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HAROLD DUSTO ET AL. *v.* ROGERS CORPORATION ET AL.
(AC 45341)

Prescott, Moll and Cradle, Js.*

Syllabus

The plaintiff, the executor of the estate of the decedent, sought in her operative complaint to recover damages for, inter alia, the wrongful death of the decedent, alleging that the defendants R Co. and S Co. negligently exposed the decedent to asbestos containing products. The plaintiff alleged that the decedent was employed by R Co. from approximately 1970 until 2002 and that, throughout the course of his employment, he was exposed to dust and particles of asbestos fibers from asbestos materials supplied to R Co. by S Co., which caused him to develop malignant mesothelioma and eventually die. S Co., a Wisconsin corporation, filed a bankruptcy petition in 2004, and a bankruptcy plan was confirmed by a bankruptcy court in 2006, at which time S Co. had no operations, its corporate assets had been sold, and the only remaining assets from which claims against it might have been paid were its liability insurance policies. In 2012, S Co. was administratively dissolved, and, in 2014, attorneys representing S Co.'s insurers published a notice of dissolution. R Co. filed a motion for summary judgment, arguing that the plaintiff's claims against it were precluded by the exclusivity provision (§ 31-284) of the Workers' Compensation Act (§ 31-275). The trial court granted R Co.'s motion for summary judgment, concluding that the plaintiff failed to demonstrate a genuine issue of material fact as to whether she had satisfied the substantial certainty exception to § 31-284. The court also granted S Co.'s motion to dismiss the plaintiff's claims against it on the ground that the court did not have subject matter jurisdiction over it because it was a dissolved corporation and the plaintiff's claims were time barred because they were not brought within the two year statutory time frame for asserting claims against a dissolved corporation pursuant to Wisconsin law. From the judgment rendered thereon, the plaintiff appealed to this court. Thereafter, L, the executor of the estates of the plaintiff and the decedent, was substituted as the plaintiff. *Held*:

1. The trial court improperly rendered summary judgment in favor of R Co. on the ground that the plaintiff's claims were barred by § 31-284 because, after considering the circumstances in light of the factors set forth by our Supreme Court in *Lucenti* v. *Laviero* (327 Conn. 764) and viewing the evidence in the light most favorable to the plaintiff, this court concluded that the plaintiff demonstrated the existence of a genuine issue of material fact as to whether R Co. subjectively believed that its conduct was substantially certain to result in injury to its employees: as to the first *Lucenti* factor, an inquiry into prior similar accidents related to the conduct at issue, the plaintiff submitted a list generated by R Co. of asbestos related workers' compensation claims filed by employees at both of its facilities indicating that forty-three R Co. employees submitted asbestos related claims and, although only one of the claims at R Co.'s Manchester facility, where the decedent worked, was filed by 1986, at least twenty more employees at its other facility had filed claims by that time, and a fact finder could have attributed knowledge to R Co. regarding the likelihood of injury to its employees on the basis of prior employee asbestos related claims from both facilities, and, as early as 1979, several R Co. employees, when screened for asbestos exposure, presented with abnormal chest X-rays or abnormal lung function, thus, a fact finder could reasonably have attributed to R Co. knowledge that several of its employees were suffering the effects of asbestos exposure in the 1970s, at the beginning of the decedent's career with R Co.; moreover, under the second *Lucenti* factor, whether there was deliberate deceit on the part of R Co. with respect to the existence of the dangerous condition at issue, the plaintiff submitted voluminous documentation in opposition to R Co.'s motion for summary judgment evincing R Co.'s knowledge of the hazards of asbestos and its intimate familiar-

ity with the medical literature pertaining to the hazards of asbestos, knowledge that R Co. did not share with its employees, including the decedent, and the plaintiff submitted evidence that R Co. misled the decedent, the decedent's union, its customers and the public as to the safety of its facilities and its compliance with Occupational Safety and Health Administration (OSHA) standards, evidence from which the trial court concluded that, although "some evidence" indicated that R Co. may not have been entirely forthcoming with respect to the dangers of asbestos, other evidence demonstrated that it implemented safety measures in the 1970s, demonstrating that the court did not view the evidence in the light most favorable to the plaintiff, as required on a motion for summary judgment but, instead, improperly weighed that evidence; furthermore, with respect to the third *Lucenti* factor, intentional and persistent violations of safety regulations over a lengthy period of time, the plaintiff presented in opposition to R Co.'s motion for summary judgment voluminous evidence of R Co.'s failures to meet OSHA standards pertaining to asbestos exposure levels over several years, as well as documentation revealing that R Co. was formally cited by OSHA four times for asbestos related violations, including evidence that R Co. violated OSHA requirements regarding the establishment of a respirator program.

2. The trial court properly dismissed the plaintiff's claims against S Co. for lack of subject matter jurisdiction on the ground that the plaintiff did not file her claims within two years of the date of the publication of the notice of S Co.'s dissolution: under Wisconsin law, claims against a dissolved corporation must be brought within two years of the date of the publication of the notice, and this action was filed in 2019, three years beyond the 2016 deadline that was effectuated by the 2014 publication of the notice; moreover, although the applicable Wisconsin statute ((Rev. to 2013–2014) § 180.1407) referred to publication by the corporation, it did not expressly state that a corporate officer or director must publish the notice and, in the absence of such an explicit requirement, this court declined to read such a requirement into that statute; furthermore, because § 180.1407 applies only to dissolved corporations, it was reasonable to infer that a party authorized by the dissolved corporation, such as an insurer, may publish the notice, and it was clear, based on S Co.'s bankruptcy plan and S Co.'s reliance on its insurers after it was administratively dissolved, that the insurers were acting as agents of S Co. because, under the bankruptcy plan, S Co. was only a shell through which claims against it passed to its insurers, which were authorized and obligated to defend or settle claims against it, nothing in the plan precluded the insurers from publishing the notice as a way of exercising the authority afforded by the plan to defend claims brought against S Co. by establishing a time limitation for the filing of those claims, and, as agents of S Co., they were permitted to act in furtherance of winding up S. Co.'s affairs; additionally, contrary to the plaintiff's claim, the bankruptcy plan did not contemplate S Co.'s infinite existence or intend to allow for claims in perpetuity.

(*One judge concurring in part and dissenting in part*)

Argued March 7—officially released October 24, 2023

Procedural History

Action to recover damages for, inter alia, the named defendant's alleged negligence in exposing the named plaintiff to asbestos, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where Anita Dusto, executor of the estate of Harold Dusto, was substituted as the named plaintiff; thereafter, the action was withdrawn as to the defendant Union Carbide Corporation et al.; subsequently, the court, *Bellis*, *J.*, granted the named defendant's motion for summary judgment and the motion to dismiss filed by the defendant Special Electric Company, Inc., and rendered judgment thereon, from which the substitute plaintiff et al. appealed to this court; thereafter, Lana Kelly, executor of the estates of Harold Dusto and Anita Dusto, was

substituted as the plaintiff. *Reversed in part*; *further proceedings*.

Christopher Meisenkothen, for the appellant (substitute plaintiff Lana Kelly).

Melissa M. Malloy, pro hac vice, with whom were *Mark J. Hoover*, and, on the brief, *Judith A. Perritano*, for the appellee (named defendant).

Cristin E. Sheehan, with whom was *Robert S. Bystrowski*, for the appellee (defendant Special Electric Corporation, Inc.).

Audrey Perlman Raphael and *Amber Long*, pro hac vice, filed a brief on behalf of the Connecticut Trial Lawyers Association as amicus curiae.

Dana M. Hrelic, *Monte E. Frank*, and *Meagan A. Cauda*, filed a brief on behalf of the Connecticut Business and Industry Association and the Insurance Association of Connecticut as amici curiae.

Kelly E. Petter and *Linda Feeney* filed a brief on behalf of the Connecticut Defense Lawyers Association as amicus curiae.

Opinion

CRADLE, J. The plaintiff, Lana Kelly, acting in her capacity as executor of the estates of Harold Dusto and his wife, Anita Dusto,[1] appeals from the summary judgment rendered in favor of Harold Dusto's employer, Rogers Corporation (Rogers), and the judgment of dismissal rendered in favor of Special Electric Company, Inc. (Special Electric), which sold asbestos materials to Rogers.[2] On appeal, the plaintiff claims that the court improperly (1) rendered summary judgment in favor of Rogers on the ground that her claims against Rogers were barred by the exclusivity provision of the Workers' Compensation Act (act), General Statutes § 31-275 et seq., and (2) dismissed her claims against Special Electric for lack of subject matter jurisdiction. We agree with the plaintiff that a genuine issue of material fact exists as to whether her claims against Rogers satisfied the substantial certainty exception to the exclusivity provision of the act, and we therefore reverse the summary judgment rendered in favor of Rogers. We affirm the dismissal of the plaintiff's claims against Special Electric.

The following procedural history is relevant to the plaintiff's challenges to the judgments on appeal. On June 11, 2019, Harold Dusto and Anita Dusto commenced this action. In the plaintiff's operative complaint, the plaintiff alleged that Dusto was employed by Rogers, an asbestos product manufacturer, at its facility in Manchester from approximately 1970 until 2002, and that, throughout the course of his employment at Rogers, Dusto was exposed to dust and particles of asbestos fibers, from asbestos materials supplied to Rogers by Special Electric, which caused him to develop malignant mesothelioma and eventually die. The plaintiff alleged, inter alia, that the defendants intentionally created a dangerous condition that they knew would make injuries to Rogers' employees substantially certain to occur.

