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PRESCOTT, J., concurring in part and dissenting in part. I concur with part II of the majority's opinion affirming the judgment of dismissal rendered in favor of the defendant Special Electric Company, Inc. I do not, however, agree with the majority's conclusion in part I of the opinion. Specifically, I disagree that the substitute plaintiff, Lana Kelly, submitted evidence in opposition to summary judgment that demonstrates the existence of a genuine issue of material fact as to whether those counts of the complaint brought against the defendant employer, Rogers Corporation (Rogers), fall within the "substantial certainty" prong of the intentional tort exception to the exclusivity provision of our Workers' Compensation Act (act). See General Statutes § 31-284 (a). Because I would affirm the judgment of the trial court granting summary judgment, I respectfully dissent with respect to part I of the majority opinion.

The majority opinion accurately sets forth the underlying procedural history as well as our standard of review, and, thus, I do not restate them here. Rather, I turn directly to a discussion of why I depart from the majority opinion's analysis regarding whether summary judgment is warranted in the present case. I begin with a brief explication of the legislative purpose and policy considerations underpinning our workers' compensation statutes, an understanding of which is necessary in considering the proper scope and application of a judicially created exception to the exclusivity provision.

"Connecticut first adopted a statutory scheme of workers' compensation in 1913. The purpose of the [act] . . . is to provide compensation for injuries arising out of and in the course of employment, regardless of fault." (Citation omitted; internal quotation marks omitted.) *Doe* v. *Yale University*, 252 Conn. 641, 672, 748 A.2d 834 (2000). The act "indisputably is a remedial statute that should be construed generously to accomplish its purpose." *Driscoll* v. *General Nutrition Corp.*, 252 Conn. 215, 220, 752 A.2d 1069 (2000). "In appeals arising under workers' compensation law, we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act." (Internal quotation marks omitted.) Id., 221. The act contains an express provision that provides in relevant part that "[a]ll rights and claims between an employer who complies with the [act] and employees . . . arising out of personal injury or death sustained in the course of employment are abolished . . . ." General Statutes § 31-284 (a). This so-called exclusivity provision "manifests a legislative policy decision that a limitation on remedies under tort law is an appropriate trade-off for the benefits provided by workers' compensation." *Dris-*

*coll* v. *General Nutrition Corp.*, supra, 220–21. "Under the [act], both the employer and the employee have relinquished certain rights to obtain other advantages. The employee no longer has to prove negligence on the part of the employer, but, in return, he has to accept a limited, although certain, recovery. . . . The employer, in turn, guarantees compensation to an injured employee in return for the exclusivity of the workers' compensation liability to its employees." (Internal quotation marks omitted.) *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 451, 820 A.2d 258 (2003). In other words, "it is an essential part of the workers' compensation bargain that an employee, even one who has suffered . . . an offensive injury, relinquishes his or her potentially large common-law tort damages in exchange for relatively quick and certain compensation." *Driscoll* v. *General Nutrition Corp.*, supra, 227.

Our Supreme Court has recognized a very limited exception to the exclusivity provision of the act for intentional torts committed by an employer against an employee and has clarified that "[t]o bypass the exclusivity of the act, the intentional or deliberate act or conduct alleged must have been *designed to cause the injury that resulted*." (Emphasis added.) *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 102, 491 A.2d 368 (1985). The Supreme Court has further refined the contours of the intentional tort exception, stating that "a plaintiff employee could establish an intentional tort claim and overcome the exclusivity bar of the [act] . . . by proving either that the employer actually intended to injure the plaintiff (actual intent standard) or that the employer intentionally created a dangerous condition that made the plaintiff's injuries substantially certain to occur (substantial certainty standard)." (Citation omitted; footnote omitted.) *Suarez* v. *Dickmont Plastics Corp.*, 242 Conn. 255, 257–58, 698 A.2d 838 (1997). "Under the [actual intent standard], the actor must have intended both the act itself and the injurious consequences of the act. Under the [substantial certainty standard], the actor must have intended the act and have known that the injury was substantially certain to occur from the act." Id., 280. "Although it is less demanding than the actual intent standard, the substantial certainty standard is, nonetheless, an intentional tort claim requiring *an appropriate showing of intent to injure* on the part of the defendant." (Emphasis added.) *Sullivan* v. *Lake Compounce Theme Park, Inc.*, 277 Conn. 113, 118, 889 A.2d 810 (2006). In short, if an employer knows that injury is substantially certain to occur as a result of its actions, the law will treat this as constructive intent to injure.

