

SC _____
Petition from AC 46515

JUAN CRUZ, et al.	:	STATE OF CONNECTICUT
	:	
v.	:	SUPREME COURT
	:	
SPEC PERSONNEL, LLC, et al.	:	JULY 22, 2026

PETITION FOR CERTIFICATION

*On behalf of Plaintiffs-Appellees
Juan Cruz and Emily Cruz*

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*(pro hac vice application
granted, juris no. forthcoming)*

JONATHAN E. TAYLOR
*(pro hac vice application
granted, juris no. forthcoming)*

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INTRODUCTION

Signify (formerly known as Philips) makes lighting products. One of its customers is Rexel, a wholesaler. Signify concedes that it has “a duty to stretch wrap the pallets of products that it ship[s] to Rexel.” A19. This duty exists because, as the Appellate Court below acknowledged, “failing to secure [products] to the pallet unquestionably increase[s] the foreseeable risk that the [products] could fall from the pallet and injure someone.” A21.

That is exactly what happened in this case. Signify failed to secure a 1,300-pound load of lights to a pallet that it shipped to Rexel’s warehouse in Hartford. The load later fell from its pallet onto Juan Cruz, a worker in the warehouse, and rendered him paraplegic. After a three-week trial, a jury found Signify liable to Juan for his injuries (and to his spouse Emily for her loss of consortium). The jury allocated 90 percent of the fault to Signify.

The Appellate Court overturned that verdict. It held that, even though Signify was negligent, Juan’s injuries fell outside the scope of foreseeable risk as a matter of law, and thus outside the scope of Signify’s conceded duty. The court based this holding on two intervening acts that it deemed to be unforeseeable: (1) Rexel’s failure to identify and fix Signify’s error before placing the lights on a warehouse shelf, and (2) a temporary worker’s negligence in retrieving a package next to the lights.

The Appellate Court’s decision contradicts this Court’s precedents. Under this Court’s cases, the scope-of-foreseeable-risk requirement is imposed as a matter of both duty and proximate cause. But it is the same basic inquiry either way: “[T]o be within the ‘scope of the risk,’ the harm actually suffered must be of the *same ‘general type’* as that which makes the defendant’s conduct negligent in the first instance.” *Stewart v. Federated*

Dept. Stores, Inc., 234 Conn. 597, 609 (1995). This determination is for the jury. *Ruiz v. Victory Props., LLC*, 315 Conn. 320, 330 (2015).

“Neither foreseeability of the extent nor the manner of the injury” is necessary to satisfy the scope-of-risk requirement. *Merhi v. Becker*, 164 Conn. 516, 521 (1973). “[S]o long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable.” *Pisel v. Stamford Hosp.*, 180 Conn. 314, 333 (1980). The same goes for intervening negligence. When the defendant’s negligence created or increased the risk that harmed the plaintiff, the existence of intervening negligence will not absolve the defendant of liability as a matter of law—even if the particular intervening acts were “not foreseeable.” *Ruiz*, 315 Conn. at 335-36.

The decision below cannot be reconciled with these cases. Contrary to the Appellate Court’s reasoning, the relevant foreseeability question here isn’t whether the *specific intervening acts* were foreseeable; it’s whether the *plaintiff’s injury* was foreseeable. As to that question, all that matters is that the jury found that Signify’s negligence “increased the foreseeable risk that the lights could fall from the pallet and injure someone,” A21, and that Juan suffered that same general type of injury. No more is required.

This Court’s review is urgently needed. If the decision below is left to stand, it will cast doubt on how the scope-of-risk inquiry is supposed to work in cases with intervening acts. Will it still be enough that the plaintiff’s general harm was foreseeable? Or must the specific intervening acts too now have been foreseeable? Before the decision below, the answer was clear. But now, trial courts, bound by that decision, will lack clear guidance. This Court should avoid that state of affairs and grant certification.

QUESTION PRESENTED

Did the Appellate Court err in holding that Signify’s conceded “duty to stretch wrap the pallets of products that it shipped to Rexel” did not extend to Juan Cruz and his harm as a matter of law, even though Signify’s failure “to secure the lights to the pallet unquestionably increased the foreseeable risk that [they] could fall from the pallet and injure someone”?

HISTORY OF THE CASE

A. Factual history

When Signify (a lighting manufacturer) ships its products to Rexel (a wholesaler), it is required to stretch-wrap them to a pallet. PA276. That is Signify’s policy. PA91-92; PA101; APA774-75. It is also the industry norm. PA128-29. And it is a requirement specifically imposed by Rexel. PA276; *see* APA775 (“[W]e need to wrap everything to the pallet for Rexel.”).¹

This requirement is important. A pallet is a platform whose “primary purpose” is to make it easier to move goods around. APA797. It allows them to be shipped, lifted, moved, and stored as a single “unit load,” using “a pallet jack or a forklift truck.” *Id.* But to work, the unit must stay together. If it begins to “break apart ... as it moves around” a warehouse, or if the load slides off the pallet as a forklift goes “up and down,” “it’s going to cause serious consequences,” endangering “everybody ... in that warehouse.” *Id.*

Securing a load to the pallet prevents this. PA92-93. It thus protects both the products and the workers who handle them. *Id.*; APA797-98.

¹ Unless otherwise specified, all internal quotation marks, emphases, alterations, and citations are omitted from all quotations. “APA” is Signify’s appendix; “PA” is the Cruzes’ appendix; and “CA” is the Clerk’s appendix.

Signify, however, did not comply with this requirement. In 2017, its employees put 1,300 pounds of boxed lights onto a pallet. The boxes had been sent to Signify from China and were “stretch-wrapped to each other” when Signify received them. CA260 n.8. But they were sent on a plastic “slip sheet” rather than a pallet. *Id.*; PA94-95; PA121. When Rexel’s order came in, Signify put the boxes onto a pallet—without stretch-wrapping them to the pallet—and kept the slip sheet on beneath the boxes. PA134-37; PA148; PA181-82; PA211-12. Because a slip sheet is “really slick,” it made the lights particularly susceptible to sliding off the pallet. PA144.

Signify’s employees loaded the unsecured unit onto a tractor trailer for delivery to Rexel’s warehouse in Hartford. PA276. A day later, Rexel’s warehouse employees unloaded the unit using a forklift, without noticing that the shrink-wrapping did not cover the pallet on the bottom, and moved it to a warehouse storage rack 18 feet above ground. PA153. Five days after that, a temporary worker named JeanPaul Paez was operating a reach truck to retrieve a package next to the lights. PA73-74; PA79; PA267. As he lifted the package, it rubbed against the lights, causing them to slide off their pallet and fall into the next aisle. PA79; PA133-34; PA146-47; PA158. The lights landed on Juan Cruz and rendered him paraplegic.

The effect on Juan’s life has been devastating. Although he tries to stay positive, it has been hard. Before, he would wake up every day and look forward to being productive. PA195. But now, he is confined to a wheelchair, feels like a burden on his family, and has bouts of depression. *Id.* He can no longer walk or play sports. PA195-96. He cannot do his job or be physically intimate with his wife. PA197-99. He cannot even go to the bathroom on his own. *Id.* And his lifelong medical needs will cost millions of dollars. CA236.

OSHA investigated the incident afterward. It photographed the fallen lights on the aisle floor and the empty pallet on the storage rack. CA174-75; PA256-59. OSHA found no violations by Rexel. PA240.

B. Procedural history

Juan and Emily sued Signify, Paez, and other parties. The case was eventually whittled down to just the claims against Signify. The core allegation was that Signify was negligent in failing to safely and securely pack the lights and in failing to train or supervise its employees properly.

Signify moved for summary judgment. It claimed that Juan's injury was not foreseeable as a matter of law because the specific sequence of intervening acts by Rexel and Paez was not foreseeable. APA73.

The Superior Court (Budzik, *J.*) denied the motion. It explained that, under this Court's precedents, "[s]o long as the harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable." *Id.* (quoting *Pisel*, 180 Conn. at 333). The court found that "[s]uch is the case here." APA73. It elaborated: "While the specific facts of this case may be unusual, the court concludes that the general nature of Mr. Cruz's injury is entirely foreseeable" because "it is foreseeable that a pallet of lighting products might fall on someone if they are not ... secure[d]" to the pallet. *Id.* The court also found that "it is entirely foreseeable that [the] lighting products might be placed on an upper storage shelf (or any elevated position)," which made it even more important that they be secured. *Id.*

A three-week jury trial followed. The evidence overwhelmingly showed that Signify was required to stretch-wrap the lights to the pallet before shipping them to Rexel, and that it did not do so. *See supra*, at 3-4.

The evidence, in fact, showed that it never did so. CA259-60. Even Signify's own video, which it offered as "ostensible proof that [its] lighting products are stretch-wrapped to the pallet before shipping[,] instead proved the opposite." CA260. Further, the jury heard expert testimony that products must be stretch-wrapped to the pallet to prevent them from falling off the pallet and injuring a warehouse worker. *See supra*, at 3-4. The jury also heard expert testimony that the load here would not have fallen had Signify complied with this requirement, and that its noncompliance was made worse by using a slipsheet on the pallet, PA133; PA158; CA257—a combination the plaintiffs' expert had "never seen ... in 30 years," PA148; *see* APA830-31.

In defense, Signify denied that it was negligent. But it also argued that any negligence on its part did not contribute to Juan's injuries, and so was not a proximate cause of them. On Signify's telling, the sole proximate cause of his injuries was the conduct of Rexel and Paez.

The jury returned a verdict for the plaintiffs. As to duty and breach, it found that Signify was negligent in packing the lights and negligent in its supervision, but not negligent in its training. CA149. In so finding, the jury also found that Juan's injury was foreseeable because it was "of the same general nature as that which a reasonably prudent person in the defendant's position should have anticipated." APA1122-23.

As to causation, the jury rejected Signify's argument that "Rexel was the sole proximate cause of the plaintiffs' injuries." CA264; APA1123-24. To the contrary, it found that Signify's negligence was a proximate cause and apportioned 90 percent of fault to Signify and 10 percent to Paez. CA149-51.

As to damages, the jury found that the total damages were \$100 million, making Signify liable to the plaintiffs for \$90 million. CA150-51.

Signify moved for judgment notwithstanding the verdict, a new trial, and remittitur. The Superior Court (Rosen, *J.*) reduced the total damages owed by Signify to just under \$42 million but otherwise kept the verdict intact. CA222-267. As relevant here, the court found that “the harm to Juan Cruz was foreseeable” because Signify knew that the products it shipped to Rexel “would be stored in the warehouse, including on above-ground racking, and that a product that was not properly secured could fall and injure someone.” CA247-48. The court also noted that “[t]he jury clearly was unpersuaded by [Signify’s] argument that Rexel (Juan Cruz’s employer) was somehow more responsible for his injuries than” it was. CA252.

The Appellate Court reversed. It acknowledged that “foreseeability is a question of fact for the jury,” A15, and that “there is no dispute that [Signify] maintained a duty to stretch wrap the pallets of products that it shipped to Rexel,” A18-19. The court also acknowledged that this duty exists because “failing to secure the lights to the pallet unquestionably increase[s] the foreseeable risk that the lights could fall from the pallet and injure someone.” A21. And it acknowledged that, under this Court’s foreseeability precedents, all that is required is that “harm of the general nature as that which occurred [be] foreseeable.” A24.

Nevertheless, the court determined that “no reasonable fact finder could find that Juan’s workplace injuries were a reasonably foreseeable consequence of [Signify’s] failure to secure the lights to the pallet.” A21. That was so, the court held, because the particular “conduct of Rexel and Paez after the lights had been delivered” was unforeseeable. A25. The court concluded that this intervening conduct meant that Juan did not suffer the same “general harm” as that which made Signify’s conduct negligent. A22.

ARGUMENT

The decision below warrants review because it decides an important and recurring question of tort law “in a way probably not in accord with applicable decisions of the Supreme Court.” Practice Book §84-2(1).

I. The decision below contravenes this Court’s precedents.

A. The Appellate Court did not deny that Signify was negligent because it had “a duty to stretch wrap the pallets of products that it shipped to Rexel” and did not do so. A19. Nor did the court deny that Signify’s negligence led to Juan’s injuries. And it acknowledged that what made Signify’s conduct negligent is that it “increased the foreseeable risk that the lights could fall from the pallet and injure someone.” A21. Yet the court still held that Juan’s injuries were not foreseeable as a matter of law because the specific intervening conduct of Rexel and Paez was not foreseeable.

That holding violates this Court’s precedents in two independent ways. *First*, it imposes a heightened foreseeability requirement of the sort that this Court has consistently rejected—demanding not only that the plaintiff’s general injury be foreseeable, but that the specific chain of events that brought it about be foreseeable too. *Second*, even if there were such a requirement, the intervening acts here would be sufficiently foreseeable to support the jury’s verdict. We address each error in turn.

1. This Court has repeatedly stressed that “[i]t is the general harm that must be foreseen, not the particular injury.” *Pisel*, 180 Conn. at 332; *see Ruiz*, 315 Conn. at 329; *Figlar v. Gordon*, 133 Conn. 577, 581-82 (1947). “The foreseeability issue, put in proper perspective, is not very complex”: “[S]o long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident

happens is unusual, bizarre or unforeseeable.” *Pisel*, 180 Conn. at 333. That is true even if the manner of injury involves intervening negligence. When the defendant’s negligence created or increased the risk that harmed the plaintiff, the existence of intervening negligence will not defeat foreseeability as a matter of law—regardless of whether the specific intervening acts were themselves foreseeable. *Ruiz*, 315 Conn. at 335-36.

Ruiz illustrates the point. There, the defendant was a landlord who had negligently failed to remove broken concrete pieces from the backyard of a housing complex. *Id.* at 336. The foreseeable “risk of harm created by [this] failure” was “that children playing in the area might trip on them or throw them at other children,” or “mishandl[e]” them in some way. *Id.* A ten-year-old child then dropped one of the pieces from a third-floor balcony, which hit the head of a younger child, who sued the landlord.