On September 28, 2021, Rogers filed a motion for summary judgment, arguing that it was entitled to judgment as a matter of law because the plaintiff's claims against it were precluded by the exclusivity provision of the act. The plaintiff filed a memorandum of law in opposition to Rogers' motion, arguing that a genuine issue of material fact existed as to whether the plaintiff's claims satisfied the substantial certainty exception to the exclusivity provision of the act. On December 30, 2021, the court filed a memorandum of decision wherein it concluded that, after the burden shifted to the plaintiff, she failed to demonstrate the existence of a genuine issue of material fact that she had satisfied the substantial certainty exception and, consequently, that the plaintiff's claims against Rogers were barred by the exclusivity provision of the act. Accordingly, the court granted Rogers' motion for summary judgment. On Jan-

uary 18, 2022, the plaintiff filed a motion for reargument and/or reconsideration of the court's decision on Rogers' motion for summary judgment on the grounds that the court "plainly misapplied the 'substantial certainty' legal standard here at the summary judgment stage, misapprehended key facts, and impermissibly invaded the province of the jury in weighing evidence and drawing its own inferences from the evidence." On February 9, 2022, the court denied the plaintiff's motion, issuing the following order: "Although the court's decision incorrectly indicates that there was only evidence presented of one [Occupational Safety and Health Administration (OSHA)] citation (as opposed to one OSHA violation), the court's decision is the same . . . ."

On October 26, 2021, Special Electric filed a motion to dismiss the plaintiff's claims against it on the ground that the court did not have subject matter jurisdiction over it because it is a dissolved corporation and the plaintiff's claims were time barred because they were not brought within the statutory time frame for asserting claims against a dissolved corporation pursuant to Wisconsin law.[3] On November 3, 2021, the plaintiff filed an objection to the motion to dismiss. On February 18, 2022, the court filed a memorandum of decision wherein it granted Special Electric's motion to dismiss on the ground that the court lacked subject matter jurisdiction over the plaintiff's claim against Special Electric because the claim was not filed within the two year period during which all claims against a dissolved corporation must be brought pursuant to Wisconsin law. The plaintiff's appeal from the granting of summary judgment to Rogers and the dismissal of her claims against Special Electric followed.

We address the plaintiff's challenge to the judgment with respect to each motion in turn.

I

The plaintiff first claims that the court erred in concluding that, after the burden shifted to her, she failed to provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact as to whether she satisfied the substantial certainty exception to the exclusivity provision of the act. We agree.

This court recently has recounted the following relevant history of the development of the substantial certainty exception. "[T]he exclusive remedy provision of our workers' compensation scheme, [General Statutes] § 31-284 (a) . . . provides in relevant part: An employer who complies with the requirements of subsection (b) of this section shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment . . . . Our Supreme Court consistently has interpreted the exclusivity provision of the act . . . as a total bar to [common-law] actions brought

by employees against employers for job related injuries with one narrow exception that exists when the employer has committed an intentional tort or where the employer has engaged in wilful or serious misconduct. *Suarez* v. *Dickmont Plastics Corp.*, 229 Conn. 99, 106, 639 A.2d 507 (1994) (*Suarez I*).

"The exclusivity provision represents a balancing of interest, insofar as the purpose of the act is to compensate the worker for injuries arising out of and in the course of employment, without regard to fault, by imposing a form of strict liability on the employer. . . . The act is to be broadly construed to effectuate the purpose of providing compensation for an injury arising out of and in the course of the employment regardless of fault. . . . Under typical workers' compensation statutes, employers are barred from presenting certain defenses to the claim for compensation, the employee's burden of proof is relatively light, and recovery should be expeditious. In a word, these statutes compromise an employee's right to a [common-law] tort action for [work-related] injuries in return for relatively quick and certain compensation. . . . *Lucenti* v. *Laviero*, [327 Conn. 764, 774, 176 A.3d 1 (2018)]; *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 106, 491 A.2d 368 (1985) (same). A damage suit as an alternative or additional source of compensation, becomes permissible only by carving a judicial exception in an uncarved statute. . . . Neither moral aversion to the employer's act nor the shiny prospect of a large damage verdict justifies interference with what is essentially a policy choice of the [l]egislature. . . . Id. The principle of exclusivity is not eroded, [however] . . . when the plaintiff alleges an intentional tort, in which case an employee is permitted to pursue remedies beyond those contemplated by the act. *Suarez* [v. *Dickmont Plastics Corp.*], supra, 229 Conn. 115.

"Our Supreme Court first recognized the narrow intentional tort exception to the act's exclusivity in *Jett* v. *Dunlap*, 179 Conn. 215, 425 A.2d 1263 (1979). In *Jett*, the court exempted from the exclusivity provision of the act an employer's tortious act of intentionally directing or authorizing another employee to assault the injured party. Id., 218–19. In *Mingachos* v. *CBS, Inc.*, supra, 196 Conn. 100–101, the court declined to extend [the] intentional tort exception to [the] act's exclusivity provision to situations in which an injury resulted from the employer's intentional, wilful, or reckless violations of safety standards as established pursuant to federal or state laws. *Lucenti* v. *Laviero*, supra, 327 Conn. 775. To bypass the exclusivity of the act, the intentional or deliberate . . . conduct alleged must have been designed to cause the injury that resulted. *Mingachos* v. *CBS, Inc.*, supra, 196 Conn. 102. [T]he mere knowledge and appreciation of a risk, short of substantial certainty, is not the equivalent of intent. . . . Id., 103. Reckless misconduct differs from intentional miscon-

duct, and an employee must establish that the employer *knew* that injury was substantially certain to follow its deliberate course of action. Id.

"Our Supreme Court elaborated on the contours of this substantial certainty standard as an alternative method of proving intent in *Suarez I* and [*Suarez* v. *Dickmont Plastics Corp.*, 242 Conn. 255, 698 A.2d 838 (1997) (*Suarez II*)], which arose from amputation injuries suffered by an employee who claimed that his foreman had forced him to clean out plastic molding machines while those machines were still running, and forbade him and other employees from using safer cleaning methods under threat of termination of their employment, despite the risk of injury to their hands. *Lucenti* v. *Laviero*, supra, 327 Conn. 775.

"In *Suarez I*, the trial court granted the employer's motion for summary judgment on the ground that the exclusivity provision of the act barred his claim, because he had introduced no evidence that the employer intended to injure him. Id., 776. The employee appealed and our Supreme Court further defined the substantial certainty exception, concluding that intent refers to the consequences of an act . . . [and] denote[s] that the actor desires to cause [the] consequences of his act, or that he believes that the consequences are substantially certain to flow from it. . . . A result is intended if the act is done for the purpose of accomplishing such a result or with knowledge that to a substantial certainty such a result will ensue. . . . An intended or wilful injury does not necessarily involve the ill will or malevolence shown in express malice, but it is insufficient to constitute such an [intended] injury that the act . . . was the voluntary action of the person involved. . . . Both the action producing the injury and the resulting injury must be intentional. . . . [Its] characteristic element is the design to injure either actually entertained or to be implied from the conduct and circumstances. . . . The intentional injury aspect may be satisfied if the resultant bodily harm was the direct and natural consequence of the intended act. . . . The known danger involved must go from being a foreseeable risk which a reasonable man would avoid and become a substantial certainty. . . . Id. The court reversed the summary judgment and remanded the case for further proceedings, concluding that it was a question for the jury to determine whether the employer's intentional conduct permitted an inference that the employer knew that there was a substantial certainty an injury would occur. Id., 777; *Suarez* [v. *Dickmont Plastics Corp.*], supra, 229 Conn. 119.

"On remand, the jury returned a verdict in favor of the employee under the actual intent standard, rather than under the substantial certainty exception; the employer appealed. *Lucenti* v. *Laviero*, supra, 327 Conn. 777. In *Suarez II*, our Supreme Court restated

the substantial certainty test to emphasize that the employer must be shown *actually to believe that the injury would occur* . . . . Id. The court described its decision in *Suarez I* as establishing an exception to workers' compensation exclusivity if the employee can prove either that the employer actually intended to injure the [employee] or that the employer intentionally created a dangerous condition that made the [employee's] injuries substantially certain to occur . . . . Id., 777–78. The court stated that [p]ermitting an employee to sue an employer for injuries intentionally caused to him constitutes a narrow exception to the exclusivity of the act. . . . Since the legal justification for the common-law action is the nonaccidental character of the injury from the . . . employer's standpoint, the common-law liability of the employer cannot . . . be stretched to include accidental injuries caused by the gross, wanton, wilful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the employer *short of a conscious and deliberate intent directed to the purpose of inflicting an injury. . . . What is being tested is not the degree of gravity of the employer's conduct, but, rather, the narrow issue of intentional versus accidental conduct.* . . . Id., 778–79.

"In *Lucenti*, the Supreme Court noted that it is now well established under Connecticut law that proof of the employer's intent with respect to the substantial certainty exception demands a purely subjective inquiry. . . . Put differently, satisfaction of the substantial certainty exception requires a showing of the employer's subjective intent to engage in activity that it knows bears a substantial certainty of injury to its employees. . . . Id., 779. The court, however, noted that intent is a question of fact ordinarily inferred from one's conduct or acts under the circumstances of the particular case. . . . Id., 780. Historically, there was a substantial body of Connecticut law rejecting an employee's claim of entitlement to the substantial certainty exception, but no decision described the kind of evidence that would allow for an inference that an employer subjectively believed that employee injury was substantially certain to follow its actions. Id. The court, therefore, looked to other jurisdictions in which the substantial certainty exception was a common feature of workers' compensation law and found New Jersey law instructive. Id.; see *Millison* v. *E.I. du Pont de Nemours & Co.*, 101 N.J. 161, 178–79, 501 A.2d 505 (1985) (New Jersey's leading decision articulating substantial certainty test).

