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BORDEN, J., with whom KATZ, J., joins, concurring and dissenting. I agree with the well reasoned analysis in part I of the majority opinion, in which the court holds that General Statutes § 52-102b (a),[1] which requires service of an apportionment complaint within 120 days after the return date of the original complaint, is mandatory, and that § 52-102b (a) involves personal, rather than subject matter, jurisdiction. Furthermore, I agree with the majority that, under the facts of this case, no distinction is warranted in this respect between apportionment defendants Neurosurgical Associates of Connecticut, P.C., and Murphy and Lieponis, P.C. I disagree, however, with the majority's conclusion that the trial courts properly granted their motions to dismiss.

I also disagree with the conclusion reached in part II of the majority opinion that General Statutes § 52-190a,[2] which requires a good faith investigation and certificate of good faith before bringing a medical malpractice action, does not apply to apportionment complaints under § 52-102b. I would conclude, to the contrary, that § 52-190a does apply to apportionment complaints brought under § 52-102b. I would also conclude that, under the facts of the present case, the trial court's granting of the defendants' motion for an extension of time of an additional ninety days to file an apportionment complaint was sufficient to relieve the defendants of the consequences of the mandatory 120 day time limit imposed by § 52-102b. I would, therefore, reverse the judgments of the trial courts.

This case involves the intersection of two separate but closely related statutes that grew out of the legislative program known as Tort Reform. Section 52-190a was enacted in 1986 by § 12 of No. 86-338 of the 1986 Public Acts, which is known as Tort Reform I. See *Donner* v. *Kearse,* 234 Conn. 660, 667, 662 A.2d 1269 (1995). A central part of Tort Reform I was the abolition of joint and several liability, and the substitution of proportional liability among different potential tortfeasors. Id., 667–68. Section 52-102b was enacted in 1995 by No. 95-111 of the 1995 Public Acts, in order to address questions that had become apparent regarding how, procedurally, to implement the concept of proportional liability where the plaintiff in a tort action had not brought an action against all the potential tortfeasors and the original defendant sought to apportion liability and, therefore, damages, among those other potential tortfeasors. This case raises the question of how these two statutes should be interpreted where the other potential tortfeasors are health care providers.

In general terms, § 52-190a (a) requires that a party may not bring an action to recover damages from a

health care provider based on a claim of malpractice without (1) a reasonable inquiry leading to a good faith belief that there was malpractice, and (2) a certificate filed by the party's attorney that such an inquiry gave rise to such a belief. Under subsection (b) of § 52-190a, the party may petition the clerk of the court for an automatic ninety day extension of the statute of limitations in order to make the reasonable inquiry required by subsection (a).

In similarly general terms, § 52-102b provides that, if a defendant in a tort action believes that another person is or may be liable for a proportionate share of the plaintiff's damages, the defendant may serve an apportionment writ, summons and complaint on that other person and seek the relief of an apportionment of liability. This apportionment complaint must be filed within 120 days of the return day of the underlying tort complaint.

With this general background in mind, I first briefly recap the facts and procedures of this case. With a return date of June 19, 2001, the plaintiff, Stephen Lostritto, commenced the underlying negligence action against the defendants, Community Action Agency of New Haven, Inc. (Community Action), and Elizabeth Barrett, for damages arising out of a motor vehicle accident. Community Action and Barrett sought to apportion liability to the plaintiff's health care providers, namely, Neurosurgical Associates of Connecticut, P.C., and its physician employee, Harry P. Engel (collectively, Neurosurgical Associates), and Murphy and Lieponis, P.C., and its physician employee, Jonas Lieponis (collectively, Murphy & Lieponis), based on their apparent belief that some portion of the plaintiff's damages had been proximately caused by the medical malpractice of Neurosurgical Associates and Murphy & Lieponis. Therefore, on October 12, 2001, Community Action and Barrett moved, pursuant to § 52-190a (b); see footnote 2 of this opinion; for a ninety day extension of the 120 day time limit provided for by § 52-190a (a); see id.; claiming that, because the apportionment complaint that they intended to file would allege medical malpractice, they needed additional time to conduct the reasonable inquiry required by § 52-190a (a) to form a good faith belief that there was, in fact, medical malpractice and, therefore, to obtain the necessary good faith certificate.[3] On October 15, 2001, the trial court granted the ninety day extension to January 19, 2002, and thereafter Community Action and Barrett served Neurosurgical Associates and Murphy & Lieponis, on January 14, 2002, and January 17, 2002, respectively, with an apportionment complaint, accompanied by the good faith certificate required by § 52-190a (a).[4] Neither Neurosurgical Associates nor Murphy & Lieponis dispute that they were served within the ninety day extension granted by the court.[5] Thus, in summary, within 120 days of the underlying negligence complaint, Com-

