DOCKET NO. CV-23-6129448	:	STATE OF CONNECTICUT
RONALD RUSSO	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
PROJECT SERVICE, LLC, ET AL.	:	APRIL 29, 2024

MEMORANDUM OF DECISION
MOTION TO DISMISS (#103)

STATEMENT OF CASE AND PROCEDURAL HISTORY

On January 12, 2023, the plaintiff, Ronald Russo, filed a three count complaint against the defendants, Project Service LLC, Amato's Lawncare, LLC, and the Connecticut Department of Transportation sounding in premises liability and statutory negligence.[1] Count three of the complaint alleges the following facts. On December 18, 2020, at approximately 7:30 a.m., the plaintiff was at the public rest area known as I-95 Northbound Service Plaza Rest Area on Interstate 95 northbound in Madison, Connecticut (premises) to perform his job duties for Performance Environmental Services, LLC. As the plaintiff traversed the perimeter of the parking area to empty trash cans, he was caused to fall to the ground by an accumulation of black ice resulting in injuries.[2] The plaintiff alleges that the defendant was negligent for failing to: (1) adequately plow and shovel the premises; (2) put adequate abrasives, such as sand or salt, on the

[1] All references to "the defendant" in this memorandum refer to the defendant Connecticut Department of Transportation.

[2] In counts one and two, the plaintiff alleges that Project Service, LLC and Amato's Lawncare, LLC were negligent for failing to: (1) adequately plow, shovel, and/or de-ice the premises; (2) put adequate abrasives, such as sand or salt, on the paved areas of the premises to render them safe for pedestrians; (3) adequately inspect the paved areas to ensure they were safe for pedestrians to traverse; (4) place signage or otherwise warn pedestrians that the paved areas contained black ice; and (5) use reasonable care after snow and icy precipitation to maintain the premises in a safe condition for pedestrians. These counts are not at issue in this memorandum.

paved areas of the premises to render them safe for pedestrians; (3) adequately inspect the paved areas to ensure they were safe for pedestrians to traverse; (4) place signage or otherwise warn pedestrians that the paved areas contained black ice; and (5) following their statutory duty to maintain highways and sidewalks for safe travel pursuant to General Statutes § 13a-144. Notice of the incident and the plaintiff's intent to file a claim was duly provided to the defendant pursuant to § 13a-144. See Compl., Exh. A.

On February 24, 2023, the defendant filed a motion to dismiss count three for lack of subject matter jurisdiction on the ground that the plaintiff's claims against the defendant fall outside the scope of § 13a-144 because the plaintiff was not a "traveler" on a state highway and, therefore, the defendant is immune from liability because there is no right of action against the state at common law. The motion is accompanied by a memorandum of law in support. On May 8, 2023, the plaintiff filed a memorandum of law in opposition to the defendant's motion. The court heard oral argument on the defendant's motion at a remote hearing on January 8, 2024.

LEGAL ANALYSIS

A.

Standard of Review

The court begins its analysis by setting forth the relevant principles of law and the applicable standard of review. "[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. . . . A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must consider the

allegations of the complaint in their most favorable light . . . including those facts necessarily implied from the allegations . . . ." (Internal quotation marks omitted.) *Dudley* v. *Commissioner of Transportation*, 191 Conn. App. 628, 634, 216 A.3d 753, cert. denied, 333 Conn. 90, 218 A.3d 69 (2019).

B.

Immunity – General Statutes § 13a-144

"It is the established law of our state that the state is immune from suit unless the state, by appropriate legislation, consents to be sued. . . . The legislature waived the state's sovereign immunity from suit in certain prescribed instances by the enactment of § 13a-144. . . . The statute imposes the duty to keep the state highways in repair upon . . . the commissioner . . . and authorizes civil actions against the state for injuries caused by the neglect or default of the state . . . by means of any defective highway . . . . There being no right of action against the sovereign state at common law, the [plaintiff] must first prevail, if at all, under § 13a-144. . . ." (Internal quotations marks omitted.) Id.

