VERTEFEUILLE, J., with whom SULLIVAN, J., joins, dissenting. I respectfully disagree with the majority's conclusion that liability must be apportioned between the negligent defendants, Raymond A. Sardinis and Raymond D. Sardinis (defendants), and the defendant Colonial Penn Insurance Company (Colonial Penn), the plaintiff's uninsured motorist insurance carrier, pursuant to General Statutes § 52-572h. I would conclude that § 52-572h (o) bars apportionment between a party liable for negligence and an uninsured motorist insurance carrier, whose liability arises under the contractual provisions of an insurance policy. That statute provides: ''Except as provided in subsection (b) of this section, *there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence* including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant

to section 52-556." (Emphasis added.) General Statutes § 52-572h (o).

Less than one year ago, in a case raising a similar issue, we interpreted § 52-572h (o) and unanimously concluded that it does not permit apportionment between a negligent defendant and a defendant liable on a product liability theory. *Allard* v. *Liberty Oil Equipment Co.*, 253 Conn. 787, 798–99, 756 A.2d 237 (2000). We recognized therein that "[t]he general effect of [§ 52-572h (o)] was to make clear that the apportionment principles of § 52-572h do not apply where the purported apportionment complaint rests on any basis other than negligence . . . ."[1] (Internal quotation marks omitted.) Id., 801.

Our decision in *Allard* offers important background for my analysis of the present case. The defendant in that case, Liberty Oil Equipment Company (Liberty Oil), which was allegedly liable in negligence, sought to apportion liability to a product seller. Id., 789. In its apportionment complaint, Liberty Oil alleged only a theory of negligence against the product seller. Id., 790. We concluded, however, that "Liberty Oil cannot . . . convert its apportionment claim against [the product seller] into something other than a product liability claim simply by alleging only negligent misconduct." Id., 800. The question before us, therefore, was whether § 52-572h, as amended by No. 99-69, § 1 (o), of the 1999 Public Acts (P.A. 99-69), allows for the apportionment of liability to a defendant on a product liability claim. Id., 798.

We began with a careful examination of the legislative history of P.A. 99-69 and concluded that "[t]he legislative history of P.A. 99-69 makes clear that its principal purpose was to overrule legislatively a portion of this court's decision in *Bhinder* v. *Sun Co.*, 246 Conn. 223, 717 A.2d 202 (1998). See, e.g., 42 S. Proc., Pt. 6, 1999 Sess., pp. 1797–98, remarks of Senator Donald E. Williams, Jr.; 42 H.R. Proc., Pt. 6, 1999 Sess., p. 1916, remarks of Representative Michael P. Lawlor; id., pp. 1918–19; see also generally Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1999 Sess., pp. 1271–74, 1310–29, 1340–46, 1355–58, 1362, 1365, 1418–20, 1426–31; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 5, 1999 Sess., pp. 1538–50." *Allard* v. *Liberty Oil Equipment Co.*, supra, 253 Conn. 801–802. We further explained that in *Bhinder* v. *Sun Co.*, supra, 225, "[t]his court held that: (1) as a matter of statutory interpretation, 'the plain language of § 52-572h provides that only negligent persons may be cited in by the defendant for apportionment of liability purposes'; id., 230; and (2) nonetheless, 'as a matter of common law, we should extend the policy of apportionment to permit a defendant in a negligence action to cite in as an apportionment defendant a party whose conduct is alleged to be reckless, wilful, and wanton.' Id., 234." *Allard* v.

Liberty Oil Equipment Co., supra, 803.

On the basis of that examination of the legislative history of P.A. 99-69, we determined that the three purposes of P.A. 99-69 were as follows: ''First, the legislature reaffirmed that, as a matter of statutory interpretation, only negligent persons may be cited in as apportionment defendants pursuant to the statute. . . . Second, the legislature made clear its intent that apportionment principles would not apply where the basis of liability of the purported apportionment defendant was based on conduct 'other than negligence,' including but not limited to intentional, wanton or reckless misconduct, strict liability, and liability pursuant to any cause of action created by statute. . . . Third, the legislature made clear its intent that, despite the specific bar to apportionment regarding statutory actions, liability *may* be apportioned among parties liable for negligence in statutory actions based on *negligence*, such as wrongful death actions and actions for injuries caused by state-owned motor vehicles.'' (Emphasis in original.) Id., 803–804. We concluded, therefore, that ''the apportionment principles of § 52-572h do not apply where the purported apportionment complaint rests on any basis other than negligence . . . .'' (Internal quotation marks omitted.) Id., 801. We further concluded that ''it would be inconsistent with the provisions of § 52-572h, as amended by P.A. 99-69, § 1 (o), to permit a defendant sued in negligence to claim apportionment against a product seller whose alleged misconduct tracks that of product liability . . . .'' Id., 804.