This Court held that a jury could reasonably find that the child’s injury was foreseeable. It explained why: Although the plaintiff’s injury was “severe,” it was of the same general type as the harm created by the landlord’s negligence. *Id.* Because that was so, it did not matter whether it was also “foreseeable that a ten year old child would carry a heavy piece of concrete from the backyard to a third floor balcony and drop it on [a child’s] head.” *Id.* at 334-35. Even if that act was “unusual” or “not foreseeable,” it did “not alter th[e] fundamental fact” that the plaintiff’s injuries were of the same general type as the harm created by the defendant’s negligence. *Id.* at 336. It was for the jury to decide whether the ten-year-old “bore the brunt of the responsibility” in apportioning fault. *Id.* at 346.

The same is true here. The foreseeable risk of harm created by Signify’s negligence was that “the lights could fall from the pallet and injure

someone”—including someone in Rexel’s warehouse. A21. Juan then suffered that general type of harm. So the foreseeability issue is “not very complex.” *Pisel*, 180 Conn. at 333. Although Juan’s injury is severe, it is of the same general type as the harm created by Signify’s negligence. That is enough for foreseeability. Whether Rexel or Paez were *also* negligent, and whether their specific negligent acts were foreseeable, are not relevant.

In holding otherwise, the decision below commits the same error as the dissenting Appellate Court judge in *Ruiz*: using “excessive detail in characterizing the type of harm,” when it is for the jury to “decide the appropriate specificity.” 315 Conn. at 335-36. In *Ruiz*, “Judge Alvord improperly had framed the foreseeability question too narrowly to encompass only the specific facts of th[e] case, namely, whether it was foreseeable that a ten year old child would carry a heavy piece of concrete from the backyard to a third floor balcony and drop it on [another child’s] head.” *Id.* at 334-35. The decision below repeats that mistake. It frames the foreseeability question to encompass only “the possibility that Rexel and Paez would engage in [their specific] conduct,” A23, in conflict with *Ruiz*.

The decision is also at odds with section 442 B of the Restatement (Second) of Torts, “which this Court has adopted.” *Snell v. Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 740 (2019). Under that section, “a defendant is liable if the plaintiff’s harm results from a hazard because of which the defendant’s conduct was negligent”—“even if the harm is brought about through the intervention of a third party” who acted negligently. *Id.* at 758. Like *Ruiz*, this case “presents an apt example of [this] principle.” *Id.* at 759 n.18.

2. Even if the Appellate Court were right that the particular intervening acts must be foreseeable, it still erred in holding that the acts here were unforeseeable as a matter of law.

“[F]oreseeability is a flexible concept.” *Vendrella v. Astriab Family Ltd. P’ship*, 311 Conn. 301, 332 (2014). It asks “whether an ordinary person in the defendant’s position, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result.” *Id.* at 337-38. “[I]n this context, the phrase ‘likely to result’ means that there was an unreasonable risk that the injury would result.” *Id.* at 338. “[C]reating even the risk of a slight possibility of injury” can be enough “if a reasonably prudent person would not act as the defendant did.” *Id.* Because this determination is “not particularly legal,” but instead involves considerations “that have long been understood to be uniquely the province of the finder of fact,” *Munn v. Hotchkiss School*, 326 Conn. 540, 567 n.19 (2017), it is “left to the jury,” *Vendrella*, 311 Conn. at 338.

Here, “the foreseeable harm was severe and it could easily have been prevented by the defendant.” *Id.* at 334. All Signify had to do was comply with its conceded duty. It is not surprising, then, that the jury found as it did. As both trial judges agreed, it was “entirely foreseeable” that Signify’s packages could be stored “on above-ground racking.” A7; A16. It was also entirely foreseeable that Rexel could fail to identify and fix Signify’s error (particularly given that the boxes themselves were wrapped), and that a warehouse worker could make contact with the lights in operating a reach truck. For this reason, too, there is no basis for overturning the verdict.

B. Rather than grapple with *Ruiz* or *Vendrella*, the Appellate Court based its conclusion on *Lodge v. Arett Sales Corp.*, 246 Conn. 563 (1998).

A21. But, as the trial court explained, *Lodge* is nothing like this case. CA247. The defendants there negligently generated a false fire alarm, and the responding fire truck got into an accident when its brakes failed from negligent maintenance. Although the defendants were negligent, their negligence did not create or increase the risk that injured the plaintiffs, so it “did not contribute to the cause” of their injuries. 246 Conn. at 583. “No degree of care on the part of the defendants could have prevented the brake failure,” which would have happened regardless. *Id.* at 582-83. This case couldn’t be more different: Signify’s negligence created the risk that manifested; Juan suffered the very type of injury that made Signify’s conduct negligent; and no injury would have occurred had Signify complied with its conceded duty.

More broadly, *Lodge* “is a fact-bound determination” driven “equally” by policy concerns that imposing liability on a defendant that couldn’t prevent the brake failure “would serve no legitimate objective of the law.” *Id.* at 577-78, 585 n.16. That plainly is not the case here. And while the *Lodge* Court took the view that foreseeability and public policy “cannot be neatly compartmentalized,” *id.* at 576, this Court has since clarified that they are “not relevant” to one another, *Munn*, 326 Conn. at 567.

To be sure, *Lodge* says that courts may consider “the direct cause of the accident” as part of the “general harm.” 246 Conn. at 574. But by “direct cause,” the Court was referring to the *only* contributing cause there. It wasn’t requiring that *every* contributing cause be foreseeable if it occurred later in time. *Id.* That reading would conflict with cases like *Ruiz* and “give[] undue prominence to the temporal order of the allegedly negligent acts.” *Cf. Barry v. Quality Steel Prods., Inc.*, 263 Conn. 424, 442 (2003).

When “a defendant claims that a subsequent negligent act by a third party cuts off its own liability,” it is the jury’s job to “determine which, among many, causes contributed to the plaintiff’s injury,” and to allocate fault. *Id.* at 436, 439. The jury did that here. Although Signify argued that the other acts were wholly responsible for Juan’s injuries, the jury disagreed. It found that neither intervening act was the sole proximate cause of his injuries and that Signify was 90 percent responsible. *Lodge* provides no grounds for nullifying that verdict. This Court should grant the petition, correctly interpret its own precedent, and set the law straight.

II. The question presented is important.

The conflict with this Court’s cases is reason enough to grant review, but the question presented is also important. Tort cases often involve multiple potential causes, with multiple potential tortfeasors. If each tortfeasor could be liable only if the other tortfeasors’ particular negligent acts were foreseeable, it would frustrate the purposes of tort law. It could even lead to a perverse result in which *none* of the tortfeasors may be held liable because none could foresee the specific negligent acts of the others.

To avoid this outcome, this Court has always focused foreseeability on the general harm suffered, not the specific events that led to it. The decision below undoes that distinction. If left uncorrected, it will put trial courts in the unenviable position of having to make sense of the conflicting precedents that bind them. Trial courts will not be free to disregard the decision below just because they read *Ruiz* and *Lodge* differently. So they will have to figure out *when* intervening negligence must be foreseeable, and *how* foreseeable it must be. And if they guess wrong, it will be costly to everyone involved. This Court’s review is needed to restore uniformity,

clarity, and predictability to the law—and with it, to avoid expanding the “authority of judges at the expense of juries.” *Munn*, 326 Conn. at 567 n.19.

CONCLUSION

This Court should grant the petition.

July 22, 2026

Respectfully submitted,

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MICHAEL S. TAYLOR

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APPENDIX: TABLE OF CONTENTS

1. Appellate Court opinion (June 2, 2026).....	A2
2. Superior Court order denying motions for judgment and to set aside the verdict for a new trial (Apr. 26, 2023)	A28
3. Superior Court order denying motion for summary judgment (Dec. 14, 2021).....	A54
4. A list of all parties to the appeal with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris numbers of their trial and appellate counsel.....	A56

**CONNECTICUT
APPELLATE REPORTS**

Vol. 239

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

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232

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

JUAN CRUZ ET AL. v. SPEC PERSONNEL,
LLC, ET AL.
(AC 46515)

Alvord, Moll and Keller, Js.*

Syllabus

The defendant S Co. appealed from the trial court's judgment for the plaintiffs, J and E, rendered following a jury trial. J sustained serious workplace injuries when an approximately 1300 pound load of lights, which had been sold and shipped by S Co. to J's employer, R Co., fell onto him. Following delivery to R Co., the lights, which had not been secured by stretch wrap to the pallet on which they had been delivered, were placed on the top shelf of a storage rack in a warehouse operated by R Co. The lights subsequently slid off the pallet onto J after a temporary staffer for R Co., while operating a reach truck, made contact with the lights. J's wife, E, claimed an attendant loss of consortium. S Co. claimed, inter alia, that the court, in denying its postverdict motion for judgment notwithstanding the verdict, improperly concluded that, as a product shipper, it owed a duty of care that extended to J and the type of harm he suffered in the postdelivery warehouse accident. *Held:*

The trial court, in denying the defendant's postverdict motion for judgment notwithstanding the verdict, improperly determined that S Co. owed a duty of care to protect against J's workplace injuries, as J's workplace injuries were not a reasonably foreseeable consequence of S Co.'s presumed failure to secure the lights to the pallet by stretch wrap before they were shipped.

Argued October 10, 2024—officially released June 2, 2026

Procedural History

Action to recover damages for, inter alia, the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Hartford and transferred to the judicial district of Waterbury, where Rexel Holdings USA Corp. intervened as a plaintiff; thereafter, Signify North America Corporation et al. were cited in as defendants; subsequently, the plaintiff AdaMaria Medina et al. withdrew from the action; thereafter, the named plaintiff et al. withdrew the action

*This appeal originally was argued before a panel of this court consisting of Judges Alvord, Moll, and Flynn. Thereafter, Judge Flynn recused himself and did not participate in the consideration of the case. Justice Keller was added to the panel and has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

239 Conn. App. 232

JUNE, 2026

233

Cruz v. Spec Personnel, LLC

as against the named defendant et al.; subsequently, the case was tried to the jury before *Rosen, J.*; verdict and judgment for the named plaintiff et al.; thereafter, the court denied the motion for judgment notwithstanding the verdict filed by the defendant Signify North America Corporation and granted in part its motion for remittitur, and the defendant Signify North America Corporation appealed to this court; subsequently, the court, *Rosen, J.*, awarded offer of compromise interest and postjudgment interest to the named plaintiff et al., and the defendant Signify North America Corporation filed an amended appeal. *Reversed; judgment directed.*

Dustin F. Guzior, pro hac vice, with whom were *Jeffrey R. Babb* and *Elizabeth A. Rose*, pro hac vice, and, on the brief, *Garrard R. Beeney*, pro hac vice, and *Michael T. Lemanski*, pro hac vice, for the appellant (defendant Signify North America Corporation).

Michael S. Taylor, with whom were *Brendon P. Levesque* and, on the brief, *Corinne A. Burlingham*, *Andrew P. Garza*, *Ryan McKeen*, *Andrew Ranks* and *Alexa Mahoney*, for the appellees (named plaintiff et al.).

Opinion

MOLL, J. The defendant Signify North America Corporation¹ appeals from the judgment of the trial court

¹The following parties either were named as defendants in the original complaint or were later cited into the present action as defendants: (1) Spec Personnel, LLC, which also was identified separately as Special Personnel, LLC; (2) JeanPaul D. Paez; (3) Philips North America, LLC; (4) Philips Lighting North America Corporation; (5) Signify North America Corporation; (6) C.H. Robinson Worldwide, Inc.; (7) Venture Properties, LLC; (8) A. Duie Pyle, Inc.; and (9) Randstad North America, Inc. The plaintiffs withdrew their claims against all of the defendants, except for Philips Lighting North America Corporation and Signify North America Corporation, prior to the conclusion of trial.

The appeal form filed in this appeal identifies both Signify North America Corporation and Philips Lighting North America Corporation as the appellants; however, the principal appellate and reply briefs identify a single appellant named “Signify North America Corporation [formerly known as] Philips Lighting North America Corporation.” The plaintiffs’ appellate brief likewise refers to a single appellant named “Signify North America Corporation (formerly known as Philips

234

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

rendered following a jury verdict returned in favor of the plaintiffs Juan Cruz (Juan) and Emily Cruz (Emily)² on their respective claims of negligence and loss of consortium in connection with severe workplace injuries that Juan sustained when an approximately 1300 pound packaged load of lights, sold and shipped to his employer by the defendant, fell from a storage rack and onto him. On appeal, the dispositive claim that the defendant raises is that the court, in denying its postverdict motion for judgment notwithstanding the verdict, improperly concluded that it owed, as a product shipper, a duty of care that extended to Juan and the type of harm he suffered in a postdelivery warehouse accident. We agree and, accordingly, reverse the judgment of the trial court.³

Lighting North America Corporation)” Additionally, (1) the verdict form filed in the present action reflects that the jury returned its verdict against a single defendant, “Philips Lighting North America Corporation, now known as Signify North America Corporation,” (2) postverdict motions filed in the present action were filed by “Signify North America Corporation (including its predecessor Philips Lighting North America Corporation), and (3) the trial court, *Rosen, J.*, in denying the postverdict motions at issue, referred to the “defendant Signify North America Corporation (formerly Philips Lighting North America Corporation)” Thus, on the basis of the record, there appears to be no dispute that there is a single entity that formerly was known as Philips Lighting North America Corporation and now is known as Signify North America Corporation. For ease of reference, we (1) treat any references in the record to Philips Lighting North America Corporation and to Signify North America Corporation to be one and the same, (2) treat Signify North America Corporation as the sole appellant in this appeal, and (3) refer to Signify North America Corporation as the defendant.

²The following parties commenced the present action as additional plaintiffs: (1) AdaMaria Medina; and (2) Juan Cruz on behalf of (a) Nathan Medina and (b) Jonathan Lopez. Those parties withdrew their claims prior to trial. Additionally, shortly after the present action had been commenced, Rexel USA Inc., formerly known as Rexel Holdings USA Corp. (Rexel), Juan’s employer, was granted permission to intervene as an additional plaintiff and to file an intervening complaint seeking reimbursement for workers’ compensation benefits that it had paid or would become obligated to pay to Juan. See General Statutes § 31-293. The claims involving Rexel are not germane to this appeal, and Rexel is not participating in this appeal. For ease of reference, we refer to Juan and Emily collectively as the plaintiffs and individually by first name.