This framework is consistent with the Restatement's view of intentional torts, which provides in relevant part: "Intent is not . . . limited to consequences which are desired. If the actor knows that the consequences

are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result." 1 Restatement (Second), Torts § 8A, comment (b), p. 15 (1965); see also 1 Restatement (Third), Torts, Liability for Physical and Emotional Harm § 1, p. 3 (2010) ("[a] person acts with the intent to produce a consequence if: (a) the person acts with the purpose of producing that consequence; or (b) the person acts knowing that the consequence is substantially certain to result"). With respect to the substantial certainty prong of the intentional tort exception, it is the employer's knowledge that its actions are so highly likely to lead to the employee's injuries that makes the employer's actions legally equivalent to an act taken with a direct intent to harm and, thus, logically to fall within the exception. See W. Keeton et al., Prosser and Keeton on the Law of Torts (5th Ed. 1984) § 8, p. 36 ("[T]he mere knowledge and appreciation of a risk—something short of substantial certainty—is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong." (Footnote omitted.)).

As our Supreme Court explained in *Lucenti* v. *Laviero*, 327 Conn. 764, 176 A.3d 1 (2018), "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." (Emphasis added.) Id., 779.[1] As so defined, the exception is an exceedingly narrow one, and our Supreme Court has cautioned that because the legal justification for the exception "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." (Emphasis altered; internal quotation marks omitted.) Id., 778–79.[2]

Accordingly, to fall within the narrow exception and avoid summary judgment, an employee bringing a tort action against an employer for work-related injuries must produce some evidence from which a jury reasonably could conclude that the employer knew with such a high degree of certainty that the employee would be hurt as a result of some intentional act of the employer that the law will treat the employer as if it actually intended the harm. See *Morocco* v. *Rex Lumber Co.*, 72 Conn. App. 516, 528, 805 A.2d 168 (2002) (affirming

granting of summary judgment because plaintiff "failed to establish the factual predicate that the defendant or any alter ego of it knew with substantial certainty that the plaintiff would be hurt or that there was an affirmative intent to create a situation to harm the plaintiff"). Substantial certainty of injury does not, under Connecticut law, mean that an injury must be virtually inevitable to occur, but it also requires more than a mere statistical probability of injury. As this court stated in *Morocco*, "[a]n employers' intentional, wilful or reckless violation of safety standards established pursuant to federal and state laws . . . is not enough to extend the intentional tort exception for the exclusivity of the act. . . . The employer must believe the injury was substantially certain to occur." (Citations omitted; internal quotation marks omitted.) Id., 527–28; see also *Melanson* v. *West Hartford*, 61 Conn. App. 683, 689 n.6, 767 A.2d 764 ("[a] wrongful failure to act to prevent injury is not the equivalent of an intention to cause injury"), cert. denied, 256 Conn. 904, 772 A.2d 595 (2001).

Commentary to § 1 of the Restatement (Third) of Torts acknowledges the difficulties presented by the substantial certainty test, particularly in its application with respect to occupational injuries or diseases like the one suffered by the named plaintiff, Harold Dusto, an employee of Rogers:[3] "The substantial-certainty definition of intent requires an appreciation of its limits. In those occupational-injury cases in which courts have applied the substantial-certainty test, there generally is a localized job-site hazard, which threatens harm to a small number of identifiable employees during a relatively limited period of time. . . . The applications of the substantial-certainty test should be limited to situations in which the defendant has knowledge to a substantial certainty that the conduct will bring about harm to a particular victim, or to someone within a small class of potential victims within a localized area. *The test loses its persuasiveness when the identity of potential victims becomes vaguer and when, in a related way, the time frame involving the actor's conduct expands and the causal sequence connecting conduct and harm becomes more complex.*" (Emphasis added.) 1 Restatement (Third), supra, § 1, comment (e), pp. 8–9.