munity Action and Barrett moved the court for the additional ninety days provided for by § 52-190 (b), and served both Neurosurgical Associates and Murphy & Lieponis within the ninety day extension granted by the court.

The majority concludes, however, that the trial courts properly granted the motions to dismiss filed by Neurosurgical Associates and Murphy & Lieponis, for two reasons. First, the 120 day time limit imposed by § 52-102b (a) for filing is mandatory, and on the facts of this case, there is no equitable basis for excusing compliance with it. Second, the ninety day extension granted by the court was ineffectual. In this latter regard, the majority reasons that § 52-190a, which requires a reasonable inquiry and good faith certificate before bringing a medical malpractice action, does not apply to apportionment complaints because such a complaint is not an action ''to recover damages'' within the meaning of § 52-190a (a); it is, instead, an action for ''apportionment of liability'' within the meaning of § 52-102b (a).

This conclusion is a classic example of the adage, ''No good deed goes unpunished.'' Under the majority's reasoning that § 52-102b does not encompass a medical malpractice action under § 52-190a (a), Community Action and Barrett, believing that the malpractice of the plaintiff's health providers may have contributed to his damages, should not have—as they did—made a reasonable inquiry before alleging medical malpractice, should not have—as they did—sought additional time from the court for that purpose, and should not have—as they did—filed a good faith certificate supporting their claims of medical malpractice. Instead, they simply should have filed an apportionment complaint against Neurosurgical Associates and Murphy & Lieponis, within the 120 days required by § 52-102b (a), *without* making any reasonable inquiry regarding whether there was such malpractice, *without* seeking to obtain a good faith certificate for a belief that there was such malpractice, and *without* seeking the court's permission for an additional ninety day extension in order to make that inquiry and obtain that certificate. Had they done so, under the majority's reasoning, they would have been ''home free'' with respect to their apportionment complaint—they could have made the serious allegations of medical malpractice that they ultimately made; see footnote 4 of this opinion; without any reasonable inquiry leading to a good faith belief in the truth of those allegations. Thus, the majority's conclusion puts in place a perverse set of incentives: if a tort defendant seeks to apportion liability to a health care provider pursuant to § 52-102b, he should do so by *not* complying with the reasonable inquiry and good faith certificate requirements of § 52-190a; he should allege first, and investigate later. I do not think that the legislature, in enacting these two separate but closely related statutory provisions, intended such an irrational

and bizarre result.[6]

Instead, I think that we should interpret these provisions so that they form a coherent and rational, rather than an inconsistent and irrational, statutory scheme; *Waterbury* v. *Washington*, 260 Conn. 506, 557, 800 A.2d 1102 (2002); so that they make sense when read together; *Interlude, Inc.* v. *Skurat*, 266 Conn. 130, 143–44, 831 A.2d 235 (2003); and so that they carry out the closely related purposes of both, consistent with the limitations of their language; *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 310–11, 819 A.2d 260 (2003). That is because we presume that the legislature intended sensible and rational results from the legislation that it has enacted. *Interlude, Inc.* v. *Skurat*, 253 Conn. 531, 539, 754 A.2d 153 (2000). Under that interpretation, when a defendant files an apportionment complaint pursuant to § 52-102b against a health care provider, the apportionment complaint is subject to the provisions of § 52-190a.

