APPELLATE COURT

OF THE

STATE OF CONNECTICUT

AC 37821, 37822

CLARENCE MARSALA, ADMINISTRATOR OF
THE ESTATE OF HELEN MARSALA, ET AL.

V.

YALE-NEW HAVEN HOSPITAL

BRIEF OF DEFENDANT-APPELLEE YALE-NEW HAVEN HOSPITAL WITH SEPARATE APPENDIX PARTS 1 AND 2

ATTORNEYS FOR
DEFENDANT-APPELLEE:

Jeffrey R. Babbin
Tadhg A.J. Dooley
WIGGIN AND DANA LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400 (tel.)
(203) 782-2889 (fax)
jbabbin@wiggin.com
tdooley@wiggin.com
Juris No. 67700

TO BE ARGUED BY:
TADHG A.J. DOOLEY

TABLE OF CONTENTS

COUNTERSTATEMENT OF ISSUES

1. Did the trial court correctly strike claims of negligent infliction of emotional distress (NIED) brought by the adult children of a hospital's patient on the grounds that the claims are properly characterized as bystander claims and the children failed to allege "contemporaneous sensory perception" (or, as an alternative ground, failed to allege "severe and debilitating" emotional distress), as necessary to state a claim for negligent infliction of emotional distress as a bystander to alleged medical malpractice? (Pages 11-22)

2. Did the trial court correctly grant summary judgment to the hospital on claims of intentional infliction of emotional distress (IIED) brought by the adult children of the hospital's patient, where: (a) the claims are properly characterized as bystander claims, and the summary judgment record contains no evidence from which a jury reasonably could find that the children contemporaneously perceived the hospital's alleged medical negligence and suffered severe and debilitating emotional distress as a result; and (b) even if the claims were construed as direct claims that the hospital intended to inflict emotional distress on the children, there is no genuine dispute that the hospital's alleged conduct was not "extreme and outrageous," did not proximately cause the alleged emotional distress, and the distress was not severe and debilitating? (Pages 22-34)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

As Plaintiffs alleged in their Complaint, "Yale New Haven Hospital deals with life and death decisions every day involving patients and their families." A15. This is true. But, like any other healthcare provider, Yale-New Haven Hospital ("the Hospital" or "YNHH")[1] owes a paramount duty of care to its patients, to the exclusion of any duty owed to patients' family and friends and other bystanders to medical care.

In this case, the Hospital sought to fulfill its obligations to its patient, Helen Marsala, an elderly woman who, as of July 2010, was in a terminal, comatose state, having been on life support for over two months. Mrs. Marsala was transferred to the Hospital in this condition, in the hope that doctors could determine what was causing her rapid deterioration. Doctors conducted a comprehensive work-up, but were unable to determine what was causing her decline. In a last-ditch effort, doctors removed the artificial respirator tube that had been keeping her alive, hoping that allowing her to breathe on her own might trigger a physiological response that would help her to regain consciousness. When this final measure failed, and it became apparent that Mrs. Marsala would not recover, her husband, Clarence, urged that she be "reintubated" and placed back on artificial life support. With the support of Mrs. Marsala's doctors, the Hospital's Ethics Committee, and an independent physician who provided a second opinion, the Hospital instead decided to transition her to "comfort care," and she passed away peacefully on July 24, 2010.

Whether the Hospital properly discerned and followed Mrs. Marsala's wishes for her end-of-life treatment is a question that will be considered in her estate's wrongful-death suit. But it is not what this appeal is about. This appeal is about whether Mrs. Marsala's five adult children, the only appellants, may bring their own claims of negligent and intentional

---

[1] Plaintiffs' Complaint names only the Hospital as a defendant, but refers to acts undertaken by unnamed "agents, apparent agents, employees and/or staff" of the Hospital. In this brief, Defendant similarly uses "the Hospital" as a shorthand for various doctors and other staff members involved in Helen Marsala's care, without making any concession that the Hospital is liable for the conduct of each individual referred to in the Complaint.

infliction of emotional distress arising from their mother's medical treatment. As a matter of Connecticut law, they may not.

The adult children seek to recover for the emotional distress they allegedly suffered as the result of the Hospital's treatment of Mrs. Marsala. Accordingly, their emotional-distress claims are properly characterized as bystander claims. For many years, Connecticut courts forbade bystander claims of emotional distress in the medical-malpractice context, for reasons of public policy. In *Squeo v. Norwalk Hospital Ass'n*, 316 Conn. 558 (2015), the Supreme Court held that, while there is no per se bar, such claims must be closely cabined and are available only to those who *contemporaneously perceive* the injury to the patient and who suffer severe *and debilitating* emotional distress as a result. Plaintiffs cannot satisfy this standard because, by their own admissions, none of them contemporaneously perceived either the Hospital's conduct or the resulting injury to Mrs. Marsala and none of them have suffered the type of debilitating emotional distress that the Supreme Court described in *Squeo*.

For these and other reasons explained more fully below, the trial court properly dismissed Plaintiffs' emotional-distress claims. This Court should affirm.

STATEMENT OF FACTS AND PROCEEDINGS

I. Factual Background

Plaintiffs Michael, Gary, Tracey, Kevin, and Randy Marsala are the adult children of Helen Marsala, an elderly woman who died in the Hospital's care on July 24, 2010. *See* A15–16.[2] At the time of her death, Mrs. Marsala had been in a depressed mental state, sometimes described as a "coma," for approximately two months. *See* A541–44; A310–11.

Mrs. Marsala was admitted to Griffin Hospital on May 24, 2010, to receive treatment for "altered mental status, hypoxia, and anasarca." A543. According to her husband,

---

[2] Citations in this brief to "A__" are to Appellants' Appendix, and cites to "AA__" are to the accompanying Appellee's Appendix. All unpublished decisions and all statutes are in the Appellee's Appendix (other than unpublished decisions in the Appellants' Appendix). Unless otherwise noted, all emphases and modifications within quotations are added.

Clarence, she had developed a disease following wrist surgery and "went into a coma." A307. Mrs. Marsala remained at Griffin for approximately three weeks. During this time, she was dependent on a ventilator for life support and was unresponsive to stimuli. A541, A546. Physicians at Griffin spoke to Clarence repeatedly about her poor prognosis. A310. According to Clarence, the doctors at Griffin had repeatedly recommended that Mrs. Marsala be taken off life support; accordingly, Clarence requested that she be transferred to YNHH for further evaluation. A311.

Mrs. Marsala was transferred to YNHH on June 19, 2010, in "tenuous condition." A541. As described in the intake report:

> Ms. Marsala is a 76 year old woman transferred from Griffin hospital for multiple medical problems for further management. She has an extensive past medical history, which includes [diabetes mellitus], moderate aortic stenosis, hypertension, hyperlipidemia. . . . She has had a long hospital course, which has included prolonged respiratory failure and failure to wean, shock requiring vasopressors, Morganella bacteremia requiring treatment with Imipenem, volume overload, and GI bleeding thought to be due to ischemic colitis.

A560. By this time, she had already been on a respirator for a month and was receiving all her nutrition through tube feedings. A555, A561; AA2, AA4. Though she opened her eyes briefly upon being transferred from a stretcher to her bed, she was otherwise unconscious and did not react to painful stimuli. A546. Her intake physician observed that "[t]his patient is critically ill as indicated by the following: Respiratory failure Shock/Hemodynamic instability Metabolic acidosis Sepsis Coma," and her "[p]rognosis is uncertain at best given her multiple medical problems and advanced age." A561.

Although Mrs. Marsala's prognosis was dire, YNHH developed a plan to try to "identify reversible problems to treat" in an effort to help her regain her mental status. A560–61. Over the next month, the Hospital conducted a comprehensive medical workup in an attempt to identify the cause of her multiorgan failure. A neurological evaluation revealed an infarct (dead tissue) in her right cerebellum and a lesion in her right hippocampus, but was unable to identify the cause of her depressed mental state. A562;

A541–42. On June 22, she began a course of hemodialysis to correct the onset of renal failure. A542, A562. Doctors hoped that, by correcting her systemic acidosis and electrolyte abnormalities, the hemodialysis might "unmask one or more of those as the etiology for her depressed mental status." A542. However, while the hemodialysis did address her acidosis and electrolyte abnormalities, it did not improve her "persistently depressed mental status." A567. The Neurology Service was consulted and recommended that a spinal tap might reveal the cause of Mrs. Marsala's depressed mental status, but "her husband declined the procedure noting at a discussion on July 6, 2010, that he did not think she would want to pursue this kind of aggressive care given her clinical condition." A542.

Over the course of Mrs. Marsala's treatment at the Hospital, doctors had numerous discussions with her husband, Clarence, regarding her goals of treatment. AA2–3. On June 23, five days after her admission to the Hospital, Mrs. Marsala's treating physician called Clarence to advise him of the results of Mrs. Marsala's MRI and her generally poor prognosis. A565. The doctor "explained that it is possible to identify specific problems and their possible treatments, but when one takes the longer view, the picture appears more grim. [He] emphasized that [Mrs. Marsala] is reaching the limits of the time she can be orally intubated, and that her overall clinical situation has not improved." *Id.* According to the notes of the conversation, entered into Mrs. Marsala's medical records that same day, "Mr. Marsala seemed to understand that the patient's combination of renal failure, widespread ischemic colitis, infarcts and infections did not portend well." *Id.* With respect to Mrs. Marsala's wishes for end-of-life care, Clarence

> reported that he and his wife had never explicitly discussed her wishes for aggressive interventions with an eye towards life-prolongation. He was concerned about the possibility that she was suffering, and seemed receptive to hearing the views of the team. He seemed to understand that withdrawal of care may be indicated if the clinical situation does not improve. He did not seem to feel that "life" at all costs was consistent with his frame of reference or beliefs.