To summarize, employees seeking to recover tort damages from employers for harm suffered in the workplace must overcome an extremely high burden of establishing that the exclusivity provision does not limit their remedies to those provided by our workers' compensation system. Indeed, a review of our appellate cases demonstrates that plaintiffs are rarely successful in their attempts to overcome the exclusivity bar, with most claims failing to survive beyond the summary judgment stage. See, e.g., *Lucenti* v. *Laviero*, supra, 327 Conn. 766–67; *Mingachos* v. *CBS, Inc.*, supra, 196 Conn. 95–96; *Hassiem* v. *O & G Industries, Inc.*, 197 Conn. App. 631, 633, 232 A.3d 1139, cert. denied, 335 Conn.

928, 235 A.3d 525 (2020); *DaGraca* v. *Kowalsky Bros., Inc.*, 100 Conn. App. 781, 783–84, 919 A.2d 525, cert. denied, 283 Conn. 904, 927 A.2d 917 (2007); *Morocco* v. *Rex Lumber Co.*, supra, 72 Conn. App. 517; but see *Suarez* v. *Dickmont Plastics Corp.*, 229 Conn. 99, 100–101, 639 A.2d 507 (1994). Additionally, with respect to occupational diseases caused by long-term exposure to dangerous substances in the workplace, the difficulties of meeting the substantial certainty test might be even greater in light of the fact that many employees who are exposed to such substances, even for long periods, do not become seriously ill. See, e.g., *Pittsburgh Corning Corp.* v. *Travelers Indemnity Co.*, Docket No. 84-3985, 1988 WL 5302, *2 (E.D. Pa. January 21, 1988) ("[n]ot everyone exposed to asbestos is affected"); *Abadie* v. *Metropolitan Life Ins. Co.*, 784 So. 2d 46, 96–97 (La. App.) (parties' experts gave consistent testimony that not everyone exposed to asbestos will get asbestos related disease due to dose response relationship as well as individual sensitivity or individual responsiveness to exposure), writ denied, 804 So. 2d 642 (La. 2001), and writ denied, 804 So. 2d 642 (La. 2001), and writ denied, 804 So. 2d 643 (La. 2001), and writ denied, 804 So. 2d 643 (La. 2001), and writ denied, 804 So. 2d 643 (La. 2001), and writ denied, 804 So. 2d 644 (La. 2001), and writ denied, 804 So. 2d 644 (La. 2001), cert. denied sub nom. *Territo* v. *Adams*, 535 U.S. 1107, 122 S. Ct. 2318, 152 L. Ed. 2d 1071 (2002); *Shellenbarger* v. *Longview Fibre Co.*, 125 Wn. App. 41, 49, 103 P.3d 807 (2004) ("[w]e know now that asbestos exposure does not result in injury to every person, and the evidence does not suggest [employer] believed otherwise [thirty] years ago"), review denied, 154 Wn. 2d 1021, 120 P.3d 73 (2005).

Neither this court nor our Supreme Court has yet applied the substantial certainty test to a case seeking recovery in tort for harm suffered by long-term exposure to asbestos or similar toxic substances in the workplace.[4] I turn then to New Jersey, a state whose law Connecticut favorably has cited in developing our own substantial certainty jurisprudence. See *Lucenti* v. *Laviero*, supra, 327 Conn. 780. The New Jersey Supreme Court, which has adopted a similar substantial certainty test, has addressed the applicability of that exception in a case involving an employee's asbestos exposure in the workplace attributed to the alleged wrongdoings of the employer. See *Millison* v. *E.I. du Pont de Nemours & Co.*, 101 N.J. 161, 176–79, 501 A.2d 505 (1985).[5] The court in *Millison* stated in relevant part: "Although we are certain that the legislature could not have intended that the system of workers' compensation would insulate actors from liability outside the boundaries of the [Compensation] Act for all willful and flagrant misconduct short of deliberate assault and battery, we are equally sure that the statutory scheme contemplates that as many work-related disability claims as possible be processed

exclusively within the [Compensation] Act. Moreover, if 'intentional wrong' is interpreted too broadly, this single exception would swallow up the entire 'exclusivity' provision of the [Compensation] Act, since virtually all employee accidents, injuries, and sicknesses are a result of the employer or a co-employee intentionally acting to do whatever it is that may or may not lead to eventual injury or disease. Thus, in setting an appropriate standard by which to measure an 'intentional wrong,' we are careful to keep an eye fixed on the obvious: the system of workers' compensation confronts head-on the unpleasant, even harsh, reality—but a reality nevertheless—that industry knowingly exposes workers to the risks of injury and disease.