"New Jersey courts engage in a [two step] analysis. First, a court considers the conduct prong, examining the employer's conduct in the setting of the particular case. . . . Second, a court analyzes the context prong, considering whether the resulting injury or disease, and the circumstances in which it is inflicted on the worker,

[may] fairly be viewed as a fact of life of industrial employment, or whether it is plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the [New Jersey Workers' Compensation Act]. . . . *Lucenti* v. *Laviero*, supra, 327 Conn. 780–81.[4]

"The New Jersey conduct prong of the substantial certainty test is closely akin to the factual inquiry Connecticut courts undertake in determining whether the employer knew of a substantial certainty of employee harm . . . . Id., 781–82. An employer's mere knowledge that a workplace is dangerous does not equate to an intentional wrong. . . . [T]he dividing line between negligent or reckless conduct on the one hand and intentional wrong on the other must be drawn with caution, so that the statutory framework . . . is not circumvented simply because a known risk later blossoms into reality. [Courts] must demand virtual certainty. . . . Id., 782. In considering whether the totality of the circumstances indicates that the conduct prong is satisfied, New Jersey courts consider factors such as: (1) prior similar accidents related to the conduct at issue that have resulted in employee injury, death, or a near-miss, (2) deliberate deceit on the part of the employer with respect to the existence of the dangerous condition, (3) intentional and persistent violations of safety regulations over a lengthy period of time, and (4) affirmative disabling of safety devices." (Emphasis in original; footnote added; footnote omitted; internal quotation marks omitted.) *Hassiem* v. *O & G Industries, Inc.*, 197 Conn. App. 631, 637–43, 232 A.3d 1139, cert. denied, 335 Conn. 928, 235 A.3d 525 (2020). In *Lucenti* v. *Laviero*, supra, 327 Conn. 791, our Supreme Court adopted those four factors (*Lucenti* factors) for consideration in determining whether a plaintiff has satisfied the substantial certainty test.

With the foregoing legal principles in mind, we set forth the following additional procedural history. In its memorandum in support of its motion for summary judgment, Rogers argued that "the evidence shows that Rogers' ensuing conduct after it learned of the potential hazards of asbestos made it such that Rogers believed it was taking all necessary precautions to further protect its employees from the hazards of asbestos. In other words, Rogers was acting in effort to try and ensure that injuries to its employees would not occur. Some examples of Rogers' conduct included the mandatory use of respirators and masks by its employees, personal and area monitoring for asbestos exposure to ensure the environment in the plant was below the applicable OSHA standards and medical screenings for its employees." (Emphasis omitted.) Rogers further argued: "The plaintiffs offer no evidence from which one might rationally infer that Rogers believed that its use of asbestos in its production facility's controlled environment would lead to the development of mesothelioma in . . .

Dusto, where he routinely wore an approved respirator, worked on a product line that utilized relatively limited amounts of asbestos, was only monitored above the OSHA [permissible exposure limit (PEL)] three times throughout his career, and spent over half of his career working in a product line that utilized no asbestos."

In its memorandum in opposition to Rogers' motion for summary judgment, the plaintiff argued that Rogers intentionally created a dangerous condition that it knew would make its employees' injuries substantially certain to occur.[5] She argued that, viewing the evidence in the light most favorable to her, a reasonable trier of fact could conclude that Rogers "intentionally deceived workers by telling them that asbestos was only a 'nuisance dust'; intentionally deceived the workers' union representatives to cover up OSHA violations and hazardous conditions; knew by 1960 that asbestos was a serious health hazard but actively participated in a scheme to suppress knowledge of the hazard; intentionally deceived customers about its own effort and ability to control asbestos exposures in its plants; intentionally failed to comply with federal law, which required that Rogers notify employees of overexposures; intentionally failed to enforce occupational safety standards that were specifically meant to safeguard against the hazards of asbestos; intentionally ignored damning information about asbestos and mesothelioma hazards obtained over a period of years from various sources; [and] 'was a real mess.' "[6]

In granting Rogers' motion for summary judgment, the trial court concluded, after shifting the burden to the plaintiff, that the plaintiff failed to establish a genuine issue of material fact as to whether she could satisfy the substantial certainty exception. In so doing, the court noted that the plaintiff had offered voluminous exhibits in opposition to Rogers' motion for summary judgment but that, "even if read in a light most favorable to her as the nonmoving party, [the plaintiff's evidence] could only establish that: (1) Rogers had some knowledge that asbestos was hazardous prior to Dusto commencing employment; (2) there were some instances where tests revealed that the asbestos levels were above OSHA standards in the Rogers plants; (3) some Rogers employees had made asbestos related workers' compensation claims; (4) representatives from Rogers may have downplayed and/or concealed the significance of the potential health consequences of asbestos; (5) the plant may not have completely complied with federal law with respect to employee health and safety requirements; (6) Rogers may not have used best practices with respect to its housekeeping procedures; and (7) in general, the Rogers Manchester plant was a 'real mess.' " The court concluded that "such evidence could be used to support an inference that Rogers acted negligently or even recklessly" but did not "rise to the level of the exceedingly high substantial certainty standard."

The court then applied the *Lucenti* factors to the evidence presented in support of and in opposition to Rogers' motion for summary judgment. The court explained: "With respect to the first factor, prior similar accidents, the summary judgment record reveals that there were only nine known asbestos related workers' compensation claims in the Manchester facility. One occurred in 1986, and two others happened in 1995 and 1996. The others all occurred in the period between 2000 and 2011, with Dusto's claim being made in 2005. Based on this record, a fact finder could not reasonably determine that Rogers had knowledge of similar accidents during the 1970s and early 1980s when Dusto worked most closely with asbestos. The second factor is deliberate deceit on the part of the employer with respect to the dangerous condition. Although there is some evidence in the record indicating that Rogers may not have been entirely forthcoming with respect to the potential dangers of asbestos, there also is other evidence demonstrating that it began to implement safety measures in the 1970s. Therefore, a fact finder could not conclude that Rogers engaged in deliberate deceit such that it was a substantial certainty that its employees would be injured. Regarding the third factor, persistent safety violations, the plaintiff only provides evidence demonstrating that one OSHA violation occurred at the Manchester plant in 1975. Finally, the plaintiff essentially admits that the fourth factor, affirmative disabling of safety devices, does not apply to the present case. . . . Accordingly, following a fair application of the *Lucenti* factors, the court concludes that the plaintiff has failed to raise a genuine issue of material fact regarding the substantial certainty exception to workers' compensation exclusivity." (Footnote omitted.) On the basis of the foregoing, the court found that Rogers was entitled to judgment as a matter of law. This appeal followed.

"The standard of review of a trial court's decision granting summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Cefaratti* v. *Aranow*, 321 Conn. 637, 645, 138 A.3d 837 (2016). "The courts are in entire agreement that the moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the mov-

ing party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *State Farm Fire & Casualty Co.* v. *Tully*, 322 Conn. 566, 573, 142 A.3d 1079 (2016). "A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Flannery* v. *Singer Asset Finance Co., LLC*, 312 Conn. 286, 310, 94 A.3d 553 (2014). "Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *Cefaratti* v. *Aranow*, supra, 645.

On appeal, the plaintiff claims that the trial court erred in concluding that she failed to demonstrate the existence of a genuine issue of material fact as to whether Rogers subjectively believed that it was substantially certain that its employees would be injured by the dangerous environment that it intentionally created. To resolve the plaintiff's claim, we, like the trial court, consider the *Lucenti* factors set forth herein. Our consideration of the totality of the circumstances in light of those factors, however, leads us to a different conclusion.

The first *Lucenti* factor presents an inquiry into "prior similar accidents related to the conduct at issue that have resulted in employee injury, death, or a near-miss . . . ." *Lucenti* v. *Laviero*, supra, 327 Conn. 782. In considering this factor, the trial court noted that "there were only nine asbestos related workers' compensation claims in the Manchester facility. One occurred in 1986, and two others happened in 1995 and 1996. The others all occurred in the period between 2000 and 2011, with Dusto's claim being made in 2005. Based on this record, a fact finder could not reasonably determine that Rogers had knowledge of similar accidents during the 1970s and early 1980s when Dusto worked most closely with asbestos." In opposition to Rogers' motion for summary judgment, the plaintiff submitted a list, generated by Rogers, of asbestos related workers' compensation claims filed by employees at both of its facilities. That list indicates that forty-three Rogers employees—ten employees from the Manchester facility and thirty-three from the facility located in Rogers, Connecticut—submitted asbestos related claims. Although the trial court correctly noted that only one of the claims at the Manchester facility was filed by 1986, at least twenty more employees at the Rogers facility had filed such claims by that same date. Although Dusto worked only at the Manchester facility, a fact finder could attribute knowledge to Rogers regarding the likelihood of injury to its employees on the basis of prior employee asbestos related claims from both facilities.

Moreover, in *Lucenti*, the court noted: "We emphasize that proof of prior injuries or deaths is not necessary, and do not suggest that there is the equivalent of

a one free bite rule in the context of workers' compensation exclusivity. The appreciation of danger can be obtained in a myriad of ways other than personal knowledge or previous injuries. Simply because people are not injured, maimed or killed every time they encounter a device or procedure is not solely determinative of the question of whether that procedure or device is dangerous and unsafe. . . . Requiring an actual accident or injury would be tantamount to giving every employer one free injury for every decision, procedure or device it decided to use, regardless of the knowledge or substantial certainty of the danger that the employer's decision entailed. . . . It is not incumbent that a person be burned before one knows *not* to play with fire." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Lucenti* v. *Laviero*, supra, 327 Conn. 782 n.8.[7] Although none of its employees had yet died from asbestos exposure in the 1970s or early 1980s, the record reflects that, as early as 1979, several Rogers employees, when screened for asbestos exposure, presented with abnormal chest X-rays or abnormal lung function. Accordingly, viewing this information in the light most favorable to the plaintiff, a fact finder could reasonably attribute to Rogers knowledge that several of its employees were suffering the effects of asbestos exposure in the 1970s, at the beginning of Dusto's career with Rogers.