Id.

Despite the comprehensive workup and several weeks of treatment, Mrs. Marsala's

condition did not improve during her hospitalization. A CT scan of her brain conducted on July 19 revealed two new infarcts, and EEGs showed diffuse brain slowing. A567. She developed pitting edema in her extremities, remained dependent on hemodialysis, and her skin degradation continued with additional and worsening skin ulcers. A567, 569. Throughout this period of hastening decline, YNHH clinicians continued to discuss Mrs. Marsala's dire prognosis with Clarence and recommended that her status be changed to provide comfort care only. AA2–3. Clarence did not agree with this recommendation. As time went on, and doctors sought to discuss Mrs. Marsala's care with him, Clarence became increasingly difficult to reach. *See* A573–574 (reflecting unsuccessful attempts to contact Mr. Marsala); A435 (Michael Marsala acknowledging that his father may have avoided talking to physicians).

A patient cannot remain intubated indefinitely. AA2. Prolonged intubation, moreover, can contribute to a patient's depressed mental status. *Id.* Therefore, Mrs. Marsala's physicians believed the best course of treatment was to withdraw the ventilator to see whether breathing without assistance would trigger a positive physiological response. AA2–3; *see also* A342 (physician testifying that "my hope was taking her off [the ventilator], she would maybe wake up"); AA23. To determine whether this was a prudent course, her physicians began conducting "weaning trials," which tested her ability to maintain acceptable oxygen levels without a ventilator's assistance. A573; AA3. The weaning trials showed that Mrs. Marsala appeared to be capable of breathing on her own. A573. Accordingly, on July 20, the decision was made to extubate her—that is, to remove the ventilator tube—in the hope that allowing her to breathe on her own would help to restore her mental status. A573, A575; AA2–3.[3] Mrs. Marsala's medical team discussed this plan with Mr. Marsala and Michael Marsala. A575; AA3. Neither Clarence nor any of the children

[3] As shown in her medical records, Mrs. Marsala was extubated at 4:30 p.m. on July 20. A575. In their Complaint, Plaintiffs alleged that YNHH made the decision to "permanently remove the ventilator . . . without replacement" on July 24th. *See* A19. This allegation is incorrect, and Plaintiffs have abandoned it on appeal. *See* Pls.' Br. at 3.

objected to extubation, which everyone hoped would lead to some improvement in Mrs. Marsala's mental status. *See* A544. However, the family insisted that Mrs. Marsala be reintubated if she proved unable to survive off the ventilator, while her physicians believed it would be in her best interests to be transitioned to comfort care. A575; AA3. Although Clarence refused to change Mrs. Marsala's status to "Do Not Reintubate," he agreed to leave in place the "Do Not Resuscitate" order that he had authorized when Mrs. Marsala was first admitted. A575.

Owing to the disagreement between Mrs. Marsala's treating physicians and some of her family members over whether to reintubate her if her condition did not improve, her case was referred to the Hospital's Ethics Committee. A543–44. The Ethics Committee is a standing committee authorized to consider ethical issues concerning patient treatment. It consists of several permanent members, as well as specialists from the field in question, the physicians and social workers familiar with the particular patient's case, and clergy members. *Id.* Although Clarence Marsala was invited to participate in the Ethics Committee's July 23 meeting, he did not attend. AA3; A544. The Ethics Committee noted that, despite Mrs. Marsala's poor prognosis, her husband "states that he still wants her to be intubated if necessary." A544. On the other hand, "[t]he primary team is concerned that we are providing futile care considering she has had multi-organ failure for several weeks now—respiratory failure, poor mental status, kidney failure, and stage IV skin break down over the back, as well as stage II over the bridge of nose from BiPAP use." *Id.*[4] The Ethics Committee's report noted that Clarence had "made comments to the primary team (physician and nursing) that his wife would not want to live this way, but he's not ready to give up." *Id.* The report also stated that Clarence had refused to allow "his sons to be involved in the decision making." *Id.*

[4] Although Mrs. Marsala had been extubated on July 20, she was provided assistance with breathing through a BiPAP (Bilevel Positive Airway Pressure) mask. A576; A544. The mask assisted her with breathing, but it caused the skin on her face to break down. A544.

Ultimately, after considering Mrs. Marsala's prognosis, the views of the medical team, and the views of the family, the Ethics Committee recommended "that there be no further escalation of care (meaning no intubation or pressors) considering this is not in the best interest of the patient and we are not providing care that would achieve the patient's goal of going home." *Id.* The Ethics Committee also recommended that dialysis be ceased, as it was not improving Mrs. Marsala's mental status. *Id.* Finally, it noted that if Clarence did not agree with the new treatment plan, he had the option of seeking to transfer Mrs. Marsala to another hospital, as he had done before, or going to the probate court. Despite being invited to participate, neither Clarence nor any of the Marsala children were present at the Ethics Committee meeting. *Id.* However, a Committee member left a voice mail for Clarence asking that he call her to discuss the Committee's decision. *Id.*

After Mr. Marsala was advised of the Ethics Committee's decision, the Hospital arranged for a second opinion from a physician who had not been involved in Mrs. Marsala's care. A590–91. That physician, a pulmonologist, stated that "I concur with the decision of [the] Primary team and of the ethics committee and further attempts at therapeutic intervention do not offer a chance of a better outcome. Reintubation, ongoing use of bipap based on both asynchrony and skin breakdown is not warranted. I agree to moving to a comfort care plan." A591; *see also* A542. The physician noted that he had left a message for Mr. Marsala explaining his agreement with the Committee's decision. A591.

Following the Ethics Committee's meeting, Mrs. Marsala's status was changed to comfort care only and a "Do Not Reintubate" order was entered. A589. According to Plaintiffs, someone from the Hospital informed Gary Marsala of the decision not to reintubate Mrs. Marsala on July 24, at which time Gary informed Clarence, who went to the hospital to protest. *See* Pls.' Br. at 4. Mrs. Marsala died that night at 10:45 p.m. A542. It is undisputed that neither Clarence nor any of the children were present when it was decided that Mrs. Marsala would be transitioned to comfort care or when she passed away. *See* AA3; A315, 375, 397, 436–37, 463, 473–75.

II. Procedural History

Plaintiffs Clarence, Michael, Gary, Tracey, Randy, and Kevin Marsala filed suit against YNHH on August 7, 2012. A2. The operative Complaint, filed on October 22, 2012, contained twenty-seven counts: the estate's wrongful-death claim (brought by Clarence as administrator), Clarence's loss-of-consortium claim, and claims of negligent and intentional infliction of emotional distress ("NIED" and "IIED," respectively) brought by Clarence and each of the five adult children. A15–47.[5]

The Hospital has never sought to dismiss the wrongful-death and loss-of-consortium claims, which remain pending in the trial court. *See* A262–63. The other counts, however, have all been disposed of. As relevant here, the NIED claims were stricken by Judge Lee on October 30, 2013. *See* A117–22, 127–36; A246.[6] Following discovery, YNHH moved for summary judgment on the IIED claims, and that motion was granted by Judge Tyma on March 19, 2015. *See* A233–41; A246.

Plaintiffs timely appealed. *See* A250–51. On June 15, 2015, this Court dismissed the appeal as to Clarence Marsala individually and as administrator of the estate, because Clarence still had claims pending in the trial court—namely, the estate's wrongful-death claim and his individual loss-of-consortium claim. A275. Those claims are set for trial, although the trial court stayed proceedings until after the conclusion of this appeal. AA5–8. As their opening brief makes clear, the only Plaintiffs who are pursuing this appeal are Mrs. Marsala's adult children. *See* Pls.' Br. at 1–2 & n.3. The only claims subject to this appeal, therefore, are the NIED and IIED claims on behalf of Michael, Gary, Tracey, Randy, and Kevin Marsala. *Id.*

---

[5] Also on October 22, 2012, Clarence, as Administrator of the estate, filed a separate one-count action, raising a claim of medical malpractice. A49–58. The two complaints were consolidated in the trial court for coordinated proceedings. *See* A246.

[6] Plaintiffs opted not to file a substitute pleading under P.B. § 10-44. *See* A229.

ARGUMENT

Though the wrongful-death and loss-of-consortium claims still pending in the trial court raise issues concerning a hospital's duties under the Removal of Life Support Systems Act, this appeal concerns only whether the adult children of Helen Marsala, the Hospital's patient, have adequately pled and developed facts to support independent claims of emotional distress relating to the care the Hospital provided Mrs. Marsala.