I begin my analysis with an examination of the history and purposes of § 52-190a, which requires that, before allegations of medical malpractice are made, there must be a reasonable inquiry leading to a good faith belief and certificate that the allegations are in fact true. As I indicated previously, this provision was enacted in 1986 as part of Tort Reform I. It is apparent, from both its language and its legislative history,[7] that it has several intertwined purposes. Those purposes include: (1) to put some measure of control on what was perceived as a crisis in medical malpractice insurance rates; (2) to discourage frivolous or baseless medical malpractice actions; (3) to reduce the incentive to health care providers to practice unnecessary and costly defensive medicine because of the fear of such actions; (4) to reduce the emotional, reputational and professional toll imposed on health care providers who are made the targets of baseless medical malpractice actions; and (5) by the replacement of proportional liability for the preexisting system of joint and several liability as a central part of Tort Reform I, so as to remove the health care provider as an unduly attractive deep pocket for the collection of all of the plaintiff's damages. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 1, 1986 Sess., pp. 212–26, 268–83, 320–21; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 6, 1986 Sess., pp. 1968–93; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 7, 1986 Sess., pp. 2319–27; Insurance and Real Estate Committee Report on Health Care Liability Insurance in Compliance with Special Act 85-85, concerning Substitute House Bill No. 5110, entitled ''An Act Establishing a Task Force on Health Care Liability Insurance.'' Thus, of particular importance for the present case, the proponents of that part of Tort Reform I that resulted in § 52-190a considered apportionment of liability as an important part of its rationale. Section 3 (c) of Public Act 86-338, enacted the system of propor-

tional liability, and is now codified at General Statutes § 52-572h (c).[8]

By 1995, however, it had become apparent that there were unanticipated procedural difficulties in implementing the system of proportional liability, particularly where the plaintiff had not brought an action against another potential tortfeasor whom the original defendant believed should share in the proportional liability. As the majority opinion aptly states, the legislature therefore enacted § 52-102b to implement the right to apportionment previously created by § 52-572h by clarifying the procedures by which other potential tortfeasors could be made parties for purposes of apportionment. It is significant, moreover, that, to the extent that, as the majority also aptly states, there is a ''symbiotic relationship between §§ 52-102b and 52-572h,'' there is also an intimate relationship between §§ 52-102b and 52-190a, because part of the essential rationale for § 52-190a was the right to apportionment created by § 52-102b. Put another way, § 52-190a, as a legislative solution to the medical malpractice crisis, was premised in part on the associated enactment of proportional liability as a means of reducing the attractiveness of the medical profession's deep pockets. Thus, in my view, §§ 52-102b and 52-190a should be read together, so as to form a rational and coherent whole.

With this background in mind, I now turn to the specific provisions of §§ 52-190a (a) and 52-102b (a), and I begin, as I must, with their language. I acknowledge that certain of the language of § 52-190a (a), namely, ''[n]o civil action shall be filed *to recover damages*''; (emphasis added); if read narrowly and literally, would not apply to an apportionment complaint filed under § 52-102b (a) because certain of that statute's language, namely, ''the demand for relief shall seek *an apportionment of liability*''; (emphasis added); if also read narrowly and literally, would not be within the meaning of § 52-190a (a) as an action ''to recover damages . . . .'' This is essentially the reasoning employed by the majority.[9] I would, however, read both statutes more broadly so as to effectuate their purposes and so that, taken together, they constitute a rational and coherent scheme applicable to the case in which the apportionment complaint is filed against a health care provider.

There is no question that a defendant who seeks to apportion liability to a potential tortfeasor who happens to be a medical provider must do so by filing an apportionment complaint pursuant to § 52-102b. The linguistic disconnect between the two statutes in such a case arises because § 52-102b was enacted nine years after § 52-190a, and it is clear that, in 1995, the legislature was focusing only on the paradigmatic case of a defendant who seeks to apportion liability to another potential tortfeasor, and did not focus on the question of

apportionment when that other potential tortfeasor is a medical provider. The question, then, becomes in my view whether § 52-102b can appropriately be interpreted broadly enough so as to be consistent with the language of and accomplish the purposes of § 52-190a. In other words, can § 52-102b be interpreted so as appropriately to constitute an action ''to recover damages'' within the meaning of § 52-190a (a)? I think that it can and should be so interpreted.