We next turn to the second *Lucenti* factor, whether there was deliberate deceit on the part of Rogers with respect to the existence of the dangerous condition at issue, namely, asbestos exposure. *Lucenti* v. *Laviero*, supra, 327 Conn. 782. We first note that, in opposition to Rogers' motion for summary judgment, the plaintiff submitted voluminous documentation evincing Rogers' knowledge of the hazards of asbestos. For example, the plaintiff submitted a document dated January 25, 1979, titled "Rogers Corporation Commentary [U]pon Proposed Standards within the State Implementation Plan for Air Quality," wherein Rogers expressed "its serious concern over the proposed asbestos emission and ambient standard portion of the State Implementation Plan for Air Quality." In that document, Rogers noted that it "does not minimize the known health hazards associated with the use of asbestos" but, nevertheless, challenged the "cornerstones" of the proposed standards, specifically, the purported "sharp rise in mesothelioma within Connecticut during a ten-year period between 1960–1969 . . . ." Rogers challenged the premise that "asbestos is *the* cause of mesothelioma incidence within Connecticut" and, instead, contended that there is evidence, based on various studies throughout the world, that there are many causes of mesothelioma unrelated to asbestos. In that same document, however, Rogers acknowledged that "no threshold level has been found, below which asbestos does not create lung cancer . . . ." (Emphasis in original.) This docu-

ment demonstrates an intimate familiarity by Rogers with the medical literature pertaining to the health hazards of asbestos exposure.

Despite knowing the risks associated with exposure to high levels of asbestos, Rogers did not share that knowledge with its employees. At his depositions,[8] Dusto testified, inter alia, that Rogers never told him that it knew that asbestos exposure could cause mesothelioma and, ultimately, death. Rogers never told him that crocidolite, a type of asbestos that was frequently used at its facility and to which Dusto was exposed, caused the highest rate of mesothelioma in people who are exposed to it. Dusto further testified that he was always told by Rogers that, in performing air quality tests,[9] they were testing for "nuisance dust," but he was never notified of the results of any of those tests, or, more specifically, that the results of those tests revealed levels of asbestos that exceeded OSHA standards. The summary judgment record reflects that Dusto had sampling performed on his person repeatedly and those tests revealed exposure levels in excess of the OSHA asbestos standard ceiling concentration of 10 fibers per cubic centimeter of air (f/cc) at least three times. Dusto was never informed of the results of any of the tests.

As further evidence that Rogers intentionally concealed the high levels of asbestos in its facilities, the plaintiff also presented, in opposing Rogers' motion for summary judgment, a letter dated March 11, 1976, from R. L. Smith, Rogers' vice president, to Charles F. Reilly, the union representative for Rogers employees. In that letter, which was written in response to an inquiry from the union raising questions concerning safety and health precautions for employees who work with asbestos, Smith explained that Rogers had used asbestos in its Manchester plant since 1936 and in its Rogers plant since 1951, but that it was "not aware of any potentially serious health hazard from [its] use of [asbestos] until 1972."[10] The plaintiff contends that, in that letter, Smith first misled Reilly in stating that Rogers did not become aware of the potentially serious health hazards of working with asbestos until 1972. Rogers' stated lack of knowledge of the dangers of asbestos exposure is belied by the voluminous documentation presented by the plaintiff. For example, the plaintiff submitted documents from The Asbestos Technical and Standards Committee of the Society of the Plastics Industry, Inc., of which Rogers was a member, dating back to at least 1960, in which the risks of working with various types of asbestos were discussed. The plaintiff also submitted correspondence to Rogers from H. A. Boisclair, dated December 30, 1968, which included a copy of an article published in The New Yorker on October 12, 1968, which discussed at length the risks associated with asbestos exposure, including mesothelioma. The letter also stressed the necessity of employing a dust control system with a "high efficiency dust collector to prevent

external atmospheric dust contamination."

In Smith's 1976 letter, Smith also told Reilly that, after learning in 1972 of the potential serious health hazards posed by asbestos exposure, Rogers instituted several safety protocols in its facilities. In this letter, Smith detailed several of those measures, and attached a summary of "[t]he results of the most recent one and two hour air samplings at each of the operations at the Manchester plant and at the Rogers plant . . . ." Rather than attaching the actual reports of those tests, Smith summarized the air sampling results, omitting several readings that exceeded the OSHA limit at that time of 2 f/cc. For example, Smith's summary omitted a reading taken on November 6, 1975, that reflected an exposure level of 24.53 f/cc, significantly in excess of the OSHA limit. Smith also omitted three readings taken on November 11, 1975—10.02, 2.47 and 5.92 f/cc—that exceeded the OSHA limit.

The plaintiff claimed in opposition to Rogers' motion for summary judgment that, in addition to deceiving the union and Rogers' employees, Rogers intentionally misled its customers and the public as to the safety of its facilities and its compliance with OSHA standards. In opposition to Rogers' motion for summary judgment, the plaintiff submitted a letter, dated June 7, 1976, from Norman L. Greenman, the president of Rogers, which was addressed to "all our customers and friends," wherein he expressed Rogers' belief that materials containing asbestos "can be used safely when applicable governmental regulations relating to asbestos fibers are met." He stated, inter alia: "In our own plants, Rogers has taken the steps necessary to comply with the requirements of OSHA regulations concerning the use and processing of asbestos fibers, which become effective July 1, 1976. All the equipment necessary to meet those requirements is presently in place." He urged the recipients of the letter to take measures to comply with OSHA requirements and advised that, "unless you, too, are prepared to take the steps necessary to meet OSHA requirements relating to the safe use of and exposure to asbestos fibers and materials, and products containing asbestos fibers, then you should discontinue using products and materials containing asbestos fibers." In writing this letter, the plaintiff alleged, Rogers led its recipients to believe that it was meeting OSHA standards. The plaintiff, however, submitted various air sampling surveys of Rogers' facilities, conducted around that time, that reflected readings in excess of OSHA standards. For instance, two of several air samplings taken on August 17, 1976, reflected levels of 22 and 14 f/cc. Samplings taken between March 15 and 16, 1977, revealed five more readings above the OSHA limit. Samplings taken on April 19 and 20, 1977, revealed another three readings over the OSHA limit. Samplings taken on June 28 and 29, 1977, revealed seven readings over the OSHA limit. Samplings taken on August 19, 1977, revealed another

three readings over the OSHA limit. Samplings taken on October 20 and 21, 1977, revealed another five readings over the OSHA limit. The plaintiff also submitted, in opposition to Rogers' motion for summary judgment, a letter, dated September 24, 1976, to W. W. Hayes, the division manager of Rogers, from two members of the loss prevention department of Liberty Mutual Insurance Company. The letter indicated that various air samples were collected on August 17, 1976, "in the breathing zones of several workers in order to determine the concentration of air-borne asbestos dust, and, in turn, to appraise the health hazard to these employees." According to the letter, "[t]he results of this sampling indicate that the concentration of asbestos fibers in the breathing zones of the kneader operators is above the limit of 2 [f/cc] permitted for an eight-hour daily exposure. The concentration in these two samples is also well above the 'ceiling' value of 10 [f/cc], which should never be exceeded." The letter identified various additional infirmities with the various measures and protocols Rogers had in place purportedly to meet OSHA standards and specifically referenced procedures employed by workers that created visible dust and caused particles to become airborne.

Despite all of these documented failures to adhere to OSHA requirements, which continued in the years to come,[11] Rogers again represented in an article titled "The Asbestos Controversy Continues," published in the November/December 1978 edition of Plastics Design Forum, that it had "taken all of the steps necessary to meet the existing OSHA standard of 2 [f/cc] in all of its manufacturing operations in which asbestos fibers are compounded with phenolic resins."

In addressing the question of whether there was deliberate deceit on the part of Rogers with respect to the existence of the dangerous condition at issue, the plaintiff argues that the trial court impermissibly weighed the evidence presented on summary judgment. In support of this argument, the plaintiff focuses on the trial court's statement that, "[a]lthough there is some evidence in the record indicating that Rogers may not have been entirely forthcoming with respect to the potential dangers of asbestos, there is also other evidence demonstrating that it began to implement safety measures in the 1970s." (Internal quotation marks omitted.) We agree with the plaintiff that this conclusion demonstrates that the court did not view the evidence presented in the light most favorable to the plaintiff, as required on summary judgment but, instead, improperly weighed that evidence. Despite Rogers' repeated representations that it was complying with OSHA's requirements, the summary judgment record reveals that Rogers, at various times, was not adhering to OSHA requirements.

This brings us to the third *Lucenti* factor, intentional

and persistent violations of safety regulations over a lengthy period of time. *Lucenti* v. *Laviero*, supra, 327 Conn. 782. As previously noted in this opinion, the plaintiff presented in support of her opposition to Rogers' motion for summary judgment voluminous evidence of Rogers' repeated failures to meet OSHA standards pertaining to asbestos exposure levels for several years.[12] In addition to the many air sampling readings that were higher than OSHA standards, the plaintiff presented documentation revealing that Rogers was formally cited by OSHA four times for various asbestos related violations. In its brief to this court, Rogers states: "The vast majority of the air sampling results obtained at the Manchester plant between 1972 and 1990 were within the contemporaneous OSHA limits. In fact, between 1972 and 1975, only 12.8 percent of the 234 samples exceeded the OSHA eight hour limit while only 3.8 percent exceeded the ceiling limit; between 1976 and 1985, only 13 percent of the 296 samples exceeded the reduced OSHA eight hour limit while only 1 percent exceeded the ceiling limit; and, between 1986 and 1990, only 7.2 percent of the 54 samples exceeded the further reduced OSHA eight hour limit while none exceeded the ceiling limit." In considering this evidence in the light most favorable to the plaintiff, a fact finder reasonably could have found that, although those statistics demonstrate a gradual improvement by Rogers in adhering to OSHA standards, they also demonstrate repeated violations of those standards. In other words, even if Rogers met OSHA standards the "vast majority" of the time, there were, undisputedly, times when it did not.

Additionally, the plaintiff argued that Rogers violated OSHA regulations that required employers to notify employees, in writing, about exposure to excessive asbestos levels and corrective action taken in response to those readings.[13] Dusto testified at his deposition that he was never notified, in writing or otherwise, of high levels of asbestos or of any corrective action taken in response to those readings. David Sherman, Rogers' designated corporate representative in this case, testified at his deposition that he did not have any documentation to show that any employees were ever notified of high levels of exposure or corrective action taken.