"The essential question therefore becomes what level of risk-exposure is so egregious as to constitute an 'intentional wrong.'

* * *

"In adopting a 'substantial certainty' standard, we acknowledge that every undertaking, particularly certain business judgments, involve some risk, but that willful employer misconduct was not meant to go undeterred. The distinctions between negligence, recklessness, and intent are obviously matters of degree, albeit subtle ones . . . . In light of the legislative inclusion of occupational diseases within the coverage of the Compensation Act, however, the 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 of the [Compensation] Act is not circumvented simply because a known risk later blossoms into reality. . . .

"Courts must examine not only the conduct of the employer, but also the context in which that conduct takes place: may the resulting injury or disease, and the circumstances in which it is inflicted on the worker, fairly be viewed as a fact of life of industrial employment, or is it rather plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the Compensation Act? . . .

"Although [the] defendants' conduct in knowingly exposing plaintiffs to asbestos clearly amounts to deliberately taking risks with employees' health, as we have observed heretofore the mere knowledge and appreciation of a risk [of occupational disease]—even the strong probability of a risk—will come up short of the 'substantial certainty' needed to find an intentional wrong resulting in avoidance of the exclusive-remedy bar of the compensation statute." (Citations omitted; emphasis omitted.) Id., 177–79.

Appellate courts in other jurisdictions that utilize a "substantial certainty" analysis in evaluating whether tort claims are barred by workers' compensation exclusivity have affirmed the granting of summary judgment

or dismissed for failure to state a claim actions brought by employees alleging that an employer's wrongful actions resulted in injuries caused by asbestos exposure. See, e.g., *Vidrine* v. *Constructors, Inc.*, 953 So. 2d 193, 197, 199 (La. App.) (affirming summary judgment on asbestos exposure claim despite evidence that employer was aware employees exposed to asbestos during renovation job but never provided access to safety gear or safety equipment and had sought abatement of asbestos prior to renovation from which knowledge of danger could be inferred), writ denied, 958 So. 2d 1189 (La. 2007), and writ denied, 958 So. 2d 1196 (La. 2007); *Landry* v. *Uniroyal Chemical Co.*, 653 So. 2d 1199, 1204 (La. App.) ("record shows no genuine issue of material fact which could possibly lead to the conclusion that defendants acted in a manner so certain to cause injury that intent to cause injury must be imputed"), writ denied, 660 So. 2d 461 (La. 1995); *Speck* v. *Union Electric Co.*, 741 S.W. 2d 280, 283 (Mo. App. 1987) (affirming dismissal as to portion of wrongful death action that claimed employee's initial illness was due to exposure from asbestos, holding that it was barred by workers' compensation statute). Furthermore, in the jurisdictions that employ a "substantial certainty" analysis,[6] courts generally require "a standard of proof that falls only slightly short of that required to show actual intent"; R. Wald, "Workers' Compensation—Employer's Intentional Misconduct," 48 Am. Jur. 1, Proof of Facts 2d § 2 (2023); and I am aware of none that have extended the exception to cover a case involving an occupational disease resulting from exposure to asbestos or a similarly toxic substance. See, e.g., *Namislo* v. *Akzo Chemical Co.*, 671 So. 2d 1380, 1382 (Ala. 1995) (affirming granting of summary judgment in action alleging, inter alia, that employer knew employee was exposed to harmful amounts of mercury and committed intentional fraud by causing her to believe no risk existed).

Turning to the present case, in the plaintiff's opposition to summary judgment, she argues that "[a]ny reasonable observer would have seen that asbestos was consistently killing some predictable percentage of workers exposed to the deadly material, even when exposures were 'slight.' Put another way, it was a 'substantial certainty' that a predictable percentage of exposed workers would die. Rogers was literally handed the necessary information and resources to understand all of this." In making this argument, the plaintiff relies on a letter, submitted as exhibit 11 to her opposition to summary judgment, that was written to Rogers in 1968, two years before Dusto was employed by Rogers, by one of its asbestos fiber suppliers, Johns-Manville, that included significant information regarding the very real dangers of asbestos, including a copy of an article in The New Yorker by a leading expert, Paul Brodeur, titled "The Magic Mineral." P. Brodeur,

"The Magic Mineral," New Yorker, October 12, 1968, p. 117. Brodeur's article also clarified the dangers of asbestos exposure, providing statistical data regarding resulting occupational diseases, including mesothelioma.