The defendant argues that the court lacks subject matter jurisdiction on the ground that the plaintiff's claims against the defendant fall outside the scope of § 13a-144 and, therefore, the defendant is immune from liability because there is no right of action against the state at common law. Specifically, the defendant claims that the plaintiff was not a "traveler" on a state highway because he voluntarily departed from the traveled way for a purpose in no way connected with his passage over the highway.[3] In response, the plaintiff argues a person "traveling" on a state

[3]The defendant's motion to dismiss also asserts that the plaintiff's allegations fall outside the scope of § 13a-144 because the defendant did not have a duty to keep the subject parking lot in repair. At oral argument, however, the defendant conceded there is no dispute that the

highway, which includes a public rest area, for business reasons is considered a "traveler" for purposes of § 13a-144.

General Statutes § 13a-144, provides in relevant part: "Any person injured . . . through the neglect or default of the state or any of its employees by means of any defective highway, bridge or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair . . . may bring a civil action to recover damages sustained thereby against the commissioner in the Superior Court."[4]

Although the statutory text does not further define the class of plaintiffs allowed to recover, "[i]t is settled law that the statutory right of action is given only to a traveler on the road or sidewalk alleged to be defective. . . . A person must be on the highway for some legitimate purpose connected with travel thereon in order to obtain the protection of the statute. . . . A person may, under some circumstances, traverse areas adjacent to the conventionally traveled highway while maintaining his status as a traveler entitled to bring an action under § 13a-144. For example, [the Supreme Court] has held that a traveler on the highway may include a person traveling on the shoulder of the road; *Griffith* v. *Berlin*, 130 Conn. 84, 87, 32 A.2d 56 (1943); grassy areas abutting the road; *Ferreira* v. *Pringle*, 255 Conn. 330, 343-44, 766 A.2d 400 (2001);

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defendant does have a duty to keep the subject parking lot in repair. See *Serrano* v. *Burns*, 248 Conn. 419, 429, 727 A.2d 1276 (1999).

[4]General Statutes § 13a-149 provides in relevant part: "Any person injured . . . by means of a defective road or bridge may recover damages from the party bound to keep it in repair." "[O]ur Supreme Court has long construed both the defective road statute [§ 13a-149] and the analogous state highway defect statute [§ 13a-144] . . . as requiring roads to be kept 'in a reasonably safe condition for the reasonably prudent *traveler*.'" (Emphasis in original.) *Moroni* v. *Old Saybrook*, Superior Court, judicial district of New Haven, Docket No. CV-12-6027981-S (January 16, 2013, *Blue, J.*) (55 Conn. L. Rptr. 354, 355) (quoting *Kozlowski* v. *Commissioner of Transportation*, 274 Conn. 497, 503, 876 A.2d 1148 [2005]).

Baker v. *Ives*, [162 Conn. 295, 299-302, 294 A.2d 290 (1972)]; *Hay* v. *Hill*, [137 Conn. 285, 289-290, 76 A.2d 924 (1950)]; and even the parking lot of a rest area along the highway. *Serrano* v. *Burns*, [248 Conn. 419, 429, 727 A.2d 1276 (1999)]. Travel over such areas may fall within the purview of § 13a-144 when it is incidental to travel over the highway . . . and for a purpose connected with travel thereon. . . .

"For example, in *Ferreira* v. *Pringle*, supra, 255 Conn. 352, [the court] concluded that a bus passenger disembarking from a bus onto a grassy area adjacent to the highway retained his status as a traveler over the highway because bus travel necessarily dictates that passengers disembark on the side of the road in connection with the use of the bus and for purposes of public travel. Because the bus passenger did not leave the highway for a purpose other than traveling over the highway, his claim fell within the ambit of General Statutes § 13a-149, the municipal highway defect statute. . . . Similarly, in *Serrano* v. *Burns*, supra, 248 Conn. 429, [the] court, in reversing dismissal of an action, held that a jury reasonably could find that a pedestrian who had slipped on ice in the parking lot of a rest area along the highway was still a traveler on the highway when she fell, because her use of the rest area was so closely related to [her] travel upon the highway . . . . In *Hay* v. *Hill*, supra, 137 Conn. 286-90, [the] court held that a motor vehicle passenger remained a traveler over the highway when she exited a vehicle, which had pulled over on the highway, walked across some shrubs and weeds next to the highway, and then fell into an unguarded culvert eight to twelve feet from the road.