I believe that our reasoning in *Allard* should guide our analysis in the present case. The plaintiff's claim against Colonial Penn is a common-law contract claim based on the contract of insurance between Colonial Penn and the plaintiff. In the complaint, the plaintiff alleged that ''[a]t the time of [the collision, the plaintiff] had an automobile policy with [Colonial Penn] providing for $100,000 in uninsured motorist coverage. [Colonial Penn] provided that [it] would pay to the plaintiff all damages suffered because of bodily injury to which she is legally entitled to recover from the unidentified motor vehicle operator up to the limits of the [Colonial Penn] policy applicable to this accident. Under the contract of insurance described above, the plaintiff has demanded that [Colonial Penn] pay to the plaintiff $100,000 but [Colonial Penn] has refused and neglected to pay the same.'' The majority concludes, however, that the jury should have apportioned liability between the defendants and Colonial Penn under § 52-572h (o) because the claim against Colonial Penn is based on negligence in that Colonial Penn acts as a surrogate for the negligent unidentified tortfeasor in this case. I disagree.

The majority concludes that the action in the present

case is based on negligence because "Colonial Penn acted, in part, as a surrogate for the third party tortfeasor . . . ." The majority requires apportionment as to Colonial Penn based on the reasoning that the "plaintiff . . . linked the cause of her damages not only to the negligence of the defendant[s], but also to the negligence of the unidentified driver when it named Colonial Penn as a defendant." This reasoning is similar to that which we rejected in *Allard* v. *Liberty Oil Equipment Co.*, supra, 253 Conn. 787.

In *Allard*, Liberty Oil argued that it was appropriate to apportion liability to the product seller "[g]iven that the . . . apportionment claim alleges negligence in relation to a defective product . . . ." (Internal quotation marks omitted.) Id., 805. In rejecting Liberty Oil's argument that its product liability claim was essentially one based on negligence, we concluded that "[t]he theory behind the statutory limitation of apportionment claims to those involving negligence is that, in such a case, both the underlying claim of the plaintiff and the apportionment claim of the defendant are in relative pari materia, in that they both involve negligent conduct. The statutory actions based on negligence given as examples are consistent with that theory because they rest on the same notions of fault embodied in nonstatutory negligence actions. Product liability claims, however, do not rest on notions of fault." Id., 805–806.

Similarly, a claim for uninsured motorist insurance benefits does not rest on the fault of the insurance carrier, but arises out of the insurance contract with the carrier. Although Colonial Penn's liability is "premised in part on the contingency of the tortfeasor's liability"; *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn. 799, 817, 695 A.2d 1010 (1997); the action by the plaintiff against Colonial Penn is not based on any allegations of fault by Colonial Penn. As we recognized in *Allard* v. *Liberty Oil Equipment Co.*, supra, 253 Conn. 803–804, the legislature clearly intended that liability be apportioned only on the basis of negligence, whether in an action arising under the common law or statute. The claim against Colonial Penn in this case is based on its insurance contract with the plaintiff and not on any negligence by Colonial Penn. The terms of § 52-572h (o) therefore expressly prohibit apportionment to Colonial Penn.

I further find that the reliance on *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 699 A.2d 964 (1997), by the majority for its surrogacy reasoning is misplaced. Citing *Haynes*, the majority concludes that "because of the 'hybrid' nature of uninsured motorist coverage, the uninsured carrier operates in part as a 'surrogate' for the financially irresponsible tortfeasor." Although we acknowledged in *Haynes* that an uninsured motorist carrier can be seen as a surrogate for the tortfeasor, *Haynes* is not applicable to this case for two reasons.

First, *Haynes* was based on common-law principles and not on § 52-572h, the statute that is directly at issue in the present case. Second, *Haynes* was decided in 1997, two years before § 52-572h was amended by adding subsection (o), which explicitly prohibits apportionment between parties liable in negligence and parties liable on any other basis. The reasoning in *Haynes* therefore has been superseded by the legislature's adoption of § 52-572h (o) and should not be applied to reach a result contrary to the explicit provisions of § 52-572h (o).

"In construing a statute, we seek to ascertain and give effect to the apparent intent of the legislature. . . . [W]e are guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *Board of Education* v. *New Haven*, 237 Conn. 169, 180, 676 A.2d 375 (1996). Also, "[i]t is a well-recognized rule of statutory construction that the legislature is presumed to know all the existing statutes, the judicial interpretation of them, and the effect that its action or nonaction will have on them." *Mack* v. *Saars*, 150 Conn. 290, 298, 188 A.2d 863 (1963). "And it is always presumed to have intended that effect which its action or non-action produces." (Internal quotation marks omitted.) *Civardi* v. *Norwich*, 231 Conn. 287, 298, 649 A.2d 523 (1994).

In adopting subsection (o) of § 52-572h, the legislature could not have spoken more clearly: apportionment to a party liable on a basis other than negligence is expressly prohibited. Because the plaintiff's claim against Colonial Penn arises under a contract of insurance, I respectfully disagree with the majority's conclusion that § 52-572h requires apportionment of liability to Colonial Penn in this case.

[1] Although *Allard* involved a defendant that was impleaded as an apportionment defendant and in the present case, Colonial Penn was an original defendant in the action brought by the plaintiff, the principles governing the apportionment issue in both cases are the same as both cases involve a claim for apportionment based on § 52-572h.