parts which supply products to large entities, such as power plants. Such suppliers could not exist if the risk of all personal injury and property damage liability fell with these smaller entities. Such entities may not be able to afford the impact of potential risks with respect to insurance coverage; which is precisely why large commercial entities accept that risk and insure accordingly.

These public policy considerations are generally respected by courts nationwide and Connecticut should be no different. *See Purvis*, 674 F.2d at 221-22 ("[T]here are strong positive reasons for courts to respect such limitations. The right to disclaim warranties and limit remedies enables commercial parties to allocate risks between the buyer and the seller in the most efficient manner and thereby to maximize their respective gains from a transaction."); *Salt River Project Agr. Imp. And Power Dist.*, 694 P.2d at 215 ("A waiver will be given effect when it represents 'an intentional relinquishment of a known right.' That relinquishment will be permitted where commercial parties have equal bargaining positions so that the choice was freely and fairly made and not forced by the circumstances. Further, the parties must have negotiated the specifications of the product and have knowingly bargained for the waiver. Under these circumstances our courts will enforce the bargain, even if it turns out to have been a bad bargain for one party or the other."); *Keystone Aeronautics Corp.*, 499 F.2d at 149 ("A social policy aimed at protecting the average consumer by prohibiting blanket immunization of a manufacturer or seller through the use of standardized disclaimers

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CDLA JURY VERDICT/ARBITRATION REPORT

Case Name: Margaret Carbone v. Trash Away Inc., et al

Docket Number: HHB-CV-12-6017559

Jurisdiction: New Britain

Trial Judge: Abrams

Return Date: 9/18/12

Verdict Date: 8/28/15

Trial counsel (Plaintiff): Joe Mulshine

Trial Counsel (Defendant): Royce Vehslage

Description of Case: On November 12, 2010, the plaintiff was crossing the road to speak with the driver of a garbage truck. As the plaintiff crossed in front of the truck, the driver (who had stopped to make a pick up with the automatic arm of the garbage truck) began to go forward, striking the plaintiff. The plaintiff claimed that the driver was inattentive. She further claimed that the garbage truck struck her and carried/pushed her for a significant distance, before throwing her to the ground. The defendant claimed that the plaintiff crossed the road in such a fashion that she approached the truck from the driver's blind spot (this truck being driven from the right side of the truck) and, due to the short stature of the plaintiff and the height of the bottom of the windshield of the truck, the driver did not see the plaintiff until immediately after she was struck.

Damages Claimed: The plaintiff claimed slightly more than $5000 in medical expenses. She did not make any lost wage claim. The plaintiff treated with an orthopedist (Dr. Becker), her primary care physician and physical therapy. The plaintiff complained of constant low back pain and neck pain and also complained of headaches.

Expert Witness (Plaintiff): none

Motions and Rulings of Interest: The court ruled that the plaintiff could not use the defendant driver's failure to answer at deposition whether or not he filed federal tax returns, for purposes of impeachment at trial.

Last Demand/Settlement Offer: Last demand was $165,000 and the defendant filed an Offer of Compromise for $12,500.

Outcome: Defendants' verdict

Issues on Appeal: None

Comments: Defense counsel's opinion is that the plaintiff presented a set of facts during her testimony which were rather incredible and a jury may have found that rendition of facts an embellishment of what actually occurred.

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Ability to Bargain

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engenders little resistance. But when the setting is changed and the buyer and seller are both business entities, in a position where there may be effective and fair bargaining, the social policy loses its raison d'etre. The transaction then tends to be more influenced by gravitational pull of the Uniform Commercial Code than by the consumer oriented § 402A.")

It also follows that hindering a company's freedom to negotiate discourages business in the State of Connecticut. If Connecticut courts followed the reasoning in *Comind*, our courts would directly encumber the ability of business to be conducted in this State. This, in and of itself, is bad policy; especially given the current economic environment in this State. These policy considerations were not considered at all in *Comind*, or later in *Associated Electric*.