³The defendant further claims that the court improperly denied its motion for judgment notwithstanding the verdict or its separate motion

239 Conn. App. 232

JUNE, 2026

235

Cruz v. Spec Personnel, LLC

The following facts, which the jury reasonably could have found, and procedural history are relevant to our resolution of this appeal. The defendant is in the business of selling lighting products branded under its name. On September 1, 2017, the defendant received at its warehouse in Pennsylvania a sealed container holding packaged loads of lights, which had been manufactured and purchased in China. Thereafter, the defendant sold a packaged load of lights weighing approximately 1300 pounds (lights) to Juan's employer, Rexel USA Inc., formerly known as Rexel Holdings USA Corp. (Rexel), which is a wholesale electrical distributor. On September 13, 2017, the defendant loaded the lights, together with a pallet upon which the defendant had placed the lights, onto a tractor trailer for shipment to Rexel's warehouse in Hartford. The lights were delivered to Rexel on September 14, 2017, and Rexel accepted the delivery that same day. Following delivery, Rexel stored the lights, along with the pallet upon which they sat but to which they were not secured,⁴ on the top shelf of a storage rack in the warehouse.

On September 19, 2017, Juan was working in the aisle of the warehouse where the storage rack holding the lights was located. Meanwhile, JeanPaul D. Paez, who was employed by a temporary staffing agency and assigned to work at Rexel, was working in an adjacent aisle. While operating a reach truck to retrieve a product situated on a storage rack in the adjacent aisle, Paez made

to set aside the verdict and for a new trial because (1) its conduct was not a substantial factor that caused Juan's injuries, (2) the court incorrectly instructed the jury on the issue of proximate causation, (3) the court committed several harmful evidentiary errors, and (4) the jury's verdict depended on conjecture and was against the great weight of the evidence. We need not reach these additional claims in light of our resolution of the defendant's dispositive duty of care claim on appeal.

⁴At trial, the parties disputed whether the defendant had secured the lights by stretch wrapping them to the pallet before shipping them to Rexel. The defendant maintains on appeal that there was insufficient evidence in the record to support a finding that it failed to stretch wrap the lights to the pallet. As we explain later in this opinion, in resolving the defendant's duty of care claim, we will presume that the defendant did not stretch wrap the lights to the pallet.

236

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

contact with the lights, whereupon they slid off from the pallet and fell onto Juan. Juan sustained severe injuries and became a paraplegic as a result of the incident.

The plaintiffs commenced the present action in 2018. In the plaintiffs' third amended complaint dated September 11, 2019, which was their operative complaint, Juan alleged that his injuries were a direct and proximate result of the defendant's negligence and carelessness in failing (1) to train and to adequately supervise its agents, servants, apparent agents, and/or employees, and (2) to ensure that pallets of its products were packed safely and securely. Additionally, Emily asserted an attendant claim of loss of consortium. On November 26, 2019, the defendant filed an answer denying the plaintiffs' material allegations or leaving the plaintiffs to their proof. The defendant also asserted two special defenses, alleging that (1) Juan's injuries were caused by Paez' intervening conduct and (2) the plaintiffs failed to state claims upon which relief could be granted.

On September 13, 2021, the defendant filed a motion for summary judgment claiming that it was not liable for negligence because, inter alia, Juan's workplace injuries were not foreseeable, and, thus, it did not owe a duty of care to Juan. On December 14, 2021, the trial court, *Budzik, J.*, denied the motion. In rejecting the defendant's foreseeability argument, the court reasoned that, "[w]hile the specific facts of this case may be unusual . . . the general nature of [Juan's] injur[ies] [are] entirely foreseeable. More specifically . . . it is foreseeable that a pallet of lighting products might fall on someone if they are not safely and securely packaged for transportation to the warehouse, or for normal handling when they are in the warehouse. . . . [I]t [also] is entirely foreseeable that [the defendant's] lighting products might be placed on an upper storage shelf (or any elevated position) in the warehouse, as opposed to exclusively on the floor of the warehouse."

The case was tried to a jury over the course of three weeks between September 13 and October 5, 2022. The

239 Conn. App. 232

JUNE, 2026

237

Cruz v. Spec Personnel, LLC

jury heard testimony from various witnesses, including the plaintiffs and S. Paul Singh, Ph.D., the plaintiffs' expert witness in packaging, transportation of material, and handling, and the court, *Rosen, J.*, admitted various exhibits into the record.

Following the close of evidence, the court charged the jury in relevant part as follows: "This is a negligence case. Negligence is the violation of a legal duty to use reasonable care under the circumstances. Reasonable care is the care that a reasonably prudent person would use in the same circumstances. In determining the care that a reasonably prudent person would use in the same circumstances, you should consider all of the circumstances which were known or should have been known to the defendant at the time of the conduct in question. Whether care is reasonable depends upon the dangers that a reasonable person would perceive in those circumstances. It is common sense that the more dangerous the circumstances, the greater the care that ought to be exercised. . . .

"Negligence is a proximate cause of an injury if it was a substantial factor in bringing the injury or harm about. In other words, if the defendant's negligence contributed materially and not just in a trivial or inconsequential manner to the production of the injury or harm, then the defendant's negligence was a substantial factor. . . .

"To prove that an injury is a reasonably foreseeable consequence of negligent conduct, the plaintiffs need not prove that the defendant actually foresaw or should have foreseen the extent of the harm suffered or the manner in which it occurred. Instead, the plaintiffs must prove that it is a harm of the same general nature as that which a reasonably prudent person in the defendant's position should have anticipated, in view of what the defendant knew or should have known at the time of the negligent conduct."⁵

⁵The court further instructed the jury that the defendant "has denied that it was negligent and contends that [Rexel] was the sole proximate cause of [Juan's] injuries; that is, that Rexel's alleged negligence was

238

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

On October 5, 2022, the jury returned a verdict in favor of the plaintiffs, which the court accepted the same day. The jury answered interrogatories as part of the verdict, finding that (1) the defendant (a) failed to adequately supervise its agents, servants, or employees and (b) failed to ensure that pallets of its products were packed safely and securely, but (c) it did not fail to train its agents, servants, or employees, (2) the defendant's negligence was a proximate cause of the plaintiffs' injuries and losses, and (3) the plaintiffs' economic and noneconomic damages totaled \$100 million. The jury further found that (1) Paez was negligent and (2) Paez' negligence was a proximate cause of the plaintiffs' injuries.⁶ The jury apportioned 90 percent of the total negligence to the defendant and the remaining 10 percent to Paez, such that the plaintiffs were awarded \$90 million in damages against the defendant. Subsequently, in granting in part a motion for remittitur filed by the defendant, the court reduced the plaintiffs' damages to \$41,859,072.98, which remittitur the plaintiffs accepted. The court later awarded the plaintiffs (1) \$1,844,092.86 in offer of compromise interest pursuant to General Statutes § 52-192a (c) and (2) postjudgment interest pursuant to General Statutes § 37-3b (a) at a rate of 7 percent per annum.

On November 23, 2022, the defendant filed a motion for judgment notwithstanding the verdict,⁷ claiming in relevant part that it did not owe a duty of care to Juan in connection with Juan's workplace injuries because (1) the injuries were "directly caused by numerous unforeseeable

the only substantial factor causing [Juan's] injuries. . . . If you find that [the defendant] has shown that Rexel was the sole proximate cause of [Juan's] injuries, you must then render a verdict in [the defendant's] favor."

⁶Spec Personnel, LLC, the staffing agency that assigned Paez to work at Rexel, was identified as an apportionment party alongside Paez; however, the jury found that the defendant had failed to demonstrate that Spec Personnel, LLC, was negligent and that such negligence was a proximate cause of the plaintiffs' injuries and losses.

⁷On September 27, 2022, after the plaintiffs had notified the court on the record that they were resting their case-in-chief, the defendant orally moved for a directed verdict, inter alia, on the ground that it owed no duty of care to Juan. The court reserved its decision on the motion.

239 Conn. App. 232

JUNE, 2026

239

Cruz v. Spec Personnel, LLC

acts of negligence” by Rexel’s employees, including their failure to inspect and to store the lights properly, as well as by Paez, and (2) imposing a duty “on product shippers [like the defendant] . . . to anticipate or to hold them responsible for accidents in customer warehouses resulting from the customer’s unforeseeable negligence or failure to implement and follow safety protocols” would violate public policy. On December 19, 2022, the plaintiffs filed an objection, and, on December 30, 2022, the defendant filed a reply memorandum. The court heard argument on the motion on January 4, 2023.

On April 26, 2023, the court denied the defendant’s motion for judgment notwithstanding the verdict.⁸ The court rejected the defendant’s contention that it did not owe a duty of care to Juan with respect to Juan’s workplace injuries, determining that (1) the harm sustained by Juan was a reasonably foreseeable consequence of the defendant’s presumed failure to secure the lights to the pallet⁹ and (2) imposing a duty of care on the defendant would not be inconsistent with public policy. This amended appeal followed.¹⁰ Additional facts and procedural history will be set forth as necessary.

The defendant’s dispositive claim on appeal is that the court, in denying its motion for judgment notwithstanding the verdict, improperly concluded that it owed a duty of care to Juan to protect against Juan’s workplace injuries by stretch wrapping the lights to the pallet before

⁸The court also denied the defendant’s motion to set aside the verdict and for a new trial, which it filed alongside its motion for judgment notwithstanding the verdict.

⁹Later in its decision, the court rejected the defendant’s claim that there was insufficient evidence regarding the condition of the lights when they left the defendant’s custody such that, as the defendant posited, the jury relied on speculation to conclude that the defendant did not properly secure the lights to the pallet.

¹⁰The defendant’s original appeal was taken from the judgment rendered on the jury’s verdict following the court’s rulings on the defendant’s postverdict motions and the plaintiffs’ acceptance of the remittitur. The defendant subsequently filed an amended appeal to encompass the court’s awards of offer of compromise interest and postjudgment interest.

240

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

shipping them to Rexel. Assuming that the evidence was sufficient to demonstrate that it failed to secure the lights to the pallet, the defendant contends that it owed no duty of care to Juan with respect to Juan's workplace injuries because (1) as a matter of law, Juan's workplace injuries were not a reasonably foreseeable consequence of its presumed failure to secure the lights to the pallet, and (2) even if Juan's workplace injuries were reasonably foreseeable, imposing a duty of care on it under the circumstances of the present action would violate public policy. The plaintiffs counter that the court correctly determined that the defendant owed a duty of care to Juan because (1) Juan's workplace injuries were a reasonably foreseeable result of the defendant's presumed conduct and (2) concluding that the defendant owed a duty of care would not contravene public policy. For the reasons that follow, we agree with the defendant that it did not owe a duty of care to Juan because Juan's injuries were not a reasonably foreseeable result of its presumed conduct.¹¹

We begin by setting forth the governing standard of review and applicable legal principles. "The standard for appellate review of the denial of a motion for judgment notwithstanding the verdict is well settled and mirrors the standard applicable to a motion for a directed verdict. Directed verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusion. . . . In reviewing the trial court's decision [to deny the defendant's motion for a directed verdict] we must consider the evidence in the light most favorable to the plaintiff. . . . Although it is the jury's right to draw

¹¹Because we agree with the defendant that no duty of care arose on the basis that Juan's workplace injuries were not reasonably foreseeable, we need not address its alternative assertion that imposing a duty of care would violate public policy. See *Dushay v. Southern Connecticut Hockey League, LLC*, 234 Conn. App. 609, 624 n.9, 344 A.3d 175 (2025) ("[b]ecause we determine that there is no duty of care on the basis of our conclusion that the harm was not reasonably foreseeable, it is not necessary to analyze the second prong of the test by undertaking a public policy analysis").

239 Conn. App. 232

JUNE, 2026

241

Cruz v. Spec Personnel, LLC

logical deductions and make reasonable inferences from the facts proven . . . it may not resort to mere conjecture and speculation. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party. . . . The foregoing standard of review also governs the trial court's denial of the defendant's motion for judgment notwithstanding the verdict because that motion is not a new motion, but [is] the renewal of [the previous] motion for a directed verdict." (Internal quotation marks omitted.) *Cockayne v. Bristol Hospital, Inc.*, 210 Conn. App. 450, 458, 270 A.3d 713, cert. denied, 343 Conn. 906, 272 A.3d 1128 (2022).

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Contained within the first element, duty, there are two distinct considerations. . . . First, it is necessary to determine the existence of a duty, and [second], if one is found, it is necessary to evaluate the scope of that duty. . . . We sometimes refer to the scope of that duty as the requisite standard of care." (Internal quotation marks omitted.) *Osborn v. Waterbury*, 333 Conn. 816, 825, 220 A.3d 1 (2019). "A duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act." (Internal quotation marks omitted.) *Bifolck v. Philip Morris, Inc.*, 324 Conn. 402, 443, 152 A.3d 1183 (2016). "Whether a duty exists is a question of law for the court, and only if the court finds that such a duty exists does the trier of fact consider whether that duty was breached. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant." (Citation omitted; internal quotation marks omitted.) *Raspberry Junction Holding, LLC v. Southeastern Connecticut Water Authority*, 340 Conn. 200, 210–11, 263 A.3d 796 (2021).

242

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

“[T]he test for the existence of a legal duty of care 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. . . . The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy.” (Internal quotation marks omitted.) *McFarline v. Mickens*, 177 Conn. App. 83, 92, 173 A.3d 417 (2017), cert. denied, 327 Conn. 997, 176 A.3d 557 (2018).

“Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Foreseeability is a critical factor in the analysis, because no duty exists unless 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” (Internal quotation marks omitted.) *Raspberry Junction Holding, LLC v. Southeastern Connecticut Water Authority*, supra, 340 Conn. 211. “[O]ur threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable, but the test is, would the ordinary [person] in the defendant’s position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result? . . . The idea of risk in this context necessarily involves a recognizable danger, based upon some knowledge of the existing facts, and some reasonable belief that harm may possibly follow. . . . Accordingly, the fact finder must consider whether

239 Conn. App. 232

JUNE, 2026

243

Cruz v. Spec Personnel, LLC

the defendant knew, or should have known, that the situation at hand would obviously and naturally, even though not necessarily, expose [the plaintiff] to probable injury unless preventive measures were taken.” (Internal quotation marks omitted.) *Osborn v. Waterbury*, supra, 333 Conn. 825–26.