Courts have traditionally been wary of independent emotional-distress claims "[b]ecause of the fear of fictitious or trivial claims, distrust of the proof offered, and the difficulty of setting up any satisfactory boundaries to liability." Restatement (Second) of Torts § 46 cmt. b (1965). These concerns are heightened where, as here, the plaintiffs are not the party against whom the defendant's allegedly negligent or extreme and outrageous conduct was directed, but are rather "bystanders."[7] As the Supreme Court recently observed:

> Beyond the concerns that once counseled against affording a remedy for any purely emotional injury—the potential for trivial, frivolous or fraudulent claims, and the difficulties involved in tracing the etiology of psychological harms—recognition of bystander emotional distress has been hindered by concerns unique to the bystander context. Specifically, there have been fears that, if anyone who witnesses a serious accident or injury is permitted to bring his or her own independent claim, courts will be flooded with these derivative claims, and defendants will be subject to liability that is disproportionate to their fault.

Squeo v. Norwalk Hosp. Ass'n, 316 Conn. 558, 564 (2015). Those concerns are even more pronounced in the medical-malpractice context, which "differs from the typical bystander scenario, such as an automobile accident, in which a lay witness is able to simultaneously assess that (1) something has gone terribly awry, and (2) the error is the cause of the resulting injuries to the primary victim." *Id.* at 577. Moreover, in the medical-malpractice

---

[7] "Bystander emotional distress is a derivative claim, pursuant to which a bystander who witnesses another person (the primary victim) suffer injury or death as a result of the negligence of a third party seeks to recover from that third party for the emotional distress that the bystander suffers as a result. Courts historically have been reluctant to recognize this cause of action." *Squeo*, 316 Conn. at 564.

context, it is often "difficult, if not impossible, to determine whether the extreme emotional disturbance suffered by close relatives of a patient stems from their having witnessed the tortious conduct or simply from their natural concern over the illness and suffering of a loved one." *Id.* at 578.

For these reasons, courts have placed strict limits on the availability of emotional-distress claims for bystanders, particularly in the medical-malpractice context. As relevant in this appeal, in order to succeed on their claims of bystander emotional distress—whether NIED or IIED—Plaintiffs were required to show that they "contemporaneously observ[ed]" the alleged gross negligence or extreme and outrageous conduct that caused Mrs. Marsala's injuries, and that they, themselves, experienced emotional injuries that are "severe *and debilitating*, such that they warrant a psychiatric diagnosis or otherwise substantially impair the bystander's ability to cope with life's daily routines and demands." *Id.* at 580–81, 585.

As explained below, Plaintiffs failed to satisfy these strict standards. Judge Lee properly struck Plaintiffs' NIED claims because they failed to allege that they had contemporaneously observed YNHH's alleged negligence or the resulting injuries to their mother, the Hospital's patient. Discovery on Plaintiffs' IIED claims subsequently revealed that they had not in fact contemporaneously perceived any alleged act of negligence and had not suffered severe and debilitating emotional distress of the kind required under *Squeo*. Accordingly, Judge Tyma properly dismissed these claims on summary judgment. The IIED claims would also be subject to dismissal even if they were (incorrectly) construed as "direct" claims, rather than "bystander" claims, because no reasonable jury could conclude that YNHH's conduct in this case was "extreme and outrageous," and Plaintiffs have failed to show that any misconduct of YNHH's, separate and apart from the loss of their mother, caused them emotional distress.

Accordingly, this Court should affirm the judgment of the trial court.

I. The Trial Court Properly Struck Plaintiffs' NIED Claims.

Plaintiffs' NIED claims are properly construed as claims for bystander emotional distress. Accordingly, Judge Lee properly struck them because Plaintiffs failed to plead facts showing that they contemporaneously perceived either YNHH's alleged negligence or the resulting injury to Mrs. Marsala and that they suffered the severe and debilitating emotional distress that is necessary to state a bystander emotional-distress claim.[8]

A. Plaintiffs' NIED Claims Are Properly Characterized as Bystander Claims.

The basis of Plaintiffs' NIED claims is that YNHH breached a duty to "ascertain the wishes of the decedent, Helen Marsala," as to whether she should be kept on life support, despite being in a terminal, comatose condition with no realistic prospect of recovery. *See* A21–27. Because the duty YNHH allegedly breached was owed to *Mrs. Marsala*, and not to her children, Plaintiffs' claims are properly characterized as "bystander" emotional-distress claims and were therefore properly stricken, because Plaintiffs failed to allege facts sufficient to satisfy the requirements of a bystander emotional-distress claim. *See Clohessy v. Bachelor*, 237 Conn. 31, 56 (1996); *Squeo*, 316 Conn. at 571.

Whether an NIED claim is characterized as a "bystander" or "direct" claim ultimately depends on whether the legal duty allegedly breached by the defendant is owed directly to the plaintiff or to a third party. *See Clohessy*, 237 Conn. at 35–36.[9] Simply put, if YNHH did not *owe* a duty of care to Plaintiffs, then (negligent or not) it could not have *breached* a duty subjecting it to direct liability. *See id.* at 45 ("Duty is a legal conclusion about relationships

---

[8] Because a motion to strike challenges the legal sufficiency of a pleading, this Court's review of the trial court's ruling striking Plaintiffs' NIED claims is plenary. *E.g. Santorso v. Bristol Hosp.*, 308 Conn. 338, 349 (2013). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Id.*

[9] Though some courts also consider whether the plaintiff was in the "zone of danger" created by the defendant's negligence, the Supreme Court has recognized that "[b]ystander medical malpractice claims will rarely if ever arise under a zone of danger rule, as it is the rare form of medical malpractice that would pose a physical threat to bystanders." *Squeo*, 316 Conn. at 575 n.10. Here, there is no allegation in the Complaint that Plaintiffs were in the zone of danger created by YNHH's alleged negligence.

between individuals, made after the fact, and imperative to a negligence cause of action."). The test for the existence of a legal duty, in turn, entails:

> (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case.

Di Teresi v. Stamford Health Sys., 142 Conn. App. 72, 79–80 (2013); *see also Gazo v. City of Stamford*, 255 Conn. 245, 250 (2001) ("The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy."). Application of this test shows that YNHH owed no duty of care to Plaintiffs, the adult children of its patient.

For purposes of a motion to strike, Plaintiffs have alleged that YNHH knew or should have known that they would suffer emotional distress as a result of its decision to transition Mrs. Marsala to comfort care. *See* Pls.' Br. at 6 (citing *Di Teresi*, 142 Conn. App. at 81). However, "[a] simple conclusion that the harm to the plaintiff was foreseeable . . . cannot by itself mandate a determination that a legal duty exists." *Clohessy*, 237 Conn. at 45. Instead, "[a] further inquiry must be made." *Id.* "The final step in the duty inquiry . . . is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results." *Id.*; *see also, e.g.*, *Perodeau v. City of Hartford*, 259 Conn. 729, 751 (2002) (same).

In this case, the public-policy inquiry is simple. The legislature, "which has the primary responsibility for formulating public policy," *Sic v. Nunan*, 307 Conn. 399, 410 (2012), has expressly rejected the notion that hospitals owe a duty to the family members of patients with respect to end-of-life care. *See* Conn. Gen. Stat. § 19a-571. As initially enacted, the Removal of Life Support Systems Act required that the attending physician "obtain[] the informed consent of the next of kin . . . of the patient prior to removal" of life support. Public Act 85-606, § 2; *see also, e.g.*, *McConnell v. Beverly Enterprises-*

Connecticut, 209 Conn. 692, 703 (1989) (discussing prior version of the law).[10] However, requiring physicians to obtain the consent of patients' next of kin, in addition to discerning the patients' wishes, proved unworkable as a matter of policy. "In practice, the informed consent requirement allowed the next of kin to veto the patient's wishes." *Valentin v. St. Francis Hosp. & Med. Ctr.*, 2005 WL 3112881, at *3 (Conn. Super. Ct. 2005) (citing 34 H.R. Proc., Pt. 23, 1991 Sess., p. 8668). Accordingly, in 1991, the legislature amended § 19a-571 to abolish the so-called "family veto." *See* Public Act 91-283, § 2; *see also Valentin*, 2005 WL 3112881, at *3 (describing amendment).

Accordingly, Plaintiffs are categorically wrong when they suggest that § 19a-571 codifies the expectation "that the hospital will consult [the patient's] family members *and act in accordance with the wishes expressed thereby*." Pls.' Br. at 8. Quite the contrary, § 19a-571 was amended to ensure that hospitals would act in accordance with the patient's wishes alone. Under current law, physicians must consult with patients' family members only for the purpose of discerning *the patient*'s wishes with respect to end-of-life care. *See* Conn. Gen. Stat. § 19a-571(a); *see also Valentin*, 2005 WL 3112881, at *4 ("Section 19a-571 includes the next of kin in the list of people to be consulted in determining *the patient's* wishes regarding care if no living will exists and the decedent has not expressed the final wishes to the attending physician."); A121 ("Under . . . General Statutes § 19a-571(a), as amended, the role of the family in making the removal of life support [decision] is basically limited to conveying *the patient's* wishes to the health [care] provider.").