Conclusion

The decisions in *Comind* and *Associated Electric* should never be followed by Connecticut courts in regard to bargained for waivers involving commercial parties. Their interpretation of Connecticut law is wrong and, perhaps more importantly, following the lead of *Comind* and *Associated Electric* may hurt business in the State of Connecticut. Neither court offered the detailed analysis required of a decision that could have far reaching impact beyond the walls of our courts. This author hopes that this article and the analysis contained in this article to effectuate a change or create new more desirable law in the State of Connecticut.

Cullen Guilmartin is a partner in the Hartford office of Gordon & Rees LLP and handles a wide range of litigation matters, including defending claims against manufacturers of complex commercial machinery, medical devices and consumer products, as well as toxic tort claims.

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You can also apply for or renew your membership on the website. Click on "Join" in the top menu bar and follow the instructions there. Members need to be logged into their accounts to renew. Call or e-mail if you've forgotten your username or password.

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_____ E-mail (req'd): _____

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Year Admitted to Connecticut Bar _____ DRI member? ___ Yes ___ No

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___ **Directors & Officers**	___ **Drug/Medical Device**	___ **Employment Law**	___ **Environmental Law**
___ **Fidelity Insured**	___ **Governmental Liability**	___ **Insurance Coverage**	___ **Intellectual Property**
___ **Medical Malpractice**	___ **Premises Liability**	___ **Products Liability**	___ **Professional Liability**
___ **Sexual Abuse/Harassment**	___ **SIU/Fraud**	___ **Toxic Tort**	___ **Trucking Law**
___ **Uninsured Motorist**	___ **Workers' Compensation**	___ **Other** _____	

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___ **The Defense (newsletter)**	___ **Marketing**	___ **Technology**	___ **Sponsorship**

CDLA JURY VERDICT / ARBITRATION REPORT

Dear Members,
The CDLA would like to publicize your achievements and verdicts. Please mail a summary of your recent results in the superior, appellate and supreme courts so that they can be shared with your colleagues. Verdicts and arbitration decisions can be recorded on the form below and mailed to: The Defense, *CDLA, P.O. Box 2114, Cheshire CT 06410.*

Case Name and Docket Number: _____

_____

Jurisdiction: _____

Trial Judge: _____

Return Date: ____ / ____ / ____ **Verdict Date:** ____ / ____ / ____

Arbitration Panel: _____ **Award Date:** ____ / ____ / ____

Trial Counsel: (Plaintiff) _____

_____

Trial Counsel: (Defendant) _____

_____

Description of Case: _____

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_____

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Damages Claimed: _____

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Defenses Raised: _____

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Expert Witnesses: _____

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Motions and Rulings of Interest: _____

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Last Demand/Settlement Offer: _____

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Outcome: _____

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Issues on Appeal: _____

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Comments: _____

_____

_____

Name: _____ **Telephone:** _____

Address: _____ **Fax:** _____

_____ **E-Mail Address:** _____

CDLA Announces 2016 Trial Tactics Series

Building on the success of its 2015 Trial Tactics Series, the CDLA will again offer a three-part program designed to improve civil defense attorneys' trial skills. At the suggestion of last year's attendees, this year's seminars will explore specific topics in more depth. On January 21, the presentation will cover Motions in Limine and Evidentiary Issues. The second seminar, Use of Demonstrative Evidence, is scheduled for March 24. The topic for the final program of the series, which will be held on May 19, is Effective Cross-Examination and Impeachment of Expert Witnesses.

Like last year, the series will be held at the New Haven office of Wiggin and Dana, with videocasts to the Hartford and Stamford offices. New York CLE credit will be available. Members who sign up for all three parts of the series at once will receive a discount. Details about each program and registration information will be available on the CDLA website, www.ctdefenselawyers.org, in the coming weeks.

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