“[T]he analysis of foreseeability logically cannot be extended so far that the term general harm incorporates any accident . . . with no consideration given to the direct cause of the accident. It is impractical, if not impossible, to separate the question of duty from an analysis of the cause of the harm when the duty is asserted against one who is not the direct cause of the harm. In defining the limits of duty, we have recognized that [w]hat is relevant . . . is the . . . attenuation between [the defendant’s] conduct, on the one hand, and the consequences to and the identity of the plaintiff, on the other hand. . . . Articulated another way, the attenuation between [the plaintiff’s] harm and [the defendant’s] conduct is nothing more than a determination of whether the harm was a reasonably foreseeable consequence of the [defendant’s] conduct. It is a well established tenet of our tort jurisprudence that [d]ue care does not require that one guard against eventualities which at best are too remote to be reasonably foreseeable. . . . [A] defendant [is] not required to take precautions against hazards [that are] too remote to be reasonably foreseeable. . . . Due care is always predicated on the existing circumstances.”¹²

¹²We note that there is an inevitable overlap that exists concerning the legal principles of duty of care, which is at issue on appeal, and proximate cause. As our Supreme Court has explained, “when a defendant claims that an independent intervening force superseded his own negligence, ‘the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor’s duty to the plaintiff.’ . . . *Ruiz v. Victory Properties, LLC*, [315 Conn. 320, 345, 107 A.3d 381 (2015)]. This is so because, in determining whether a duty exists, ‘our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant’ . . . *Mirjavadi v. Vakilzadeh*, 310 Conn. 176, 191, 74 A.3d 1278 (2013); which is the same inquiry a jury makes in deciding whether a defendant’s actions were the proximate cause of the harm. *Id.*, 192. As [our Supreme Court], quoting Prosser and Keeton on the Law of Torts, has explained: “[T]he

244

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

(Citations omitted; footnotes omitted; internal quotation marks omitted.) *Lodge v. Arett Sales Corp.*, 246 Conn. 563, 574–75, 717 A.2d 215 (1998). “[I]t is well established [however] that [t]he injury resulting from the breach of duty need not be the direct or immediate result of the wrongful act; if it is probable and a natural result, that is according to the operations of natural laws, it is enough. . . . The mere fact that the act of another person concurs, cooperates or contributes, in any degree whatever in producing the injury, is of no consequence . . . [I]n no case is the connection between an original act of negligence and an injury actually broken if a [person] of ordinary sagacity and experience, acquainted with all the circumstances, could have reasonably anticipated that the [direct cause of the harm] might, not improbably but in the natural and ordinary course of things, follow his act of negligence.” (Internal quotation marks omitted.) *Ruiz v. Victory Properties, LLC*, 315 Conn. 320, 346, 107 A.3d 381 (2015).

“Although, typically, [foreseeability] is a question of fact for the jury . . . it becomes an issue of law for the court if no reasonable fact finder could conclude that the injury was within the foreseeable scope of the risk such that the defendant should have recognized the risk and taken precautions to prevent it. . . . In other words, foreseeability becomes a conclusion of law . . . when . . . a fair and reasonable [person] could reach only one conclusion” (Citation omitted; internal quotation marks omitted.) *Brooks v. Powers*, 328 Conn. 256, 273, 178 A.3d 366 (2018).

question whether there is a duty has most often seemed helpful in cases [in which] the only issue is in reality whether the defendant stands in any such relation to the plaintiff as to create any legally recognized obligation of conduct for the plaintiff’s benefit. Or, reverting again to the starting point, whether the interests of the plaintiff are entitled to legal protection at the defendant’s hands against the invasion [that] has in fact occurred. Or, again reverting, whether the conduct is the ‘proximate cause’ of the result. The circumlocution is unavoidable, since all of these questions are, in reality, one and the same.” [W. Keeton et al., *Prosser and Keeton on the Law of Torts* (5th Ed. 1984)] § 42, p. 274; see also *id.*, § 53, p. 358.’” *Snell v. Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 743 n.9, 212 A.3d 646 (2019).

239 Conn. App. 232

JUNE, 2026

245

Cruz v. Spec Personnel, LLC

In rejecting the defendant's duty of care claim raised in its postverdict motion for judgment notwithstanding the verdict, the court reasoned that "the plaintiffs . . . presented expert testimony to the effect that the [lights] would not have fallen had they been stretch wrapped to the pallet. The defendant knew and understood that its lighting products were required to be stretch wrapped to the pallet, that the products that it shipped to [Rexel's] warehouse would be stored in the warehouse, including on above-ground racking, and that a product that was not properly secured could fall and injure someone. Accordingly, the court finds that the harm to Juan . . . was foreseeable. See *Pisel v. Stamford Hospital*, 180 Conn. 314, 333, 430 A.2d 1 (1980) ('so long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable')." (Footnote omitted.) Later in its decision, the court further stated that "the defendant shipped a 1300 pound pallet of lighting products knowing that it was at least reasonably foreseeable that they would be stored in a warehouse and could fall if not properly stretch wrapped to the pallet."

The defendant asserts on appeal that, as a matter of law, Juan's workplace injuries were not a reasonably foreseeable consequence of its presumed failure to stretch wrap the lights to the pallet for two reasons. First, the defendant concedes that it "had a duty [to secure its products] to protect against accidents that might occur in the normal course of *shipment*"; (emphasis in original); such as injuries caused by an unsecured load to workers during loading or to motorists during transit; however, as the defendant posits, the unsecured lights did not cause any injuries during the shipping and delivery process, and "[Juan's] workplace accident does not come close to a normal and natural consequence of a shipping error." The defendant contends that, following delivery of the lights, (1) "it was Rexel's duty to safely inspect, handle, and store the [lights] and to operate a safe warehouse," and (2) the defendant maintained no control over the

246

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

lights or Rexel's handling thereof, such that it could not be expected to foresee new zones of harm created by Rexel following delivery. Thus, the defendant argues that "the reasonably foreseeable zone of risk associated with preparing a package *for shipment* does not—even at its outermost bounds—extend to accidents involving the package several days after delivery. The law does not allow the [plaintiffs] to extend the zone of risk to a completely different place, time, and set of circumstances." (Emphasis in original.) In short, the defendant maintains that "[Juan's] workplace accident, five days after delivery [of the lights], was not within the zone of risk that [the defendant's] supposed shipping error created."

Second, assuming that its duty of care survived beyond Rexel's acceptance of the lights following delivery, the defendant asserts that its presumed failure to stretch wrap the lights to the pallet was an "indirect and relatively remote" contribution to Juan's injuries, whereas the unforeseeable third-party negligence of Rexel and Paez after the lights were delivered to and accepted by Rexel was the "direct cause" of the injuries. The defendant asserts that, notwithstanding testimony adduced at trial reflecting that Rexel (1) inspected all packages arriving at its warehouse for damage, (2) had the ability to rewrap unsecured packages prior to handling and storing them, and (3) would not place unsecured packages on a storage rack, Rexel stored the unsecured lights on the top shelf of a storage rack, which created an "'unexpected'" danger that was not a normal and natural consequence of the defendant's conduct. With respect to Paez, the defendant contends that it was "far from normal" for Paez to engage in negligent conduct, particularly in his operation of the reach truck prior to the incident. Moreover, the defendant maintains that the plaintiffs failed to adduce evidence at trial reflecting that the defendant "knew or reasonably should have known of Rexel's unsafe workplace and Paez' unsafe operation of a reach truck"

In response, the plaintiffs argue that Juan's workplace injuries were a reasonably foreseeable result of the

239 Conn. App. 232

JUNE, 2026

247

Cruz v. Spec Personnel, LLC

defendant's presumed failure to stretch wrap the lights to the pallet. The plaintiffs maintain that "[Juan's] injuries, and [the] harm of the general nature suffered, were foreseeable because they are an anticipated consequence of defective product packaging and warehouse operations" and that "[i]t is simply not any great leap to anticipate that an unsecured product might slip from its pallet and injure someone." The plaintiffs also maintain that, under the applicable law, any third-party negligence by Rexel "does not eliminate the defendant's negligent conduct."¹³

Preliminarily, we emphasize that, on the basis of the parties' respective appellate briefs, there is no dispute

¹³The plaintiffs also maintain that the defendant, in essence, is attempting to apply the doctrine of superseding cause, which doctrine, pursuant to our Supreme Court's decision in *Barry v. Quality Steel Products, Inc.*, 263 Conn. 424, 446, 820 A.2d 258 (2003), has been "abrogated . . . in most tort contexts." *Sapko v. State*, 305 Conn. 360, 363, 44 A.3d 827 (2012); see also *Snell v. Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 748–50, 212 A.3d 646 (2019) ("In light of the significant changes to our tort system implemented by tort reform . . . [our Supreme Court] determined in *Barry* that the doctrine of superseding cause no longer serves a useful purpose in our jurisprudence when a defendant claims that a subsequent negligent act by a third party cuts off its own liability for the plaintiff's injuries. [In such] circumstances, superseding cause instructions serve to complicate what is fundamentally a proximate cause analysis. . . . [B]ecause our statutes allow for apportionment among negligent defendants . . . and because Connecticut is a comparative negligence jurisdiction . . . the simpler and less confusing approach to cases . . . [in which] the jury must determine which, among many, causes contributed to the [plaintiff's] injury, is to couch the analysis in proximate cause rather than allowing the defendants to raise a defense of superseding cause. . . .

"In reaching [its] determination in *Barry*, [our Supreme Court] expressly limited [its] holding to cases in which a defendant claims that its tortious conduct is superseded by a subsequent negligent act or there are multiple acts of negligence, stating that our decision did not necessarily affect those cases [in which] the defendant claims that an unforeseeable intentional tort, force of nature, or criminal event supersedes its tortious conduct. . . . Later, [our Supreme Court] made clear that [its] holding in *Barry* did not affect those types of cases." (Citations omitted; internal quotation marks omitted.) We do not construe the defendant as asserting a claim premised on the doctrine of superseding cause; rather, the defendant properly frames its claim in terms of foreseeability.

248

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

that the defendant maintained a duty to stretch wrap the pallets of products that it shipped to Rexel. Indeed, the parties executed a stipulation, which was admitted into evidence, providing in relevant part that, “[p]rior to September 19, 2017, [the defendant] was aware of [Rexel’s] shipping requirements, which stated that [the defendant] was required to ‘palletize and stretch wrap all shipments’ sent to [Rexel].” The dispositive issue on appeal, then, is whether the scope of that duty extended to protect against Juan’s workplace injuries.

In addressing the defendant’s claim regarding foreseeability, we consider our Supreme Court’s decision in *Lodge v. Arett Sales Corp.*, supra, 246 Conn. 563, to be instructive. In *Lodge*, while responding to a false fire alarm, several firefighters were injured or killed when their fire engine crashed into a tree following a brake failure caused by negligent maintenance. *Id.*, 567–70. Two injured firefighters, the representatives of the estates of two deceased firefighters, and three of the firefighters’ spouses (plaintiff firefighters) commenced an action alleging that the companies that had transmitted the false alarm (defendant companies) were liable for the plaintiff firefighters’ injuries as a result of the defendant companies’ negligent transmission of the false alarm to which the firefighters had responded. *Id.*, 566–67, 570. Following trial, the jury returned a verdict in favor of the plaintiff firefighters. *Id.*, 567. The defendant companies appealed from the judgment rendered on the verdict to this court, whereupon our Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). *Id.*

On appeal, our Supreme Court reversed the trial court’s judgment, concluding that the defendant companies did not owe the plaintiff firefighters a duty of care to prevent the harm suffered. *Id.*, 578. Our Supreme Court determined that, “[n]otwithstanding the retrospective foreseeability of the possibility of the engine’s brake failure, we agree with the [defendant companies] that the harm suffered by the [plaintiff firefighters] qualifies under the category of an unforeseeable consequence.

239 Conn. App. 232

JUNE, 2026

249

Cruz v. Spec Personnel, LLC

Liability may not be imposed merely because it might have been foreseeable that some accident could have occurred; rather, liability attaches only for *reasonably* foreseeable consequences. . . . We conclude that the brake failure of a negligently maintained fire engine is beyond the scope of the reasonably foreseeable risks created by the transmission of a false alarm and that legal responsibility for the resulting accident should not extend to [the defendant companies].” (Citations omitted; emphasis in original.) *Id.*, 577. Our Supreme Court observed that “the analysis of foreseeability logically cannot be extended so far that the term general harm incorporates any accident involving a fire engine responding to a false alarm with no consideration given to the direct cause of the accident.” (Internal quotation marks omitted.) *Id.*, 574. Although positing that, in some situations, imposing liability on the initiator of a negligently transmitted false alarm in connection with accidents involving emergency responders might be reasonable, our Supreme Court determined that “[i]t cannot reasonably be said . . . that liability for negligently causing a false alarm should include the risk that the emergency vehicle will be negligently maintained and utilized, causing it to experience brake failure. Imposing liability on the [defendant companies] for a harm that they reasonably could not be expected to anticipate and over which they had no control would serve no legitimate objective of the law.” *Id.*, 577–78. As our Supreme Court concluded: “In every case in which a defendant’s negligent conduct may be remotely related to a plaintiff’s harm, the courts must draw a line, beyond which the law will not impose legal liability. Although that line is often amorphous and difficult to discern, we conclude that it has been crossed in this case. The possibility that a city would so negligently maintain its vehicles and that firefighters would operate a fire engine, the mechanical soundness of which was clearly in doubt, is sufficiently remote that a reasonable person should not be expected to anticipate such an event. To hold otherwise would be to convert the imperfect vision

250

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

of reasonable foreseeability into the perfect vision of hindsight.”¹⁴ (Internal quotation marks omitted.) *Id.*, 578.

Guided by the rationale of *Lodge*,¹⁵ we conclude that no reasonable fact finder could find that Juan’s workplace injuries were a reasonably foreseeable consequence of the defendant’s presumed failure to secure the lights to the pallet, such that, as a matter of law, we resolve the issue of foreseeability in the defendant’s favor. See *Brooks v. Powers*, *supra*, 328 Conn. 273. In a vacuum, failing to secure the lights to the pallet unquestionably increased the foreseeable risk that the lights could fall from the pallet and injure someone; however, as *Lodge* instructs, “the analysis of foreseeability logically cannot

¹⁴Our Supreme Court further determined that public policy did not support the imposition of a duty of care on the defendant companies. *Lodge v. Arett Sales Corp.*, *supra*, 246 Conn. 578–86.

