NILSA CORDERO *v.* UNIVERSITY OF CONNECTICUT HEALTH CENTER ET AL.
(SC 18804)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.*

Argued November 26, 2012—officially released March 26, 2013

Jane R. Rosenberg, assistant attorney general, with whom were *Maite Barainca*, assistant attorney general, and, on the brief, *George Jepsen*, attorney general, for the appellants (defendants).

Emanuele R. Cicchiello, with whom, on the brief, was *Michael J. Reilly*, for the appellee (plaintiff).

Opinion

PALMER, J. General Statutes § 17b-93 (a)[1] establishes a general rule for a claim for reimbursement of public assistance benefits by the state under which the state has a claim for the full amount of its benefit payments against a beneficiary who has or acquires property of any kind. The sole issue raised by this appeal is whether an exception to that rule set forth in General Statutes § 17b-94 (a),[2] which caps the amount of the state's recovery of such aid from the proceeds of a beneficiary's cause of action at 50 percent of those proceeds after the deduction of certain expenses, applies when the beneficiary brings an action against the state, rather than a third party. The plaintiff, Nilsa Cordero, commenced this negligence action against the defendants, the University of Connecticut Health Center (health center) and the state of Connecticut. Following a bench trial, the court rendered judgment for the plaintiff on the complaint and in part for the state on its counterclaim seeking a setoff. On appeal,[3] the state[4] claims that the court improperly concluded that, under § 17b-94 (a), the state's recovery on its claim for a setoff of the entire amount of general assistance benefits that it had paid to the plaintiff is limited to 50 percent of specified proceeds of the action. We conclude that there is no clear textual evidence that the limitation contained in § 17b-94 (a) applies to actions against the state and that its application to such actions would be inconsistent with the purpose of the limitation therein, namely, to provide a financial incentive to beneficiaries to seek recovery so that the state in turn may benefit from that recovery.[5] We therefore conclude that the trial court improperly applied § 17b-94 (a) to limit the state's recovery on its setoff. Accordingly, we reverse the judgment only with respect to the award of damages.

The following facts, as found by the trial court, and procedural history are not disputed. On May 4, 2006, in the course of her employment as a driver for Hartford Elderly Services, LLC (Hartford Elderly), the plaintiff transported a client to the emergency room of the health center. While the plaintiff was waiting for the client in the health center's waiting room, a woman asked the plaintiff to turn on the television, which was suspended approximately six feet above the floor and held in place by a wall mounted bracket and threaded spindle. Because there was no remote control for the television, the plaintiff attempted to turn it on manually. When the plaintiff pressed the power button, the television fell onto her, causing injuries to her neck, right shoulder and right hand. It subsequently was determined that the repetitive act of operating the power button manually, over time, had caused the threads on the spindle to wear and the television to move onto the last thread. The plaintiff received workers' compensation benefits from Hartford Elderly for subsequent periods of inca-

pacity and for varying degrees of permanent partial impairment to her neck, shoulder and hand.

In May, 2009, after obtaining permission from the claims commissioner to sue the state in accordance with General Statutes § 4-160, the plaintiff commenced the present negligence action. The state filed a counterclaim, seeking an equitable setoff of the financial assistance that it had provided to the plaintiff "with the legal liability established by General Statutes §§ 17b-93, 17b-94 and 17b-265 and 42 U.S.C. §§ 1396a (a) and 1396k."[6] In support of this claim, the state alleged that, from June, 1991 through December, 2001, the plaintiff had received $70,355 in general assistance payments,[7] of which she had repaid $250, for a total lien of $70,105, and that, from May, 2007 through March, 2009, the plaintiff had received $3876.05 in accident related medical assistance. Thereafter, pursuant to General Statutes § 31-293, Hartford Elderly filed a motion to intervene in the case as a party plaintiff to recover the workers' compensation benefits it had paid to the plaintiff, which the trial court, *Aurigemma, J.*, granted.

