Chapter 5

Business Torts

5-1 INTRODUCTION

It is not uncommon for business entities to find themselves in business disputes or in positions of having to protect their rights from competitors or others in the marketplace. Often times, this ultimately leads to litigation. This chapter explores various causes of action under Connecticut common law that typically arise in actions involving commercial entities and disputes.

5-2 TORTIOUS INTERFERENCE

Connecticut common law has long recognized a cause of action for tortious interference with another's business relations, opportunities, and expectancies. It is well settled that one cannot unjustifiably interfere with another's lawful business pursuits or occupation and the right

> to secure to himself the earnings of his industry. Full, fair and free competition is necessary to the economic life of a community, but under its guise, no man can by unlawful means prevent another from obtaining the fruits of his labor.[1]

There are essentially two closely related causes of action recognized under the penumbra of tortious interference: tortious interference with contractual or business relations and tortious interference with business expectancies. While the two are

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[1] *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 89-90 (2007) (quoting *Selby v. Pelletier*, 1 Conn. App. 320, 323 (1984)).

separate causes of action in tort, many courts have treated them interchangeably. As the Connecticut Appellate Court has noted,

> [i]t has long been considered tortious either to induce a breach of contract or to interfere with financial expectancies. Unfortunately, courts have tended to confuse these two types of actions, and there is no clear enumeration of their requisite elements.[2]

Originally, the law recognized a cause of action where a defendant was alleged to have unjustifiably interfered with the plaintiff's contractual relations with another. Over time, in recognition of increasing competition,

> the principles of liability for interference with contract extended beyond existing contractual relations, and [recognized] that a similar action would lie for *interference with relations which were merely prospective or potential*.[3]

The resulting closely related causes of action share similar elements and have been characterized in the following manner:

> The tort of interference with contractual relations is merely a species of the broader tort of interference with prospective advantage[,] and the tort of interference with business advantage is merely interference with ongoing and existing rather than prospective business advantage.[4]

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[2] *Wellington Sys., Inc. v. Redding Grp., Inc.*, 49 Conn. App. 152, 168 (1998) (internal quotation marks omitted); *see also Amatulli Imps., Inc. v. Nargezian*, No. 30 90 84, 1993 WL 11937, at *3 (Conn. Super. Ct. Jan. 19, 1993) (discussing that the claim of tortious interference with contractual relations is closely related to tortious interference with business expectancies and that "our courts have tended to confuse the two separate causes of action and, consequently, there is no clear separation of their requisite elements").

[3] *Amatulli Imps., Inc. v. Nargezian*, No. 30 90 84, 1993 WL 11937, at *2 (Conn. Super. Ct. Jan. 19, 1993) (emphasis in original) (internal quotation marks omitted).

[4] *Deutsch v. Backus Corp.*, No. X07CV106022074, 2012 WL 1871398, at *6 (Conn. Super. Ct. May 2, 2012) (quoting *TMK Assocs. v. Landmark Dev.*, No. 562077, 2003 WL 22133151, at *9 (Conn. Super. Ct. Aug. 21, 2003) (quoting 45 Am. Jur. 2d 301 § 36)); *see NEJ, Inc. v. Kentucky Apparel, LLP*, No. CV054006714, 2006 WL 438247, at *3 (Conn. Super. Ct. Feb. 10, 2006).

5-2:1 Tortious Interference with Business Expectancies

A cause of action for tortious interference with business expectancies, also referred to at times as tortious interference with prospective advantage, requires proof of three elements:

> (1) a business relationship between the plaintiff and another party; (2) the defendant's intentional interference with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffers actual loss.[5]

To prevail on a claim, a plaintiff need not prove a breach of contract. Rather, a plaintiff must establish that "he suffered loss as a result of tortious conduct by the defendants that interfered with a business relationship."[6] There must, however, exist a sufficiently identifiable business expectancy or opportunity with which the defendant purportedly interfered, i.e., that there existed a reasonable probability of entering into a contract or making a profit.[7] Further, there must have been a business expectancy with a specific third party.[8] In other words, "interference with a potential contractual relationship may constitute sufficient proof to establish the existence of a contractual or business relationship … [provided

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[5] *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) (quoting *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 27 (2000)); *see, e.g., Lawton v. Weiner*, 91 Conn. App. 698, 706 (2005); *Deutsch v. Backus Corp.*, No. X07CV106022074, 2012 WL 1871398, at *5 (Conn. Super. Ct. May 2, 2012); *Baldwin v. Village Walk Condo., Inc.*, No. FSTCV085007925, 2010 WL 5095319, at *7 (Conn. Super. Ct. Nov. 19, 2010).

[6] *Lawton v. Weiner*, 91 Conn. App. 698, 706 (2005); *see also American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 105 (2007) (holding that plaintiff proved his tortious interference claim by demonstrating that defendant interfered with plaintiff's business relations without justification); *Baldwin v. Village Walk Condo., Inc.*, No. FSTCV085007925, 2010 WL 5095319, at *7 (Conn. Super. Ct. Nov. 19, 2010) (holding that, while the existence of a binding contractual relationship is not necessary for a claim of tortious inference with business expectancies or prospective economic advantage, defendant must have tortiously interfered with an existing or prospective business relationship).

[7] *Amatulli Imps., Inc. v. Nargezian*, No. 30 90 84, 1993 WL 11937, at *3 (Conn. Super. Ct. Jan. 19, 1993); *see also Baldwin v. Village Walk Condo., Inc.*, No. FSTCV085007925, 2010 WL 5095319, at *8 (Conn. Super. Ct. Nov. 19, 2010) (granting motion to strike claim of tortious inference with prospective economic advantage because plaintiff failed to plead existence of a business relationship with another party).

[8] *Amatulli Imps., Inc. v. Nargezian*, No. 30 90 84, 1993 WL 11937, at *3 (Conn. Super. Ct. Jan. 19, 1993) (citing *Norden Sys., Inc. v. Gen. Dynamics Corp.*, No. CV89 0101260, 1990 WL 264084, at *3 (Conn. Super. Ct. Nov. 8, 1990)).

the] contractual relationships were identifiable individuals and identifiable potential contracts."[9]

5-2:2 Tortious Interference with Contractual Relations

A cause of action for tortious interference with contractual relations requires proof of the following elements:

> (1) the existence of a contractual or beneficial relationship, (2) the defendants' knowledge of that relationship, (3) the defendants' intent to interfere with the relationship, (4) the interference was tortious, and (5) a loss suffered by the plaintiff that was caused by the defendants' tortious conduct.[10]

A formal breach of contract is not required to prevail on a claim. The Connecticut Supreme Court has held that "[a] plaintiff may recover damages for tortious interference with a contract not only where the contract is thereby not performed but also where the interference causes the performance to be more expensive and burdensome."[11]

Additionally, it is well settled that a claim for tortious interference with contractual relations arises only "when a third party adversely affects the contractual relations of two *other* parties."[12] Thus, one who is either directly or indirectly a party to the contract at issue cannot be held liable for tortiously interfering with it.[13] Accordingly, an agent who acts legitimately within the scope of his authority generally cannot be held liable for interfering with a contract

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9. *Tassmer v. McManus*, No. CV085018961, 2009 WL 1218591, at *2 (Conn. Super. Ct. Apr. 9, 2009) (discussing the holding of *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 90 (2007)).

10. *Rioux v. Barry*, 283 Conn. 338, 351 (2007); *see, e.g., Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 133 (D. Conn. 2012); *Appleton v. Board of Educ. of the Town of Stonington*, 254 Conn. 205, 212-13 (2000) (quoting *Collum v. Chapin*, 40 Conn. App. 449, 452 (1996)); *Metcoff v. Lebovics*, 123 Conn. App. 512, 520 (2010).

11. *Herman v. Endriss*, 187 Conn. 374, 376-77 (1982) (internal quotation marks omitted) (internal citation omitted).

12. *Metcoff v. Lebovics*, 123 Conn. App. 512, 520 (2010) (emphasis in original) (quoting *Wellington Sys., Inc. v. Redding Grp., Inc.*, 49 Conn. App. 152, 168 (1998)); *see Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012).