¹⁵In concluding that Juan’s workplace injuries were foreseeable, the trial court addressed, and distinguished, *Lodge*. The trial court observed that, in *Munn v. Hotchkiss School*, 24 F. Supp. 3d 155 (D. Conn. 2014), *aff’d*, 724 Fed. Appx. 25 (2d Cir. 2018), the United States District Court for the District of Connecticut interpreted *Lodge*’s holding to be “fundamentally concerned with cause in fact, not the scope of duty. . . . Although [our Supreme] Court framed the [plaintiff firefighters’] harm as ‘too remote’ from the [defendant companies’] conduct to require liability, ‘remote’ was used to describe the closeness of the relationship between the [plaintiff firefighters’] harm and the [defendant companies’] conduct, not to refer to the probability, or improbability, of that harm occurring. . . . Ultimately, [our Supreme] Court indicated that the [plaintiff firefighters] had sued the wrong defendant, not that the anticipated harm was unforeseeable if liability were asserted against another defendant under the same circumstances.” (Citations omitted.) *Id.*, 175–76. The trial court, in turn, stated that “*Lodge* . . . involved [firefighters] performing an act that they would not have performed but for the [defendant companies’] negligence, during which [the firefighters] sustained injuries. . . . [T]he injury [in *Lodge*] would have occurred if the [firefighters] were performing the action regardless of the reason; the fire [engine’s] brakes would have failed even if the firefighters were responding to a real emergency Thus, the injuries in *Lodge* . . . were not foreseeable.” On the basis of our reading of *Lodge*, however, *Lodge* plainly and expressly addressed the issue of duty and whether, under the circumstances of that case, the plaintiff firefighters’ injuries were a reasonably foreseeable consequence of the defendant companies’ negligent transmission of the false fire alarm. Thus, we disagree with the trial court’s determination that *Lodge* does not support the defendant’s duty of care claim.

239 Conn. App. 232

JUNE, 2026

251

Cruz v. Spec Personnel, LLC

be extended so far that the term ‘general harm’ incorporates any accident . . . with no consideration given to the direct cause of the accident.” *Lodge v. Arett Sales Corp.*, supra, 246 Conn. 574. In the present case, we cannot reasonably conclude that the risk stemming from the defendant’s presumed failure to secure the lights to the pallet encompassed (1) Rexel accepting the delivery of the unsecured lights and—withstanding uncontroverted testimony in the record that Rexel would (a) inspect delivered products and (b) not store products that were “dangerous” or “not safe” on their storage racks¹⁶—placing the unsecured lights on the top shelf of a storage rack, and (2) Paez, several days after the lights had been delivered to and accepted by Rexel, engaging in negligent conduct that contributed to the lights falling onto Juan, as found by the jury.¹⁷ Under these circumstances, “a [person] of ordinary sagacity and experience, acquainted with all the circumstances”; (internal quotation marks omitted) *Ruiz v. Victory Properties, LLC*, supra, 315 Conn. 346; could not “have reasonably anticipated that the [direct cause of the harm, namely, the conduct of Rexel and Paez] might, not improbably but in the natu-

¹⁶Robert Kelly, the warehouse manager of Rexel’s warehouse in Hartford at the time of the incident, testified that Rexel would not place anything “dangerous” on a storage rack but, rather, “[Rexel would] fix it.” Claudio Solano, a receiving supervisor for Rexel’s warehouse at the time of the incident, testified that, if a product delivered and placed on the loading dock was “not safe, [then] it [would not] get put up on [a storage] rack.” Kelly and Solano further testified that Rexel had a stretch wrap machine at the warehouse that, if needed, could be used to add additional stretch wrap to products.

¹⁷The court’s charge to the jury included the following instructions: “[The defendant] claims that the plaintiffs’ injuries were a direct and proximate result of the negligence and carelessness of . . . Paez, in one or more of the following ways in that he, one, failed to clear adjacent aisles of Rexel or Spec [Personnel, LLC] employees prior to lifting the pallet; two, did not ensure that adjacent aisles were clear of Rexel or Spec [Personnel, LLC] employees before he operated the forklift; and, three, failed to inspect the pallet of lighting products to ensure that the load was properly secured to the pallet.” In the interrogatory responses accompanying the jury’s verdict, the jury found that (1) Paez was negligent and (2) Paez’ negligence was a proximate cause of the plaintiffs’ injuries and losses.

252

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

ral and ordinary course of things, follow [the] act of negligence.” (Internal quotation marks omitted.) *Id.* In short, we conclude that the possibility that Rexel and Paez would engage in the aforementioned conduct after the lights had been delivered to and accepted by Rexel “is sufficiently remote that a reasonable person should not be expected to anticipate such an event. To hold otherwise would be to convert the imperfect vision of reasonable foreseeability into the perfect vision of hindsight.”¹⁸ (Internal quotation marks omitted.) *Lodge v. Arett Sales Corp.*, supra, 246 Conn. 578; cf. *Ruiz v. Victory Properties, LLC*, supra, 336 (injuries to child caused by another child dropping piece of concrete taken from backyard of defendant landlord’s apartment building were “sufficiently foreseeable that it was inappropriate for the trial court to foreclose the foreseeability question as a matter of law” when defendant landlord did “not dispute that the risk of harm created by its failure to remove the buckets, trash, broken concrete pieces and other debris from the backyard was that children playing in the area might trip on them or throw them at other children,” and “unusual manner” in which injuries were sustained did not “alter [the] fundamental fact” that the injuries “[fell] squarely along the [expected] continuum of harm”).

We briefly note that *Pisel v. Stamford Hospital*, supra, 180 Conn. 314, which the court cited in determining that Juan’s workplace injuries were foreseeable, does not militate against our conclusion that the defendant owed no duty of care to protect against Juan’s workplace injuries. In *Pisel*, while admitted as a patient in the defendant hospital’s psychiatric unit, the decedent was found in her room, unconscious, with no pulse, blood pressure, or respiratory function, with her head wedged between the side rail and the mattress of her bed. *Id.*, 316–17. The conservator of the decedent’s estate brought an action

¹⁸We agree, in essence, with the defendant’s second subclaim in support of its assertion that Juan’s workplace injuries were not reasonably foreseeable. As such, we need not delve into the merits of the defendant’s first subclaim predicated on its contention that its presumed failure to secure the lights to the pallet was a “shipping error” that could not form the basis of liability for Juan’s workplace injuries.

239 Conn. App. 232

JUNE, 2026

253

Cruz v. Spec Personnel, LLC

against the defendant hospital for malpractice.¹⁹ Id., 316. The jury returned a verdict against the defendant hospital, which thereafter filed an appeal. Id. One of the defendant hospital's claims on appeal was that the trial court improperly failed to instruct the jury that the defendant hospital "could not be held liable for a bizarre or unusual occurrence which it had no reason to foresee . . ." Id., 332. Our Supreme Court rejected this claim, determining that "so long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable. . . . The foreseeability issue, put in proper perspective, is not very complex. It was a jury question whether the defendant [hospital] could have anticipated that harm would come to the [decedent] from the steel frame bed given all the factors which the defendant [hospital] knew or should have known. The jury's affirmative answer cannot be disturbed." (Citations omitted.) Id., 333. Later in its decision, in addressing the issue of proximate cause, our Supreme Court rejected the defendant hospital's separate argument that "it should not be liable for the [decedent's] injuries . . . because the injuries came about in an unusual, unforeseeable manner"; id., 341; determining that "[u]nusual or bizarre results can become a factor on the question of proximate cause, but only when with the benefit of hindsight it appears highly extraordinary that the actor's negligent conduct should have brought about the plaintiff's injury. . . . Applying that test to this case we do not find it extraordinary that a psychotic patient who is delusional and whose view of space and distance is distorted might wedge herself between a mattress and a side rail in attempting either to hurt herself or to extricate herself from what may have appeared to her to be her place of confinement." (Citations omitted.) Id., 341–42.

Unlike in *Pisel*, the issue in this appeal is not whether Juan's workplace injuries came about in an "unusual,

¹⁹The conservator also asserted a claim of malpractice against a doctor, in favor of whom the jury returned a verdict. *Pisel v. Stamford Hospital*, supra, 180 Conn. 316.

254

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

bizarre or unforeseeable” manner; *id.*, 333; rather, the issue before us is whether Juan’s workplace injuries were a reasonably foreseeable consequence of the defendant’s presumed failure to secure the lights to the pallet when taking into account the conduct of Rexel and Paez after the lights had been delivered to and accepted by Rexel. Put simply, *Pisel* does not undermine our resolution of the defendant’s duty of care claim.

The plaintiffs advance three additional reasons to support the imposition of a duty on the defendant. First, the plaintiffs contend that, pursuant to the testimony of their expert witness, Singh, the defendant’s presumed failure to stretch wrap the lights to the pallet violated the industry standard of care²⁰ and “it was the defendant’s responsibility to make sure that the design of the packaging extended to the point of sale and down the supply chain.” Assuming that Singh’s testimony, in fact, supports the plaintiffs’ proposition, such testimony has no bearing on our conclusion that Juan’s workplace injuries were not reasonably foreseeable in light of the conduct of Rexel and Paez.

Second, the plaintiffs argue that the defendant owed a duty of care to Juan on the basis of “the ongoing commercial and business relationship between the defendant and Rexel, [counterclaims that were filed in the present action], and the standard terms and conditions between Rexel and the defendant [in contracts that they executed]” As the defendant notes in its reply brief and as the parties recognized during argument on the defendant’s motion for judgment notwithstanding the verdict, no contracts setting forth such terms and conditions were

²⁰ “[E]vidence of custom in the trade may be admitted on the issue of the standard of care, but it is not conclusive. . . . [I]n most cases reasonable prudence is in fact common prudence; but strictly it is never its measure Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission. . . . The trier of fact is not bound by the industry standard, but rather should consider it in light of the totality of the evidence presented in the case.” (Citations omitted; internal quotation marks omitted.) *McDermott v. State*, 316 Conn. 601, 614–15, 113 A.3d 419 (2015).

239 Conn. App. 232

JUNE, 2026

255

Cruz v. Spec Personnel, LLC

entered into the evidentiary record during trial. In any event, insofar as the plaintiffs advance their argument by relying on contracts executed by the defendant and Rexel, their “ongoing commercial and business relationship,” or counterclaims filed in the present action, the plaintiffs’ analysis is limited to two paragraphs with no record citations or substantive legal analysis. In other words, we conclude that the plaintiffs have abandoned this issue as inadequately briefed. See *Handsome, Inc. v. Planning & Zoning Commission*, 317 Conn. 515, 534 n.7, 119 A.3d 541 (2015) (“It is well established that [w]e are not obligated to consider issues that are not adequately briefed. . . . Issues are deemed inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion . . . [and] when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record” (Citation omitted; internal quotation marks omitted.)).

Third, the plaintiffs claim that the defendant’s own policies and procedures, as testified to by its warehouse manager, Damian Fritz, support imposing a duty of care on the defendant. At trial, Fritz testified that (1) it was the defendant’s policy to secure outbound products to shipping pallets, (2) products “need[ed] to be secured to a pallet to secure in transportation,” and (3) people loading and unloading products could get hurt if the products were unsecured. We perceive nothing in Fritz’ testimony that cuts against our conclusion that Juan’s workplace injuries were not a reasonably foreseeable consequence of the defendant’s presumed failure to stretch wrap the lights to the pallet before it was shipped.

In sum, we conclude that, as a matter of law, Juan’s workplace injuries were not a reasonably foreseeable consequence of the defendant’s presumed failure to secure the lights to the pallet. Accordingly, we further conclude that the court, in denying the defendant’s postverdict motion for judgment notwithstanding the verdict, improperly determined that the defendant owed a duty of care to protect against Juan’s workplace injuries.

256

JUNE, 2026

239 Conn. App. 232

Cruz v. Spec Personnel, LLC

The judgment is reversed and the case is remanded with direction to grant the defendant's motion for judgment notwithstanding the verdict and to render judgment for the defendant.

In this opinion the other judges concurred.

DOCKET NO: HHD-CV-18-5051489-S : SUPERIOR COURT
JUAN CRUZ ET AL : J.D. OF HARTFORD
v. : AT HARTFORD
SPEC PERSONNEL, LLC, ET AL : APRIL 26, 2023

**MEMORANDUM OF DECISION RE: DEFENDANT'S
MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT (#521.00),
AND TO SET ASIDE VERDICT AND FOR NEW TRIAL (#522.00)**

INTRODUCTION

On September 19, 2017, the plaintiff, Juan Cruz, was picking an order at his warehouse job when a 1300-pound load of the defendant's lightbulbs fell from a rack, breaking his spine and paralyzing him from the waist down. The plaintiff commenced the present action against defendant Signify North America Corporation (formerly Philips Lighting North America Corporation) and other parties,¹ alleging that the defendant was negligent by, among other things, failing to ensure that the pallets containing its lighting products were packed safely and securely.

On October 5, 2022, after a three-week trial, the jury returned a \$100 million verdict in favor of Juan Cruz and his wife Emily Cruz, reported to be the largest personal injury verdict in state history. The jury awarded Juan Cruz \$75 million in noneconomic damages and \$10 million in economic damages on his negligence claim, and \$10 million to Emily Cruz on her loss of consortium claim. The verdict was reduced to \$90 million, reflecting the jury's

¹ Shortly before the trial commenced the plaintiffs settled their claims with defendants JeanPaul D. Paez, Spec Personnel, LLC, and Venture Properties, LLC.

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HARTFORD, J.D.

apportionment of 10 percent liability to defendant JeanPaul D. Paez, who, while operating a “reach truck” in an aisle adjacent to where Juan Cruz was working, made contact with the pallet containing the defendant’s lightbulbs. At the defendant’s request, the jury was polled and confirmed that the verdict was in fact their verdict, after which the court accepted the verdict.

On November 23, 2022, the defendant filed its motion for judgment notwithstanding the verdict (JNOV motion) and motion to set aside the verdict and for new trial (motion to set aside) and supporting papers (docket entry nos. 521-523, 525).² The defendant argues in its JNOV motion that: it owed no duty to Juan Cruz because the injury was not foreseeable and it would be against public policy to recognize a duty in this case; if the defendant did owe a duty to Juan Cruz, there was insufficient evidence to prove that the defendant breached that duty; and if the defendant breached that duty, its breach did not cause Juan Cruz’ injury. As to the motion to set aside, the defendant contends that the jury’s verdict was against the weight of the evidence; the court made erroneous evidentiary rulings; the court gave an erroneous jury instruction; and the plaintiffs’ counsel made unfairly prejudicial statements.