"By contrast, when a person voluntarily depart[s] from the traveled way, and turn[s] aside from [their] journey for a purpose in no way connected with [their] passage over the highway, that person loses their status as a traveler over the highway. . . . For example, in [*O'Neil* v. *New*

Haven, 80 Conn. 154, 155-157, 67 A. 487 (1907)], [the] court held that a cart driver was not a traveler over the highway when he left the traveled portion of the highway to use platform scales owned and operated by a private party. . . . With respect to the driver's apparent intention to return to the highway, [the] court stated: The fact that he had but shortly before been using the street for travel, and intended to soon resume his passage over it, made him no more a traveler thereon than he would have been had his digression for an independent purpose been of longer duration." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Giannoni* v. *Commissioner of Transportation*, 322 Conn. 344, 351-353, 141 A.3d 784 (2016).

The salient question in the present case is whether the plaintiff retained his status as a traveler on the highway when he sustained injuries while performing his employment duties at the rest area. Our Supreme Court has not answered this question directly. See *Kozlowski* v. *Commissioner of Transportation*, 274 Conn. 497, 500 n.6, 876 A.2d 1148 (2005). In *Kozlowski* v. *Commissioner of Transportation*, the plaintiff, while in the course of his employment, sustained serious personal injuries when he stepped on a defective catch basin cover along Mile Hill Road in Newtown that broke and caused him to fall into the catch basin. Id., 499. The plaintiff alleged that the catch basin covers along the road were owned by the state and, therefore, the state had a duty to maintain the roadway and the adjacent catch basin covers. Id. The defendant filed a motion to dismiss the complaint, asserting that the plaintiff's claim was barred by the doctrine of sovereign immunity because "at the time of the accident, the plaintiff was not a 'traveler' on the roadway and, therefore, could not avail himself of the state highway defect statute." Id., 500. The trial court, *Booth, J.*, denied the defendant's motion on the ground that "the plaintiff's status as an employee injured on the roadway in the course of his employment

should not preclude him from pursuing a claim as a traveler under the state highway defect statute." Id. Although the Supreme Court reversed this denial, the court did so on the ground that the catch basin did not constitute a highway defect because it was in an area off the roadway that was not intended to be traversed. Id. The court did not address the defendant's claim that the plaintiff was not a "traveler" on the roadway at the time of the injury because he was on the roadway only for purposes of his employment, "because [the court's] resolution of the defendant's first claim [was] dispositive." Id., 500 n.6. Therefore, Judge Booth's analysis of this claim remains relevant.

In *Kozlowski* v. *Commissioner of Transportation*, Superior Court, judicial district of Hartford, Docket No. CV-99-0589488-S (January 21, 2004, *Booth, J.*) (36 Conn. L. Rptr. 406), Judge Booth cited to *Oberlander* v. *Sullivan*, 70 Conn. App. 741, 799 A.2d 1114, cert. denied, 261 Conn. 924, 806 A.2d 1061 (2002), to explain that the plaintiff constituted a traveler within the scope of § 13a-144. "In *Oberlander* [v. *Sullivan*], the plaintiff was a school crossing guard who was injured when she tripped on a loose pipe cap on the roadway where she was working. The plaintiff brought suit pursuant to § 13a-144 on account of the defective condition of the pavement, which was the commissioner of transportation's duty to maintain. The commissioner moved to dismiss the complaint on the ground that the court lacked subject matter jurisdiction due to the plaintiff's failure to give adequate notice as required under § 13a-144. The court denied the commissioner's motion and held that the plaintiff had sufficiently pleaded a claim under the defective highway statute. Although *Oberlander* [v. *Sullivan*] did not directly address the plaintiff's status as a 'traveler' within the scope of § 13a-144, this conclusion is presumed since the plaintiff was allowed to pursue her claim under the statute. If the injured crossing