I turn, therefore, first to the language of § 52-102b, and I conclude that the language used is broad enough so as to be appropriately interpreted to carry out the purposes of § 52-190a. Although § 52-102b (a) refers, as the prayer for relief of such a complaint, to ''an apportionment of liability,'' its predicate is that the complaint be served ''upon a person not a party to the action who is or may be liable . . . for a *proportionate share of the plaintiff's damages* . . . .'' (Emphasis added.) Thus, functionally, apportionment of liability and apportionment of damages go hand in hand. Indeed, that is made explicit by § 52-102b (f), which provides: ''This section shall be the exclusive means by which a defendant may add a person who is or may be liable *pursuant to section 52-572h* for a proportionate share *of the plaintiff's damages* as a party to the action.'' (Emphasis added.) We must turn, therefore, to § 52-572h (c) and (d),[10] which provide, in a case involving apportionment, the method by which to calculate each party's ''proportionate share of the recoverable *economic damages* and the recoverable *noneconomic damages*''; (emphasis added) General Statutes § 52-572h (c); and ''[t]he *proportionate share of damages* for which each party is liable . . . .'' (Emphasis added.) General Statutes § 52-572h (d).

Second, subsection (b) of § 52-102b provides in relevant part: ''The apportionment complaint shall be equivalent in all respects to an original writ, summons and complaint, except that it shall include the docket number assigned to the original action and no new entry fee shall be imposed. . . .'' This language supports the notion that § 52-102b ought to be read in conjunction with § 52-190a. Indeed, the phrase ''equivalent in all respects to an original writ, summons and complaint,'' strongly suggests that a defendant seeking to implead a third party under § 52-102b (b) must comply with the same procedures as a plaintiff serving the original complaint under §§ 52-572h and 52-190a. In any action to recover damages from a health care provider, the ''complaint or initial pleading shall contain a certificate'' of good faith. General Statutes § 52-190a (a). Thus, if an initial complaint against a health care provider must be accompanied by a certificate of good faith, and an ''apportionment complaint shall be equivalent in *all* respects to an original writ, summons and complaint''; (emphasis added) General Statutes § 52-102b (b); then an apportionment complaint against a health care pro-

vider, even if read literally, must be accompanied by a certificate of good faith.

In addition, the language of § 52-102b is certainly capacious enough to encompass a meaning consistent with an action ''to recover damages'' contained in § 52-190a (a), because an original writ against the health care provider would certainly be viewed as a claim for recovery of money damages. This conclusion is buttressed by the reference to § 52-572h in the first sentence of § 52-102b (a): ''A defendant in any civil action to which section 52-572h applies . . . .'' This reference to § 52-572h runs counter to the majority's attenuated distinction between the phrases an action ''to recover damages'' and ''apportionment of liability,'' because the scope and tenor § 52-572h applies to *actions to recover damages*. Indeed, § 52-572h is replete with references to the word ''damages.'' Section 52-572h (a) defines '' '[e]conomic damages,' '' '' 'noneconomic damages,' '' '' 'recoverable economic damages,' '' and '' 'recoverable noneconomic damages.' '' The remainder of the statute then goes on to discuss damages in varying scenarios. Thus, if the procedures for filing an apportionment complaint under § 52-102b are applicable only to actions governed by § 52-572h, and if the remedies available under § 52-572h focus solely on ''damages,'' then it seems to me that the legislature contemplated apportionment complaints to not only apportion liability, but also to shift *damages*. Any other conclusion elevates form over substance.[11]