On December 19, 2022, the plaintiffs filed their objection to the JNOV motion and the motion to set aside (docket entry no. 535). On December 30, 2022, the defendant filed a reply memorandum and exhibits in further support of its motions (docket entry nos. 538-39). The court heard oral argument on the post-verdict motions on January 4, 2023.

² The defendant also filed a motion for remittitur and supporting papers (docket entry nos. 526-528). The court has issued a separate memorandum of decision addressing the remittitur motion.

DISCUSSION

I. Motion for Judgment Notwithstanding the Verdict

“A trial court may only grant a motion for judgment notwithstanding the verdict if the jury reasonably and legally could not have reached any other conclusion . . . and must deny such a motion where it is apparent that there was some evidence upon which the jury might reasonably reach [its] conclusion” (Citation omitted; internal quotation marks omitted.) *Landmark Investment Group, LLC v. CALCO Construction & Development Co.*, 318 Conn. 847, 863, 124 A.3d 847 (2015). “A directed verdict³ is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party. . . . In addition, [a] verdict may be directed [when] the decisive question is one of law” (Citation omitted; footnote added; internal quotation marks omitted.) *Ventura v. East Haven*, 330 Conn. 613, 629, 199 A.3d 1 (2019).

A. Duty

The defendant first argues that it owed no duty to the plaintiff. “The existence of a duty is a question of law and [o]nly if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant.” (Citation omitted; internal quotation marks omitted.) *Santopietro v. New Haven*, 239 Conn. 207, 226, 682 A.2d 106 (1996). “[T]he test for the

³ The standard of review for a motion for judgment notwithstanding the verdict is the same standard governing a motion for directed verdict, “because a motion for judgment notwithstanding the verdict is not a new motion, but the renewal of a motion for a directed verdict.” (Citation and internal quotation marks omitted.) *Gagne v. Vaccaro*, 255 Conn. 390, 400-401, 766 A.2d 416 (2001).

existence of a legal duty of care 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." (Internal quotation marks omitted.) *Murdock v. Croughwell*, 268 Conn. 559, 566, 848 A.2d 363 (2004). "The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy." (Internal quotation marks omitted.) *Streifel v. Bulkley*, 195 Conn. App. 294, 305, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020).

1. Foreseeability

"Inasmuch as virtually all harms, in hindsight, are literally foreseeable . . . the law has rejected a literal foreseeability test as the fulcrum of duty. . . . [T]he conclusion that a particular injury to a particular plaintiff or class of plaintiffs possibly is foreseeable does not, in itself, create a duty of care. . . . Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Lodge v. Arett Sales Corp.*, 246 Conn. 563, 575-76, 717 A.2d 215 (1998). "Even where harm was foreseeable, [the Supreme Court] has found no duty when the nexus between a defendant's negligence and the particular consequences to the plaintiff was too attenuated." *First Federal Savings & Loan Assn. of Rochester v. Charter Appraisal Co.*, 247 Conn. 597, 605, 724 A.2d 497 (1999). Nonetheless, "the [intervening acts] of [a third party do] not [necessarily] relieve the [defendant] of liability because the trier of fact may find that the plaintiff's injury falls within the

scope of the risk created by [the defendant's] negligent conduct.” (Internal quotation marks omitted.) *Snell v. Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 756, 212 A.3d 646 (2019).

The defendant relies primarily on *Lodge v. Arett Sales Corp.*, supra, 246 Conn. 563, and *Demers v. Rosa*, 102 Conn. App. 497, 925 A.2d 1165 (2007), for its contention that the plaintiff's injury was not foreseeable.⁴ In *Lodge*, an alarm company transmitted a false alarm to the local fire department. *Lodge v. Arett Sales Corp.*, supra, 567. While responding to the false alarm, the brakes on the fire truck failed, causing it to crash. *Id.* The firefighters argued that the alarm company was responsible because they would not have been driving if the alarm company had not negligently transmitted the false alarm. *Id.*, 566. The Supreme Court held that the accident was not a foreseeable consequence of the alarm company's actions. *Id.*, 577. As the District Court noted in *Munn v. Hotchkiss School*, 24 F. Supp. 3d 155, 175-76 (D. Conn. 2014), *aff'd*, 724 F. Appx. 25 (2d Cir. 2018), “[t]he holding in *Lodge*, however, is fundamentally concerned with cause in fact, not the scope of duty. . . . Although the Court framed the plaintiffs' harm as ‘too remote’ from the defendant's conduct to require liability, ‘remote’ was used to describe the closeness of the relationship between the plaintiffs' harm and the defendant's conduct, not to refer to the probability, or improbability, of that harm occurring. . . . Ultimately, the Court indicated that the plaintiffs had sued the wrong defendant, not that the anticipated harm

⁴ In its JNOV papers, the defendant also argued that the court should reconsider the December 14, 2021 ruling of the court (*Budzik, J.*) denying the defendant's motion for summary judgment. (Docket entry no. 297.86.) Judge Budzik held that it was foreseeable that a pallet of lighting products that were not safely and securely packaged when shipped to a warehouse might be placed on an upper storage shelf or in an elevated position and fall on someone. The defendant did not move for reargument or reconsideration of Judge Budzik's decision at that time. The defendant abandoned the argument on the record during oral argument. See Tr., 1/4/23, pp. 54-56.

was unforeseeable if liability were asserted against another defendant under the same circumstances.” (Citations omitted.)

In *Demers*, two police officers responded to a report of a dog roaming outside during a snowstorm. *Demers v. Rosa*, supra, 102 Conn. App. 498. After retrieving the dog, the police officers were talking next to their car when one of the officers slipped and fell. *Id.*, 499. The officer alleged that the dog owner was responsible because he would not have been standing on the icy driveway if the owner had not negligently allowed his dog to roam outside. *Id.*, 501. The Appellate Court held that the fall was not a foreseeable consequence of the dog owner’s actions. *Id.*, 504.

Both *Lodge* and *Demers* involved individuals performing an act that they would not have performed but for the defendant’s negligence, during which they sustained injuries. In each case, the injury would have occurred if the plaintiffs were performing the action regardless of the reason; the fire truck’s brakes would have failed even if the firefighters were responding to a real emergency, and the officer would have slipped on the icy driveway even if he were standing there for a different reason. Thus, the injuries in *Lodge* and *Demers* were not foreseeable. By contrast, the plaintiffs in the present case presented expert testimony to the effect that the products would not have fallen had they been stretch-wrapped to the pallet. The defendant knew and understood that its lighting products were required to be stretch-wrapped to the pallet, that the products that it shipped to Rexel USA, Inc.’s (Rexel) warehouse would be stored in the

warehouse, including on above-ground racking, and that a product that was not properly secured⁵ could fall and injure someone. Accordingly, the court finds that the harm to Juan Cruz was foreseeable. See *Pisel v. Stamford Hospital*, 180 Conn. 314, 333, 430 A.2d 1 (1980) (“so long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable”).

2. Public policy

“A court . . . is not required to address the first prong as to foreseeability if [it] determine[s], based on the public policy prong, that no duty of care existed. . . . Foreseeability notwithstanding, it is well established that Connecticut courts will not impose a duty of care on [a defendant] if doing so would be inconsistent with public policy.” (Citation omitted; internal quotation marks omitted.) *Streifel v. Bulkley*, supra, 195 Conn. App. 305. “[The Supreme Court] previously [has] recognized four factors to be considered in determining the extent of a legal duty as a matter of public policy: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions.” *Murillo v. Seymour Ambulance Assn., Inc.*, 264 Conn. 474, 480, 823 A.2d 1202 (2003).

⁵ The parties use various phrases, such as “properly secured,” “shrink-wrapped” or “stretch-wrapped” in their post-verdict memoranda in describing whether the defendant’s lighting products that were shipped to Rexel were stretch-wrapped to the pallet. For ease of reference the court will use the phrases “stretch-wrapping” or “stretch-wrapped.”

i. Normal expectations of parties

“Our case law also establishes that, in applying [the first] factor, courts must consider Connecticut’s existing body of common law and statutory law relating to this issue” (Citation omitted; internal quotation marks omitted.) *Raspberry Junction Holding, LLC v. Southeastern Connecticut Water Authority*, 340 Conn. 200, 216, 263 A.3d 796 (2021). The defendant quotes from *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 539, 51 A.3d 367 (2012), in which the Supreme Court stated that “[t]here generally is no duty that obligates one party to aid or to protect another party. . . . One exception to this general rule arises when a definite relationship between the parties is of such a character that public policy justifies the imposition of a duty to aid or to protect another.” This rule is derived from the Second Restatement of Torts, which provides as an exception to the rule that “[o]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm”² Restatement (Second), Torts § 324A (1965).

The defendant argues that the parties expected that the defendant would be responsible only for harm occurring during the shipping process, and that its responsibility ended when its product reached Rexel’s warehouse. The plaintiffs counter that the defendant’s own shipping policies (requiring that its product be properly secured to a pallet before shipping), Rexel’s and the defendant’s competing contractual indemnification provisions regarding liability for injuries caused by defective products, and the uncontroverted expert testimony of S. Paul Singh, Ph. D.

(the plaintiffs' expert in packaging, transportation and materials handling) that products should be secured properly before shipping to prevent damage to the product and injuries to others, establish that it was the normal expectations of the parties that products should be properly secured to prevent injury to persons and damage to the product.

The court finds that it was the normal expectations of the parties that the product was to be properly secured to prevent injuries to persons and property. There is nothing to suggest that it was the parties' normal expectation that the defendant's potential liability for injury or harm caused by improperly shipping its product ended when the product arrived at Rexel.

- ii. Encouraging participation while weighing safety and avoiding an increase in litigation

The second and third policy factors are "consider[ed] together" because they "are analytically related." *Streifel v. Bulkley*, supra, 195 Conn. App. 317. "[The Appellate Court has] recognize[d] that, with respect to the third factor which contemplates the concern of increased litigation, [i]t is [often] easy to fathom how affirmatively imposing a duty on the defendants . . . could encourage similarly situated future plaintiffs to litigate on the same grounds; that is true anytime a court establishes a potential ground for recovery. . . . Because of this, in considering these two factors, our Supreme Court at times has employed a balancing test to determine whether, in the event that a duty of care is recognized by the court, the advantages of encouraging participation in the activity under review outweigh the disadvantages of the potential increase in litigation." (Internal quotation marks omitted.) *Id.*, 318. Additionally, "[t]he argument for encouraging participation in an activity while ensuring safety contains two considerations—(1) encouraging participation, and (2) *promoting* safety—not just the objective of *ensuring* safety under any and all circumstances." (Emphasis in original.) *Grenier v.*

Commissioner of Transportation, supra, 306 Conn. 545. See also *Raspberry Junction Holding, LLC v. Southeastern Connecticut Water Authority*, supra, 340 Conn. 223 (“because improving public safety is a primary reason duties are imposed in the first instance, the fact that no duty we could impose on the defendant in the present case would be likely to increase the physical safety of the defendant’s customers is a compelling reason not to impose one”).

It is generally expected that “increased litigation may result in those cases in which, by holding that a duty exists, [the court] effectively [is] recognizing a new cause of action or otherwise breaking new ground.” (Internal quotation marks omitted.) *Munn v. Hotchkiss School*, 326 Conn. 540, 565, 165 A.3d 1167 (2017). Duties which would result in “[t]he elimination of unnecessary risks, i.e., those that can be minimized with little effort,” however, “should have the salutary effect of promoting safety by ensuring that . . . appropriate protective measures are taken,” and therefore “should encourage, rather than dampen” participation in the activity. (Emphasis omitted.) *Id.*, 561.

The availability of workers’ compensation is also relevant: “Our courts previously have considered the availability of workers’ compensation to a plaintiff as a factor militating against allowing subsequent recovery from the person who engendered harm.” *Streifel v. Bulkley*, supra, 195 Conn. App. 325. This is especially so when the plaintiff’s employer is more directly responsible for the injury than the defendant, as imposing liability on the defendant in such a case “would have the deleterious effect of exempting the party that is primarily responsible for the [plaintiff’s] harm from all liability.” *Lodge v. Arett Sales Corp.*, supra, 246 Conn. 583. Nonetheless, the weight to be accorded the availability of workers’ compensation is tempered by the foreseeability of the injury and the benefits of imposing a duty. See *id.*, 585 (“those social

costs may not be sufficient to prompt us to conclude that public policy dictates that there should be no duty in a case where the harm and the negligence are less attenuated or where the benefits of imposing liability are more substantial”).

The defendant argues that (1) imposing a duty here would not enhance safety because such a duty would not affect the events that occurred at the warehouse that contributed to Juan Cruz’ injury; (2) it would be unfair to impose a duty on the defendant when Juan Cruz’ employer holds greater responsibility for the injury but is immunized from liability due to the workers’ compensation statute; and (3) imposing a duty here would lead to an increase in litigation. The plaintiffs respond that imposing a duty would encourage product shippers to ensure that their products are properly secured, and litigation would not increase because the circumstances in the present case are uncommon and would be less likely to occur if product shippers properly secure the products.

The court finds that safety concerns far outweigh any concerns about additional litigation. Imposing a duty would promote safety, by ensuring that parties such as the defendant ship their products according to their own standards, industry standards, and their contractual obligations. The jury clearly was unpersuaded by the defendant’s argument that Rexel (Juan Cruz’ employer) was somehow more responsible for his injuries than was the defendant. The jury was instructed that it could find that Rexel was the sole proximate cause of the plaintiffs’ injuries, but the jury rejected that claim. Rather, it found that the defendant was 90 percent responsible, and Paez was 10 percent responsible. Lastly, there is no duty being created here, but even if there were, imposing a duty would eliminate risk and promote safety, which in the end should decrease, rather than increase, litigation.

iii. Decisions of other jurisdictions

When there are no decisions in other jurisdictions on point, the fourth policy factor does not weigh in either party's favor. See *Munn v. Hotchkiss School*, supra, 326 Conn. 566-67 (noting that the cases cited by the parties were "largely unhelpful" and concluding that "the fourth public policy factor in the present case is essentially neutral"). The defendant cites to *Richardson v. Rasulov*, United States District Court, Docket No. 1:19CV01549 (TWP) (S.D. Ind. April 15, 2021), in which the court dismissed a claim against a shipper arising out of a motor vehicle collision. In discussing public policy, the court stated, "public policy dictates that no duty should be owed by Amazon when it brokered the Load to XPO and XPO sub-brokered the Load to Columbia. Columbia, [Rasulov], and/or Xpress then transported the Load. . . . This lengthy chain is much too tenuous to impose a duty on public policy grounds." (Internal quotation marks omitted.) *Id.* *Richardson v. Rasulov* is clearly distinguishable. In that case, the district court focused primarily on the fact that the defendant had very little control over who drove the truck. In the present case, the defendant shipped a 1300-pound pallet of lighting products knowing that it was at least reasonably foreseeable that they would be stored in a warehouse and could fall if not properly stretch-wrapped to the pallet. Thus, this factor is neutral, and the court concludes that the imposition of a legal duty on the defendant is not inconsistent with public policy.