The plaintiff also argued that Rogers violated the OSHA requirement that employers establish a respirator program in accordance with the requirements of American Standard Practice for Respiratory Protection, which initially was mandated in 1971.[14] The plaintiff submitted several documents containing references to the need to implement a respirator program and the fact that Rogers had not yet done so, dating from 1972 until approximately 1990. Frank Morse, Dusto's coworker and foreman, testified at his deposition that he did not recall any respirator training being performed at the Manchester facility prior to 1987. In a Corporate Environmental Engineering Report dated August 30,

1988, it was noted: "It is apparent that respirator training and fit testing has not begun" at Rogers' Manchester facility. Another report was issued on September 27, 1990, which was prepared "[i]n response to the recent letter from the Department of Labor (OSHA) office regarding asbestos health hazards at the [Manchester] work site . . . ." In the report, it was noted, inter alia: "There continues to be confusion as to the proper use and care of respirators at the [Manchester] plant. As I understand it, training has been conducted in compliance with OSHA [29 C.F.R. §] 1910.134 (respirator protection) for some employees. However, during our last industrial hygiene survey, as well as previous visits to the plant, employees have offered comments to us that training was absent or they were not sure if they had been trained or not." A confidential environmental engineering report dated August 20, 1981, which documented the results of a study conducted to determine worker exposure to air contaminants during a blender clean out operation, revealed: "Dust exposure during the clean out process is well in excess of the current OSHA PEL. Currently used respirator protection is not considered adequate for the measured dust levels."

Additionally, the plaintiff claimed, in opposing Rogers' motion for summary judgment, that Rogers violated OSHA standards by providing the incorrect respiratory protection for its employees. The OSHA standards mandated the use of specific types of respirators dependent upon the asbestos exposure levels.[15] Despite OSHA's requirements as to which type of respirator should be used at certain levels of asbestos exposure, Rogers supplied its employees with only reusable filter type respirators that were prescribed for atmospheres in the lowest levels of exposure. Rogers exceeded those levels of exposure repeatedly throughout the 1970s and 1980s.

The plaintiff also claimed that Rogers violated OSHA regulations against dry sweeping asbestos dust.[16] According to various reports submitted by the plaintiff in opposition to Rogers' motion for summary judgment, Rogers employees continued to dry sweep asbestos dust well after the 1972 promulgation of the ban against doing so, as recently as 1983. Further, the plaintiff alleged that Rogers violated OSHA standards pertaining to the disposal of asbestos bags.[17] Rather than properly disposing of asbestos bags in sealed impermeable containers to prevent airborne asbestos dust, the plaintiff submitted reports of " 'empty' bags [being] carried across the floor and shoved into a waste drum, creating visible dust," in addition to numerous reports of accumulated dust on various surfaces throughout the facility.[18]

On the basis of the foregoing, our review of the evidence submitted to the trial court in support of and in opposition to Rogers' motion for summary judgment, taken in the light most favorable to the plaintiff, demon-

strates that Rogers was aware of the risks associated with asbestos exposure before Dusto commenced his employment with Rogers; approximately ten Rogers employees had filed asbestos related claims by the early 1980s, and several had developed respiratory issues, as documented by Rogers' physicians, during that time; Rogers failed to comply with OSHA standards regarding asbestos exposure levels into the late 1980s; Rogers did not inform its employees of the risks associated with exposure to high levels of asbestos, or that those levels were frequently revealed by testing at Rogers facilities; Rogers misled the union and its customers as to its compliance with OSHA standards pertaining to asbestos exposure levels; Rogers violated several federal safety regulations pertaining to working with asbestos, perhaps most notably, its failure to implement a respiratory program and provide its employees with proper respiratory protection. While all of this was happening at Rogers' own facilities, it was admonishing others in the industry that, if they were not able to comply with OSHA's requirements, they should not engage in the handling or production of asbestos related materials due to the risks that asbestos exposure posed to their employees. This stands in stark contrast to *Lucenti*, wherein our Supreme Court concluded that there was no evidence presented of prior accidents, an extensive or protracted history of workplace safety violations, or deception on the part of the defendant with respect to the danger presented. *Lucenti* v. *Laviero*, supra, 327 Conn. 791.

The trial court's conclusions that there were "some" instances in which the asbestos levels were above OSHA limits; that Rogers "may have downplayed" the significance of potential health consequences of asbestos; and that Rogers "may not have completely complied" with federal safety standards do not reflect an examination of the evidence in the light most favorable to the plaintiff, as required on summary judgment. We recognize that a fact finder could review the evidence presented and come to the same conclusions, but those conclusions are not so clear that Rogers was entitled to judgment as a matter of law. In other words, in light of the totality of the evidence presented by the plaintiff in this case, those conclusions are by no means compelled. Our review of the summary judgment record, as discussed herein, demonstrates that there is an evidentiary factual predicate for reasonable inferences to the contrary. Choosing which of these competing inferences to draw is the province of the jury. See, e.g., *Suarez* [v. *Dickmont Plastics Corp.*], supra, 229 Conn. 111 ("[i]t is for the finder of fact, not the court on summary judgment, to determine what inferences to draw" (internal quotation marks omitted)).

As stated herein, "satisfaction of the substantial certainty exception requires a showing of the employer's subjective intent to engage in activity that it knows

bears a substantial certainty of injury to its employees"; *Lucenti* v. *Laviero*, supra, 327 Conn. 779; and "[i]ntent is clearly a question of fact that is ordinarily inferred from one's conduct or acts under the circumstances of the particular case." (Internal quotation marks omitted.) Id., 780. "Substantial certainty exists when the employer cannot be believed if it denies that it knew the consequences were certain to follow." (Internal quotation marks omitted.) *Hassiem* v. *O & G Industries, Inc.*, supra, 197 Conn. App. 650. A plaintiff need not prove substantial certainty at the summary judgment stage but must demonstrate, taking the evidence in the light most favorable to the plaintiff, that there is at least a genuine issue of material fact as to whether, in light of the totality of the evidence presented, a jury could reasonably infer that the employer subjectively believed that its conduct was substantially certain to result in injury to its employees. On the basis of the foregoing, we conclude that the plaintiff has satisfied this burden and, therefore, that the trial court erred in rendering summary judgment in favor of Rogers.

II

The plaintiff also challenges the dismissal of her claims against Special Electric. The plaintiff claims that the trial court improperly concluded that it did not have subject matter jurisdiction over the plaintiff's claims against Special Electric on the ground that the plaintiff did not file those claims within two years of the date of the publication of the notice of Special Electric's dissolution. Specifically, the plaintiff argues that the notice of dissolution was ineffective because it was published by Special Electric's insurers, who did not have authority to do so. We disagree.

The following facts, which are undisputed, and procedural history are relevant to our resolution of this claim. Special Electric was incorporated in Wisconsin in 1957. It brokered the sale of, and distributed, asbestos to manufacturers of products containing asbestos in several states, including Connecticut, where Rogers was located. In 2004, Special Electric petitioned for relief under chapter 11 of the United States Bankruptcy Code. In August, 2006, Special Electric filed its Second Amended Plan of Reorganization of Special Electric (plan), which was confirmed by the United States Bankruptcy Court for the Eastern District of Wisconsin on December 21, 2006. When the plan was confirmed, and its only remaining officer was John Erato, who served as its director and president after the bankruptcy proceedings commenced, Special Electric had no operations, its corporate assets had been sold, and the only remaining assets of Special Electric from which claims against it might be paid were its liability insurance policies.

The plan provides, inter alia: "The holders of all Claims against or Interests in the Debtor, of whatever

nature . . . shall be bound by the provisions of the Plan . . . ." Under the plan, asbestos claims that were not yet settled at the time the plan was filed are included in the definition of "Unliquidated Personal Injury Claims," and asbestos claimants are required to serve their complaints on a designated registered agent, which tenders the claims directly to the insurance companies.[19] Section 8.1 (c) (1) of the plan further provides in relevant part: "Each Insurance Company shall defend and/or settle Unliquidated Personal Injury Claims . . . in accordance with and in a manner consistent with the language of the applicable Insurance Policies and applicable state law." Section 8.1 (c) (iii) of the plan also provides that "[t]he obligations, if any, of the Insurance Companies to pay holders of Unliquidated Personal Injury Claims shall be determined solely pursuant to the terms of the Insurance Policies and applicable law." Finally, § 8.1 (c) (iv) of the plan contains a reservation of rights and defenses, which provides, inter alia, that nothing in the plan "shall impair, alter, restrict, modify, or limit the right of . . . any Insurance Company to . . . assert any rights, claims, counterclaims, and/or defenses under the Insurance Policies and applicable law . . . ."[20]

After Erato resigned in 2009, no successor officer or director was appointed and Special Electric failed to submit annual reports or fees to the Wisconsin Department of Financial Institutions (WDFI), which were required to maintain Special Electric's corporate existence. Consequently, on September 11, 2012, the WDFI administratively dissolved Special Electric pursuant to §§ 180.1421 (2) (b), 181.1421 (4) (b) and 183.09025 (2) (c) of the Wisconsin Business Corporation Law (WBCL). See Wis. Stat. §§ 180.1421 (2) (b), 181.1421 (4) (b) and 183.09025 (2) (c) (2021-2022).

On May 8, 2014, the attorneys representing Special Electric's insurers[21] published a Notice of Dissolution of Special Electric Company, Inc. (notice), pursuant to § 180.1407 (1) of the 2013-2014 WBCL, which provides, inter alia, that "[a] dissolved corporation" may publish notice of its dissolution requesting that claimants present their claims in accordance with the notice.[22] Section 180.1407 (2) provides in relevant part that "if the dissolved corporation publishes a newspaper notice . . . a claim against the dissolved corporation . . . is barred unless the claimant brings a proceeding to enforce the claim within 2 years after the publication date of the newspaper notice . . . ." Thus, pursuant to Wisconsin law, if the notice published in 2014 was proper, the period within which claims could be filed against Special Electric expired in May, 2016.