Along these same lines, it is undisputed that the relevant limitation period for negligence actions is contained in General Statutes § 52-584, which provides in relevant part: ''*No action to recover damages* . . . caused by negligence . . . shall be brought but within two years . . . .'' (Emphasis added.) Section 52-102b (b) permits an apportionment defendant to use that limitation period as a defense if the defendant who served the apportionment complaint could have done so. Thus, if § 52-102b (b) permits an apportionment defendant to use § 52-584 as a defense, and § 52-584, by its very language, *is only a defense to actions seeking to recover damages*, then an apportionment complaint filed pursuant to § 52-102b ought to be regarded as the functional equivalent of an action ''to recover damages . . . .'' General Statutes § 52-190a (a). Put another way, the majority gives an apportionment defendant the best of both worlds: it permits an apportionment defendant to use a defense that is reserved only for actions seeking to recover damages; while at the same time it allows an apportionment defendant to avoid the requirements of § 52-190a because, in the majority's view, it is not an action to recover damages. This is further evidence that, when the apportionment defendant is a health care provider, the legislature intended an apportionment complaint to include the good faith investigation and certificate requirements of § 52-190a.

I conclude, therefore, that the language in § 52-102b (a) on which the majority so heavily relies, namely, an action ''to recover damages,'' does not exclude an apportionment complaint against a health care provider. Read in context, and together with §§ 52-102b (b) and (f), and 52-572h (d), subsection (a) of § 52-102b is broad enough to mean, and was intended to mean, an action to apportion damages against a health care provider so as to trigger the requirement of § 52-190a.

Finally, in my view, most, if not all, of the purposes of § 52-190a (a) would be served by considering an apportionment complaint against a health care provider as coming within the strictures of § 52-190a, and a contrary conclusion would be wholly inconsistent with those purposes. As I have indicated previously, those purposes are: (1) to control medical malpractice insurance rates;[12] (2) to discourage baseless medical malpractice actions; (3) to reduce the practice of unnecessary and costly defensive medicine because of the fear of such actions; (4) to reduce the various personal and professional tolls imposed on health care providers by such actions; and (5) to remove the health care provider as an unduly attractive deep pocket for the collection of all of the plaintiff's damages.

It is arguable, at least, that requiring compliance with § 52-190a for apportionment complaints against health care providers would help control medical malpractice insurance rates. It is true that, because such a complaint does not seek the actual payment of money damages by the provider's carrier, there would be no occasion for a duty to indemnify. It is also true, however, that we have not, as yet, been confronted with the question of whether such a complaint would trigger a duty to defend. Nonetheless, because the duty to defend is broader than the duty to indemnify; *Board of Education* v. *St. Paul Fire & Marine Ins. Co.*, 261 Conn. 37, 40, 801 A.2d 752 (2002); the provider would, depending of course on the language of the policy, certainly have a powerful argument for the duty to defend. In the event such a duty exists, the costs thereof would likely be factored into the insurance rates.

The next three purposes would also be served. It is clear to me that requiring a defendant to make a reasonable investigation, and secure a good faith certificate, before alleging malpractice against a health care provider in an apportionment complaint, would discourage baseless allegations, help reduce the practice by providers of unduly defensive medicine, and help reduce the toll on such providers taken by such allegations. The final purpose—to remove the incentive to view the provider as a potential deep pocket—would neither be served nor disserved by imposing the requirement.

Taking the contrary view, as the majority does, more-

over, would be contrary to those purposes. From the viewpoint of the provider, who has to defend himself against such allegations of malpractice, it would make little difference whether the allegations come in the form of a complaint by the plaintiff or an apportionment complaint by the defendant—in either instance, the provider is haled into court without a good faith predicate, and is required to defend himself against a factual claim of medical malpractice.

I conclude, therefore, that, on the basis of both the language and purposes of § 52-190a, taken together, an apportionment complaint against a health care provider, based on allegations of malpractice, should appropriately be considered as coming within the meaning of § 52-102b.[13] Consequently, I turn next to the question of whether, in the present case, Community Action and Barrett have made a sufficient showing of equitable considerations to relieve them of the consequences of their failure to comply with the mandatory nature of the 120 day time limit imposed by that provision. I would conclude that they have done so.