In sum, the court concludes that the defendant owed a legal duty to the plaintiff.

B. Breach

The defendant next argues that the plaintiff did not provide sufficient evidence to prove that it breached its duty. "A party challenging the validity of the jury's verdict on grounds that there was insufficient evidence to support such a result carries a difficult burden. In reviewing

the soundness of a jury's verdict, [the court] construe[s] the evidence in the light most favorable to sustaining the verdict. . . . [The court] must determine . . . whether the totality of the evidence, including reasonable inferences therefrom, supports the jury's verdict [I]f the jury could reasonably have reached its conclusion, the verdict must stand" (Citation omitted; internal quotation marks omitted.) *Broadnax v. New Haven*, 294 Conn. 280, 299, 984 A.2d 658 (2009).

"Although the elements of a cause of action may be established on the basis of inferences drawn from circumstantial evidence . . . such inferences must be reasonable and logical, and the conclusions based on them must not be the result of speculation and conjecture. . . . An inference must have some definite basis in the facts. . . . When an element necessary to a cause of action cannot be established without conjecture, the evidence presented cannot withstand a motion for a directed verdict." (Citations omitted; internal quotation marks omitted.) *Boehm v. Kish*, 201 Conn. 385, 389, 517 A.2d 624 (1986).

The defendant argues that there was insufficient evidence regarding the condition of the defendant's lightbulbs when they left the defendant's custody, so the conclusion that the defendant did not properly secure them could only be reached through speculation. The plaintiffs respond that there was ample evidence showing that the lightbulbs were not properly secured when they arrived at Rexel's warehouse,⁶ and the jury could reasonably infer that the lightbulbs had been shipped from the defendant's Mountain Top, Pennsylvania facility in that fashion. The

⁶ For example, Juan Cruz testified that he personally observed many shipments of the defendant's lightbulbs arriving at Rexel in 2017 and none were stretch-wrapped to a pallet. Dr. Singh, the plaintiffs' packaging, transportation, and materials handling expert, also testified that, based on his review and analysis of the OSHA photographs taken after the accident, the defendant's product had not been stretch-wrapped to the pallet before the lightbulbs fell off the pallet onto Juan Cruz. Among other things, Dr. Singh noted that there was no evidence of fraying, or that the stretch wrap had been cut or torn.

plaintiffs further argue that the jury was free to disbelieve the defendant's evidence suggesting that the lightbulbs were properly secured when they left the defendant's custody.

The court finds that the totality of the evidence, including reasonable inferences that may be drawn therefrom, supports the jury's verdict.

C. Causation

The defendant argues that the plaintiff presented insufficient evidence to establish that the defendant's conduct was a cause in fact of Juan Cruz' injuries, and that its conduct was a proximate cause of his injuries as a matter of law. "Causation is an essential element of a cause of action in negligence. . . . [A] plaintiff must establish that the defendant's conduct legally caused the injuries. . . . The first component of legal cause is causation in fact. Causation in fact is the purest legal application of . . . legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct. . . . The second component of legal cause is proximate cause. . . . [T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. . . . Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendant's conduct]. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection. . . . This causal connection must be based upon more than conjecture and surmise." (Citation omitted; internal quotation marks omitted.) *Kumah v. Brown*, 130 Conn. App. 343, 347, 23 A.3d 758 (2011). "[T]he question of proximate causation generally belongs to the trier of fact because causation is essentially a factual issue. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a

reasonable disagreement the question is one to be determined by the trier as a matter of fact.”

(Internal quotation marks omitted.) *Id.*, 349.

“[I]t is well established that [t]he injury resulting from the breach of duty need not be the direct or immediate result of the wrongful act; if it is probable and a natural result, that is according to the operations of natural laws, it is enough. . . . The mere fact that the act of another person concurs, co-operates or contributes, in any degree whatever in producing the injury, is of no consequence [I]n no case is the connection between an original act of negligence and an injury actually broken if a [person] of ordinary sagacity and experience, acquainted with all the circumstances, could have reasonably anticipated that the [direct cause of the harm] might, not improbably but in the natural and ordinary course of things, follow his act of negligence.”

(Internal quotation marks omitted.) *Ruiz v. Victory Properties, LLC*, 315 Conn. 320, 346, 107 A.3d 381 (2015).

“[C]auses traced clear to the end [that] become of trivial consequences, mere incidents of the operating cause, may be, in a sense, factors, but are so insignificant that the law cannot fasten responsibility [on] one who may have set them in motion. They are not substantial factors as operative causes. To be factors of this degree they must have continued down to the moment of the damage, or, at least, down to the setting in motion of the final active injurious force [that] immediately produced (or preceded) the damage.” (Internal quotation marks omitted.) *Snell v. Norwalk Yellow Cab, Inc.*, *supra*, 332 Conn. 745.

The Supreme Court noted in *Lodge v. Arett Sales Corp.*, *supra*, 246 Conn. 574 n.9, and *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 387 n.4, 650 A.2d 153 (1994), that when the defendant is not the “direct cause” of the harm, the proximate cause analysis is highly similar

to the foreseeability analysis in determining duty. Although the Appellate Court in *Kumah v. Brown*, supra, 130 Conn. App. 349, concluded that the substantial factor test is not the same as the foreseeability test, the Supreme Court in more recent cases stated that “[i]n negligence cases . . . in which a tortfeasor’s conduct is not the direct cause of the harm, the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor’s duty to the plaintiff.” (Internal quotation marks omitted.) *Ruiz v. Victory Properties, LLC*, supra, 315 Conn. 345.

The defendant argues that the evidence does not establish that the incident would not have occurred but for the defendant’s failure to properly secure the lightbulbs, and that the connection between the defendant’s conduct and Juan Cruz’ injury is too attenuated to meet the substantial factor test. The plaintiffs counter that their expert testified that the lightbulbs would not have fallen if they had been secured properly to the pallet;⁷ and the possibility of a package falling on someone was a foreseeable consequence of failing to secure a package, as evidenced by the defendant’s own policies and the industry standard.

The court agrees with the plaintiffs. There was ample evidence that the defendant’s negligence was a cause in fact of Juan Cruz’ injuries, and that its conduct was a proximate cause of his injuries as a matter of law.

For the reasons set forth above, the JNOV motion is denied.

⁷ Dr. Singh testified, among other things, that the product that fell onto Juan Cruz was a defective load, that the defendant’s failure to stretch-wrap the product to the pallet violated the applicable industry standard of care (as well as the defendant’s own policies and procedures), and that the failure to properly secure the product to the pallet was a substantial contributing factor in causing Juan Cruz’ injuries, injuries that could have been avoided had the product been properly secured to the pallet.

II. Motion to Set Aside the Verdict and for a New Trial

“The trial court possesses inherent power to set aside a jury verdict which, in the court’s opinion, is against the law or the evidence. . . . The supervision which a judge has over the verdict is an essential part of the jury system. . . . [The trial court] should not set aside a verdict where it is apparent that there was some evidence upon which the jury might reasonably reach their conclusion, and should not refuse to set it aside where the manifest injustice of the verdict is so plain and palpable as clearly to denote that some mistake was made by the jury in the application of legal principles, or as to justify the suspicion that they or some of them were influenced by prejudice, corruption or partiality. . . . The court has a duty to set aside the verdict where the jury’s action is so unreasonable as to suggest that it was the product of such improper influences. . . . A verdict may be set aside even if the evidence was conflicting and there was direct evidence in favor of the party who prevailed with the jury.” (Citations omitted; internal quotation marks omitted.) *Palomba v. Gray*, 208 Conn. 21, 23-24, 543 A.2d 1331 (1988). “The decision to set aside a verdict entails the exercise of a broad legal discretion” *Id.*, 24. Nonetheless, “the exercise of this discretion should be a wise discretion, to be sparingly exercised and only in instances when the error falls within the class” of “palpable error[s] which [were] harmful to the proper disposition of the case and probably brought about a different result in the verdict[.]” *Munson v. Atwood*, 108 Conn. 285, 737-38, 142 A.2d 737 (1928).

A. Weight of the Evidence

The defendant argues that there was substantial evidence disproving the plaintiffs’ claim, and that the verdict was against the clear weight of the evidence. The plaintiffs respond that a

verdict should not be set aside as long as there is some evidence to support it, and in this case, there was substantial evidence supporting the verdict.

“In passing on a motion to set aside a jury verdict, a trial court, like a juror considering the evidence, must draw upon its experience and knowledge of human nature, events and motives and evaluate the verdict in that context. . . . If the trial judge finds the verdict to be so clearly against the weight of the evidence in the case as to indicate that the jury did not correctly apply the law to the facts in evidence in the case, or [was] governed by ignorance, prejudice, corruption or partiality, then it is his duty to set aside that verdict and to grant a new trial.”

(Citation omitted; internal quotation marks omitted.) *Fileccia v. Nationwide Property & Casualty Ins. Co.*, 92 Conn. App. 481, 486, 886 A.2d 461 (2005), cert. denied, 277 Conn. 907, 894 A.2d 987 (2006). “For [a motion] to set aside the verdict to succeed, it must appear that the evidence furnished *no reasonable basis* for the jury’s conclusion The evidence must be considered in the light most favorable to the [prevailing party].” (Citation omitted; emphasis added.) *Moriarty v. Lippe*, 162 Conn. 371, 374, 294 A.2d 326 (1972). “[The trial court] should not set aside a verdict where it is apparent that there was *some evidence* upon which the jury might reasonably reach their conclusion” (Emphasis added; internal quotation marks omitted.) *Palomba v. Gray*, *supra*, 208 Conn. 24.

The court finds that there was ample evidence adduced at trial establishing the defendant’s negligence, including, among other evidence: Juan Cruz testified that in 2017, he personally observed that none of the pallets of the defendant’s lightbulbs shipped to Rexel were stretch-wrapped to the pallet. One of the defendant’s employees testified that the defendant only stretch-wraps loose loads, not full pallets. Given the fact that product arrived at Rexel as a full

pallet, wrapped in green banding and stretch-wrapped (but not to the pallet), the jury reasonably could have inferred that the product was shipped to Rexel as it had been received from China.⁸ Moreover, the jury may well have found it compelling that the video shown *by the defendant* as ostensible proof that the defendant's lighting products are stretch-wrapped to the pallet before shipping instead proved the opposite. The video showed a machine stretch-wrapping the boxes of lightbulbs only – it did not stretch-wrap the boxes to the bottom of the pallet. Gerry Madash, an employee of the defendant and the last person to see the lightbulbs in question at the Mountain Top facility before they were shipped to Rexel, testified that he could not confirm that the product had been secured to the pallet before shipment. The OSHA photographs taken shortly after the incident showed that the defendant's product fell off the pallet as a single unit (banded and stretch-wrapped), while the pallet remained on the warehouse rack. Dr. Singh, the plaintiffs' packaging expert, and other witnesses testified that the product had not been secured to the pallet before it fell and crushed Juan Cruz.

Considering the evidence in the light most favorable to the plaintiffs, there is no basis to find that the verdict was against the weight of the evidence.

B. Evidentiary Rulings

"A trial court has the inherent power to set aside a verdict where it finds it has made, in its instructions, rulings on evidence, or otherwise in the course of the trial, a palpable error which was harmful to the proper disposition of the case and probably brought about a different result in

⁸ The evidence at trial established that the lightbulbs were manufactured in China and shipped to the defendant's warehouse in Mountain Top, Pennsylvania. The boxes of lightbulbs shipped from China were stacked and wrapped with green banding, stretch-wrapped to each other, placed onto a plastic "slip sheet" to facilitate loading onto a container, and then shipped to the United States. The banded and wrapped boxes were later placed onto a wooden pallet.

the verdict. . . . It is proper for a trial court, using due caution, and in the exercise of its discretion, to set aside a verdict when satisfied that . . . its rulings on evidence were erroneous and that those erroneous . . . rulings were consequential enough to have had a substantial effect on the verdict.” (Internal quotation marks omitted.) *Holmes v. Hartford Hospital*, 147 Conn. App. 713, 719-20, 84 A.3d 885 (2014).

The defendant argues that the court made three erroneous and unfairly prejudicial evidentiary rulings: (1) the court excluded all evidence of Paez’ drug use; (2) the court excluded all evidence of OSHA’s investigation and alleged concerns about unsafe conditions at Rexel’s warehouse; and (3) the court precluded the defendant’s expert, Fawzi Bayan, from rebutting Dr. Singh’s causation opinions and testifying that the lightbulbs would have fallen even if they had been properly secured to the pallet. The plaintiffs respond that the evidentiary rulings were within the court’s discretion, and therefore provide no basis for a new trial, and were inadequately briefed and should be considered abandoned.⁹

Although the defendant’s challenges to the court’s evidentiary rulings were inadequately briefed, the court notes that its ruling with respect to Paez’ alleged drug use was addressed at

⁹ Courts are not required to review claims that are inadequately briefed. *Heyward v. Judicial Dept.*, 159 Conn. App. 794, 802, 124 A.3d 920 (2015). “The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited. . . . It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel’s work, create the ossature for the argument, and put flesh on its bones.” (Citation omitted; internal quotation marks omitted.) *State v. Prosper*, 160 Conn. App. 61, 74-75, 125 A.3d 219 (2015). “These same principles apply to claims raised in the trial court.” *Connecticut Light & Power Co. v. Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003).

length in the context of motions in limine and a *Porter* hearing¹⁰ regarding the proposed expert testimony of the *plaintiffs'* toxicologist, Dr. Scott Lukas. (See Order at docket entry no. 404.86.) Similarly, the OSHA evidence was the subject of a motion in limine (docket entry no. 475.00) and was argued extensively. Finally, Bayan's testimony was the subject of a motion in limine (docket entry no. 471) and a *Porter* hearing. The defendant was specifically asked by the court to address each of the *Porter* factors with respect to Bayan's proposed testimony, but failed to do so. (See Order at docket entry no. 471.86.) Moreover, Bayan's methodology was, by his own admission, created specifically for this litigation and had never been subjected to the rigors of peer review.