13. *Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012) ("[T]here can be no intentional interference with contractual relations by someone who is directly or indirectly a party to the contract. [T]he general rule is that the agent may not be charged with having interfered with a contract of the agent's principal.") (quoting *Appleton v. Board of Educ. of the Town of Stonington*, 53 Conn. App. 252, 267 (1999), *rev'd in part on other grounds*, 254 Conn. 205 (2000)).

made by the agent's principal and a third party, or for inducing the principal to breach that contract, "because to hold him liable would be, in effect, to hold the corporation liable in tort for breaching its own contract."[14] However, an exception to this general rule applies where the agent improperly acted outside the scope of his authority, using the corporate power for personal gain.[15]

5-2:3 Common Elements

5-2:3.1 Knowledge of Beneficial Relationship

To impose liability for tortious interference, it is axiomatic that the defendant have known of the beneficial relationship with which it is alleged to have improperly interfered.[16] Without knowledge of a beneficial relationship, a defendant cannot be found to have intent and, therefore, there can be no liability.[17]

5-2:3.2 Improper Interference

While tortious interference with business expectancies encompasses a broad range of behavior, not every act of interference is tortious.[18] To be actionable, the defendant's interference must be "wrongful" beyond the mere fact of the interference itself.[19]

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14. *Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012) (quoting *Wellington Sys., Inc. v. Redding Grp., Inc.*, 49 Conn. App. 152, 168, *cert. denied*, 247 Conn. 905 (1998)); *Metcoff v. Lebovics*, 123 Conn. App. 512, 520-21 (2010) (quotation omitted); *see also Boyce v. American Liberty Ins. Co.*, 204 F. Supp. 317, 318 (D. Conn. 1962) (reasoning that it is difficult to imagine how one can be held liable in tort for interfering and breaching its own contract).

15. *Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012) (quoting *Wellington Sys., Inc. v. Redding Grp., Inc.*, 49 Conn. App. 152, 168 (1998)); *Metcoff v. Lebovics*, 123 Conn. App. 512, 520 (2010); *see also Weber v. FujiFilm Med. Sys. U.S.A., Inc.*, 854 F. Supp. 2d 219 (D. Conn. 2012) ("Ordinarily, an entity that is directly or indirectly a party to a contract cannot be held liable for tortious interference with that contract, absent allegations of willful misconduct or lack of good faith.") (citing *Boulevard Assocs. v. Sovereign Hotels, Inc.*, 72 F.3d 1029, 1036 (2d Cir. 1995)).

16. *Tassmer v. McManus*, No. CV085018961, 2009 WL 1218591, at *3 (Conn. Super. Ct. Apr. 9, 2009) ("To be subject to liability the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract") (internal quotation marks omitted).

17. *Tassmer v. McManus*, No. CV085018961, 2009 WL 1218591, at *3 (Conn. Super. Ct. Apr. 9, 2009).

18. *Blake v. Levy*, 191 Conn. 257, 261 (1983).

19. *Blake v. Levy*, 191 Conn. 257, 262 (1983); *see also American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 90 (2007) (providing that not every act is actionable as tortious interference, but only when the "interference resulting in injury to another is wrongful

A plaintiff must prove some *improper* motive or use of *improper* means by demonstrating that the defendant was guilty of fraud, misrepresentation, intimidation, or molestation, or that he acted maliciously.[20] The term "malice" in a tortious interference claim means "without justification," as opposed to the ordinary sense of ill will. The plaintiff bears the burden of proving a defendant's "lack of justification."[21]

In determining whether the defendant's conduct is improper for purposes of a tortious interference claim, Connecticut courts consider the following factors set forth in the Restatement (Second) of Torts:

> (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties.[22]

A plaintiff bears the burden of proof to establish a tortious interference claim by a preponderance of the evidence.[23]

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by some measure beyond the fact of the interference itself'") (quoting *Downes-Patterson Corp. v. First Nat'l Supermarkets, Inc.*, 64 Conn. App. 417, 429 (2001)).

20. *Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012) (quoting *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 90 (2007)); *see, e.g., Downes-Patterson Corp. v. First Nat'l Supermarkets, Inc.*, 64 Conn. App. 417, 429 (2001) (quoting *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 805-06 (1999)); *see also Blake v. Levy*, 191 Conn. 257, 262 (1983) (holding that a plaintiff must plead and prove some improper motive or means to prevail on a claim for tortious interference with business relations).

21. *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 90-91 (2007) (quoting *Downes-Patterson Corp. v. First Nat'l Supermarkets, Inc.*, 64 Conn. App. 417, 429 (2001)); *see Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 806 (1999); *see also Genworth Fin. Wealth Mgmt., Inc. v. McMullan*, No. 3:09-CV-1521, 2012 WL 1078011, at *10 (D. Conn. Mar. 30, 2012) (denying summary judgment motion because a reasonable juror could conclude that defendants "engaged in aggressive business practices without the malice, intimidation, or molestation necessary to establish tortious interference"); *Blake v. Levy*, 191 Conn. 257, 261 (1983) ("[T]he test is whether the actor's behavior is improper.").

22. *Blake v. Levy*, 191 Conn. 257, 261, 263 n.3 (1983) (quoting 4 Restatement (Second) Torts § 767 (1979)); *Haiyan v. Hamden Pub. Schs.*, 875 F. Supp. 2d 109, 134 (D. Conn. 2012); *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 91 n.4 (2007) (quoting 4 Restatement (Second) Torts § 767 (1979)).

23. *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 105 (2007) (holding that a preponderance of the evidence is the appropriate burden of proof in a tortious interference case) (citing *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 34-37 (2000)).

5-2:3.3 Actual Loss

An essential element of a cause of action for tortious interference is that the plaintiff must have suffered actual loss as a result of the interference.[24] As the Connecticut Supreme Court has explained, "[u]nlike other torts in which liability gives rise to nominal damages even in the absence of proof of actual loss[,] it is an essential element of the tort of unlawful interference with business relations that the plaintiff suffers actual loss."[25] When damages are an essential element to establishing the plaintiff's claim, they must be proved with reasonable certainty.[26]

Actual loss may be established by demonstrating that "except for the tortious interference of the defendant, there was a reasonable probability that the plaintiff would have entered into a contract or made a profit."[27] A plaintiff may not recover for an interference with "a mere possibility" of its making a profit in business.[28]

The issue that often arises with this type of loss, however, is the difficulty in determining the amount of loss, i.e., the resulting damage, with a reasonable degree of certainty. For this reason, courts will give appropriate weight to the fact that the ability to calculate the amount of actual loss with reasonable certainty was made hypothetical by the defendant's own wrongful conduct.[29]

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[24] *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) (quoting *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 33 (2000)); *see, e.g., DiNapoli v. Cooke*, 43 Conn. App. 419, 426 (1996); *see also Appleton v. Board of Educ. of the Town of Stonington*, 254 Conn. 205, 213 (2000) ("[T]he tort is not complete unless there has been actual damage suffered.") (internal quotation marks omitted).

[25] *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) (quoting *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 33 (2000)) (internal citation omitted); *see, e.g., Appleton v. Board of Educ. of the Town of Stonington*, 254 Conn. 205, 213 (2000) (quoting *Taylor v. Sugar Hollow Park, Inc.*, 1 Conn. App. 38, 39 (1983)); *DiNapoli v. Cooke*, 43 Conn. App. 419, 426 (1996).

[26] *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) (quoting *Lawson v. Whitney's Frame Shop*, 241 Conn. 678, 689 (1997)).

[27] *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 97 (2007) (quoting *Goldman v. Feinberg*, 130 Conn. 671, 675 (1944)); *DiNapoli v. Cooke*, 43 Conn. App. 419, 428 (1996) (quotation omitted); *see also Collum v. Chapin*, 40 Conn. App. 449, 452 (1996) (holding that to establish liability, plaintiff must show that defendant's tortious conduct caused the third party to terminate its relationship with plaintiff).

[28] *Saye v. Old Hill Partners, Inc.*, 478 F. Supp. 2d 248, 276 (D. Conn. 2007).

[29] *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 97 (2007) ("If the question is whether the plaintiff would have succeeded in attaining a prospective business transaction in the absence of the defendant's interference, the court may, in determining whether the proof meets the requirement of reasonable certainty, give due weight to the fact that the question was made hypothetical by the very wrong of the defendant.") (quoting *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 34 (2000)).