Because the legislature has clearly spoken on the issue of whether a hospital owes a patient's family members a duty to accede to their wishes with respect to the patient's end-of-life care, it is not necessary to undertake the four-factor analysis that courts typically

---

[10] Even under the repealed version of the statute, the Hospital would not have been required to act in accordance with Plaintiffs' wishes, because the repealed statute required only that hospitals obtain the express consent of the "next of kin." *See* Public Act 85-606, § 2. Mrs. Marsala's "next of kin" is Clarence, who is not a party to this appeal. *See* Conn. Gen. Stat. § 19a-570(9) (confirming, in 1991 amendment to statute's definitions, that surviving spouse is first in the "order or priority" above the patient's "adult son or daughter").

employ to assess whether public policy favors imposing a duty of care. *See, e.g.*, *Laurel Bank & Trust Co. v. Mark Ford, Inc.*, 182 Conn. 437, 442 (1980) ("A statute declares public policy. If that statute is constitutional it can never be declared to be against public policy.") (internal quotation marks and ellipses omitted); *Ireland v. Ireland*, 246 Conn. 413, 420 (1998) (courts look "to statutes as a source of policy for common-law adjudication, particularly where there is a close relationship between the statutory and common-law subject matters").

It bears mentioning, however, that the Supreme Court has *already* concluded, "as a matter of public policy," that hospitals owe no direct duty to bystanders to medical treatment, even if the bystanders are close family members. *Murillo v. Seymour Ambulance Ass'n*, 264 Conn. 474, 478, 480–84 (2003). In *Murillo*, the Court affirmed a decision striking the negligence claims of a woman who fainted and suffered physical injury after witnessing the defendants' repeated failed attempts to insert an IV needle into her sister's arm. *Id.* at 477. Applying the four-factor public-policy test, *see id.* at 480–84, the Court concluded that the defendant providers "owed no duty to the plaintiff—a bystander who was not a patient of the defendants—to prevent foreseeable injury to her as a result of her observing the medical procedures performed on her sister." *Id.* at 478. Plainly, the public-policy grounds for refusing to recognize a direct duty to prevent *physical* injuries to patients' family members doubly counsels against recognizing a duty to prevent more nebulous *emotional* injuries to patients' family members.

In addition, in *Mendillo v. Board of Education*, the Supreme Court employed a similar public-policy analysis in refusing to recognize third-party claims for loss of parental consortium by adult children. 246 Conn. 456, 484–85 (1998), *overruled, Campos v. Coleman*, 319 Conn. 36 (2015). Though the Court has since recognized a loss of consortium claim on behalf of a *minor* child of an *injured* parent, it still does not recognize a cause of action for adult children, or for children of any age claiming injuries arising out of the death of a parent. *Campos*, 319 Conn. at 57–59. To permit Mrs. Marsala's adult

children to bring emotional-distress claims arising from her death would be to permit an end-run around these limitations, so recently underscored in *Campos*.[11]

These cases are in accord with the general common-law rule that "[a]s a matter of public policy . . . the law should encourage medical care providers . . . to devote their efforts to their patients, and not be obligated to divert their attention to the possible consequences to bystanders of medical treatment of the patient." *Murillo*, 264 Conn. at 481; *see also Maloney v. Conroy*, 208 Conn. 392, 403 ("Medical judgments as to the appropriate treatment of a patient ought not to be influenced by the concern that a visitor may become upset from observing such treatment or from the failure to follow some notion of the visitor as to care of the patient."). Accordingly, even if the legislature had not foreclosed the matter, binding precedent requires a holding here that the Hospital owed no duty of care to Plaintiffs to avoid causing them emotional distress.

For these reasons, if YNHH is to be liable for negligent infliction of emotional distress, it must be because of its violation of a duty owed to Mrs. Marsala, its patient, and not a duty owed to Plaintiffs, her children. Therefore, in order to state a claim as bystanders

---

[11] Plaintiffs ignore *Murillo* and *Mendillo* entirely and instead cite two decisions of the Superior Court for the proposition that hospitals owe a duty of care to the family members of patients with regard to end-of-life-care. Pls.' Br. at 10–11 (citing *Valentin v. St. Francis*, 2005 WL 3112881 (Conn. Super. Ct. Nov. 7, 2005) and *O'Connell v. Bridgeport Hosp.*, 2000 WL 728819 (Conn. Super. Ct. May 17, 2000)). But neither of these lower-court decisions concerned a duty to "act in accordance with the wishes" of patients' family members. Instead, both cases concerned a hospital's duty to *notify* family members before withdrawing life support. *Valentin*, 2005 WL 728819, at *8; *O'Connell*, 2000 WL 728819, at *5; *see also* A121. This duty derives directly from the Removal of Life Support Systems Act, which requires a physician, "[w]ithin a reasonable time prior to withholding or causing the removal of any life support system," to "make reasonable efforts to notify the [patient's] health care representative, next-of-kin, legal guardian, conservator or person designated in accordance with section 1-56r, if available." Conn. Gen. Stat. § 19a-580. In this case, Plaintiffs concede, as they must, that the Hospital notified Clarence, the next of kin, of its intent not to reintubate Mrs. Marsala, so they cannot raise claims of the type recognized in *Valentin* and *O'Connell*. A544; AA3-4. Plaintiffs claim that the Hospital should have acceded to Clarence's request to reintubate Mrs. Marsala, but, as *Valentin* itself acknowledged, "the statute does not presently require the *consent* of the next of kin." *Valentin*, 2005 WL 728819, at *3.

to alleged medical malpractice, Plaintiffs must satisfy the standard set forth in *Clohessy,* as modified by the Supreme Court's more recent decision in *Squeo*. This they failed to do.

B. Plaintiffs Failed to State Claims for Bystander NIED.

"Bystander emotional distress is a derivative claim, pursuant to which a bystander who witnesses another person (the primary victim) suffer injury or death as a result of the negligence of a third party seeks to recover from that third party for the emotional distress that the bystander suffers as a result." *Squeo*, 316 Conn. 564. As the Supreme Court recognized in *Squeo*, "[c]ourts historically have been reluctant to recognize this cause of action." *Id.* This is particularly so in the context of medical malpractice, which "differs from the typical bystander scenario, such as an automobile accident, in which a lay witness is able to simultaneously assess that (1) something has gone terribly awry, and (2) the error is the cause of the resulting injuries to the primary victim." *Id.* at 945; *see also id.* ("In the health care setting . . . bystanders may witness severe injuries that are deeply disturbing but that are not the result of negligence; conversely, bystanders may witness instances of professional negligence, the nature or results of which are not readily apparent.").[12]

The Supreme Court has stressed that "specific limitations must be imposed . . . in order not to leave the liability of a negligent defendant open to undue extension by the verdict of sympathetic juries." *Clohessy*, 237 Conn. at 51. Specifically, the bystander must satisfy the following conditions:

> (1) he or she is closely related to the injury victim, such as the parent or sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical

[12] Indeed, until very recently, most Connecticut courts held that bystander emotional distress claims were per se impermissible in the medical-malpractice context. In *Maloney v. Conroy*, the Supreme Court held that, whether or not bystander emotional distress claims may be viable in other contexts, a bystander to medical malpractice could not recover for emotional distress. 208 Conn. at 393. However, in its recent decision in *Squeo,* the Court clarified that bystander emotional-distress claims *may* be brought in the medical malpractice context, albeit "only under extremely limited circumstances." 316 Conn. at 560.

> injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response.

Id. at 56. In its recent decision in *Squeo*, the Supreme Court reaffirmed these requirements and added two more: "a bystander to medical malpractice may bring a claim for the resulting emotional distress only when the injuries result from gross negligence such that it would be readily apparent to a lay observer," and the "bystander must suffer injuries that are severe and debilitating, such that they warrant a psychiatric diagnosis or otherwise substantially impair the bystander's ability to cope with life's daily routines and demands." *Squeo*, 316 Conn. at 560–61; *see also id.* at 580–81, 585.

Accordingly, following the Supreme Court's decision in *Squeo*, in order to state a claim for bystander NIED in the medical-malpractice context, a plaintiff must satisfy the following requirements: (1) he or she must be closely related to the injury victim, such as the parent or sibling of the victim, *id.* at 571; (2) he or she must have suffered emotional distress caused by the contemporaneous sensory perception of the event or conduct that causes the injury to the patient, *id.*; (3) the injury to the patient must be substantial, resulting in death or serious physical injury, *id.*; (4) the alleged medical malpractice must result from "gross negligence such that it would be readily apparent to a lay observer," *id.* at 560; (5) and the bystander's emotional injuries must be "severe and debilitating, such that they warrant a psychiatric diagnosis or otherwise substantially impair the bystander's ability to cope with life's daily demands and routines," *id.* at 560–61.

Plaintiffs fail to satisfy this standard. At a minimum, they failed plausibly to allege contemporaneous perception of the alleged negligence giving rise to their mother's injuries and that they suffered severe and debilitating emotional distress.[13]

---

[13] YNHH categorically denies any malpractice in this case, let alone gross negligence of the type necessary to satisfy the fourth factor identified above. However, given the procedural posture of the case when the NIED claims were stricken and given that these claims fail to satisfy two of the other conjunctive requirements of a bystander NIED claim, YNHH need not contest the gross-negligence requirement here.