The premise of the plaintiff's summary judgment argument and her argument on appeal, however, is flawed because the substantial certainty test does not look to what a "reasonable observer" would know, but to the subjective belief of the defendant. *Lucenti* v. *Laviero*, supra, 327 Conn. 779. More fundamentally, evidence that a "predictable percentage of exposed workers" would, over some undefined period of time, develop some asbestos related occupational disease does not raise a genuine issue of material fact that the defendant engaged in the particular acts or omissions alleged by the plaintiff with the direct intent to injure or the knowledge or belief that Dusto was *substantially certain* to fall victim to those statistics.

Although I agree that the plaintiff has presented evidence from which a reasonable jury or fact finder could infer that the defendant acted intentionally when it suppressed information regarding the dangers of asbestos, ignored clear warnings to the contrary, and tolerated poor air quality standards in its facilities, my review of the record shows no evidence, even viewed in the light most favorable to the plaintiff, that reasonably could be viewed to demonstrate that Rogers acted knowingly with anywhere close to substantial certainty that Dusto, many years later, would contract mesothelioma or another asbestos related occupational injury. To satisfy the substantial certainty standard, an employer must both have "intended the act and have known that the injury was substantially certain to occur from the act." *Suarez* v. *Dickmont Plastics Corp.*, supra, 242 Conn. 280.

The majority opinion understandably relies upon our Supreme Court's discussion in *Lucenti*, in which our Supreme Court attempted to provide some guidance regarding "the kind of evidence that would allow for an inference that an employer subjectively believed that [an] employee injury was substantially certain to follow its actions." *Lucenti* v. *Laviero*, supra, 327 Conn. 780. Our Supreme Court, which found a series of decisions from New Jersey instructive, endorsed four nonexclusive factors for consideration by courts evaluating "whether [an] employer knew of a substantial certainty of employee harm . . . ."[7] (Footnote omitted; internal quotation marks omitted.) Id., 781. These "*Lucenti* factors" were not set forth as a legal test but only as an analytical tool, and their relative applicability necessarily will vary depending upon the particular circumstances of each case. For example, as the majority acknowledges, the fourth factor—whether there was any affirmative disabling of safety devices—has no

applicability under the facts of this case. Because *Lucenti* was not an asbestos exposure case and did not involve an occupational injury, the usefulness of the *Lucenti* factors in resolving the present appeal is, in my view, greatly diminished.

I am acutely aware of the considerable harm suffered by Dusto and his family as a result of his mesothelioma diagnosis, from which he eventually succumbed, and the real limitations—imposed by the legislature—that workers' compensation exclusivity places on legal compensation for such harm. As the New Jersey Supreme Court acknowledged in *Millison*, there is "a certain anomaly in the notion that employees who are severely ill as a result of their exposure to asbestos in their place of employment are forced to accept the limited benefits available to them through the Compensation Act. Despite the fact that the current system sometimes provides what seems to be, and at times doubtless is, a less-than-adequate remedy to those who have been disabled on the job, all policy arguments regarding any ineffectiveness in the current compensation system as a way to address the problems of industrial diseases and accidents are within the exclusive province of the legislature." *Millison* v. *E.I. du Pont de Nemours & Co.*, supra, 101 N.J. 179–80.

In Connecticut, the legislature enacted workers' compensation legislation that included a broad exclusivity provision with no express exceptions for intentional torts of the employer. See General Statutes § 31-284 (a). The legislature also elected to include occupational illnesses within the types of injuries that are compensable under the act and thus intended to be subject to the exclusivity provision. I am mindful that courts, in recognizing and applying common-law exceptions to legislation, must do so with great caution, and any such exception should be construed as narrowly as possible so as not to frustrate the intent of the legislature.

I conclude on the basis of my review of the summary judgment record and consideration of the facts and circumstances, both undisputed and reasonably inferred, that the plaintiff has failed to raise a genuine issue of material fact that Rogers knew Dusto's illness was a substantially certain result of its actions. Accordingly, I would affirm the trial court's decision to grant summary judgment on the ground that the plaintiff's suit against Rogers is barred by the exclusivity provision of the act. I therefore cannot join the majority with respect to part I of the opinion.