Courts have recognized the distinction between "damage" (i.e., the loss or injury caused by the negligence or misconduct of another) and "damages" (i.e., the money used to compensate one for the loss or injury occasioned by the negligence or misconduct of another), holding that the actual loss requirement of a tortious interference claim means "damage."[30] Accordingly, if actual loss is established, "the fact that [plaintiff] did not prove by a preponderance of the evidence the specific amount of the loss should not bar recovery … ."[31]

5-2:4 Defenses

As discussed, not every act of interference is tortious for purposes of imposing liability under a theory of tortious interference.[32] Rather, to be actionable, the defendant's interference must be improper, and a plaintiff must demonstrate malice, not in the sense of ill will but intentional interference without justification.[33] "Therefore, justification is a defense to a claim of tortious interference."[34]

Additionally, Connecticut courts have allowed the application of the *Noerr-Pennington* immunity doctrine to common law claims of tortious interference.[35] Essentially, the *Noerr-Pennington* doctrine

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30. *DiNapoli v. Cooke*, 43 Conn. App. 419, 427-28 (1996) ("*[D]amage* is the loss, hurt, or harm which results from the injury[] and *damages* are the recompense or compensation awarded for the damage suffered.") (emphasis added) (internal quotation marks omitted).

31. *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 37 (2000) (allowing award of punitive damages despite that the specific amount of damages was not established because the jury found that there was actual loss); *see also American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 98 (2007) ("[A]n award of compensatory damages is not necessary to establish a cause of action for tortious interference as long as there is a finding of actual loss") (quotation omitted); *DiNapoli v. Cooke*, 43 Conn. App. 419, 428 (1996) (affirming determination that plaintiff proved actual loss for tortious interference claim despite that "the court could not mathematically compute the precise or approximate pecuniary compensation, or damages, for that loss").

32. Improper interference is discussed in § 5-2:3.2.

33. *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 90-91 (2007) (quoting *Downes-Patterson Corp. v. First Nat'l Supermarkets, Inc.*, 64 Conn. App. 417, 429 (2001)); *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 806 (1999); *Ogden v. Diserio, Martin, O'Connor & Castiglioni, LLP*, No. CV075009328, 2011 WL 4031159, at *6 (Conn. Super. Ct. July 1, 2011).

34. *Ogden v. Diserio, Martin, O'Connor & Castiglioni, LLP*, No. CV075009328, 2011 WL 4031159, at *6 (Conn. Super. Ct. July 1, 2011) (citing *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 806 (1999)).

35. *T.F.T.F. Capital Corp. v. Marcus Dairy, Inc.*, 33 F. Supp. 2d 122, 125 (D. Conn. 1998), *aff'd on other grounds*, 312 F.3d 90 (2d Cir. 2002) ("Connecticut Courts have applied the *Noerr-Pennington* doctrine to defeat state law claims."); *Zeller v. Consolini*, 59 Conn.

serves to immunize a party from liability for activities that attempt to influence governmental or judicial action despite having an anti-competitive purpose to eliminate competition.[36] While the doctrine has its origins in antitrust law, the *Noerr-Pennington* defense applies to Connecticut common law claims as well, in particular claims of tortious interference.[37]

However, the *Noerr-Pennington* doctrine does not provide immunity from suit if the conduct at issue constitutes a mere "sham" to disguise an attempt to directly interfere with a competitor's business relationships.[38] This "sham litigation" exception "applies where the litigation is (1) 'objectively baseless' and (2) intended to cause harm to defendant 'through the use of governmental *process*—as opposed to the *outcome* of that process."[39] "Essentially, then, a sham involves a defendant whose activities are not genuinely aimed at procuring favorable governmental action in any form" but, rather, one who has used governmental or judicial processes as an "anticompetitive weapon" to unjustifiably interfere with another's business.[40] Under these circumstances, the *Noerr-Pennington* doctrine will not immunize a defendant from suit for tortious interference.

App. 545, 552-53 (2000) (noting that many Connecticut trial courts have applied the *Noerr-Pennington* doctrine).

36. *T.F.T.F. Capital Corp. v. Marcus Dairy, Inc.*, 33 F. Supp. 2d 122, 125 (D. Conn. 1998), *aff'd on other grounds*, 312 F.3d 90 (2d Cir. 2002); *Zeller v. Consolini*, No. CV920060356, 1997 WL 374944, at *3 (Conn. Super. Ct. June 26, 1997); *see also Zeller v. Consolini*, 59 Conn. App. 545, 553 (2000) ("The *Noerr-Pennington* doctrine subordinates antitrust considerations and commercial expediency to the constitutional rights of individuals and groups to petition their government.").

37. *T.F.T.F. Capital Corp. v. Marcus Dairy, Inc.*, 33 F. Supp. 2d 122, 125-26 (D. Conn. 1998), *aff'd on other grounds*, 312 F.3d 90 (2d Cir. 2002) (holding that the *Noerr-Pennington* doctrine barred claim of tortious interference); *Zeller v. Consolini*, 59 Conn. App. 545, 554 n.5 (2000) ("We note that the *Noerr-Pennington* doctrine is similar to existing law in Connecticut governing the tort[] of interference with business relations….").

38. *Zeller v. Consolini*, 59 Conn. App. 545, 552 (2000) ("[P]etitioning activity is not protected if such activity is a mere sham or pretense to interfere with no reasonable expectation of obtaining a favorable ruling.") (citing *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 700 F.2d 785, 809-12 (2d Cir. 1983)).

39. *T.F.T.F. Capital Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (emphasis in original) (quoting *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 60-61 (1993)); *Zeller v. Consolini*, 59 Conn. App. 545, 552 (2000).

40. *Zeller v. Consolini*, 59 Conn. App. 545, 552 (2000).

5-2:5 Damages

The proper measure of damages for a claim of tortious interference with business expectancies is "the pecuniary loss to the plaintiff of the benefits of the prospective business relation."[41] Stated another way, damages resulting from tortious interference are to be based upon the plaintiff's lost profits, not upon any improper gains realized by the defendant.[42] In addition, it is well established that nominal damages are "appropriate where there is insufficient evidence produced at trial to prove actual damages."[43] In essence, nominal damages are "a mere peg to hang costs on."[44]

As succinctly stated by the Connecticut Supreme Court, with respect to tortious interference cases, "[w]e . . . note that there are circumstances in which proof of damages may be difficult and that such difficulty is, in itself, an insufficient reason for refusing an award once the right to damages has been established."[45] Nonetheless, a plaintiff is not relieved of its burden of producing at least some nonspeculative evidence to permit the objective calculation of damages with some reasonable certainty.[46] While mathematical exactitude is not required for an ultimate award of damages, it remains "the unvarying rule that evidence of such certainty as the nature of the case permits should be produced."[47]

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41. *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 103 (2007) (citing *Conrad v. Erickson*, 41 Conn. App. 243, 247-48 (1996)); *see also* 4 Restatement (Second) Torts § 774A(1) (1979) ("One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for (a) the pecuniary loss of the benefits of the contract or the prospective relation; (b) consequential losses for which the interference is a legal cause; and (c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.").

42. *American Diamond Exch., Inc. v. Alpert*, 101 Conn. App. 83, 104 (2007).

43. *DiNapoli v. Cooke*, 43 Conn. App. 419, 424 (1996) ("Nominal damages mean no damages. They exist only in name and not in amount.") (quoting *Larsen Chelsey Realty Co. v. Larsen*, 232 Conn. 480, 504 (1995)).

44. *DiNapoli v. Cooke*, 43 Conn. App. 419, 424 (1996) (quoting *Riccio v. Abate*, 176 Conn. 415, 420 (1979)).

45. *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) (internal quotation marks omitted).

46. *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011) ("Nevertheless, the court must have evidence by which it can calculate the damages, which is not merely subjective or speculative but which allows for some objective ascertainment of the amount.") (internal quotation marks omitted).

47. *American Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 512 (2011) (internal quotation marks omitted).

5-3 COMMERCIAL DISPARAGEMENT AND DEFAMATION

5-3:1 Generally

Connecticut recognizes a cause of action for commercial disparagement, also known as trade libel, as a "species of defamation."[48]

In the seminal case of *QSP, Inc. v. Aetna Casualty & Surety Company*,[49] the Connecticut Supreme Court recognized that the differing terminology used in this area of law is "somewhat confusing."[50] As the Court explained, "[f]alse communications which damage or tend to damage the reputation as to quality of goods or services are variously described as 'disparagement,' 'product disparagement,' 'trade libel,' or 'slander of goods.'"[51] Also, while "slander" connotes an oral communication, and "libel" connotes a written communication in the law of defamation, the terms "trade libel" and "slander of goods" in the context of commercial disparagement "are used without regard to the manner of publication."[52] In sum, the Court described the subtleties of commercial disparagement and defamation as follows:

> Defamation and disparagement in the commercial context are allied in that the gravamen of both are falsehoods published to third parties. More specifically, however[,] where a statement *impugns the basic integrity or creditworthiness of a business*, an action for defamation lies and injury is conclusively presumed. But where, however, the statement is confined to *denigrating the quality of*

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48. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 358 (2001) ("Defamation or disparagement of a business' goods and services may be considered trade libel and is recognized by Connecticut . . . courts as a species of defamation."); *see, e.g., RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *8 (Conn. Super. Ct. Mar. 29, 2012); *Time Was Garage, LLC v. Giant Steps, Inc.*, No LLICV106002895, 2011 WL 1888096, at *7 (Conn. Super. Ct. Apr. 29, 2011).

49. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343 (2001).

50. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001).

51. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001).

52. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001).

> *the business, goods or services*, it could support an action for disparagement.[53]

Subsequent courts addressing claims of commercial disparagement or trade libel have evaluated those claims under the tenets of defamation law.[54]

5-3:2 Liability

To prevail on a claim for commercial disparagement, the plaintiff must prove that the defendant made a false and damaging statement concerning the plaintiff.[55] This requirement is consistent with the treatment of a claim for commercial disparagement by Connecticut courts as one for defamation.[56] A defamatory statement is one that "tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."[57] In the context of trade libel, the appropriate inquiry is whether the plaintiff has been disparaged "in such a way as to interfere with its business relationships?"[58]

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53. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001) (emphasis added) (internal quotation marks omitted).

54. *RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *8-9 (Conn. Super. Ct. Mar. 29, 2012) (evaluating commercial disparagement claim pursuant to elements of defamation claim); *Time Was Garage, LLC v. Giant Steps, Inc.*, No LLICV106002895, 2011 WL 1888096, at *8-9 (Conn. Super. Ct. Apr. 29, 2011) (holding that Connecticut has not recognized trade libel or injurious falsehoods as distinct torts); *American Int'l Specialty Lines Co. v. HMT Inspections*, No. MMXCV095007419, 2011 WL 1759098, at *7-8 (Conn. Super. Apr. 13, 2011) (evaluating trade libel claim pursuant to elements of defamation claim).

55. *Doctor's Assocs., Inc. v. QIP Holder LLC*, No. 3:06-cv-1710, 2010 WL 669870, at *24 (D. Conn. Feb. 19, 2010) (citing *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n. 15 (2001)); *see also Wolf Colorprint, Inc. v. Marino*, No. CV096005913, 2010 WL 3328322, at *7 (Conn. Super. Ct. Aug. 2, 2010) ("The torts of trade libel and commercial disparagement, like defamation, require that the alleged damaging statement be made concerning the plaintiff.") (internal quotation marks omitted); *River Sound Dev., LLC v. Connecticut Fund for the Env't*, No. CV044000381, 2004 WL 2757449, at *3 (Conn. Super. Ct. Nov. 3, 2004).

56. *RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *8 (Conn. Super. Ct. Mar. 29, 2012) (quoting *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359-60 (2001)); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010).

57. *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (quoting *Gambardella v. Apple Health Care, Inc.*, 291 Conn. 620, 627-28 (2009)); *River Sound Dev., LLC v. Connecticut Fund for the Env't*, No. CV044000381, 2004 WL 2757449, at *3 (Conn. Super. Ct. Nov. 3, 2004) (quoting *Cweklinsky v. Mobil Chem. Co.*, 267 Conn. 210, 217 (2004)).

58. *River Sound Dev., LLC v. Connecticut Fund for the Env't*, No. CV044000381, 2004 WL 2757449, at *5 (Conn. Super. Ct. Nov. 3, 2004); *see also Kelly v. Noble Envtl. Power, LLC*, No. MMXCV085005444, 2012 WL 753750, at *14 (Conn. Super. Ct. Feb. 15, 2012) ("The

"[T]rade defamation is the knowing publication of a false matter derogatory to the plaintiff's business calculated to prevent or interfere with relationships between the plaintiff and others to its detriment."[59] A plaintiff must prove the following elements to establish a claim of defamation:

> (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement.[60]

Additionally, a plaintiff is required to plead claims of defamation with specificity. To sufficiently state a claim, a plaintiff must specifically identify the alleged defamatory statement, when it was made, by whom, and to whom it was made.[61]

5-3:3 Defenses

5-3:3.1 Generally

Given the treatment by Connecticut courts of a claim for commercial disparagement or trade libel as one for defamation, it follows that the various common law defenses available under the law of defamation may be asserted in actions for trade libel.[62]

'gravamen of disparagement in the commercial context' is 'falsehoods published to third parties.'") (quoting *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001)).

59. *River Sound Dev., LLC v. Connecticut Fund for the Env't*, No. CV044000381, 2004 WL 2757449, at *3 (Conn. Super. Ct. Nov. 3, 2004) (emphasis omitted) (quoting *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 358-59 (2001)).

60. *RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *9 (Conn. Super. Ct. Mar. 29, 2012) (quoting *Spears v. Elder*, 124 Conn. App. 280, 287 (2010)); *see, e.g., Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (quoting *Gambardella v. Apple Health Care, Inc.*, 291 Conn. 620, 627-28 (2009)).

61. *RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *9 (Conn. Super. Ct. Mar. 29, 2012) ("Certainty is required in the allegations as to the defamation and as to the person defamed.") (internal quotation marks omitted); *American Int'l Specialty Lines Co. v. HMT Inspections*, No. MMXCV095007419, 2011 WL 1759098, at *7-8 (Conn. Super. Apr. 13, 2011) (granting motion to strike trade libel claim for failure to identify to whom the statements were made).

62. *See generally RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *8 (Conn. Super. Ct. Mar. 29, 2012) (evaluating trade libel claim under tenets of defamation law); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (same).

As discussed, to be liable for defamation, it must be established that "the defendants published false statements that harmed the [plaintiff], and that the defendants were not privileged to do so."[63] Thus, common defenses typically asserted include those which attack the prima facie elements of the claim, such as maintaining that the statements at issue were actually true, that there was no publication of the statement, or that the statement was privileged.[64] In the corporate context, intracorporate communications constitute "publication" of a defamatory statement.[65] With respect to a privilege defense, there are two aspects to the defense: "[t]he occasion must be one of privilege, and the privilege must not be abused."[66]

5-3:3.2 Absolute Privilege

It is well established that an absolute privilege exists for statements that are made in the course of judicial proceedings. Connecticut courts "have consistently held that absolute immunity bars defamation claims that arise from statements made in the course of judicial or quasi-judicial proceedings."[67] In such circumstances, the public policy of affording people the opportunity to speak freely and encouraging participation and candor outweighs the risk that one may abuse the privilege to impugn another by a false and defamatory statement.[68] Accordingly, so long as the

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63. *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1, 27 (1995) (quoting *Kelley v. Bonney*, 221 Conn. 549, 563 (1992)).

64. *See generally Genworth Fin. Wealth Mgmt., Inc. v. McMullan*, No. 3:09-CV-1521, 2012 WL 1078011, at *16 (D. Conn. Mar. 30, 2012) ("Under Connecticut law, truth of the allegedly defamatory statement is an absolute defense. . . .") (citing *Goodrich v. Waterbury Republican-American*, 188 Conn. 107, 112 (1982)); *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1, 27-30 (1995) (discussing defenses asserted to defamation claim); *Green v. Konover Residential Corp.*, No. 3:95CV1984, 1997 WL 736528, at *15-16 (D. Conn. Nov. 24, 1997) (same).

65. *Green v. Konover Residential Corp.*, No. 3:95CV1984, 1997 WL 736528, at *16 (D. Conn. Nov. 24, 1997); *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1, 27-28 (1995).

66. *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1, 28 (1995) (internal quotation marks omitted).

67. *Rioux v. Barry*, 283 Conn. 338, 344 (2007); *see, e.g., American Int'l Specialty Lines Co. v. HMT Inspections*, No. MMXCV095007419, 2011 WL 1759098, at *7-8 (Conn. Super. Apr. 13, 2011); *see also McKinney v. Chapman*, 103 Conn. App. 446, 451 (2007) ("In Connecticut, the doctrine of absolute privilege is a long-standing rule that protects otherwise defamatory statements made in the context of judicial or quasi-judicial proceedings.") (quoting *Petyan v. Ellis*, 200 Conn. 243, 245-46 (1986)).