This action was filed in 2019, three years beyond the 2016 deadline that Special Electric asserts was effectuated by the 2014 publication of its notice of dissolution. On that basis, Special Electric moved to dismiss the

plaintiff's claims against it on the ground that they were time barred and, therefore, that the court lacked subject matter jurisdiction over them. The plaintiff objected to the motion to dismiss, arguing that the notice of dissolution was inadequate because, inter alia,[23] it was published by Special Electric's insurers who, she alleged, lacked the authority to issue the notice. The plaintiff further argued that, even if Special Electric's insurers had authority to issue the notice of dissolution, they were precluded from doing so by Special Electric's bankruptcy plan, which, she alleged, was intended to allow for claims to be filed in perpetuity.

On February 18, 2022, the court issued a memorandum of decision granting Special Electric's motion to dismiss. In rejecting the plaintiff's argument that the notice of dissolution was ineffective because it was not issued by a corporate officer of Special Electric, the court explained that, after Erato resigned in 2009 and Special Electric was administratively dissolved in 2012, there were no remaining corporate officers to govern Special Electric, and the only remaining parties who were authorized to act on Special Electric's behalf were its insurers. The court reasoned that, although § 180.1407 (1) of the WBCL "provides detailed requirements concerning where the notice shall be published and what it shall contain, the statute provides no further guidance concerning whether the corporation itself must cause the publication of the notice or whether its attorneys or other agents may do so. In the absence of any binding authority requiring a member of the board of directors to personally cause the notice to be published, the court will not infer that such a requirement exists." (Internal quotation marks omitted.) The court further held that Special Electric's insurers were authorized to issue the notice pursuant to Special Electric's bankruptcy plan, which not only contemplates the application of the WBCL to the processing of claims filed against Special Electric but also requires the insurers to defend or settle claims brought against Special Electric. On those bases, the court concluded that the notice published in Wisconsin of Special Electric's dissolution was statutorily sufficient, that the plaintiff failed to file her claims against Special Electric within the two year period triggered by the publication of that notice, and, consequently, that the court lacked subject matter jurisdiction over the plaintiff's claims.[24] This appeal followed.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A trial court's determination of its subject matter jurisdiction is a question of law that we review de novo." (Citation omitted; internal quotation marks omitted.) *Dobie* v. *New Haven*, 346 Conn. 487, 495–96, 291 A.3d 1014 (2023).

It is well settled that a business entity is a creature of state law. Consequently, the state under whose law the entity was created is the state that determines whether and how its existence is terminated. See Fed. R. Civ. P. 17 (b) ("[c]apacity to sue or be sued is determined as follows . . . (2) for a corporation, by the law under which it was organized"); *Gross* v. *Hougland*, 712 F.2d 1034, 1040 (6th Cir. 1983) ("the question whether an action has abated because of the dissolution of a corporation is controlled by the law of the state of incorporation"), cert. denied, 465 U.S. 1025, 104 S. Ct. 1281, 79 L. Ed. 2d 684 (1984); *G. M. Standifer Construction Corp.* v. *Commissioner of Internal Revenue*, 78 F.2d 285, 286 (9th Cir. 1935) ("[t]he general effect of the dissolution of a corporation is to put an end to its corporate existence for all purposes whatsoever and to extinguish its power to sue or be sued, but, if the law of the state of incorporation so provides, its existence may continue for a specified period after dissolution for the purpose of winding up its affairs, and during that extended period of corporate life it may sue or be sued"); *Bazan* v. *Kux Machine Co.*, 52 Wis. 2d 325, 333, 190 N.W.2d 521 (1971) ("[i]t is the rule that when a corporation becomes defunct by dissolution in the state of its creation, it is defunct in every other state unless such other state has also granted it a charter"); Restatement (Second), Conflict of Laws § 299, p. 295 (1971) ("[w]hether the existence of a corporation has been terminated or suspended is determined by the local law of the state of incorporation"); 17A Fletcher Cyclopedia of the Law of Corporations (2023) § 8579 ("the state or country that grants the corporation its franchise has exclusive and supreme power to withdraw it and to forfeit the corporate charter or dissolve the corporation"); 19 Am. Jur. 2d 463, Corporations § 2335 (2015) ("[t]he existence of a corporation cannot be terminated except by some act of the sovereign power by which it was created").

Here, Special Electric was created in Wisconsin and was administratively dissolved by the state of Wisconsin. Accordingly, we look to Wisconsin law to ascertain the effect of Special Electric's dissolution, particularly on its capacity to be sued. See, e.g., *Bazan* v. *Kux Machine Co.*, supra, 52 Wis. 2d 337 (construing predecessor to § 180.1407 of WBCL as limitation on actions against dissolved corporations "in terms of the capacity to sue or be sued, rather than in terms of a statute of limitation"); *Branch of Citibank, N.A.* v. *De Nevares*, 74 F.4th 8, 15 (2d Cir. 2023) ("[w]hether a party enjoys separate legal existence may be a decisive issue as to whether federal courts have subject matter jurisdiction over disputes involving that party, but legal existence itself turns on an examination of the law of the party's place of incorporation or formation" (internal quotation marks omitted)). In doing so, we are mindful of the following guidance of the Wisconsin Supreme Court,

which has explained: "[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect. . . . We assume that the legislature's intent is expressed in the statutory language." (Citation omitted; internal quotation marks omitted.) *Banuelos* v. *University of Wisconsin Hospitals & Clinics Authority*, 406 Wis. 2d 439, 449, 988 N.W.2d 627 (2023). Courts are not permitted to read words into the statute that the legislature did not insert. See, e.g., *Dawson* v. *Jackson*, 336 Wis. 2d 318, 335, 801 N.W.2d 316 (2011).

Section 180.1421 (3) of the WBCL provides that § 180.1405 (1) and (2) and §§ 180.1406 through 180.1408 pertain to corporations that have been administratively dissolved.[25] Section 180.1405 is titled "Effect of dissolution" and subsection (1) provides in relevant part: "A dissolved corporation continues its corporate existence but may not carry on any business except that which is appropriate to wind up and liquidate its business affairs including the following . . . (c) [d]ischarging or making provision for discharging its liabilities . . . [and] (e) [d]oing every other act necessary to wind up and liquidate its business and affairs." Section 180.1407 (1) provides in relevant part that "[*a*] *dissolved corporation* may publish notice of its dissolution and request that persons with claims . . . against [it] . . . present them in accordance with the notice. . . ." (Emphasis added.) Pursuant to § 180.1407 (2), such claims against the dissolved corporation must be brought within two years of the date of the publication of the notice.

The plaintiff challenges the trial court's dismissal of her claims against Special Electric and its rejection of her argument that the publication of the notice of dissolution that triggered the two year time frame within which claims were to be filed against Special Electric was deficient because it was issued by Special Electric's insurers, rather than a corporate officer of Special Electric. She contends that the authority to publish that notice is limited by § 180.1407 of the WBCL to a corporate officer of Special Electric, in that it provides that "[a] dissolved corporation" may publish notice of its dissolution. Although the statute refers to publication by the corporation, it does not expressly state that a corporate officer or director must publish the notice of dissolution. In the absence of such an explicit requirement, we, like the trial court, decline to read such a requirement into that statute.

Moreover, because § 180.1407 of the WBCL applies only to dissolved corporations, which, like Special Electric, are not likely to have corporate officers to act on their behalf following dissolution, the question of who does have authority to publish the notice of dissolution must be resolved. In the absence of an explicit requirement that a corporate officer must publish the notice of dissolution, it is reasonable to infer that another

party who is authorized by the dissolved corporation may do so. "Generally speaking . . . an agency [to act on behalf of an insured] may be created by the active consent of the principal and agent or by an express contract, operation of law, implication, estoppel, or custom or usage." 43 Am. Jur. 2d 161, Insurance § 120 (2013); see also 3 G. Couch, Insurance (3d Ed. 2011) §§ 44:1 through 44:35 and 44:38 through 44:57; 3 Am. Jur. 2d 458–65, Agency §§ 14–19 (2013). The question of "[w]hether an agency has been created is a question of fact to be determined by the relations of the parties as they exist under their agreements or acts." (Footnote omitted.) 43 Am. Jur. 2d, supra, § 120, p. 161. Here, it is clear, based on Special Electric's bankruptcy plan and the reliance by Special Electric on its insurers since it was administratively dissolved, that the insurers were acting as agents of Special Electric.

As noted herein, pursuant to Special Electric's bankruptcy plan, Special Electric remained only a shell through which claims against it passed to its insurers. As part of the pass-through procedure established by the plan, Special Electric's insurers are authorized and obligated to defend or settle claims filed against Special Electric on its behalf. The only limitation the plan imposes upon the insurers in their authority and obligation to defend claims filed against Special Electric is that they do so consistently with the insurance policies at issue and the applicable state law. There is nothing in the plan that precluded the insurers from publishing the notice of dissolution as a way of exercising the broad authority, afforded by the plan, to defend claims brought against Special Electric by establishing a time limitation for the filing of those claims. Moreover, not only are the insurers afforded broad authority to act in defense of claims brought against Special Electric, but, as agents of Special Electric, they are permitted to take actions in furtherance of winding up the affairs of Special Electric.

In *Morehouse* v. *Special Electric Co.*, Wisconsin Circuit Court, Dane County, Case No. 14CV1154 (April 14, 2016), the Dane County Circuit Court of Wisconsin rejected the argument that Special Electric's insurers did not have authority to publish the same notice of dissolution that is at issue in the present case.[26] That court explained: "[T]he [WBCL] appears to provide these rights and appears to have occupied the field. [The legislature] took into account [the] corporations that acted affirmatively to dissolve themselves and corporations that failed to continue to operate. And, so, by eliminating them through the failure to pay, they administratively would dissolve them. . . . [The legislature] did anticipate the situation where corporations had effectively dissolved, everybody walked away, everybody died, and what was the state supposed to do. Because people would logically consider them to still be in existence and, thus, be misled. And, so, they

created this scheme or structure, it seems to me, in which . . . the corporation would be dissolved administratively, and also a structure that was to protect creditors, not to hurt creditors, by requiring a publication or having a publication in order to limit the time period. Those seem to me to be actually laudable goals on behalf of potential creditors or claimants . . . that the purpose was to make sure that everyone knew what was going on, that it was happening in an orderly way, that a time period was created in which people could make certain claims, and that at the end of that time period, it would expire." The court reasoned: "[T]he duty of the insurers in this instance is to defend the insured, it's not to pay the plaintiffs. I mean, it's not to pay claimants, it's to defend the insured. That's their legal, potentially fiduciary obligation to Special Electric."