Simply put, it was entirely reasonable, in my view, for these two defendants in a commonplace motor vehicle negligence case, to seek an additional ninety days from the court so as to make a reasonable investigation before making such serious allegations of malpractice against Neurosurgical Associates and Murphy & Lieponis. They represented to the court that such an ''extension of time is necessary to allow the defendants an opportunity to conduct a reasonable inquiry as required by Connecticut General Statute[s] § 52-190[a] (a) et seq., to determine whether or not there is a good faith basis for a claim of negligence against any health care providers who rendered care and treatment to the plaintiff . . . .'' We should encourage, rather than discourage, defendants who need time beyond the statutory 120 days before making serious allegations of medical malpractice in this procedural posture, to seek a reasonable amount of time to be sure that they have a good faith basis to do so. I would, therefore, conclude that, although the 120 day time limit of § 52-102b is mandatory, the court was justified in extending it by ninety days in the present case.[14]

I therefore respectfully dissent, and would reverse the judgments of the trial courts dismissing the apportionment complaint.

[1] General Statutes § 52-102b provides: ''(a) A defendant in any civil action to which section 52-572h applies may serve a writ, summons and complaint upon a person not a party to the action who is or may be liable pursuant to said section for a proportionate share of the plaintiff's damages in which case the demand for relief shall seek an apportionment of liability. Any such writ, summons and complaint, hereinafter called the apportionment complaint, shall be served within one hundred twenty days of the return date specified in the plaintiff's original complaint. The defendant filing an apportionment complaint shall serve a copy of such apportionment complaint on all parties to the original action in accordance with the rules of practice of the Superior Court on or before the return date specified in the apportionment complaint. The person upon whom the apportionment complaint is served, hereinafter called the apportionment defendant, shall

be a party for all purposes, including all purposes under section 52-572h.

"(b) The apportionment complaint shall be equivalent in all respects to an original writ, summons and complaint, except that it shall include the docket number assigned to the original action and no new entry fee shall be imposed. The apportionment defendant shall have available to him all remedies available to an original defendant including the right to assert defenses, set-offs or counterclaims against any party. If the apportionment complaint is served within the time period specified in subsection (a) of this section, no statute of limitation or repose shall be a defense or bar to such claim for apportionment, except that, if the action against the defendant who instituted the apportionment complaint pursuant to subsection (a) of this section is subject to such a defense or bar, the apportionment defendant may plead such a defense or bar to any claim brought by the plaintiff directly against the apportionment defendant pursuant to subsection (d) of this section.

"(c) No person who is immune from liability shall be made an apportionment defendant nor shall such person's liability be considered for apportionment purposes pursuant to section 52-572h. If a defendant claims that the negligence of any person, who was not made a party to the action, was a proximate cause of the plaintiff's injuries or damage and the plaintiff has previously settled or released the plaintiff's claims against such person, then a defendant may cause such person's liability to be apportioned by filing a notice specifically identifying such person by name and last known address and the fact that the plaintiff's claims against such person have been settled or released. Such notice shall also set forth the factual basis of the defendant's claim that the negligence of such person was a proximate cause of the plaintiff's injuries or damages. No such notice shall be required if such person with whom the plaintiff settled or whom the plaintiff released was previously a party to the action.

"(d) Notwithstanding any applicable statute of limitation or repose, the plaintiff may, within sixty days of the return date of the apportionment complaint served pursuant to subsection (a) of this section, assert any claim against the apportionment defendant arising out of the transaction or occurrence that is the subject matter of the original complaint.

"(e) When a counterclaim is asserted against a plaintiff, he may cause a person not a party to the action to be brought in as an apportionment defendant under circumstances which under this section would entitle a defendant to do so.

"(f) This section shall be the exclusive means by which a defendant may add a person who is or may be liable pursuant to section 52-572h for a proportionate share of the plaintiff's damages as a party to the action.

"(g) In no event shall any proportionate share of negligence determined pursuant to subsection (f) of section 52-572h attributable to an apportionment defendant against whom the plaintiff did not assert a claim be reallocated under subsection (g) of said section. Such proportionate share of negligence shall, however, be included in or added to the combined negligence of the person or persons against whom the plaintiff seeks recovery, including persons with whom the plaintiff settled or whom the plaintiff released under subsection (n) of section 52-572h, when comparing any negligence of the plaintiff to other parties and persons under subsection (b) of said section."