68. *McKinney v. Chapman*, 103 Conn. App. 446, 452 (2007); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *13 (Conn. Super. Ct. June 3, 2010) (quoting *Gallo v. Barile*, 284 Conn. 459, 465-66 (2007)).

communications or statements are *pertinent* to the subject matter of the controversy, the absolute privilege serves to bar the recovery of any damages for defamatory statements made.[69] The privilege is not limited to formal testimony but also "extends to any statement made in the course of the judicial proceeding, whether or not given under oath, as long as it is pertinent to the controversy."[70]

5-3:4 Damages

In actions for trade libel, Connecticut courts are also guided by the settled principles of the law of defamation on the issue of damages.[71] When statements are defamatory per se, i.e., they impugn the integrity of one's business or profession,[72] then injury to one's reputation is conclusively presumed.[73] In these circumstances, a plaintiff is entitled to recover general damages without proof of special damages, or specific pecuniary harm.[74]

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[69] *McKinney v. Chapman*, 103 Conn. App. 446, 452 (2007) ("[C]ommunications uttered or published in the course of the judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of the controversy. The effect of an absolute privilege is that damages cannot be recovered for a defamatory statement even if it is published falsely or maliciously.") (internal quotation marks omitted); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *13 (Conn. Super. Ct. June 3, 2010) (same) (quoting *Gallo v. Barile*, 284 Conn. 459, 465-66 (2007)).

[70] *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *13 (Conn. Super. Ct. June 3, 2010) (internal quotation marks omitted); *see also American Int'l Specialty Lines Co. v. HMT Inspections*, No. MMXCV095007419, 2011 WL 1759098, at *7 (Conn. Super. Apr. 13, 2011) ("The privilege applies also to statements made in pleadings or other documents prepared in connection with a court proceeding.") (quoting *Alexandru v. Strong*, 81 Conn. App. 68, 83 (2004)).

[71] *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12-13 (Conn. Super. Ct. June 3, 2010) (discussing general and special damages in the context of a claim for trade libel and awarding general damages).

[72] *Miles v. Perry*, 11 Conn. App. 584, 601-02 (1987) (providing that defamation "is actionable per se if it charges improper conduct or lack of skill or integrity in one's profession or business and is of such a nature that is calculated to cause injury to one in his profession or business") (internal quotation marks omitted); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (same).

[73] *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (quoting *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1, 35 (1995)); *see also Genworth Fin. Wealth Mgmt., Inc. v. McMullan*, No. 3:09-CV-1521, 2012 WL 1078011, at *18 (D. Conn. Mar. 30, 2012) ("[W]here a statement impugns the basic integrity or creditworthiness of a business, an action for defamation lies and injury is *conclusively presumed*.") (emphasis added) (quoting *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 359 n.15 (2001)); *Miles v. Perry*, 11 Conn. App. 584, 602 (1987) ("[T]he law presumes general damages where the defamatory statements are actionable per se.") (citation omitted).

[74] *Genworth Fin. Wealth Mgmt., Inc. v. McMullan*, No. 3:09-CV-1521, 2012 WL 1078011, at *17 (D. Conn. Mar. 30, 2012) (holding that statements that are defamatory per se obviate

If, however, defamation is established but is not actionable per se, general damages may still be recoverable but "only upon proof of special damages for actual pecuniary loss suffered."[75]

5-4 FRAUD

In the context of business litigation, fraud generally involves obtaining an unfair advantage by an affirmative act or omission that violates good faith and conscientious conduct. Given the various types of fraud that exist, there are a variety of remedies available, some of which turn on whether the fraud was intentional or negligent.

5-4:1 Fraudulent Misrepresentation

The essential elements required to establish a cause of action for common law fraud are:

> (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury.[76]

Fraudulent misrepresentation is an intentional tort.[77] The plaintiff bears the burden of establishing fraud "by a standard higher than the usual fair preponderance of the evidence, which we have described as clear and satisfactory or clear, precise and

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the need to prove specific pecuniary harm); *Miles v. Perry*, 11 Conn. App. 584, 602 (1987) ("Once the plaintiff has established that the words are false and actionable per se … she is entitled under Connecticut law to recover general damages without proof of special damages.") (citation omitted).

75. *Miles v. Perry*, 11 Conn. App. 584, 602 (1987); *Wilcox v. Schmidt*, Nos. WWMCV044001126, WWMCV054001851, 2010 WL 2817490, at *12 (Conn. Super. Ct. June 3, 2010) (providing that recovery of special damages requires proof of economic loss caused by the defamatory statement).

76. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142 (2010) (quoting *Suffield Dev. Assocs. Ltd. P'ship v. Nat'l Loan Investors, L.P.*, 260 Conn. 766, 777-78 (2002)); *see, e.g.*, *456 Corp. v. United Natural Foods, Inc.*, No. 3:09cv1983, 2011 WL 87292, at *3 (D. Conn. Jan. 11, 2011); *Garrigus v. Viarengo*, 112 Conn. App. 655, 663-64 (2009); *Capp Indus., Inc. v. Schoenberg*, 104 Conn. App. 101, 116 (2007).

77. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142 (2010); *see also Kramer v. Petisi*, 285 Conn. 674, 684 n.9 (2008) (noting that "at common law, fraudulent misrepresentation and intentional misrepresentation are the same tort") (citing *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 561 (1995)).

unequivocal."[78] Additionally, fraud claims asserted in federal court actions are subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure.[79]

A false representation for purposes of a fraud claim "is one that is knowingly untrue, or made without belief in its truth, or recklessly made and for the purpose of inducing action upon it."[80] The false representation must be one of fact, and not a mere statement of opinion.[81] Also, the false representation must relate to an existing or past fact. "[A] promise to do an act in the future is a false representation only when coupled with a present intent not to fulfill the promise."[82] Additionally, it is axiomatic that the party to whom the false representation was made must have reasonably relied on the representation and suffered harm as a result of that reliance.[83]

5-4:1.1 Fraudulent Nondisclosure

The intentional nondisclosure of a known fact may also form the basis of a fraudulent misrepresentation claim. Fraud may be

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78. *Capp Indus., Inc. v. Schoenberg*, 104 Conn. App. 101, 116 (2007) (quoting *Duplissie v. Devino*, 96 Conn. App. 673, 681 (2006)); *see also Garrigus v. Viarengo*, 112 Conn. App. 655, 665 (2009) (providing that the party alleging fraud bears the burden of proving it by "clear, precise, and unequivocal evidence") (internal quotation marks omitted); *Kelly v. Noble Envtl. Power, LLC*, No. MMXCV085005444, 2012 WL 753750, at *7 (Conn. Super. Ct. Feb. 15, 2012) (same).

79. Fed. R. Civ. P. 9(b); *see also Sovereign Bank v. ACG II, LLC*, No. 08cv1600, 2010 WL 363336, at *4 (D. Conn. Jan. 25, 2010) (providing that to satisfy Rule 9(b) a complaint must specify the purportedly fraudulent statements, identify the speaker, when and where the statements were made, and why the statements are fraudulent).

80. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142 (2010) (quoting *Kramer v. Petisi*, 285 Conn. 674, 684 n.9 (2008)).

81. *456 Corp. v. United Natural Foods, Inc.*, No. 3:09cv1983, 2011 WL 87292, at *3 (D. Conn. Jan. 11, 2011) (providing that "an opinion that a certain event will arise in the future cannot form the basis of a fraud or misrepresentation claim. . ."); *Anastasia v. Beautiful You Hair Designs, Inc*., 61 Conn. App. 471, 478 (2001) ("The requirement that a representation be made as a statement of fact focuses on whether, under the circumstances surrounding the statement, the representation was intended as one of fact as distinguished from one of opinion.") (quoting *Meyers v. Cornwell Quality Tools, Inc.*, 41 Conn. App. 19, 28-29 (1996)).

82. *Kelly v. Noble Envtl. Power, LLC*, No. MMXCV085005444, 2012 WL 753750, at *7 (Conn. Super. Ct. Feb. 15, 2012) (internal quotation marks omitted) (quoting *Paiva v. Vanech Heights Constr. Co.*, 159 Conn. 512, 515 (1970)); *see also 456 Corp. v. United Natural Foods, Inc.*, No. 3:09cv1983, 2011 WL 87292, at *3 (D. Conn. Jan. 11, 2011) (holding that a promise to do an act in the future may be a misrepresentation only if it is coupled with the present intent not to fulfill the promise); *Duplissie v. Devino*, 96 Conn. App. 673, 681(2006) ("A representation about a promise to do something in the future, when linked with a present intention not to do it, is a false representation.").

83. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142 (2010) (quoting *Suffield Dev. Assocs. Ltd. P'ship v. Nat'l Loan Investors, L.P.*, 260 Conn. 766, 777-78 (2002)).

perpetrated in a variety of different ways calculated to deceive another, and "there may be as much fraud in a person's silence as in a false statement."[84] Nondisclosure of a known fact can amount to fraud only if there is a duty to speak.[85] Once a vendor undertakes to speak with respect to some matter, it must then make "full and fair disclosure" as to that matter and avoid any deliberate nondisclosure concerning the matter.[86]

Accordingly, to establish fraudulent nondisclosure, there must be

> a failure to disclose known facts, a duty to disclose, and an intent or expectation by the declarant that the nondisclosure will 'cause mistake by another to exist or to continue, in order to induce the latter to enter into or refrain from entering into a transaction.'[87]

5-4:1.2 Defenses

Comparative negligence is not a defense to a claim of fraudulent or intentional misrepresentation.[88] The defense of comparative negligence, which replaced the former rule of contributory negligence that acted as a complete bar to liability, operates to diminish the amount of damages recoverable based upon the degree of the plaintiff's own negligence.[89] A defendant charged with fraud cannot use the defrauded party's negligence as a defense to liability

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84. *Garrigus v. Viarengo*, 112 Conn. App. 655, 669-70 (2009) (quoting *Statewide Grievance Comm. v. Egbarin*, 61 Conn. App. 445, 455 (2001)).

85. *Dockter v. Slowik*, 91 Conn. App. 448, 458 (2005); *see also Sovereign Bank v. ACG II, LLC*, No. 08cv1600, 2010 WL 363336, at *5 (D. Conn. Jan. 25, 2010) (dismissing fraudulent nondisclosure claim for failure to establish defendants had a duty to disclose).

86. *Dockter v. Slowik*, 91 Conn. App. 448, 458 (2005); *see also Wedig v. Brinster*, 1 Conn. App. 123, 131 (1983) ("[O]nce a vendor assumed to speak, 'he must make a full and fair disclosure as to the matters about which he assumes to speak.' He must then avoid a deliberate nondisclosure.") (quoting *Franchey v. Hannes*, 152 Conn. 372, 379 (1965)).

87. *Sovereign Bank v. ACG II, LLC*, No. 08cv1600, 2010 WL 363336, at *4 (D. Conn. Jan. 25, 2010) (quoting *Wedig v. Brinster*, 1 Conn. App. 123, 131 (1983)).

88. *Kramer v. Petisi*, 285 Conn. 674, 684 (2008) (citing *Franchey v. Hannes*, 152 Conn. 372, 380 (1965)).

89. Conn. Gen. Stat. § 52-575h(b); *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 585-86 (1995) (citing *Gomeau v. Forrest*, 176 Conn. 523, 525 (1979); W. L. Prosser & W. P. Keeton, *Prosser and Keeton on the Law of Torts* § 67 (4th ed. 1971)).

for its own intentional conduct.[90] Thus, in fraud claims, "fault should not be apportioned between an intentional tortfeasor and a merely negligent victim."[91]

5-4:1.3 Damages

In an action for fraud, a plaintiff may be entitled to recover general and special damages, as well as punitive damages.[92] Proof of damages on a fraud claim need be established by only a preponderance of the evidence.[93]

Punitive or exemplary damages may be awarded not as punishment but when the evidence demonstrates "a reckless indifference to the rights of others or an intentional and wanton violation of those rights."[94] An award of punitive damages is discretionary.[95] Additionally, punitive damages in a fraud case may include an award of attorney's fees.[96] The amount of punitive damages awarded is limited to a party's litigation expenses less taxable costs.[97] "Litigation expenses may include not only attorney's fees, but also any other nontaxable disbursements reasonably necessary to prosecuting the action."[98]

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90. *Kramer v. Petisi*, 285 Conn. 674, 685 (2008) ("One who has perpetrated a fraud should not be permitted to say to the party defrauded when relief is demanded that he or she not ought to have believed or trusted the perpetrator and was negligent in doing so.") (quoting 37 Am. Jur. 2d 330 § 319 (2001)).

91. *Kramer v. Petisi*, 285 Conn. 674, 685 (2008) (internal quotation marks omitted).

92. *Whitaker v. Taylor*, 99 Conn. App. 719, 730 (2007) (quoting *DeSantis v. Piccadilly Land Corp.*, 3 Conn. App. 310, 315 (1985)).

93. *Whitaker v. Taylor*, 99 Conn. App. 719, 735 (2007); *see also Dockter v. Slowik*, 91 Conn. App. 448, 453-54 (2005) ("[A]lthough the elements of fraud must be proved by clear and convincing evidence, damages may be proved by the preponderance of the evidence.") (quoting *Kilduff v. Adams, Inc.*, 219 Conn. 314, 329 (1991)).

94. *Whitaker v. Taylor*, 99 Conn. App. 719, 730 (2007) (quoting *DeSantis v. Piccadilly Land Corp.*, 3 Conn. App. 310, 315 (1985)).

95. *Whitaker v. Taylor*, 99 Conn. App. 719, 730 (2007) (quoting *Arnone v. Enfield*, 79 Conn. App. 501, 522 (2003)); *Wedig v. Brinster*, 1 Conn. App. 123, 137 (1983).

96. *Ensign Yachts, Inc. v. Arrigoni*, No. 3:09-cv-209, 2012 WL 4372002, at *2 (D. Conn. Sept. 24, 2012) (citing *O'Leary v. Industrial Park Corp.*, 211 Conn. 648, 651 (1989)); *see also Wedig v. Brinster*, 1 Conn. App. 123, 134 (1983) ("Punitive or exemplary damages in a fraud case include attorney's fees.") (citation omitted).

97. *Ensign Yachts, Inc. v. Arrigoni*, No. 3:09-cv-209, 2012 WL 4372002, at *2 (D. Conn. Sept. 24, 2012) (citing *Berry v. Loiseau*, 223 Conn. 786, 826 (1992)); *Wedig v. Brinster*, 1 Conn. App. 123, 134 (1983).

98. *Ensign Yachts, Inc. v. Arrigoni*, No. 3:09-cv-209, 2012 WL 4372002, at *2 (D. Conn. Sept. 24, 2012) (quoting *Berry v. Loiseau*, 223 Conn. 786, 832 (1992)).

5-4:2 Negligent Misrepresentation

5-4:2.1 Generally

The tort of negligent misrepresentation is separate and distinct from the tort of fraudulent or intentional misrepresentation.[99] The requisite elements for a claim of negligent misrepresentation vary slightly from those of fraudulent or intentional misrepresentation. For negligent misrepresentation, a plaintiff must establish

> (1) that the defendant made a misrepresentation of fact (2) that the defendant knew or should have known was false, and (3) that the plaintiff reasonably relied on the misrepresentation, and (4) suffered pecuniary harm as a result.[100]

A plaintiff must prove negligent misrepresentation by a fair preponderance of the evidence.[101]

Connecticut has long recognized and imposed liability for negligent misrepresentation. The principles underlying such a claim are well settled in Connecticut common law:

> One who, in the course of his business, profession or employment supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.[102]

In such circumstances, "even an innocent misrepresentation may be actionable if the declarant has the means of knowing,

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99. *Kramer v. Petisi*, 285 Conn. 674, 684 (2008).

100. *Nazami v. Patrons Mut. Ins. Co.*, 280 Conn. 619, 626 (2006) (quoting *Glazer v. Dress Barn, Inc.*, 274 Conn. 33, 73 (2005)); *see, e.g.*, *456 Corp. v. United Natural Foods, Inc.*, No. 3:09cv1983, 2011 WL 87292, at *3 (D. Conn. Jan. 11, 2011); *Sovereign Bank v. Licata*, 116 Conn. App. 483, 502 (2009) (quoting *Centimark Corp. v. Village Manor Assocs. Ltd. P'ship*, 113 Conn. App. 509, 518 (2009)).

101. *Capital Mortg. Assocs., LLC v. Hulton*, No. NNICV065000431, 2009 WL 567057, at *14 (Conn. Super. Ct. Feb. 13, 2009) (citing *Citino v. Redevelopment Agency*, 51 Conn. App. 262, 269-76 (1998)).