guard, who was on the defective road solely due to her employment, qualifies as a 'traveler on the roadway' within the meaning of § 13a-144, then it follows logically that the plaintiff in this case should also be protected under the statute. Contrary to the commissioner's assertion, it is insignificant that the plaintiff and his employer, an independent contractor, were hired indirectly by the state to do work on the roadway at issue, for they were not hired to make any repairs or modifications to the defective catch basin that caused the injury. Therefore, like the crossing guard in *Oberlander* [v. *Sullivan*], the plaintiff's status as an employee injured on the roadway in the course of his employment should not preclude him from pursuing a claim as a traveler under the defective highway statute." (Emphasis omitted.) *Kozlowski* v. *Commissioner of Transportation*, supra, 408-409.

In the present case, similar to the plaintiff in *Kozlowski* v. *Commissioner of Transportation*, the plaintiff's status as an employee injured in the rest area in the course of his employment should not preclude him from pursuing a claim as a traveler under the defective highway statute. Moreover, the state points to no statutory text or legislative history that would support such a narrow reading of § 13a-144 as to result in the exclusion of the plaintiff within the class of persons intended to be covered by the statute. Indeed, the statute was designed to cover "all persons who have lawful occasion to pass over them upon business or for pleasure" while recognizing that "the demands of [a plaintiff's] business oftentimes compel him to withdraw temporarily from the limits of the road . . . ." *Moroni* v. *Old Saybrook*, Superior Court, judicial district of New Haven, Docket No. CV-12-6027981-S (January 16, 2013, *Blue, J.*) (55 Conn. L. Rptr. 354, 355) (denying town's motion to dismiss for lack of subject matter jurisdiction and concluding that person sitting on bench located in area adjacent to sidewalk and cut out of city

street was traveler for purposes of § 13a-149) (quoting *Ward* v. *North Haven*, 43 Conn. 148, 154 [1875]).

The defendant argues that the plaintiff is similar to the plaintiff in *O'Neil* v. *New Haven*, supra, 80 Conn. 154, in that the plaintiff was on the highway and then left the highway for a purpose totally disconnected from travel on the highway. The plaintiff in *O'Neil* v. *New Haven*, however, was injured upon premises "owned and operated for hire by private parties." Id., 155. "Its location . . . was without that portion of the highway maintained for travel, was such that no traveler would knowingly and intentionally make use of it as a part of the highway, and travelers upon the highway did not in fact use it as a part thereof." Id. The present case is distinguishable in that the plaintiff was injured upon premises that the defendant has a statutory duty to maintain and that travelers routinely make use of as part of the highway. See *Serrano* v. *Burns*, supra, 248 Conn. 429 ("facts showing that highway travelers are invited by the state to use a rest stop along the highway may establish that the use of such an area is so closely related to travel upon the highway that such an area is part of the state highway system").

In light of the facts alleged in this case, the court concludes that the plaintiff was a traveler over the highway pursuant to § 13a-144 when he slipped and fell in the rest area because his travel over the rest area was incidental to and for a purpose connected with his travel over I-95. See *Giannoni* v. *Commissioner of Transportation*, supra, 322 Conn. 352. The plaintiff's status as an employee injured at the rest area in the course of his employment does not preclude him from pursuing a claim as a traveler under the state highway defect statute. See *Kozlowski* v. *Commissioner of Transportation*, supra, 36 Conn. L. Rptr. 406. Accordingly, the defendant's motion to dismiss is denied.

CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss is denied.

Juris No. 421279
Wilson, J.