[2] General Statutes § 52-190a provides: "(a) No civil action shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint or initial pleading shall contain a certificate, on a form prescribed by the rules of the superior court, of the attorney or party filing the action that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant. For purposes of this section, such good faith may be shown to exist if the claimant or his attorney has received a written opinion, which shall not be subject to discovery by any party except for questioning the validity of the certificate, of a similar health care provider as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented

against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative, shall impose upon the person who signed such certificate, a represented party or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney submitted the certificate.

"(b) Upon petition to the clerk of the court where the action will be filed, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods."

[3] It is true, of course, that Community Action and Barrett did not strictly comply with § 52-190a (b), because they moved *the court* for the additional ninety days, rather than, as subsection (b) provides, simply petitioning *the clerk* for an "automatic ninety-day extension of the statute of limitations" that, the statute also provides, "shall be granted to allow the reasonable inquiry required by subsection (a) of this section." It would be bizarre to conclude, however, and neither Neurosurgical Associates nor Murphy & Lieponis contends, that the court did not have the power to grant what the statute commands the clerk to grant.

[4] In their apportionment complaint, Community Action and Barrett alleged that Neurosurgical Associates and Murphy & Lieponis had committed the following acts of medical malpractice: failure to evaluate the plaintiff's progressive neurological deterioration; failure to diagnose the plaintiff's condition; failure to treat the plaintiff properly; failure to use appropriate preoperative and intraoperative preparations; and failure to employ proper surgical techniques and instruments.

[5] Murphy & Lieponis, in its brief to this court, specifically "acknowledges that the apportionment complaint was served before the expiration of that [ninety] day period" granted by the court, and Neurosurgical Associates makes no claim in this court that it was not served within the ninety day period.

[6] I note that, in rejecting my statutory analysis, the majority, when relying on No. 03-154 of the 2003 Public Acts (P.A. 03-154), relies only on the first sentence of that act, which provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes." I perceive no inconsistency between that sentence and this court's decision in *State* v. *Courchesne*, 262 Conn. 537, 577, 816 A.2d 562 (2003), in which this court held that, in performing the judicial task of statutory interpretation, we always begin with the text of the statute and that the text is the most important factor involved in that process. Thus, the majority states only that I have given insufficient weight to that text. My response is that the majority has given too much weight to the narrow reading of the text of § 52-190a, and too little weight to the purposes of that statute and its relationship with other tort related statutes.

The majority does not, however, rely on the second sentence of P.A. 03-154, which provides: "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." It is clear to me that, when reading §§ 52-102b and 52-190a *together*, as P.A. 03-154 requires (meaning of statute in first instance to "be ascertained from the text of the statute itself *and its relationship to other statutes*" [emphasis added]), § 52-190a is not plain and unambiguous, and that precluding its applicability to an apportionment complaint will "yield [an] absurd or unworkable [result] . . . ." P.A. 03-154. Therefore, I conclude that a proper application of the process of statutory interpretation in this instance is not constrained by P.A. 03-154.

[7] The particular legislative history to which I refer includes the committee hearings on the bills that eventually became Tort Reform I. We have long recognized testimony in committee hearings as relevant to the meaning of legislative language, because it indicates the problems that the legislature was attempting to resolve in enacting the legislation. See *Burke* v. *Fleet National Bank*, 252 Conn. 1, 17, 742 A.2d 293 (1999); *Toise* v. *Rowe*, 243 Conn. 623, 630, 707 A.2d 25 (1998).

[8] General Statutes § 52-572h (c) provides: "In a negligence action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, if the damages are determined to be proximately caused by the negligence of more than one party, each

party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable economic damages and the recoverable noneconomic damages except as provided in subsection (g) of this section.''