1. Plaintiffs Failed to Allege Contemporaneous Perception.

As the Supreme Court held in *Clohessy*, and reiterated in *Squeo*, a bystander to alleged medical malpractice can only bring a claim for negligent infliction of emotional distress if his or her distress is "caused by the *contemporaneous sensory perception* of the event or conduct that causes the accident or injury" to the patient. *Squeo*, 316 Conn. at 582 (citing *Clohessy*, 237 Conn. at 52–56).[14]

In light of this standard, Judge Lee properly struck Plaintiffs' NIED claims after finding that "the plaintiffs nowhere allege that they witnessed the actual removal of the respirator or the resulting demise of Mrs. Marsala or arrived shortly thereafter." A122. According to their own Complaint, no Plaintiff was present at the time that YNHH staff informed Clarence Marsala that they planned to remove Mrs. Marsala's ventilator tube, A19, or when they in fact removed the ventilator, A20, or when Mrs. Marsala died, A20. Even "tak[ing] the facts to be those alleged in the complaint that has been stricken," *Mueller v. Tepler*, 312 Conn. 631, 647 (2014), there simply *are no facts* alleged in the Complaint that suggest Plaintiffs contemporaneously perceived, or arrived soon after, YNHH's alleged negligence, as required to state a claim for bystander NIED. *See, e.g.*, *Bridgeport Harbor Place I, LLC v. Ganim*, 303 Conn. 205, 213 (2011) ("A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.").

---

[14] It is not clear whether a plaintiff bringing a bystander NIED claim must allege and prove that she contemporaneously perceived the negligent act, or whether it is sufficient to show that she arrived immediately after the negligent act and observed the injured person. In *Amodio v. Cunningham*, 182 Conn. 80 (1980), the Supreme Court suggested that bystander NIED claims are limited to "situations where the injury to the third party is manifest contemporaneously with the negligent act." *Id.* at 91–92; *see also id.* at 90 ("Merely observing the consequences of the defendant's negligence towards another person without perceiving the actual negligent behavior . . . is insufficient to maintain a cause of action for emotional distress to a bystander."). In *Clohessy*, however, the Court stated that the requirement could also be satisfied "by viewing the victim *immediately* after the injury causing event if no material change has occurred with respect to the victim's location and condition." 237 Conn. at 52; *see also id. at* 56. In this case, it does not matter how strictly the contemporaneous-perception requirement is applied, because Plaintiffs do not claim to have witnessed the alleged negligence *or* to have arrived soon after to observe their mother without any substantial change in her condition and location.

On appeal, Plaintiffs argue that the mere allegation that Gary Marsala objected on July 24, 2010, to YNHH's plan to permanently remove the ventilator "leads to the reasonable inference that Gary was aware of the decedent's removal from life support and impending death on the night of July 24, 2010, or that he saw the decedent shortly after her death." Pls.' Br. at 18. "It further leads," Plaintiffs maintain, "to the reasonable inference that Gary, as any sibling would, informed the other appellants of the appellee's decision, leading to their own contemporaneous perceptions of the appellee's conduct. Moreover, the allegations pleaded by the appellants lead to the reasonable inference that all of the appellants rushed to see their mother soon after they learned of her murder." *Id.*

Although courts are required to construe complaints in the manner most favorable to sustaining their legal sufficiency, they may not draw inferences that are not supported by the facts actually alleged in the complaint. If Plaintiffs had more to plead, they should, and could, have done so. In *Pike v. Bugbee*, for example, the Appellate Court considered the sufficiency of a claim of parental liability, which requires proof of the minority of the defendant's child. 115 Conn. App. 820, 828 (2009). The complaint, however, failed to allege the minority of the defendant's son, and the Court refused to draw that inference from the facts alleged. *Id.* ("[E]ven when the pleadings are construed broadly, the minority of Blake Bugbee is not a reasonable inference that can be derived from the facts alleged."). Here, too, it is not possible for a court to infer that Plaintiffs contemporaneously observed the Hospital's alleged negligent acts or the resulting harm to Mrs. Marsala when the Complaint contains no allegations that any of them were anywhere near the Hospital at any relevant point in time.

Indeed, just as in *Pike*, the key factual allegation in this case was not made for the simple reason that it isn't true. In *Pike*, the Court observed that the plaintiff had conceded at oral argument that the defendant's son was not, in fact, a minor at the time of the incident. *Id.* at 827 n.4. In this case, discovery conducted on Plaintiffs' IIED claims, which survived the motion to strike, revealed that none of the Plaintiffs were at the Hospital at any relevant

point in time. *See infra* at 26. Although Plaintiffs' NIED claims were stricken before discovery, this Court need not blind itself to the later revealed evidence. *See, e.g., In re Mark C.*, 28 Conn. App. 247, 253 (1992) (court "has the power to take judicial notice of court files or other actions between the same parties").[15] If nothing else, the facts as discovered in this case explain why the Complaint did not allege the required elements of an NIED claim and why Plaintiffs did not amend to add them.

Because Plaintiffs failed to allege that they contemporaneously perceived either YNHH's alleged negligence or the resulting injury to their mother, the trial court was correct in striking their claims for bystander NIED. *See, e.g., Valentin*, 2005 WL 3112881, at *2 n.3 (striking bystander NIED claim because "[w]hile the plaintiff was closely related [to the patient], she was not present at the hospital and did not witness any of the alleged conduct causing injury nor was she immediately aware of her father's death"); *Hernandez v. Yale-New Haven Hosp.*, 2010 WL 3786861, at *9 (Conn. Super. Ct. 2010) (striking bystander NIED claim where plaintiff "did not witness the alleged act of medical negligence . . . [but rather] witnessed only the effects of this alleged negligence").

2. *Plaintiffs Failed Plausibly to Allege Severe and Debilitating Emotional Distress.*

Although it had not been decided at the time Judge Lee rendered his decision granting the Hospital's motion to strike Plaintiff's NIED claims, the Supreme Court's decision in *Squeo* adds an additional ground for affirming Judge Lee's decision. *See generally Gerardi v. City of Bridgeport*, 294 Conn. 461, 466–67 (2010) (appellate court may affirm on alternative grounds in the record). In *Squeo*, the Supreme Court held that a bystander NIED claim "will lie only when the bystander's psychological injuries are both

---

[15] Moreover, to the extent that the Court holds that Plaintiffs have failed to produce sufficient evidence of contemporaneous perception and severe and debilitating distress to go to trial on their IIED claims, *see infra* at 22, that holding would be collateral estoppel and the law of the case with respect to the identical elements in Plaintiffs' NIED claims. *See generally Dowling v. Finley Assocs.*, 248 Conn. 364, 373 (1999); *Bowman v. Jack's Auto Sales*, 54 Conn. App. 289, 292–93 (1999). Accordingly, any belated attempt on the part of Plaintiffs to amend their Complaint to allege contemporaneous perception and severe and debilitating distress would be foreclosed.

severe and debilitating, such that they warrant a psychiatric diagnosis or otherwise substantially impair the bystander's ability to cope with life's daily routines and demands." 316 Conn. at 585. Although the Supreme Court in *Squeo* did not expressly require allegations and proof of a psychiatric diagnosis, it emphasized the need "to restrict bystander emotional distress claims to psychological injuries that are on a par with diagnosable mental disorders." *Id.* at 587. Applying this standard, the Court in *Squeo* rejected the claims of a mother and father who alleged that they had suffered severe emotional distress after discovering their son hanging from a tree after he was negligently discharged from the hospital where he had gone for a psychiatric evaluation. *Id.* at 596–97. Although the parents had attended intermittent therapy sessions, the Court found it relevant that they had not received any psychiatric diagnoses and had not missed a significant amount of work as a result of their emotional distress. *Id.*

In their Complaint, Plaintiffs each make an identical allegation regarding their emotional distress:

> As a result of the defendant, Yale New Haven Hospital's conduct . . . the plaintiff . . . suffered the following serious, painful and permanent injuries: (a) severe emotional distress; (b) loss of opportunity to say goodbye; (c) depression; (d) loss of sleep; (e) stress; (f) anxiety; and (g) pain and suffering.

A21–22, 23, 24–25, 25–26, 27. Plaintiffs allege no facts to support their conclusory allegations of severe emotional distress. They do not allege that they were diagnosed with any mental disorders, or that they suffered from emotional distress "on a par with" a diagnosable disorder. *Squeo,* 316 Conn. at 587–88. Nor do they allege that their lives were significantly disrupted as a result of their alleged emotional distress. There is no allegation that any Plaintiff missed work or was otherwise "substantially impair[ed] [in] his or her ability to cope with life's daily routines and demands." *Id.* at 591–92.

While the Court is bound to draw reasonable inferences in Plaintiffs' favor, "[a] motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Ganim*, 303 Conn. at 213 (2011). Because Plaintiffs

merely set forth identical, conclusory allegations regarding their emotional distress, without any accompanying factual support, their bystander NIED claims may be dismissed for failure adequately to allege that they suffered "severe and debilitating" emotional distress as a result of observing YNHH's negligence.

II. The Trial Court Properly Granted Summary Judgment to the Hospital on Plaintiffs' IIED Claims.

The Hospital did not move to strike Plaintiffs' IIED claims on grounds that they failed to satisfy the *Clohessy* requirements for bystander claims. *See* A69–71; A122–27. Following discovery, which conclusively revealed that the Hospital did not transition Mrs. Marsala to comfort care *for the purpose* of inflicting severe emotional distress on Plaintiffs, the Hospital moved for summary judgment on the IIED claims on grounds, *inter alia*, that they are bystander claims and that Plaintiffs could not satisfy all the elements of a bystander emotional-distress claim. *See* A163–64. Judge Tyma correctly held that Plaintiffs' IIED claims were bystander claims, and dismissed them on summary judgment, because at that time (before *Squeo*) this Court's binding precedent made bystander claims unavailable in the medical-malpractice context. A239–41; *see also* A236 n.9.