The defendant failed to show how the court's prior rulings were legally incorrect, harmful to the proper disposition of the case, and would likely have resulted in a different verdict. The motion to set aside the verdict and for a new trial on this basis is denied.

C. Jury Instructions

"Although a trial judge may set aside a verdict for misstatements in his charge to the jury, this must be done with great caution, and only if he is entirely satisfied, upon an authoritative or statutory basis, that he has committed unmistakable error that has caused unquestionable harm. . . . It is difficult for a court to review its own charge with sufficient detachment from its own impressions received during the course of the trial and its own opinion of what result the

¹⁰ "In [*State v. Porter*, 241 Conn. 57, 80-90, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998)], we followed the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and held that testimony based on scientific evidence should be subjected to a flexible test to determine the reliability of methods used to reach a particular conclusion." (Internal quotation marks omitted.) *State v. Raynor*, 337 Conn. 527, 529 n.2, 254 A.3d 874 (2020).

jury should have reached.” (Citations omitted.) *Sciola v. Shernow*, 22 Conn. App. 351, 360, 577 A.2d 1081, cert. denied, 216 Conn. 815, 580 A.2d 60 (1990).

The defendant argues that the court improperly prevented it from arguing that Rexel and Paez together were the sole proximate cause of Juan Cruz’ injuries and improperly instructed the jury with respect to sole proximate cause. The plaintiffs respond that (1) the defendant waived this argument by failing to include the allegedly incorrect jury instruction in its brief; and (2) the court instructed the jury that it could impute Paez’ negligence to Rexel.

The defendant failed to adequately brief this issue, and it is considered abandoned. The court notes, however, that the defendant argued at length in connection with the proposed request to charge that the jury should be instructed that Rexel, as Juan Cruz’ employer, and Paez could together be considered the “sole” proximate cause of the incident. The court rejected that argument, finding that under *Archambault v. Sonoco/Northeastern, Inc.*, 287 Conn. 20, 37, 946 A.2d 839 (2008), a defendant is entitled to assert, under a general denial, that the negligence of an *employer* who is not a party to the action (such as Rexel) is the sole proximate cause of the plaintiff’s injuries.

Consistent with *Archambault*, the jury was instructed that it could find that Rexel was the sole proximate cause of the plaintiffs’ injuries:

Philips/Signify has denied that it was negligent, and contends that Rexel USA, Inc. (Rexel) was the sole proximate cause of the plaintiffs’ injuries, that is, that Rexel’s alleged negligence was the only substantial factor causing the plaintiffs’ injuries. Philips/Signify claims that Rexel was negligent in one or more of the following ways:

1. it failed to adequately train and certify Mr. Paez to operate a powered industrial truck before allowing him to operate the reach truck;
2. it failed to follow its own safety rules as set forth in the Rexel Safety Manual; and/or

3. if it had observed an unsafe condition because the TLED product allegedly was not stretch-wrapped to the pallet when it arrived at Rexel, Rexel could have stretch-wrapped the product to the pallet before storing the product in the warehouse.

I have previously explained to you how to analyze claims of negligence and causation. The same analysis applies with respect to Philips/Signify's claim that Rexel's negligence was the sole proximate cause of the plaintiffs' injuries. If you find that Philips/Signify has shown that Rexel was the sole proximate cause of the plaintiffs' injuries, you must then render a verdict in Philips/Signify's favor.

The jury was also charged that it should consider Paez' conduct under the "borrowed worker" doctrine in determining whether Rexel was the sole proximate cause of Juan Cruz' injuries:

In evaluating Philips/Signify's claim that Rexel was the sole proximate cause of the plaintiffs' injuries there is one additional issue for you to consider. Philips/Signify claims that Mr. Paez was a borrowed worker of Rexel. A worker is considered a "borrowed" worker when the general employer (in this case Spec Personnel) surrenders exclusive supervision and control over the worker to a borrowing employer, who accepts and assumes supervision and control over the borrowed worker. Exclusive control for all purposes is not required. Rather, the question is whether the borrowing employer has exclusive control over the borrowed worker related to the activities giving rise to the injuries at hand. Here, you must determine if Rexel had exclusive control over Mr. Paez on the day in question and for the activities in dispute. In making that determination, you may consider such factors as who paid Mr. Paez's wages; who had the right to hire or fire him; who had the right to direct him where to go and what to do; the custody or ownership of the tools or appliances he used in his work; and the business in which Rexel is engaged.

If you find that Philips/Signify has proven by a preponderance of the evidence that Rexel had exclusive control over Mr. Paez on the day of the incident for the activities giving rise to the incident, you may impute his conduct to Rexel in determining whether Rexel's alleged negligent conduct was the sole proximate cause of the plaintiffs' injuries. If you find that Rexel did not have such exclusive control, then you cannot impute Mr. Paez's conduct to Rexel.

Thus, the jury could have found that Rexel was the sole proximate cause of the plaintiffs' injuries. It did not. Instead, it found the defendant 90 percent liable for the plaintiffs' injuries.

The defendant failed to satisfy its burden of showing that the court should be “entirely satisfied, upon an authoritative or statutory basis, that [it] has committed unmistakable error that has caused unquestionable harm.” *Sciola v. Shernow*, supra, 22 Conn. App. 360. The motion to set aside the verdict and for a new trial on this basis is denied.

D. Statements of Counsel

Lastly, the defendant argues that the plaintiffs’ counsel “deployed a highly prejudicial strategy of intentionally polluting the trial with . . . baseless allegations of destruction of evidence” despite the court’s directive that spoliation was not at issue in the case. Def.’s Mem., p. 51. Both parties refer the court to their briefing on this point in connection with the defendant’s motion for remittitur

“When a verdict should be set aside because of improper remarks of counsel . . . the remedy is a new trial. . . . In civil cases . . . the harmed party must show manifest injury In every case, both criminal and civil, involving improper argument, there are two questions. The first is whether the remarks were improper, and the second is whether, if the remarks were improper, a new trial is necessary.” (Internal quotation marks omitted.) *Davies v. Jezek*, 123 Conn. App. 555, 560, 3 A.3d 112 (2010). “To determine whether the court [should grant a] motion to set aside the verdict and for a new trial, [the court] examine[s] whether the improper remarks made by . . . counsel deprived the [movant] of a fair trial. In other words, [the court] look[s] to see whether permitting the verdict to stand in light of the impropriety of counsel’s argument would constitute a manifest injury to the [movant]. The [movant] has the burden of proving that [it] suffered manifest injury, that the remarks were unreasonable or that they were flagrantly prejudicial. . . . If [the court] determine[s] that the remarks of . . . counsel deprived the

[movant] of a fair trial, then the court [should grant the] motion.” (Citations omitted.) *Audibert v. Halle*, 198 Conn. App. 472, 485, 233 A.3d 1237 (2020). “[T]he impact of . . . improper [questions and] arguments can usually be nullified by the court’s curative instruction.” (Internal quotation marks omitted.) *Brown v. Cartwright*, 203 Conn. App. 490, 510, 249 A.3d 59 (2021). “By requesting curative instructions and not objecting to the instructions given by the court, [a party] waive[s] any claim of error.” *Id.*

The plaintiffs’ counsel’s statements, although clearly contrary to the court’s ruling that this case did not involve a “spoliation adventure,” did not deprive the defendant of a fair trial. The record reflects that the defendant did not object to, or ask for a sidebar conference with the court to address, the plaintiffs’ counsel’s references to the destruction of evidence in his opening statement. The record further reflects that the court consistently sustained the defendant’s objections (when they were made) with respect to the spoliation issue, including during the plaintiffs’ closing argument. Moreover, the defendant requested a sidebar conference at the conclusion of the plaintiffs’ counsel’s closing argument, at which defense counsel requested an immediate curative instruction. The court granted that request and discussed the instruction it proposed to give with counsel before delivering it. The court then advised the jury as follows: “Ladies and gentlemen, before Mr. Vossler begins with his closing, I just wanted to instruct you on one thing. There was a reference to destruction of evidence. I’m going to instruct you to disregard that statement. There was no evidence that there was any destruction of evidence in this case. So please disregard that statement. Thank you.” Tr., 10/4/22, p. 36.

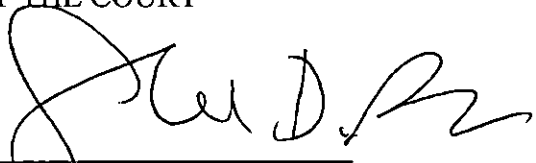
The defendant did not request any other curative instruction or any specific charge to the jury on that point, nor did it move for a mistrial at any time.

The motion to set aside the verdict and for a new trial on this basis is denied.

CONCLUSION

For all of the foregoing reasons, the motions for judgment notwithstanding the verdict, and to set aside the verdict and for a new trial, are denied.

BY THE COURT



Rosen, J.

DOCKET NO: HHDCV185051489S

SUPERIOR COURT

CRUZ, JUAN Et Al
V.
SPEC PERSONNEL, LLC Et Al

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

12/14/2021

ORDER

ORDER REGARDING:
09/13/2021 297.00 MOTION FOR SUMMARY JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

The motion for summary judgment filed by defendants Philips Lighting North America Corporation (Philips) and Signify North America Corporation (Signify) is denied.

Construing the facts in the light most favorable to the nonmoving party, the court recites the following material facts from the record. Plaintiff Juan Cruz sues defendants Rexel USA, Inc. (Rexel), SPEC Personnel LLC, Jean Paul Paez, Philips, Signify, and Venture Properties LLC over a workplace incident in which Mr. Cruz was seriously injured. A wooden shipping pallet holding lighting products fell on top of Mr. Cruz; paralyzing Mr. Cruz. Mr. Cruz was a temporary employee at Rexel's warehouse when, Mr. Cruz alleges, Mr. Paez was operating a forklift without proper training and while under the influence of cocaine. While operating the forklift, Mr. Paez allegedly knocked a pallet of lighting products off of an upper storage shelf and on to Mr. Cruz. Philips/Signify shipped the pallet of lighting products to Rexel's warehouse. Mr. Cruz alleges that Philips/Signify negligently packaged the lighting products for shipping to Rexel's warehouse by failing to wrap plastic "stretch wrap" all around the lighting products in such a way as to secure the lighting products directly to the shipping pallet. Because the lighting products were not secured to the pallet by stretch wrap, Mr. Cruz alleges the lighting products were able to slide and be knocked off of the pallet by Mr. Paez and injure Mr. Cruz. Mr. Cruz has retained an expert witness who testified at deposition that the lighting products that injured Mr. Cruz ought to have been secured to the pallet with stretch wrap and that, had the products been secured in this manner, they might not have slid and fallen onto Mr. Cruz when Mr. Paez knocked into them with the forklift.

Phillips and Signify move for summary judgment on the basis of lack of foreseeability and lack of control over Rexel's warehouse premises.

First, Philips/Signify argue that it was not foreseeable that Rexel would allow an ill-trained and "high" fork lift operator to move their products, or that Rexel would chose to store Philips/Signify's products on an upper shelf where they could fall. The court is not convinced. "[S]o long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable." *Pisel v. Stamford Hospital*, 180 Conn. 314, 333 (1980). Such is the case here. While the specific facts of this case maybe unusual, the court concludes that the general nature of Mr. Cruz's injury is entirely foreseeable. More specifically, the court concludes that it is foreseeable that a pallet of lighting products might fall on someone if they are not safely and securely packaged for transportation to the warehouse, or for normal handling when they are in the warehouse. The court also concludes that it is entirely foreseeable that Philips/Signify's lighting products might be placed on an upper storage shelf (or any elevated position) in the warehouse, as opposed to exclusively on the floor of the warehouse.

Second, Mr. Cruz sues in general negligence. Philips/Signify's arguments with respect to the legal

principles applicable to premises liability, and the need for control over the premises where the injury occurred, misstate the gravamen of Mr. Cruz's complaint and are therefore inapplicable. Mr. Cruz is not alleging a defect in the premises of Rexel. Mr. Cruz is alleging that Philips/Signify were negligent in their actions before the pallet of lighting products ever reached Rexel's warehouse. As set forth above, Mr. Cruz is alleging that Philips/Signify negligently packaged the lighting products for shipping by failing to wrap plastic "stretch wrap" all around the lighting products in such a way as to secure the lighting products directly to the wooden shipping pallet and therefore prevent those products from slipping off the pallet.

Finally the court cannot conclude as a matter of law that Mr. Paez's alleged cocaine use was a intervening criminal act that breaks the chain of causation as to Philips/Signify's allegedly negligent conduct. "[A] negligent defendant, whose conduct creates or increases the risk of a particular harm and is a substantial factor in causing that harm, is not relieved from liability by the intervention of another person, except where the harm is intentionally caused by the third person and is not within the scope of the risk created by the defendant's conduct." *Doe v. Manheimer*, 212 Conn. 748, 759 (1989). On a summary judgment standard, the court cannot determine, as a matter of law, that Mr. Paez intended to knock the pallet of lighting products on to Mr. Cruz, or that the risk of the lighting products being accidentally knocked on to Mr. Cruz was not within the scope of the risk created by Philips/Signify's failure to properly secure the lighting products to the pallet.

Judicial Notice (JDNO) was sent regarding this order.

438570

Judge: MATTHEW JOSEPH BUDZIK

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

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Emily Cruz

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CERTIFICATE OF COMPLIANCE

In accordance with Practice Book 62-7(b), I hereby certify that the foregoing document:

- (1) 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,
- (2) has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rules, statute, court order or case law, and
- (3) complies with all applicable rules of appellate procedure.

The foregoing document, exclusive of the portions that do not count toward the 4,000-word limit, contains 3,997 words.

July 22, 2026

Respectfully submitted,

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I hereby certify that on this 22nd day of July 2026, a copy of the foregoing was served by e-mail upon all counsel of record, as follows:

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