I respectfully dissent as to part I of the majority opinion and concur as to part II.

[1] "Consistent with the focus . . . on employer knowledge and intent, 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." *Lucenti* v. *Laviero*, supra, 327 Conn. 779.

[2] Our Supreme Court suggested in *Lucenti* that, as a matter of public policy, "only the most egregious cases of intentional misconduct on the part

of employers will avoid the bar of workers' compensation exclusivity." *Lucenti* v. *Laviero*, supra, 327 Conn. 782 n.7.

[3] The act covers both accidental injuries and occupational diseases that arise out of and in the course of employment. General Statutes § 31-275 (1) and (16) (A). "Occupational disease" is defined in the act as "any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such . . . ." General Statutes § 31-275 (15); see also 82 Am. Jur. 2d 328–29, Workers' Compensation § 291 (2013) ("[a]n occupational or industrial disease is a disease or infirmity that develops gradually and imperceptibly as a result of engaging in a particular employment and that is generally known and understood to be a usual incident or hazard of that employment").

[4] But see *Stebbins* v. *Doncasters*, *Inc.*, 47 Conn. Supp. 638, 820 A.2d 1137 (2002), aff'd, 263 Conn. 231, 819 A.2d 287 (2003). Our Supreme Court adopted the Superior Court's decision in *Stebbins* granting summary judgment for an employer in an action brought by employees alleging that they developed a form of hypersensitivity pneumonitis as a result of inhaling airborne droplets of petroleum based metal working fluids used in their employment that were contaminated by microorganisms. *Stebbins* v. *Doncasters*, *Inc.*, 263 Conn. 231, 234–35, 819 A.2d 287 (2003); see also *Stebbins* v. *Doncasters*, *Inc.*, supra, 47 Conn. Supp. 640. The Superior Court concluded that "[t]he plaintiffs' [summary judgment] submissions may show that the defendant exhibited a lackadaisical or even cavalier attitude toward worker safety, but are bereft of evidence from which one might reasonably and logically infer that the defendant believed its conduct was substantially certain to cause [the plaintiffs' injuries]." *Stebbins* v. *Doncasters*, *Inc.*, supra, 47 Conn. Supp. 644.

[5] In *Millison*, the plaintiff employees alleged not only that their employer had knowingly exposed them to asbestos and deliberately concealed the risks but that company doctors had fraudulently concealed specific medical information obtained during employee physicals that showed employees already had contracted asbestos related diseases. *Millison* v. *E.I. du Pont de Nemours & Co.*, supra, 101 N.J. 182. The New Jersey Supreme Court held that, "although the employees are limited to workers' compensation benefits for any initial occupational-disease disabilities related to the hazards of their employment experience, the Compensation Act does not bar plaintiffs' cause of action for aggravation of those illnesses resulting from defendants' fraudulent concealment of already-discovered disabilities." Id., 166. There are no equivalent fraudulent concealment claims raised in the present case.

[6] Fourteen states (Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Kentucky, Massachusetts, Nebraska, Pennsylvania, Rhode Island, Virginia, Wisconsin, Wyoming) either recognize no employer intentional tort exception to workers' compensation exclusivity or strictly limit application of the exception to cases of direct physical assault by an employer. See J. Lockhart, "Cause of Action Against Employer for Intentional Exposure of Employee to Hazardous Condition in Workplace," 7 Causes of Action 2d 197, § 17 (2023) (collecting cases).

Only twelve other states besides Connecticut (Alabama, Florida, Indiana, Louisiana, Missouri, New Jersey, New York, North Carolina, Ohio, South Dakota, Texas, West Virginia) hold that the intentional tort exception applies both in cases in which the employer actually intended to injure an employee and those in which the employer knew that an injury was substantially certain to occur as a result of the employer's actions. Id., § 7.

In the remaining majority of states that do recognize an intentional tort exception (Alaska, Arizona, Illinois, Maryland, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Vermont, Washington), they apply the exception only if an employer knowingly and deliberately injures an employee. Id., § 6.

[7] Specifically, our Supreme Court noted with favor that "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." (Footnote omitted.) *Lucenti* v. *Laviero*, supra, 327 Conn. 782.