102. *Kramer v. Petisi*, 285 Conn. 674, 681-82 (2008) (quoting *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 575 (1995)); *see, e.g., Sovereign Bank v. ACG II, LLC*, No. 08cv1600, 2010 WL 363336, at *4 (D. Conn. Jan. 25, 2010) (citing *Burnham v. Karl & Gelb, P.C.*, 50 Conn. App. 385, 390 (1998)); *Biro v. Matz*, 132 Conn. App. 272, 284 (2011) (quoting *Rafalko v. Univ. of New Haven*, 129 Conn. App. 44, 52 (2011)).

ought to know, or has the duty of knowing the truth."[103] Given that the claim is premised upon negligence, the defendant must have "failed to exercise the reasonable care and competence of a reasonable man in obtaining or communicating the information."[104] Regardless of whether the statement of fact was made negligently or innocently, to be actionable it must have been false and made for purposes of inducing action upon it.[105] Finally, a plaintiff's reliance on the misrepresentation must have been reasonable.[106]

A claim of negligent misrepresentation may arise even as between two sophisticated commercial entities having full access to information concerning a business transaction. In *Williams Ford, Inc. v. Hartford Courant Company*,[107] the Connecticut Supreme Court rejected the argument that the tort of negligent misrepresentation cannot be recognized in circumstances involving business adversaries in the commercial context.[108] To the contrary, the Court expressly adopted the reasoning that "there would seem to be very little justification for not extending liability to all parties and agents to a bargaining transaction for making misrepresentations negligently."[109]

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103. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 144 (2010) (quoting *Kramer v. Petisi*, 285 Conn. 674, 681 (2008)); *see, e.g., Loiselle v. Browning & Browning Real Estate, LLC*, No. CV106001942, 2012 WL 2854033, at *7 (Conn. Super. Ct. June 11, 2012).

104. *Little Mountains Enters., Inc. v. Groom*, No. FSTCV075004977, 2011 WL 6934572, at *4 (Conn. Super. Ct., Dec. 6, 2011) (quoting *Johnnycake Mountain Assocs. v. Ochs*, 104 Conn. App. 194, 201 (2007)).

105. *Biro v. Matz*, 132 Conn. App. 272, 284-85 (2011) ("It must be established that there was a false representation in order for a plaintiff to prevail on a negligent misrepresentation claim.") (citing *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 792-93 (1999)); *Loiselle v. Browning & Browning Real Estate, LLC*, No. CV106001942, 2012 WL 2854033, at *7 (Conn. Super. Ct. June 11, 2012) ("An actionable misrepresentation, whether made knowingly, recklessly, negligently, or innocently, must be made for the purpose of inducing action upon it.") (quoting *J. Frederick Scholes Agency v. Mitchell*, 191 Conn. 353, 359 (1983)).

106. *Biro v. Matz*, 132 Conn. App. 272, 285 (2011) (citing *Visconti v. Pepper Partners Ltd. P'ship*, 77 Conn. App. 675, 682 (2003)); *see also Mips v. Becon, Inc.*, 70 Conn. App. 556, 558 (2002) ("There must be a justifiable reliance on the misrepresentation for a plaintiff to recover damages.") (quoting *Citino v. Redevelopment Agency*, 51 Conn. App. 262, 273-74 (1998)).

107. *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559 (1995).

108. *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 578 n.15 (1995).

109. *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 578 n.15 (1995) (quoting W. L. Prosser & W. P. Keeton, *Prosser and Keeton on the Law of Torts* § 107 (5th ed. 1984)).

5-4:2.2 Defenses

Comparative negligence under § 52-572h(b) of the Connecticut General Statutes is available as a defense to a claim of negligent misrepresentation resulting in commercial loss.[110] As previously discussed,[111] comparative negligence replaced the former rule of contributory negligence, which had served as a complete defense to the imposition of liability.[112] Thus, in defense of a negligent misrepresentation claim, a defendant may assert the plaintiff's comparative negligence "to diminish recovery of damages based upon the degree of the plaintiff's own negligence."[113]

5-4:3 Innocent Misrepresentation

Connecticut common law recognizes the tort of innocent misrepresentation, which is a separate and distinct cause of action from that of negligent misrepresentation and is based on principles of warranty.[114] The requisite elements of a cause of action for innocent misrepresentation are:

> (1) a representation of material fact (2) made for the purpose of inducing the purchase, (3) the representation is untrue, and (4) there is justifiable reliance by the plaintiff on the representation by the defendant and (5) damages.[115]

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110. Conn. Gen. Stat. § 52-575h(b); *Kramer v. Petisi*, 285 Conn. 674, 684-86 (2008); *see also Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 586 (1995) ("[T]he policy of the comparative negligence statute, § 52-572h, applies to negligence actions where only commercial losses are sustained.").

111. The defense of comparative negligence is also discussed in § 5-4:1.2.

112. *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 585 (1995).

113. Conn. Gen. Stat. § 52-575h(b); *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 585-86 (1995) (citing *Gomeau v. Forrest*, 176 Conn. 523, 525 (1979); W. L. Prosser & W. P. Keeton, *Prosser and Keeton on the Law of Torts* § 67 (4th ed. 1971)); *see also Kramer v. Petisi*, 285 Conn. 674, 685-86 (2008) (holding that, unlike an action for fraudulent misrepresentation, the defense of comparative negligence is available in an action for negligent misrepresentation).

114. *Gibson v. Campano*, 241 Conn. 725, 730 (1997); *Kramer v. Petisi*, 285 Conn. 674, 686 n.10 (2008) (discussing "the separate and distinct tort of innocent misrepresentation, which, in contrast to the tort of negligent misrepresentation, is predicated on principles of warranty") (citing *Johnson v. Healy*, 176 Conn. 97, 100-02 (1978)).

115. *Petrucelli v. Palmer*, 596 F. Supp. 2d 347, 374 (D. Conn. 2009) (quoting *Frimberger v. Anzellotti*, 25 Conn. App. 401, 410 (1991)); *see, e.g., Matyas v. Minck*, 37 Conn. App. 321, 333 (1995); *Little Mountains Enters., Inc. v. Groom*, No. FSTCV075004977, 2011 WL 6934572, at *5 (Conn. Super. Ct., Dec. 6, 2011).

The tort extends to any sale, rental, or exchange transaction, and is not limited to the sale of goods.[116]

Negligence on the part of the defendant is not required.[117] An innocent misrepresentation is actionable if it is false and misleading, even in the absence of fraud or bad faith. Thus, the plaintiff need establish only that the defendant made a false representation of fact that induced it to act and that the plaintiff suffered damages as a result of the incorrect statement.[118] In this regard, innocent misrepresentation is considered a strict liability tort.[119] The tort may also be analogized to the doctrine of mistake under contract law.[120]

5-5 STATUTE OF LIMITATIONS

5-5:1 Generally

Section 52-577 of the Connecticut General Statutes provides for a three-year statute of limitations for causes of action sounding in tort.[121] Given that § 52-577 is an occurrence statute, the time period to commence an action "begins to run at the moment the act or omission complained of occurs."[122] The limitations period

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116. *Gibson v. Campano*, 241 Conn. 725, 730 (1997).

117. *Little Mountains Enters., Inc. v. Groom*, No. FSTCV075004977, 2011 WL 6934572, at *5 (Conn. Super. Ct., Dec. 6, 2011) ("Consequently, it can be seen that the difference between a claim for negligent misrepresentation and innocent misrepresentation is that under an innocent misrepresentation theory, the plaintiff does not have to demonstrate that the defendants acted negligently.").

118. *Little Mountains Enters., Inc. v. Groom*, No. FSTCV075004977, 2011 WL 6934572, at *5 (Conn. Super. Ct., Dec. 6, 2011).

119. *Petrucelli v. Palmer*, 596 F. Supp. 2d 347, 373 (D. Conn. 2009) (describing innocent misrepresentation claim asserted by plaintiff as "the closest to a 'strict liability' tort") (citing *Johnson v. Healy*, 176 Conn. 97, 101-02 (1978) (extending this "strict liability" from the sale of goods to transactions for the sale of land)); *Matyas v. Minck*, 37 Conn. App. 321, 334 n.7 (1995) (discussing that strict liability has been imposed for innocent misrepresentation with respect to construction contracts) (citing *E & F Constr. Co. v. Stamford*, 114 Conn. 250 (1932)).

120. *See generally Gibson v. Campano*, 241 Conn. 725, 730-31 (1997) (applying general principles of contract law to resolve innocent misrepresentation claim); *cf. Duska v. City of Middletown*, 173 Conn. 124, 128 (1977) (holding that the innocent and unintentional nondisclosure of facts where there existed a duty to disclose justifies the remedy of rescission).