Although the Supreme Court subsequently held that "bystander claims should be available in the medical malpractice context only under extremely limited circumstances," *Squeo*, 316 Conn. at 560, Judge Tyma's summary-judgment ruling dismissing Plaintiffs' IIED claims should nevertheless be affirmed because Plaintiffs fail to satisfy the elements of a bystander IIED. *See generally Gerardi*, 294 Conn. 461, 466–67 (2010) (appellate court may affirm on alternative grounds in the record).[16] Specifically, as with their NIED claims,

---

[16] In their brief, Plaintiffs argue that "[a]n appellate court should not affirm the judgment of a trial court on alternative grounds that were not considered by the trial court." Pls.' Br. at 19 (citing *Kiewlen v. City of Meriden*, 317 Conn. 139, 156 (2015)). The general rule, however, is that an appellate court may affirm on any grounds supported in the record. *E.g. Gerardi*, 294 Conn. at 466. In *Kiewlen*, the Supreme Court declined to consider two alternative defenses as grounds for affirmance because they were not supported in the record, not because they were not relied upon by the trial court. *Id.* at 155-56 (citing *White v. Mazda Motor of Am.*, 313 Conn 610, 619–20) (2014) ("*Because our review is limited to*

Plaintiffs have failed to show that they contemporaneously perceived the alleged "extreme and outrageous conduct" and that they suffered severe and debilitating emotional distress.

A. Plaintiffs' IIED Claims Are Properly Characterized As Bystander Emotional Distress Claims.

Although Plaintiffs maintain that the alleged conduct underlying their IIED claims was directed at them, and not at Mrs. Marsala, neither the allegations in their Complaint nor the record evidence supports this assertion. Instead, as Judge Tyma correctly discerned, Plaintiffs' claims concern conduct directed at Mrs. Marsala, the patient, and are therefore properly considered bystander claims subject to additional requirements of proof.

Neither this Court nor the Supreme Court has squarely addressed how to distinguish bystander IIED claims from direct IIED claims. However, as Judge Tyma observed, lower courts have consistently held that IIED claims should be classified as bystander claims "where the challenged conduct was not directed at the plaintiff, but at a third party." A238 (citing cases). This is consistent with the treatment of the issue in the Restatement (Second) of Torts, which Connecticut courts often look to for guidance. *See, e.g.*, *Appleton v. Bd. of Educ.*, 254 Conn. 205, 210–11 (2000); Under the Restatement rule:

> (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.
> (2) *Where such conduct is directed at a third person*, the actor is subject to liability if he intentionally or recklessly causes *severe emotional distress*
> a. to a member of such person's immediate family *who is present at the time*, whether or not such distress results in bodily harm, or
> b. to any other person who is present at the time, if such distress results in bodily harm.

Restatement (Second) of Torts § 46 (1965) (emphases added).

The Restatement (Third) of Torts retains this rule and clarifies the distinction between direct and bystander claims in the IIED context. Restatement (Third) of Torts:

---

matters in the record, we . . . will not address issues not decided by the trial court."). Here, the alternative basis for affirmance is not only supported by the record, it was briefed and argued below. Accordingly, there is no reason for this Court to ignore it.

Phys. & Emot. Harm § 46 (2010).[17] The distinction turns on whether the tortfeasor's alleged extreme and outrageous conduct is undertaken with the specific purpose of causing emotional distress to the bystander (in which case, the resulting action is properly characterized as a direct IIED claim), or if it is substantially certain to cause severe emotional harm to the bystander (in which case it is properly characterized as a bystander claim). As explained in the Restatement (Third)'s commentary:

> When an actor's extreme and outrageous conduct causes harm to a third person, as for example, when a murderer kills a husband in the presence of his wife, the actor may know that the murder is substantially certain to cause severe emotional harm to the witnessing spouse. The murderer acts at least recklessly regard to that risk. In these cases, this Section applies.

Id. § 46 cmt. m.

However, in that situation—that is, where the tortfeasor intentionally causes harm to one person, with reckless disregard for the risk of causing severe emotional harm to another—the Restatement rule requires that the bystander contemporaneously perceive the extreme and outrageous conduct. Restatement (Second) of Torts § 46, cmt. l ("The cases thus far decided . . . have limited [bystander] liability to plaintiffs who were present at the time, as distinguished from those who discover later what has occurred."); Restatement (Third) § 46, cmt. m ("Although the Second Restatement limited liability for emotional harm caused by harm to a third person by requiring 'presence at the time,' this Comment expresses that limitation by requiring 'contemporaneous perception of the event.'"). In contrast, "[i]f an actor harms someone *for the purpose of inflicting mental distress on another person*, the limitations contained in this Comment do not apply." *Id.*

The contemporaneous-perception requirement is "justified by the practical necessity of drawing the line somewhere, since the number of persons who may suffer emotional distress at the news of an assassination of the President is virtually unlimited, and the

---

[17] The Restatement (Third), which was adopted in 2010, has also been favorably cited by Connecticut courts. *See, e.g., Ruiz v. Victory Props.*, 315 Conn. 320 (2015); *Huber v. Bakewell*, 2015 WL 3973881, at *2 (Conn. Super. Ct. June 3, 2015).

distress of a woman who is informed of her husband's murder ten years afterward may lack the guarantee of genuineness which her presence on the spot would afford." Restatement (Second) § 46, cmt. l; *see also* Restatement (Third) of Torts § 46, cmt. m ("Modern courts have continued to limit liability to cases in which the person seeking recovery contemporaneously perceived the event, as distinguished from those who discovered what has occurred later. This limitation may be justified by the practical necessity of drawing a line, since the number of persons who suffer emotional harm at the news of a homicide or other outrageous attack may be virtually unlimited.").

In this case, although Plaintiffs cavalierly accuse YNHH of "murder[ing]" Mrs. Marsala, *see, e.g.*, Pls.' Br. at 18, 20, 25, even they don't allege, let alone cite evidence suggesting, that YNHH acted *for the purpose* of inflicting emotional harm on them. *See* Pls.' Br. at 20 ("The appellee knew or should have known that, given the sensitive nature of the life or death situation, emotional distress was the likely result of terminating the decedent's life support."). This case is not, therefore, analogous to the Restatement illustration of a tortfeasor killing a man in front of his wife with the specific intent of causing her emotional distress. *See* Restatement (Second) of Torts § 46, illus. 21 & 22; *see also* Restatement (Third) of Torts § 46, cmt. m. & illus. 12. At worst, Plaintiffs accuse YNHH of intentionally removing Mrs. Marsala's life support knowing that this allegedly extreme and outrageous conduct would likely cause them severe emotional distress. As such, these claims are properly characterized as bystander IIED claims.

B. Plaintiffs Failed to Satisfy the Requirements of a Bystander IIED Claim.

Because Plaintiffs' IIED claims are properly classified as bystander claims, Plaintiffs had the burden of showing that they contemporaneously perceived YNHH's allegedly extreme and outrageous conduct, and that they suffered severe and debilitating emotional distress as a result. As Judge Tyma aptly observed, "[t]he restrictions placed upon the indirect intentional infliction claims of family members are similar to the elements of a bystander [NIED] claim in this state." A238–39 (comparing Restatement (Second) § 46 with

Clohessy, 237 Conn. 56). Therefore, for reasons similar to those supporting the decision striking Plaintiffs NIED claims, their IIED claims must also be dismissed.

1. Plaintiffs Failed to Show Contemporaneous Perception.

As noted above with respect to their NIED claims, Plaintiffs' Complaint contains no allegation that they contemporaneously perceived either YNHH's alleged misconduct in withdrawing Mrs. Marsala's life support or the resulting injury to Mrs. Marsala. *See supra* at 20. Because YNHH did not move to strike Plaintiffs' IIED claims on similar grounds, they proceeded to discovery, which revealed that in fact not one of the Plaintiffs satisfies the contemporaneous-perception requirement. Each Plaintiff provided deposition testimony confirming that he or she was *not* present at any time relevant to their claims. Not one was present when the decision was made to transition Mrs. Marsala to comfort care; not one was present when Mrs. Marsala's status was switched to "Do Not Reintubate"; not one was present when Mrs. Marsala's ventilator was removed on July 20; and not one was present when she died four days later. *See generally* Pls.' Br. at 27–28 (conceding that no Plaintiff was present at the time Mrs. Marsala died).

Gary Marsala testified that he had a discussion with one of Mrs. Marsala's doctors, during which the doctor told him that they were considering removing the ventilator. But he further testified that he left the hospital before the ventilator was removed, and he does not believe that he saw his mother again after that conversation. A375. Michael, Kevin, and Randy Marsala, in turn, each testified that he found out about the removal of the ventilator, and Mrs. Marsala's subsequent death, via a telephone call. A397, 436–37, 463. And Tracey Marsala never once saw her mother at the hospital and did not even learn of the circumstances of her death until she was noticed for a deposition in this case. A473–75; *see also* A323.

