

DOCKET NO.: CV-14-6025333-S : **COMPLEX DOCKET**
ROBIN SHERWOOD and
GREG HOELSCHER : **J.D. OF WATERBURY**
V. : **AT WATERBURY**
STAMFORD HEALTH SYSTEM, INC.
D/B/A STAMFORD HOSPITAL : **APRIL 29, 2015**

REPLY MEMORANDUM OF LAW IN SUPPORT OF
STAMFORD HOSPITAL’S MOTION FOR REARGUMENT

Pursuant to Practice Book § 11-12, Stamford Hospital, by its counsel, Neubert, Pepe & Monteith, P.C. respectfully submits this Reply Memorandum of Law in further support of its Motion to Re-Argue¹ the Court’s December 2, 2014 Order (the “Order”) denying Stamford Hospital’s Motion to Strike.

Plaintiffs’ counsel has elected not to respond to the arguments made in Stamford Hospital’s brief. Plaintiffs therefore do not dispute that the Restatement of Torts provides that in a super majority of jurisdictions (forty nine including Connecticut), “hospitals are held not to be sellers of products they supply in connection with the provision of medical care, regardless of the circumstances.” Restatement (Third) of Torts: Products Liability, § 20 “Definition of ‘One Who Sells or Otherwise Distributes,’ Comment d.”² They also do not dispute that this

¹ The standard for this type of motion is well known. “The purpose of a reargument is . . . to demonstrate to the court that there is some decision or principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts” (Internal quotation marks omitted.) Jaser v. Jaser, 37 Conn. App. 194, 202 (1995). It may also be used “to address alleged inconsistencies in the trial court’s memorandum of decision as well as claims of law that the [movant] claimed were not addressed by the court.” K.A. Thompson Electric Co. v. Wesco, Inc., 24 Conn. App. 758, 760 (1991).

² The Restatement surveys cases from throughout the United States on this issue and finds the result to be nearly uniform – “hospitals are held not to be sellers of products they supply in connection with the provision of medical care.” Restatement (Third) of Torts: Products Liability, § 20 “Definition of ‘One Who Sells or Otherwise Distributes,’ Comment d.

precedent is controlling and therefore provides a basis for reargument. See Jaser v. Jaser, 37 Conn. App. 194, 202 (1995).

Plaintiffs also do not dispute that the Connecticut Supreme Court follows the principles described in the Restatement of Torts which explain when a party is a product seller. See Vitanza v. Upjohn Co. 257 Conn. 365, 373, 376 (2001) (Following the Restatement (Second) of Torts on Product Liability). See also Giglio v. Connecticut Light & Power Co., 230, 233 (1980) (The court “accepted the principles adopted by the American Law Institute as contained in § 402A of the Restatement (Second) of Torts, establishing the strict liability in torts.”)³

The forgoing additional controlling appellate cases, which the Court may have overlooked, clarify any doubt that may exist about the meaning of the Supreme Court’s decision in Zbras v. St. Vincent’s Medical Center, 91 Conn. App. 289 (2005), and provide a basis, in their own right, to grant the Motion to Strike. Connecticut appellate and trial court precedent are uniform, as is the appellate precedent of forty nine states and the Restatement: “hospitals are held not to be sellers of products they supply in connection with the provision of medical care, regardless of the circumstances.” Restatement (Third) of Torts: Products Liability, § 20 “Definition of ‘One Who Sells or Otherwise Distributes,’ Comment d. Because there is controlling Supreme Court precedent which the Court overlooked, reargument should be granted.

Counsel is not unmindful of the point raised by plaintiffs in their Objection. However, rather than litigate five cases (plaintiffs’ counsel just commenced another case based on the same theories) through trial, counsel is making every effort to present the Court with the uniform

³ Connecticut courts have also accepted principles set forth in Restatement of Torts in areas other than products liability. See Orsini v. Zimmer, No. CV075013711S, LEXIS 3442, at *8-9 (Conn. Sup. Ct. Dec. 24, 2009) (“our state accepts the common law requirements [of defamation] and generally adopts the Restatement (2d) of Torts position on this tort.”)

Connecticut⁴ and national precedent (aside from the common law of Louisiana) which holds that “hospitals are held not to be sellers of products they supply in connection with the provision of medical care, regardless of the circumstances.” Restatement (Third) of Torts: Products Liability, § 20. Stamford Hospital also seeks to preserve its rights for appeal because it believes the precedent cited is controlling and leaves the Court without discretion in ruling on this issue and the pending motion.

Because plaintiffs do not dispute the holding of these cases or offer contrary precedent, and because the basic principle summarized in Restatement (Third) of Torts: Products Liability, § 20 represents the state of the law in forty nine states including Connecticut, the CPLA claim against Stamford Hospital should be stricken.

⁴ These cases also demonstrate the accuracy the Court’s opinion in O’Dell v. Greenwich Healthcare Services, Inc., 2013 Conn. Super LEXIS 972, *7 (Conn. Super. Ct. April 25, 2013) in which the Court discussed the “unanimous chorus of appellate and trial court decisions” on this issue. Counsel cannot find any contrary controlling appellate precedent on a national basis outside of Louisiana either.

CONCLUSION

For the foregoing reasons, Stamford Hospital respectfully requests that the Court grant reargument and Stamford Hospital's Motion to Strike.

**DEFENDANT,
STAMFORD HEALTH SYSTEM, INC.,
D/B/A STAMFORD HOSPITAL**

/s/Simon I. Allentuch
Eric J. Stockman
Simon I. Allentuch
NEUBERT, PEPE & MONTEITH, P.C.
195 Church Street, 13th Floor
New Haven, CT 06510
Tel. (203) 821-2000
Juris No. 407996

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed, postage prepaid, by
U.S. Mail, this 29th day of April, 2014, to the following counsel of record:

Brenden P. Leydon, Esq.
Tooher, Wool & Leydon, LLC
80 Fourth Street
Stamford, CT 06905

/s/ Simon I. Allentuch
Simon I. Allentuch
NEUBERT, PEPE & MONTEITH, P.C.