121. Conn. Gen. Stat. § 52-577.

122. *Collum v. Chapin*, 40 Conn. App. 449, 451 (1996) (quoting *S.M.S. Textile Mills, Inc. v. Brown, Jacobson, Tillinghast, Lahan & King, P.C.*, 32 Conn. App. 786, 790 (1993)); *see also Fenn v. Yale Univ.*, 283 F. Supp. 2d 615, 636 (D. Conn. 2003) ("[T]ort claims begin[] to run the moment the act, injury and/or omission complained of occurs.").

begins to run regardless of when the plaintiff first discovers the purported injury.[123] The three-year statute of limitations governs claims of tortious interference with contractual relations,[124] tortious interference with business expectancies,[125] fraudulent or intentional misrepresentation,[126] negligent misrepresentation,[127] and innocent misrepresentation.[128]

While Connecticut courts have not expressly addressed the applicable statute of limitations governing claims of commercial disparagement, the tort, as previously discussed,[129] is recognized under Connecticut law as a species of defamation.[130] Thus, these claims are governed by the two-year statute of limitations under

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123. *Collum v. Chapin*, 40 Conn. App. 449, 451-52 (1996) (citing *Fichera v. Mine Hill Corp.*, 207 Conn. 204, 212-13 (1988)); *see also Dall v. Certified Sales, Inc.*, No. 3:08CV19, 2010 WL 1286944, at *3 n.14 (D. Conn. Mar. 26, 2010) ("Section 52-577 is a statute of repose that runs from 'the date of the act or omission complained of, not the date when the plaintiff first discovers an injury.'") (quoting *Watts v. Chittenden*, 115 Conn. App. 404, 410 (2009)).

124. *Rossman v. Morasco*, 115 Conn. App. 234, 254 (2009) (holding that tortious interference with contractual relations claim was governed by three-year statute of limitations set forth in § 52-577) (citing *Collum v. Chapin*, 40 Conn. App. 449 (1996)).

125. *PMG Land Assocs., L.P. v. Harbour Landing Condo. Ass'n, Inc.*, 135 Conn. App. 710, 717-18 (2012) (holding that tortious interference with business expectancies claim was governed by three-year statute of limitations set forth in § 52-577).

126. *Dall v. Certified Sales, Inc.*, No. 3:08CV19, 2010 WL 1286944, at *3 n.14 (D. Conn. Mar. 26, 2010) ("The statute of limitations for fraud claims is Conn. Gen. Stat. § 52-577.") (citing *Wedig v. Brinster*, 1 Conn. App. 123, 136 (1983)).

127. *Viejas Band of Kumeyaay Indians v. Lorinsky*, 116 Conn. App. 114, 158 n.15 (2009) (holding that plaintiff's negligent misrepresentation claim was governed by the three-year statute of limitations under § 52-577). While Connecticut law also provides for a two-year statute of limitations for claims of negligence under § 52-584, that statute governs the limitations period for recovery for injury to person or personal property. Conn. Gen. Stat. § 52-584. As such, § 52-584 generally does not apply to litigation among commercial entities. *Guerrera v. Signore's Place, LLC*, No. CV1811371, 2010 WL 5188630, at *2 n.1 (Conn. Super Ct. Dec. 2, 2010) (holding that § 52-577 applies "to claims of negligent misrepresentation which, as here, do not include allegations of damages to person or property"); *Lee v. Brenner, Saltzman & Wallman, LLP*, No. CV065000728, 2010 WL 398916, at *3 (Conn. Super. Ct. Jan. 12, 2010) ("Because the plaintiff in this action does not seek to recover damages for injury to his person or to his real or personal property, his negligent misrepresentation claims do not fall in within § 52-584 and are governed by § 52-577."); *but see Goncalves v. Superior Plating Co.*, No. CV085015711, 2010 WL 3964659, at *11 (Conn. Super. Ct. Sept. 9, 2010) (applying two-year statute of limitations under § 52-584 because negligent misrepresentation claim is an action for negligence).

128. *City of New Britain v. Law Eng'g & Envtl. Servs., Inc.* No. 3:10-cv-31, 2012 WL 124597, at *8 (D. Conn. Jan. 17, 2012) ("Claims for innocent misrepresentation are limited by section 52-577. …") (citation omitted); *Cocchiola Paving, Inc. v. Peterbilt of S. Connecticut*, No. CV010168579, 2003 WL 1227557, at *3 (Conn. Super. Ct. Mar. 3, 2003) (holding that § 52-577 applied to claims of innocent and negligent misrepresentation).

129. Commercial disparagement is discussed in § 5-3.

130. *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343, 358 (2001); *see, e.g., RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934, 2012 WL 1434963, at *8 (Conn. Super. Ct. Mar. 29, 2012) (quotation omitted).

§ 52-597, which applies to defamation claims.[131] Similar to § 52-577, the two-year limitations period under § 52-597 begins to run "from the act complained of," meaning "the publication of the alleged defamatory statement, not the plaintiff's discovery of that defamatory statement."[132]

5-5:2 Fraudulent Concealment

The running of the three-year statute of limitations may be suspended, however, where a party fraudulently conceals the existence of the cause of action. Specifically, § 52-595 of the Connecticut General Statutes provides that, if any person who is liable to another fraudulently conceals the existence of the cause of action, that cause of action will begin to accrue only when the person entitled to sue thereon first discovers its existence.[133] Section 52-595 does not create an independent cause of action. The statute merely serves to toll the relevant statute of limitations until such time as the potential plaintiff discovers the existence of the cause of action.[134]

To demonstrate fraudulent concealment under § 52-595, a plaintiff has the burden of proving that the defendant

> (1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish plaintiff's cause of action; (2) intentionally concealed these facts from the plaintiff; and

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131. Conn. Gen. Stat. § 52-597; *Byte Interactive, LLC v. Schlechter*, No. FSTCV044002070, 2006 WL 2556307, at *2 (Conn. Super. Ct. Aug. 10, 2006) (applying § 52-597 to trade defamation claim but denying summary judgment on issue of whether the claim was barred because there existed a genuine issue of material fact as to when the statement was made).

132. *Podgurski v. Grey*, No. 3:95CV2284, 1998 WL 26408, at *5 (D. Conn. Jan. 6, 1998) (citing *L. Cohen & Co. v. Dun & Bradstreet, Inc.*, 629 F. Supp. 1425, 1428 (D. Conn. 1986)); *see also* Conn. Gen. Stat. § 52-597 ("No action for libel or slander shall be brought but within two years from the date of the act complained of."); *Dauphinais v. Cunningham*, No. 3:08-cv-1449, 2009 WL 4545293, at *4 (D. Conn. Nov. 30, 2009), *aff'd*, 395 Fed. App'x 745 (2d Cir. 2010) (holding that the two-year statute of limitations for libel and slander under § 52-597 begins to run on the date of the act complained of, "rather than the date the cause of action has accrued or the injury has occurred") (citations omitted).

133. Conn. Gen. Stat. § 52-595.

134. *Baldwin v. Village Walk Condo., Inc.*, No. FSTCV085007925, 2010 WL 5095319, at *13 (Conn. Super. Ct. Nov. 19, 2010) (quoting *Campbell v. Plymouth*, 74 Conn. App. 67, 83-84 n.9 (2002)).

(3) concealed the facts for the purpose of delaying plaintiff's filing of a lawsuit.[135]

In sum, for the statute of limitations to be tolled for fraudulent concealment under § 52-595, the plaintiff must establish that the defendant had actual knowledge of the facts giving rise to the plaintiff's claim and intentionally concealed those facts to delay the commencement of a lawsuit.[136]

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135. *Dall v. Certified Sales, Inc.*, No. 3:08CV19, 2010 WL 1286944, at *4 (D. Conn. Mar. 26, 2010) (citing *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn LLP*, 281 Conn. 84, 105 (2007)); *Coachman-Francis v. Connecticut Att'ys Title Ins. Co.*, No. HHDCV106011498, 2012 WL 234147, at *5 (Conn. Super. Ct. Jan. 3, 2012) (quoting *Campbell v. Plymouth*, 74 Conn. App. 67, 83 (2002)); *Baldwin v. Village Walk Condo., Inc.*, No. FSTCV085007925, 2010 WL 5095319, at *13 (Conn. Super. Ct. Nov. 19, 2010); *see also Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn LLP*, 281 Conn. 84, 105 (2007) (providing that fraudulent concealment must be established "by the more exacting standard of clear, precise, and unequivocal evidence").

136. *Dall v. Certified Sales, Inc.*, No. 3:08CV19, 2010 WL 1286944, at *4 (D. Conn. Mar. 26, 2010).