Because the record irrefutably shows that none of the Plaintiffs contemporaneously perceived either the Hospital's allegedly extreme and outrageous conduct toward Mrs. Marsala or the resulting injury to their mother, this Court should affirm the trial court's

judgment dismissing Plaintiffs' IIED claims under the alternative ground that they failed to satisfy this prong of the Restatement/*Clohessy* standard. *See, e.g.*, *Gerardi*, 294 Conn. at 466–67 (appellate court may affirm on alternative grounds in the record).

2. Plaintiffs Failed to Show Severe and Debilitating Emotional Distress.

The record also conclusively establishes that Plaintiffs did not suffer "severe and debilitating" distress of the kind necessary to satisfy *Squeo*'s requirements for bystander claims. As discussed above, *supra* at 21, the Supreme Court in *Squeo* held that "a bystander cause of action will lie only when the bystander's psychological injuries are both severe and debilitating, such that they warrant a psychiatric diagnosis or otherwise substantially impair the bystander's ability to cope with life's daily routines and demands." 316 Conn. at 585.

The facts of *Squeo* illustrate how high the threshold is for succeeding on a bystander emotional distress claim.[18] The plaintiffs, Agnes and Joseph Squeo, sued Norwalk Hospital and one of its nurses, alleging that the nurse had negligently discharged their suicidal son after conducting an emergency psychiatric evaluation. *Id.* at 561, 563. They claimed that they suffered severe emotional distress when, approximately thirty-five minutes after his discharge, they discovered him hanging from a tree in their front yard. *Id.* The record revealed that Agnes had discussed "the images that [she] had to deal with and the nightmares" with a family therapist, a social worker, and her pastor, and had taken prescription sleeping pills and that Joseph had ultimately sought psychiatric treatment for emotional distress four years after the suicide. *Id.* at 596–97. Nevertheless, and despite the

[18] Although *Squeo* concerned a claim of *negligent* infliction of emotional distress, there is no reason why the standard for proving "severe and debilitating emotional distress" should be any different for clams of bystander IIED claims. Indeed, as a general matter, IIED claims require a *greater* showing of emotional distress than do NIED claims. *See* Restatement (Third) of Torts, Phys. & Emot. Harm § 46, cmt. j. ("[T]he threshold of severity required for liability under this Section is greater than that required for liability under §§ 47 and 48," concerning negligent and reckless infliction of emotional distress). A direct IIED claim requires proof of "severe" (as opposed to "serious") emotional distress, which the Restatement describes as distress "so severe that no reasonable man could be expected to endure it." Restatement (Third) of Torts § 46, cmt. j.

"deeply and inherently traumatic" nature of witnessing one's child hanging from a tree in broad daylight, *id.* at 598, the Court concluded that the Squeos had *not* demonstrated "severe and debilitating" emotional distress of the type necessary to state a bystander emotional-distress claim, primarily because they were able to remain employed and neither needed significant medication or mental-health care. *Id.* at 599–600 (citing cases from other jurisdictions imposing similarly stringent standards).

While no one doubts that Plaintiffs were distraught to lose their mother, their emotional distress, as discussed in their depositions, simply does not approach the degree of severity necessary to satisfy *Squeo*'s standard. Gary testified that he thinks about his mother's death every day, and about how he "didn't get a chance to say goodbye." A377–78. He said he still picks up the phone sometimes to call her and he "get[s] angry once in a while." *Id.*; *see also* Pls.' Br. at 25. Randy testified that YNHH's conduct made him "upset and mad and angry." A464; *see also* Pls.' Br. at 25–26. Michael testified that the ordeal upset him in a "lot of ways. One, not being able to say goodbye. Two, angry, depressed a little bit, crying constantly, speaking to God all the time." A444; *see also* Pls.' Br. at 25. Likewise, Kevin testified that he spent a lot of time crying and sometimes felt pains in his chest, and that it wears on him that he could not do anything for his mother. A399. For her part, Tracey Marsala testified that she was "very unhappy," A483, but she also testified that she did not know the circumstances of her mother's death until February 2014, A474.[19]

None of the Plaintiffs "experienced the most common indicia of severe emotional

---

[19] Following their depositions, each Plaintiff signed an identical affidavit claiming to have suffered "shock, amazement, depression, confusion, anger, sadness, grief and disappointment." *See* A278, 282, 286, 290, 294. These conclusory assertions are not enough to create a genuine issue of fact regarding whether Plaintiffs' emotional distress satisfies the *Squeo* standard. *See, e.g.*, *Stuart v. Freiberg*, 316 Conn. 809, 828–29 (2015) (rejecting averments in affidavit submitted in opposition to summary judgment, which "closely replicate[d] portions of the pleadings" and "are conclusory, and therefore inadequate to defeat a summary judgment motion"); *Hoskins v. Titan Value Equities Grp.*, 252 Conn. 789, 793–94 (2000) ("A conclusory assertion . . . does not constitute evidence sufficient to establish the existence of a disputed material fact for purposes of a motion for summary judgment.").

distress, such as an inability to work or a need for ongoing medical or psychological care." *Squeo*, 316 Conn. at 593; *see* A378 (Gary testifying that he did not see anyone professionally and took "almost a week" off of work); A399 (Kevin testifying that he did not see anyone professionally about his feelings and "possibly could have" lost his job because he was preoccupied thinking about what had happened);[20] A444, A409 (Michael testifying that he has not seen anyone professionally to discuss his feelings and that he had not been employed for "[m]any years" before his mother's death);[21] A463 (Randy testifying that he has not seen "any professional about this event"). On the contrary, the emotional injuries Plaintiffs testified to, while no doubt palpable and sincere, are indistinguishable from the type of distress one would ordinarily expect upon losing a parent. *See generally* Pls.' Br. at 25–26, 29 (describing Plaintiffs' alleged emotional distress).

"Just as 'few persons travel through life alone,' few of us complete the journey without ever suffering the loss of a parent, child, sibling or partner." *Squeo*, 316 Conn. at 598 (quoting *Clohessy*, 237 Conn. at 47). The record demonstrates that Plaintiffs' emotional distress was not "beyond the normal reaction of a [child] to . . . losing a [parent]." *Id.* at 599. Accordingly, while Plaintiffs are entitled to sympathy, they do not satisfy the Supreme Court's strict requirements for bringing a bystander emotional-distress claim.[22]

---

[20] Plaintiffs contend that Keven "believed the grief he suffered played a role in his recent loss of employment." Pls.' Br. at 26. In fact, when specifically asked whether his most recent loss of employment could have anything to do with his emotional distress, Kevin responded, "[i]t possibly could have." A399. In the same deposition, he noted that the loss of his most recent job coincided with a divorce. A383. Kevin had a history of bouncing from job to job in the food-services industry, dating back before his mother's death. A382–83, 399. He did not testify, nor is there any evidence to suggest, that he suffered an *inability* to work.

[21] Plaintiffs contend that Michael "considered seeking professional help to cope with his grief." Pls.' Br. at 25. His testimony in fact demonstrates that his emotional distress, while no doubt sincere, was not debilitating. *See* A444 ("Q. Have you seen anyone professionally discuss these issues? A. No. Q. Have you thought about that? A. No. A little, but not enough to react on it.").

[22] Plaintiffs argue that the Court should "remand the matter and permit [them] to supplement the record with additional evidence geared toward the elements of bystander emotional distress." Pls.' Br. at 27 n.13. Any such remand would be futile. While Plaintiffs claim to have "conducted discovery . . . on the assumption that they had properly raised

C. Even if Analyzed as Direct Claims, Plaintiffs' IIED Claims Fail.

Although Plaintiffs IIED claims are properly classified as bystander claims, requiring contemporaneous sensory perception, the claims would fail even under a direct IIED analysis, for three reasons. The first reason, explained above, is that Plaintiffs failed to show they suffered severe and debilitating emotional distress as required even for direct IIED claims under the Restatement and *Squeo*. *See supra* at 27–29 & n.18. Beyond that, Plaintiffs also failed to show that the Hospital's conduct was extreme and outrageous and that the conduct proximately caused their alleged emotional distress.

1. The Hospital's Conduct Was Not "Extreme and Outrageous."

The Supreme Court has instructed that "[l]iability for intentional infliction of emotional distress requires conduct that exceeds all bounds usually tolerated by decent society." *Appleton*, 254 Conn. at 210–11 (2000). Such liability "has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* Although Plaintiffs' Complaint may adequately have *alleged* that the Hospital's conduct rose to this level, *see* A123–24, the evidence later developed in discovery belies any suggestion that YNHH acted in an extreme and outrageous manner.

Lost in Plaintiffs' telling of the story is the fact that, when the Hospital decided to remove Mrs. Marsala's ventilator tube, it was with the hope that allowing her to breathe on her own might trigger a physiological response that would help her to regain consciousness. AA 2–3 ("I believed that removing the ventilator and allowing Mrs. Marsala to try and breathe on her own and see if her mental status would improve was the best course of treatment after a comprehensive medical evaluation."); A341–42 ("[O]ne of the

---

claims of IIED," there is no escaping the fact that the record conclusively demonstrates that they do not satisfy the elements of a bystander claim. Plaintiffs cannot now try to turn back the clock and change their sworn testimony to the effect that none of them contemporaneously perceived the Hospital's alleged negligence or Mrs. Marsala's injury and none of them suffered severe and debilitating emotional distress.

thoughts I had was that maybe, if we took her off the ventilator, she would perk up. . . . I think my hope was taking her off, she would maybe wake up."). In addition to the hope that Mrs. Marsala might respond positively to extubation, her doctors feared that if she remained intubated her condition would further deteriorate. AA2. The decision to extubate was made in consultation with Mr. Marsala and Michael Marsala. A575; AA3. While the Marsalas insisted that Mrs. Marsala be reintubated if necessary, they did not object to extubation. A544, A575.