The court reiterated: "[I]n the end, the statute occupies the field. The legislature made that decision, to make policy choices about whether or not a corporation could be dissolved and the sequence in which it would be dissolved. . . . [T]he legislature considered every aspect of dissolution as far as I can tell. They considered the situation where it's voluntary and they want to do it. They considered where it's involuntary. They considered it where there could be creditors who would come into the corporation and dissolve it or maintain it. . . . We even have a process by which, once dissolved, it still doesn't disappear. There's still preservation of certain rights to those who have given notice or otherwise acted for those assets that the corporation still has. . . . I'm unable to find really any gap in that process. It is true that some people will be aggrieved by the decisions made by the legislature, but simply being an aggrieved party doesn't mean that one would undo this very elaborate and important structure of the [WBCL]. And, so, Special Electric had a right to dissolve. It had a right to be dissolved if it just didn't do anything. And once its officers and directors were gone, it was dissolved, and another state agency has made that decision . . . .

"[O]ne thing I'm sure of is that [the] duties [of the insurers] are to their insured. And, so, it is not bothersome to me . . . in fact, it would be bothersome to me if it was [the] opposite. It's not bothersome to me that they have taken certain steps to perfect the dissolution. To me, that was their obligation. They're not doing it to put the plaintiffs or any other future claimants at risk. That is not the reason they did it. To the extent they are the ones who forced the publication, they did it because of their fiduciary . . . potentially fiduciary obligation, certainly contractual obligation, to Special Electric to perfect affirmative [defenses]. . . . [T]here are many different kinds of affirmative defenses that insurance companies regularly work to perfect. . . . They may well develop a case of . . . an affirmative

case of a statute of limitations against the plaintiff. The insured doesn't care. But the insurance company does, and they have to perfect it by way of going out and taking certain affirmative steps including filing of briefs and doing the like. The very essence of a duty to defend is to take those kinds of steps of behalf of the insured. . . . [And] . . . simply the dissolution doesn't end the obligations of the duty to defend. There may be affirmative defenses and the like."

The court concluded: "The business corporation law, as I said previously, completely occupies the field. There's an unrestricted right to dissolve. If you dissolve in certain circumstances, creditors are dealt with in different ways. The creditors are dealt with in a situation like this, very thoroughly, make your claim, you're there, you will not have a problem under Wisconsin law. There is nothing more for me to do."

The plaintiff argues that, because Special Electric has no remaining corporate officers, no one had the authority to publish the notice of dissolution, which is consistent with the intent of the bankruptcy plan, namely, that Special Electric exist in perpetuity for the purpose of resolving claims brought against it. The bankruptcy plan, however, does not contemplate Special Electric's infinite existence. Indeed, this argument was rejected by the United States Bankruptcy Court for the Eastern District of Wisconsin in *In re Special Electric Co.*, United States Bankruptcy Court, Eastern District of Wisconsin, Docket No. 04-25471-11 (October 7, 2016), in which the court held that the plan "contained no requirement for Special Electric to remain a corporation in good standing for any particular length of time . . . ." The court noted that the bankruptcy court had rendered its final decree in Special Electric's bankruptcy case in March, 2010, bankruptcy counsel for Special Electric was permitted to withdraw at that time, and the court ordered the case closed. Id. The court explained: "Contributing to the anticipation of the eventual dissolution of Special Electric was the fact that the parties to the bankruptcy case had to negotiate the two stay put bonus arrangements for the sole remaining officer [and] director of Special Electric in order to have him available to bring the plan to confirmation."[27] Id. The court held: "Nothing in the plan requires Special Electric to remain incorporated into 2016. The only requirements concerning Special Electric's incorporation are found in § 8.12, which required the debtor to file an amended certificate of incorporation with the WDFI and designate a registered agent before the effective date of the plan." Id. The court further explained that the plan "does not require Special Electric to continue to exist for a particular length of time, not even to the point where any available insurance coverage is exhausted." Id. The court further held: "For the same reason, allowing the administrative dissolution to continue to final dissolution is not a violation of § 8.5 of

the plan.[28] Not only does the plan fail to mandate Special Electric's continued incorporation, but this court must defer to [the state court's] interpretation of the [WBCL] . . . ." Id. (Footnote added.) Like the Bankruptcy Court, we conclude that the plaintiff's argument that the plan contemplated that Special Electric would continue to exist in perpetuity is unavailing.[29]

On the basis of the foregoing, we conclude that Special Electric's insurers had the authority to issue the notice of dissolution. Because the publication of that notice triggered a two year period within which claimants were required to bring any claims, and the plaintiff in this case did not file this action within that two year period, the court properly dismissed her claims against Special Electric.

The judgment with respect to Rogers Corporation is reversed and the case is remanded for further proceedings according to law; the judgment is affirmed in all other respects.

In this opinion MOLL, J., concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

[1] This action was commenced by Harold Dusto and Anita Dusto on June 11, 2019. On November 11, 2019, Harold Dusto died, and Anita Dusto, as executor of his estate, subsequently was substituted as a party plaintiff. During the pendency of this appeal, Anita Dusto died on September 12, 2022. Lana Kelly thereafter was appointed executor of both estates and was substituted as the party plaintiff in this action. Any reference herein to Dusto refers to Harold Dusto only. For convenience, we will refer to Kelly as the plaintiff.

[2] Union Carbide Corporation, Metropolitan Life Insurance Company, Seegott Holdings, Inc., Seegott, Inc., GTE Corporation, and Strathmore Paper Company initially were named as defendants in this action. The plaintiff withdrew the action as to all defendants other than Rogers and Special Electric.

[3] Special Electric initially moved to dismiss the plaintiff's claims against it on July 31, 2019, on the ground that the court did not have subject matter or personal jurisdiction over it. On October 19, 2021, the court summarily denied Special Electric's motion as untimely as to the issue of personal jurisdiction. The court ordered the parties to "rebrief the issue of subject matter jurisdiction as follows: the motion to dismiss is to be filed on or before October 26, 2021, the objection is to be filed on or before November 2, 2021, and the reply is to be filed on or before November 9, 2021."

[4] In *Lucenti*, our Supreme Court declined to adopt New Jersey's context prong. Accordingly, we need not address it in this case. *Lucenti* v. *Laviero*, supra, 327 Conn. 781 n.7.

[5] The plaintiff did not claim before the trial court in opposing Rogers' motion for summary judgment, and does not claim on appeal, that Rogers intended to injure its employees.

[6] Rogers and the plaintiff submitted voluminous documentary evidence in support of their respective arguments in support of, and in opposition to, Rogers' motion for summary judgment.

[7] It is important to note that the substantial certainty exception requires only that a defendant be substantially certain that the consequences of his actions will occur, not that they will occur 100 percent of the time. See *Suarez* [v. *Dickmont Plastics Corp.*], supra, 229 Conn. 111.

[8] Dusto described his experience at Rogers during his depositions. Over the course of his career at Rogers, Dusto worked in several capacities. Dusto was hired initially as an extrusion operator. In that capacity, he worked on an extruder machine, which was located in the center of the facility, around the corner from the kneader room, where mixes were made. Although there was a wall between these two areas, there was an opening for a door, but no door. During each shift that he worked, Dusto used a forklift to bring twelve to sixteen fifty-five gallon drums of mixes, consisting

of rocks and dust, often containing asbestos, into his department from the kneader room and then dump them into the extruder machine. He also would routinely have to change the collection barrels in the dust collector on the roof of the building. Most of the dust collected came from the kneader room. He would have to move the full barrels, which were not covered, from the dust collector to the kneader room. Dust would sometimes spill out over the sides of the barrels. Dusto also unloaded bags of asbestos from freight cars and stacked them on pallets. Sometimes, the bags had holes in them from where they had been punctured by a forklift.

After about one and one-half years, Dusto became a premix operator in the mill area and made mixes of all powders for the mill. The raw materials he mixed included fiberglass, resin, asbestos and other filler materials. As a premix operator, Dusto wore a dust mask that had a plastic cartridge where a filter would be placed inside. The filters were replaceable and only lasted one shift. Dusto only wore the mask when mixing and took it off when not mixing. Dusto indicated that Rogers did not care if he wore the mask and he was never reprimanded for not wearing it. In the premix area, Rogers had a dust collection system known as Dustex. When the Dustex blew dust back into the shop, Dusto went outside to empty it. Dusto did not wear any protective equipment when working around the Dustex machine or picking up the barrels.

Dusto eventually transferred to a blender operator position for approximately one year, where he blended material from the premix. He loaded the blender using a vacuum that sucked the premix material up to the top of the blender. He did not wear a mask as a blender operator. As a blender operator, he continued to empty the Dustex.

[9] The air sampling tests were conducted by York Research Corporation, an outside consultant retained by Rogers in 1975.

[10] In July, 1972, OSHA made permanent the 5 f/cc PEL and the 10 f/cc ceiling limit and mandated a future reduction of the PEL to 2 f/cc by July 1, 1976. See generally 29 C.F.R. 1910 (1972) OSHA explained, inter alia: "In view of the undisputed grave consequences from exposure to asbestos fibers, it is essential that the exposure be regulated now, on the basis of the best evidence available now, even though it may not be as good as scientifically desirable. An asbestos standard can be [reevaluated] in the light of the results of ongoing studies, and future studies, but cannot wait for them. Lives of employees are at stake. . . ." Id.

