



STATE OF CONNECTICUT

SUPREME COURT
APPELLATE COURT

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February 24, 2023

THE SUPREME COURT IS SOLICITING AMICUS CURIAE BRIEFS IN:

SC 20763, 20764, and 20765

Kristin Mills, Administrator (Estate of Cheryl Mills)

v.

Hartford Healthcare Corporation et al.

&

S.C. 20767 and 20768

Kimberly Manginelli, Conservator (Estate of Darlene Matejek), et al.

v.

Regency House of Wallingford, Inc., et al.

The Court invites amici curiae to file briefs in the above-captioned matters that address the following four questions:

1. Does this case present an exceptional circumstance for this court to invoke its authority under *Blumberg Assocs. Worldwide, Inc. v. Brown & Brown of Connecticut*, 311 Conn. 123, 84 A.3d 840 (2014), to raise and decide the issues identified below, which were not addressed by the parties?
2. If the answer to the first question is yes, does the Governor have the authority under General Statutes § 28-9 (b) (1) or (7) and/or *Casey v. Lamont*, 338 Conn. 479, 258 A.3d 647 (2021), to suspend the common law?
3. If the answer to the second question is no, what was the source of the Governor's authority to enact Section 6 of Executive Order 7V?

4. Under General Statutes § 28-9 (b) (1) or (7) and/or *Casey v. Lamont*, 338 Conn. 479, 258 A.3d 647 (2021), does the Governor have the authority to create and confer immunity through an executive order?

As this is a Court-initiated request, an application for permission to file as amicus curiae is not required. If you accept the Court's invitation, you must file the amicus brief limited to 6000 words on or before March 17, 2023, in compliance with Practice Book Section 67-7, including the disclosure required in the first footnote on the first page of text. No extensions of time or argument will be permitted for amicus curiae, and responsive briefs by the parties will not be allowed.

Please find the case summary that was prepared for the general public by court staff attached to this invitation. It does not represent the Court's view of this case.

If you have any questions, please call 860-757-2200.

**KRISTIN MILLS, ADMINISTRATOR (ESTATE OF CHERYL MILLS) v.
HARTFORD HEALTHCARE CORP. et al., SC 20763, SC 20764, SC 20765**
Judicial District of Hartford

COVID-19; Malpractice; Gross Negligence; Whether Defendants Immune from Suit Under Executive Order and Federal Act; Whether Trial Court Properly Denied in Part Defendants' Motion to Dismiss. During the COVID-19 pandemic, the governor issued Executive Order No. 7V, which provided that health care professionals and facilities "shall be immune from suit for civil liability" when "providing health care services in support of the [s]tate's COVID-19 response" including "acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic." The executive order excludes acts of gross negligence, but the federal Public Readiness and Emergency Preparedness Act (act) provides immunity therefor in relation to COVID-19 testing. On March 21, 2020, following the onset of the pandemic, an emergency room doctor suspected that the decedent was having a heart attack. Because that hospital did not have a cardiac catheterization lab, the physician swiftly ordered the decedent transferred to the defendant hospital, which did not admit patients suspected of having COVID-19 to its cardiac catheterization lab absent an immediate need. The decedent did not know whether she had been exposed to COVID-19 but reported that she had been in contact with someone with a respiratory illness. The defendant physician concluded that she might have COVID-19 and ordered a test on March 21, but, because rapid tests were not available yet, the decedent's negative test results were not received until 7:40 p.m. on March 24, 2020. The defendant physicians ordered a cardiac catheterization the next day, but the decedent died of a heart attack in the early morning on March 25. The plaintiff administrator of the decedent's estate commenced this action alleging that the defendants committed malpractice and gross negligence by misdiagnosing the decedent with heart inflammation and by failing to immediately admit her to the cardiac catheterization lab. The defendants claimed immunity from suit under the executive order and the act, arguing that they suspected that the decedent had COVID-19 and were acting in good faith to prevent further spread of the disease. The plaintiff contended that she was not seeking to recover for the defendants' negligent response to the pandemic but rather for their failure to properly diagnose the decedent with a heart attack. The trial court concluded that the defendants were immune from suit under the executive order because they "had a good faith believe that they may be treating an actual COVID-19 patient" and because the purpose of their delay in transferring the decedent to the cardiac catheterization lab was to conserve personal protective equipment. The court also determined that the defendants were immune under the act, as the plaintiff's claims centered on the decedent's COVID-19 test. The court, however, denied the defendant physician William Farrell's motion to dismiss with respect to acts or omissions that he took after learning of the negative test result. The plaintiff, the defendant hospital, and Farrell filed separate appeals in the Appellate Court, which the Supreme Court transferred to itself pursuant to General Statutes § 51-199 (c). The plaintiff claims that the trial court improperly granted the defendants' motions to dismiss without an evidentiary hearing and improperly concluded that the delay in receiving the test results, as opposed to the alleged misdiagnosis, caused the delay in treatment. Farrell and the defendant hospital claim that the court erred in denying in part their motion to dismiss.

KIMBERLY MANGINELLI, CONSERVATOR (ESTATE OF DARLENE MATEJEK), et al. v. REGENCY HOUSE OF WALLINGFORD, INC., et al., SC 20767, SC 20768
Judicial District of New Haven

COVID-19; Executive Orders; Malpractice; Whether Trial Court Improperly Denied Defendants' Motion to Dismiss Based on Immunity Under Executive Order; Whether Immunity Applies to Treatment of Only Patients Infected With COVID-19. The decedent was physically impaired such that she required complete assistance to transfer into and out of her bed and wheelchair, and she resided at the defendant long term care facility. On or about April 26, 2020, after the onset of the COVID-19 pandemic, the decedent fell at the facility and suffered serious injuries, including bilateral femur fractures. Thereafter, the decedent died on December 29, 2020, and the plaintiff administrator of her estate as well as her daughter commenced the underlying action sounding in negligence, wrongful death, and loss of consortium. The plaintiffs specifically alleged that the defendants' staff failed to assist the decedent as required, and, because there were no visitors allowed at the facility due to the pandemic, they attempted to conceal the incident and delayed sending her to the hospital for two days. The defendants moved to dismiss the action on the ground that they were immune from suit under the governor's Executive Order No. 7V, which was issued during the pandemic and provided that "any health care professional or health care facility shall be immune from suit . . . for any injury or death" resulting from "acts or omissions undertaken in good faith while providing health care services in support of the [s]tate's COVID-19 response" including "acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic." The trial court, agreeing with the Superior Court's decision in *Mills v. Hartford Healthcare Corp.*, denied the motion to dismiss on the ground that the executive order "only applies in instances involving the treatment of COVID-19 patients." The defendants sought reconsideration on the ground that their affidavits demonstrated how the care that they provided at the facility had been adversely impacted as a result of the pandemic, which they asserted prove that they cared for the decedent in good faith while also supporting the state's COVID-19 response, and, therefore, they are immune from suit under the executive order. The trial court denied the defendants' motion for reconsideration, and the Chief Justice granted the defendants' certification to appeal pursuant to General Statutes § 52-265a, which allows for an immediate appeal when there are issues of substantial public importance and delay may work a substantial injustice, and the two appeals were consolidated. The Supreme Court will decide whether the trial court erred in denying the defendants' motion to dismiss where they argue that the trial court improperly limited the application of the executive order to claims relating to the treatment of patients infected with COVID-19.