When extubation did not restore Mrs. Marsala's mental status, her medical team did not think there was anything further that could be done for her. A355–56; A610–12. Still, recognizing that the family wanted Mrs. Marsala reintubated, her physicians referred her case to the Ethics Committee, which consists not only of doctors, but also social workers and clergy members. A543–44. They invited Mr. Marsala to attend the meeting of the Ethics Committee, but he declined. AA3; A544. After reviewing the case, the Ethics Committee agreed that Mrs. Marsala had no realistic possibility of improving and that she should be transitioned to comfort care. A544. The Hospital then provided Mr. Marsala with a second opinion from a disinterested pulmonologist, who agreed that Mrs. Marsala had no prospect of recovery and should not be reintubated. A590–91. Throughout this process, physicians and staff made numerous attempts to speak with Mr. Marsala to discuss Mrs. Marsala's prognosis and treatment, but he became withdrawn and difficult to reach. *See* A356–57; A435.

The question in this appeal is not whether YNHH acted properly in discontinuing care that it considered futile and against the best interests of its patient. That question will be answered at trial of the estate's wrongful-death claim. Instead, to the extent the IIED claims are construed as direct claims to begin with, the relevant question is whether the Hospital's refusal to provide care requested by a patient's family—care that the patient's treating physicians, the Ethics Committee, and an uninvolved physician all agreed was futile and against the best interests of the patient—is conduct that is "beyond all possible

bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Appleton*, 254 Conn. at 211.

In that respect, it is highly relevant that the contemporaneous evidence indicates that Clarence Marsala informed physicians that "he and his wife had never explicitly discussed her wishes for aggressive interventions with an eye towards life-prolongation." A565; *contra* Pls.' Br. at 21. At that time, Mr. Marsala stated that he "was concerned about the possibility that she was suffering, and seemed receptive to hearing the views of the team. He seemed to understand that withdrawal of care may be indicated if the clinical situation does not improve. He did not seem to feel that 'life' at all costs was consistent with his frame of reference or beliefs." A565. Though Clarence did insist that *he* wanted Mrs. Marsala to be reintubated rather than transitioned to comfort care, there is no contemporaneous evidence that the Hospital had reason to believe that *Mrs. Marsala*, its patient, wished to remain on life support when she had no prospect of recovery. On the contrary, as noted in the Ethics Committee report, Clarence had "made comments to the primary team (physician and nursing), that his wife would not want to live this way, but *he's* not ready to give up." A544.

In an effort to bolster their claim of extreme and outrageous conduct, Plaintiffs grossly misrepresent Mrs. Marsala's degree of consciousness in the days surrounding her extubation. *See* Pls.' Br. at 22. They claim that "on the day that the appellee terminated her life support, a nursing note indicated that she was 'alert and oriented x3, pupils normal size and reactive, speech [was] clear and understandable or developmentally appropriate, no impairment in all extremities." *Id.* (citing A595). In fact, the opposite is true. The nursing note contained choices of different states, with prompts to indicate whether the nurse agrees or disagrees with each. With respect to the language quoted above, the nurse marked "*Disagree*." A595. As even Plaintiffs acknowledge, Mrs. Marsala was in a coma and had been in a depressed mental state for over two months with no sign of improvement by the time she was extubated. *See* A541–42, 543–44; A319. While it is possible that she might have remained alive in a coma for a while longer had she been reintubated, *see*

A347, A612–13, there is no genuine dispute of fact that she had no prospect of recovering.[23]

Plaintiffs also contend that the Hospital made no efforts to transfer Mrs. Marsala prior to withdrawing her life support and transitioning her to comfort care. Pls.' Br. at 22. It is true that the Hospital did not, itself, seek to have Mrs. Marsala transferred, but that was because she was not an appropriate candidate for transfer, given her dire prognosis and the fact that she had already been transferred once before. A358. The Hospital did *not*, however, prevent Mrs. Marsala's family from seeking a transfer or from going to the probate court for an order requiring that she be reintubated. *See, e.g.*, A544 (Ethics Committee report stating that, if Clarence did not agree with plan to transition Mrs. Marsala to comfort care, "he has the option of seeking transfer of care to a different hospital and/or going to the probate court.").[24]

2. Plaintiffs Cannot Prove Causation.

Finally, whether cast as a bystander or direct claim, Plaintiffs have failed to show that their emotional distress was proximately caused by the Hospital's conduct. As this Court has recognized, where third parties raise emotional-distress claims, it is difficult to distinguish whether the plaintiffs' distress is "the result of natural grief over [their] mother's death, which may have occurred even in the absence of malpractice," or the result of the defendant's actions. *Di Teresi*, 142 Conn. App. at 83.

---

[23] Plaintiffs claim that "two of the decedent's physicians did not rule out the possibility of the decedent recovering from her ailments had she remained on life support." Pls.' Br. 22. In fact, the attending physicians testified only that Mrs. Marsala's death would have been "delayed" had she been reintubated. *See* A348 ("[I]f we breathe[d] for her, she may have lived a little bit longer. But . . . [s]*he would have died either way.*"); A612–13 ("[I]t would be very difficult to see in which way she could recover after having that intensive a period of treatment without demonstrable improvement."). Even Plaintiffs' own expert witness testified only that, had she been reintubated, Mrs. Marsala would not have died *on July 24, 2010*. A528–29. He did not testify, as Plaintiffs suggest, that she might have recovered. *See* Pls.' Br. at 22.

[24] Under Conn. Gen. Stat. § 19a-580c, the probate court has jurisdiction of disputes concerning end-of-life care. There is no requirement that a Hospital secure an order from the probate court before withdrawing life-sustaining treatment. *See* Conn. Gen. Stat § 19a-580.

Because this is a case where the Hospital's alleged misconduct merely hastened an outcome that was not merely inevitable, but imminent, it is impossible to distinguish whatever emotional distress Plaintiffs felt as a result of the Hospital's conduct, from the emotional distress they would inevitably have felt as a result of their mother's death. Indeed, Clarence Marsala, who was most involved and most vocal in his opposition to removing her ventilator tube, acknowledged that he would have experienced emotional distress even if the Hospital had not removed Mrs. Marsala's life support. *See* A322.

Plaintiffs have attempted to prove that their emotional distress was due to the Hospital's conduct, but once again their "proof" takes the form of identical, conclusory affidavits, each asserting that "[m]y severe emotional distress was not due to merely the natural grief of the loss of my mother but, rather, was due to my belief that the suffering and death of my mother was due to Yale New Haven Hospital's improper treatment of my mother." A279, 283, 287, 291, 295. Conclusory assertions of this type are not sufficient to defeat summary judgment. *See supra* at 28 n.19; *Hoskins*, 252 Conn. at 793–94. Nothing about Plaintiffs' conclusory assertions, submitted in opposition to summary judgment, makes it any easier to separate the understandable grief they would have felt at the death of their mother from the emotional distress they allegedly felt as a result of the Hospital's conduct.

CONCLUSION

The Hospital is entitled to judgment as a matter of law on all of the claims brought by Mrs. Marsala's adult children, Michael, Gary, Tracey, Kevin, and Randy Marsala. For the foregoing reasons, the trial court's judgment should be affirmed.

Dated: December 23, 2015

Respectfully submitted,

DEFENDANT-APPELLEE
YALE-NEW HAVEN HOSPITAL

By: _____

Jeffrey R. Babbin
Tadhg A.J. Dooley
WIGGIN AND DANA LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400 (tel.)
(203) 782-2889 (fax)
jbabbin@wiggin.com
tdooley@wiggin.com
Juris No. 67700

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 67-2, as follows:

§67-2(g):

(1) The electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) The electronically submitted brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

§67-2(i):

(1) A copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with P.B. § 62-7; and

(2) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically pursuant to P.B. § 67-2(g); and

(3) the brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(4) the brief complies with all provisions of this rule.

Jeffrey R. Babbin
Tadhg A.J. Dooley

Dated: December 23, 2015

CERTIFICATION

I hereby certify that on this 23nd day of December 2015, a copy of the foregoing brief and separately bound appendix was sent by first-class mail, postage prepaid, to all counsel and pro se parties of record, and to the trial court judges, as follows:

Jeremy C. Virgil, Esq.
Zeldes, Needle & Cooper, P.C.
P.O. Box 1740
Bridgeport, CT 06601-1740
(203) 332-5775 (tel.)
(203) 333-1489 (fax)
jvirgil@znclaw.com

Honorable Theodore Tyma
Connecticut Superior Court
106 Elizabeth Street
Derby, CT 06418

Honorable Charles Lee
Connecticut Superior Court
106 Elizabeth Street
Derby, CT 06418

Jeffrey R. Babbin
Tadhg A.J. Dooley