[11] For example, air samplings taken on April 7, 1978, revealed two readings over the OSHA limit. Air samplings taken from May 31 to June 4, 1979, revealed one reading over the OSHA limit. Samplings taken in March, 1980, produced eight readings over the OSHA limit.

[12] An internal memo, dated April 20, 1972, circulated to several individuals within Rogers, acknowledged that "most of our areas are presently over standard . . . ."

On March 22, 1987, another memo was circulated within Rogers, noting, inter alia, that OSHA had revised its regulations for asbestos exposure on June 20, 1986, but that, as of the date of the memo, Rogers was "not in compliance with any section of these regulations."

[13] See 29 C.F.R. § 1910.93a (i) (3) (1972).

[14] See 29 C.F.R. § 1910.93a (c) (5) (1971); 29 C.F.R. § 1910.93a (d) (2) (iv) (1972).

[15] See 29 C.F.R. § 1910.93a (d) (2) (i) through (iii) (1972).

[16] See 29 C.F.R. § 1910.93a (g) (1972).

[17] See 29 C.F.R. § 1910.93a (h) (1972).

[18] The plaintiff argues, as she did in opposing Rogers' motion for summary judgment, that, although this case did not involve the "disabling of safety devices" per se, which is the fourth *Lucenti* factor, Rogers' persistent violation of federal safety regulations had the practical effect of "disabling" those regulations. (Internal quotation marks omitted.) Because we previously discussed Rogers' failure to comply with those safety regulations in considering the third *Lucenti* factor, we do not reiterate that discussion.

[19] The plan requires claims to be submitted to:

"Special Electric Company, Inc.

"c/o CT Corporation System, Registered Agent

"8025 Excelsior Drive, Suite 200

"Madison, WI 53717."

[20] Specifically, § 8.1 (c) (iv) of the plan provides in relevant part: "Reservation of Rights and Defenses. Nothing in the Case, the Plan, the Plan Documents, the Confirmation Order . . . or any finding of fact and/or conclusion of law with respect to confirmation of the Plan . . . shall impair, alter,

restrict, modify, or limit the right of: [1] any Insurance Company to [a] assert any rights, claims, counterclaims, and/or defenses under the Insurance Policies and applicable law as they may have against any Entity . . . asserting liability or coverage under any Insurance Policy; or [b] analyze, respond to, litigate, or settle any Unliquidated Personal Injury Claim tendered to such Insurance Company or under or on account of such Insurance Policy; or [2] except as provided in Sections 5.2, 8.1 (a) and 8.1 (b) of the Plan, any Unliquidated Personal Injury Claimant to assert any rights, claims, counterclaims, and/or defenses under the Insurance Policies and applicable law as they may have against any Entity . . . including any Insurance Company. Confirmation of the Plan, the Plan Documents, and the entry of the Confirmation Order . . . or any finding of fact and/or conclusion of law with respect to confirmation of the Plan . . . shall not be deemed to be or have the effect of a waiver of any right, claim, defense, or argument each Insurance Company and Unliquidated Personal Injury Claimant may have or would be entitled to assert as against each other in any future judicial or quasi-judicial proceeding. All arguments of Unliquidated Personal Injury Claimants, the Insurance Companies, and the Debtor as of the Petition Date with respect to the Unliquidated Personal Injury Claims and the Insurance Policies are preserved."

[21] The plaintiff does not argue that the attorneys representing the insurers did not have the authority to act on behalf of the insurers.

[22] Wisconsin Statutes (Rev. to 2013-2014) § 180.1407 (1) provides: "A dissolved corporation may publish notice of its dissolution and request that persons with claims, whether known or unknown, against the corporation or its directors, officers or shareholders, in their capacities as such, present them in accordance with the notice. The notice shall be published as a class 1 notice, under ch. 985, in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located. The notice shall include all of the following: (a) A description of the information that must be included in a claim, (b) A mailing address where the claim may be sent, (c) A statement that a claim against the dissolved corporation or its directors, officers or shareholders is barred unless a proceeding to enforce the claim is brought within 2 years after the publication date of the notice."

Hereinafter, unless otherwise indicated, all references to § 180.1407 in this opinion are to the 2013-2014 revision of the statute.

[23] In opposition to Special Electric's motion to dismiss, the plaintiff also argued that the notice was insufficient in that it failed to include certain information required under Wisconsin law. The trial court rejected that argument, and the plaintiff has not challenged that holding on appeal.

[24] Although a statute of limitations defense typically does not implicate a court's subject matter jurisdiction, the trial court concluded that, because Special Electric was a dissolved corporation that no longer had the capacity to be sued, the plaintiff's claims against it were not justiciable. See, e.g., *Janulawicz* v. *Commissioner of Correction*, 310 Conn. 265, 270, 77 A.3d 113 (2013); *State* v. *Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 444, 54 A.3d 1005 (2012). The parties do not contest the trial court's determination that the plaintiff's failure to timely file her claims against Special Electric implicated the court's subject matter jurisdiction.

[25] Section 180.1407 of the WBCL is modeled on § 14.07 of the American Bar Association's Model Business Corporation Act (MBCA), which is substantially identical to § 180.1407 except that it provides for a three year claims period, rather than a two year claims period. The official comment to MBCA § 14.07 indicates that the purpose of the provision is to provide a reasonable time to file a claim against a corporation after its dissolution. The comment states in relevant part: "Section 14.07 addresses the problems created by possible claims that might arise long after the dissolution process is completed and the corporate assets distributed to shareholders . . . . On one hand, the application of a mechanical limitation period to a claim for injury that occurs after the period has expired may involve injustice to the plaintiff. On the other hand, to permit these suits generally makes it impossible ever to complete the winding up of the corporation, make suitable provision for creditors, and distribute the balance of the corporate assets to the shareholders. . . .

"[The three year cutoff] provides a reasonable compromise between the competing interests of potential injured plaintiffs, the ability of dissolved corporations to distribute remaining assets free of all claims, and the interests of shareholders in receiving those assets secure in the knowledge that they may not be reclaimed." Model Business Corporation Act (A.B.A. 2016)

§ 14.07, comment, p. 338. Many states have adopted statutes that are based on versions of MBCA § 14.07 and are similar to § 180.1407. See 16A Fletcher Cyclopedia of the Law of Corporations (2023) § 8144.10; see also 4 J. Cox & T. Hazen, Treatise on the Law of Corporations (3d Ed. 2022) § 26:10. Several courts have described these corporate survival statutes as allowing a limited period for claimants to sue a dissolved corporation.

[26] Indeed, Special Electric's brief to this court cites several cases from courts throughout the country that have rejected this very argument as to the notice of dissolution published by Special Electric's insurers. See, e.g., *Hart* v. *Special Electric Co.*, Docket No. A151293, 2018 WL 6168098, *4–5 (Cal. App. November 26, 2018); *Deister* v. *Asbestos Corp., Ltd.*, California Superior Court, Santa Clara County, Docket No. 2018-1-CV-327331 (January 18, 2019); *Hart* v. *Certainteed Corp.*, California Superior Court, Alameda County, Docket No. RG16833060 (February 10, 2017); *In re Asbestos Litigation*, Delaware Superior Court, Docket Nos. N17C-02-136, N17C-08-0228 (ASB), (December 7, 2017); *Desalvo* v. *Advance Auto Parts, Inc.*, Illinois Circuit Court, Madison County, Docket No. 15 L 803 (July 14, 2017); *Brenon* v. *Asbestos Corp., Ltd.*, 188 App. Div. 3d 1610, 136 N.Y.S.3d 592 (2020), appeal denied, 191 App. Div. 3d 1404, 137 N.Y.S.3d 810 (2021); *In re Eighth Judicial District Asbestos Litigation*, New York Supreme Court, Erie County, Docket Nos. 810168/2017, 805211/2017, 806760/2017, E 162678/2017 (March 14, 2019); *In re New York City Asbestos Litigation*, New York Supreme Court, New York County, Docket No. 190219/2016 (March 16, 2017); *McCoy* v. *Special Electric Co.*, Pennsylvania Court of Common Pleas, Philadelphia County, Docket No. 2830 (August 4, 2016).

[27] In making this statement, the court referred to the record of Special Electric's bankruptcy case. Although that record is not before us for review, the court's statement is not contested by the parties.

[28] Section 8.5 of the plan provides: "Debtor Injunction. As of the Effective Date, except as otherwise expressly set forth in the Plan, all entities shall be enjoined from (i) prosecuting any Claim, demand, debt, right, cause of action, liability, or interest against or with respect to the Debtor; (ii) enforcing, attaching, collecting, or recovering in any manner, any judgment, award, decree, or order against the Debtor, or its property; (iii) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, or its property; (iv) asserting a right of setoff, right of subrogation, or right of recoupment of any kind against any debt, liability, or obligation due to the Debtor, or its property; (v) commencing or continuing any action, in any manner or in any place, that does not comply with, or is inconsistent with, the provisions of the Plan; and (vi) commencing or continuing, in any manner, any action or other proceeding against the Debtor, or its property. To the extent the foregoing is in conflict with section 1141 of the Code, section 1141 of the Code shall control. Notwithstanding the foregoing, nothing herein shall prevent Claimants from asserting Unliquidated Personal Injury Claims in accordance with section 8.1 of the Plan."

[29] To the extent that the plaintiff argues that the bankruptcy plan preempts the application of Wisconsin law, we disagree. Section 11.11 of the plan, titled "Governing Law," provides: "Unless a rule of law or procedure is supplied by Federal Law (including the Code and the Rules), the laws of the State of Wisconsin, without giving effect to any conflicts of laws principles thereof that would result in the application of the laws of any other jurisdiction, shall govern the construction of the Plan and any agreements, documents, and instruments executed in connection with the Plan." Moreover, as stated herein, because the plan simply does not contemplate the infinite existence of Special Electric, any argument regarding the choice of federal law versus Wisconsin law is unavailing.