[9] This narrow reading places a heavy burden on the legislature when drafting a statute, and ignores the rule of statutory construction that requires this court to interpret statutes so as to create one harmonious body of law. *Interlude, Inc.* v. *Skurat*, supra, 266 Conn. 143. For instance, General Statutes § 52-584 provides in relevant part: ''No action to recover damages . . . caused by negligence . . . shall be brought but within two years . . . .'' Read narrowly and literally, that language suggests that ''no action'' may ever exceed that two year limitation period. In addition, § 52-584 makes no reference to § 52-190a, and does not contain limiting language such as ''except as otherwise provided.'' Yet, § 52-190a (b) expressly permits parties to extend the limitation period by ninety days in order to obtain a certificate of good faith. It would be untenable to argue that the legislature's failure to provide excepting language in § 52-584 would somehow render § 52-190a inapplicable to § 52-584. The majority concludes, however, that the legislature's use of the phrase '' 'apportionment of liability,' '' as opposed to, say, ''apportionment of damages'' or ''apportionment of liability and damages,'' either of which the legislature plainly meant, somehow removes outright § 52-102b from the statutory scheme governing negligence actions seeking damages.

[10] General Statutes § 52-572h provides in relevant part: ''(c) In a negligence action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, if the damages are determined to be proximately caused by the negligence of more than one party, each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable economic damages and the recoverable noneconomic damages except as provided in subsection (g) of this section.

''(d) The proportionate share of damages for which each party is liable is calculated by multiplying the recoverable economic damages and the recoverable noneconomic damages by a fraction in which the numerator is the party's percentage of negligence, which percentage shall be determined pursuant to subsection (f) of this section, and the denominator is the total of the percentages of negligence, which percentages shall be determined pursuant to subsection (f) of this section, to be attributable to all parties whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section. Any percentage of negligence attributable to the claimant shall not be included in the denominator of the fraction. . . .''

[11] Indeed, the language ''the demand for relief shall seek an apportionment of liability'' in § 52-102b (a) would serve the same purpose if the legislature had written ''the demand for relief shall seek an apportionment of *damages*.'' I see no persuasive reason for the majority's unduly narrow reading of that language in the present case.

[12] The majority dismisses this contention as ''speculative.'' I do not say, however, as the majority suggests, that an apportionment complaint against a health care provider *will* trigger a duty to defend; I acknowledge that this court has not decided that question. To cast the point aside as ''speculative,'' however, simply *misses* the point, because the question of whether a duty to defend will be triggered necessarily depends on the contractual terms of the insurance policy at issue. Merely because a duty to defend *might* be triggered, as opposed to *will* be triggered, by an apportionment complaint, does not render the contention unworthy of consideration. My point is that a health care provider has a powerful argument for a duty to defend when an apportionment complaint is filed against him—a proposition that hardly can be deemed ''speculative.''

Indeed, this is the *only* argument presented in this concurring and dissenting opinion to which the majority responds at all. The majority does not, for example, discuss: why the other identified purposes of § 52-190a are not furthered by requiring its application to an apportionment complaint; why the provisions of § 52-102b (b) do not require such an application; or why the provisions of § 52-584 do not also require such an application.

[13] Indeed, in the context of tort reform legislation, we have recently followed the same principle of statutory interpretation of reading facially disparate statutory provisions ''together to create a harmonious body of law . . . and . . . to avoid conflict between them.'' (Internal quotation marks omitted.) *Collins* v. *Colonial Penn Ins. Co.*, 257 Conn. 718, 742, 778 A.2d 899

(2001). In *Collins*, we harmonized General Statutes §§ 52-572h and 38a-336, by interpreting the phrase, ''legally entitled to recover as damages,'' to include statutory apportionment of a contractual claim for uninsured motorist benefits, despite the provision that apportionment was not to include liability on ''any basis other than negligence . . . .'' (Internal quotation marks omitted.) Id., 740. This was because ''[t]he uninsured motorist statutes and regulations incorporate the negligence law of liability and damages involving claims in which joint tortfeasors are present''; id., 741; and because to do so ''allow[ed] for the principles guiding Tort Reform II [Public Acts 1987, No. 87-227] to be applied equitably.'' Id., 742.

[14] The majority itself recognized that there is a split of authority in the Superior Court as to whether an apportionment complaint against a provider requires a good faith certificate. See footnote 10 of the majority opinion. The defendants should not be penalized for following a reasonable interpretation of many of our trial court judges regarding an unsettled issue in our law.