Prior to trial, the state filed a "Motion for Setoff of [Department of Administrative Services (department)] Lien,"[8] and by agreement of the parties, a ruling on that motion was deferred until the close of trial. Following a bench trial, the court, *Hon. Robert Satter*, judge trial referee, issued a decision in favor of the plaintiff, finding the state negligent and awarding $85,070.83 in economic damages and $150,000 in noneconomic damages for total damages of $235,070.83. The court also found in favor of Hartford Elderly on its intervening complaint against the state for recovery of workers' compensation benefits.[9]

Thereafter, the trial court considered the state's renewed motion for setoff, which had been revised to reflect assistance payments made to date. The parties stipulated that deductions totaling $156,174.10 for certain expenses and the workers' compensation lien properly could be made from the damages award, leaving $78,896.73 in proceeds subject to the state's setoff.[10] The parties further agreed that the state had a department lien of $70,628.33 for assistance payments made to the plaintiff, but disagreed as to the amount of setoff to which the state was entitled. The state claimed that it was entitled to set off the entire debt owed to it by the plaintiff, whereas the plaintiff contended that, under § 17b-94 (a), the state's setoff was limited to 50 percent of the $78,896.73 in proceeds.

The trial court agreed with the plaintiff, relying, in part, on the fact that, under § 17b-93 (a), the state's claim is "subject to the provisions of section 17b-94 . . . ." The court further reasoned that applying the limitation of § 17b-94 to the state's recovery in a case, like the present one, brought by a beneficiary against the state, would be consistent with the purpose of that

limitation insofar as it provides an incentive for the beneficiary to recover on a claim for damages in circumstances where the beneficiary otherwise might decline to do so because the state would be entitled to a setoff of the entire recovery. Accordingly, the trial court concluded that the state was entitled only to "one half of $78,896.73, representing the net amount of the judgment after proper deductions," and ordered the state to pay an equal amount to the plaintiff as damages. Following the trial court's judgment rendered in favor of the plaintiff and Hartford Elderly on their complaints and the judgment in part for the state on its counterclaim, this appeal followed.

On appeal, the state claims that § 17b-94 is applicable only to actions against third parties, and that, when a beneficiary brings an action against the state, the state may exercise its common-law right to set off the entire debt established under § 17b-93. The state contends that § 17b-94 provides the state with a mechanism to recover a debt where none previously existed, in the form of a lien, and thus did not supplant the state's existing common-law mechanism of a setoff. The state asserts that such a reading of the statute also is compelled by rules of strict construction that operate in its favor. It further contends, contrary to the trial court's reasoning, that the purpose of the limitation in § 17b-94, as previously recognized by this court, would be inconsistent with its application to a cause of action brought against the state because when the state is the defendant in such an action, it does not stand to recover any—let alone 50 percent—of the beneficiary's proceeds, as it would if the defendant were a third party and not the state itself.

The plaintiff claims that, notwithstanding the fact that rules of strict construction would apply in the present case if the statutory scheme were ambiguous, the statutory terms unambiguously support the trial court's conclusion. The plaintiff contends that § 17b-93 expressly is limited by § 17b-94, and, in turn, § 17b-94 unambiguously applies to a cause of action against the state. Relying on the principle of expressio unius est exclusio alterius—the expression of one thing is the exclusion of another—the plaintiff contends that, because a lien is the only mechanism provided to the state in § 17b-94 to recover its debt from the proceeds of a beneficiary's cause of action and because no exception is provided therein for a cause of action brought against the state, § 17b-94 clearly abrogates the state's common-law right of setoff. The plaintiff further contends that the state's reliance on legislative history as evidence of the purpose of the limitation in § 17b-94 is improper and that plausible policy justifications other than those cited in that legislative history support the application of § 17b-94 to limit the state's recovery. We agree with the state.

Whether § 17b-94 operates as a limitation on § 17b-93 in a cause of action brought against the state presents a question of law over which we exercise plenary review. *Fennelly* v. *Norton*, 294 Conn. 484, 492, 985 A.2d 1026 (2010). In resolving this question, we apply well settled rules of construction for the purpose of ascertaining legislative intent, beginning with the plain meaning rule set forth in General Statutes § 1-2z. If an examination of the text of the applicable statute and related statutes yields an ambiguity, we may resort to extratextual sources, such as the legislative history and circumstances surrounding the statute's enactment, the legislative policy it was designed to implement and its relationship to common-law principles governing the same general subject matter. See *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 449, 984 A.2d 748 (2010). In addition to these generally applicable rules, in light of the nature of the particular statutory scheme and the parties' claims in relation thereto, certain other principles of construction apply. Specifically, "[i]n determining whether or not a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope."[11] (Internal quotation marks omitted.) *State* v. *Leak*, 297 Conn. 524, 534, 998 A.2d 1182 (2010). Thus, under this rule of construction, if the statutory provisions relevant to the present case are ambiguous, the state is entitled to prevail.

We begin with § 17b-93, which both parties agree sets forth the general rule concerning the rights of the state with respect to reimbursement for state administered general assistance payments. That statute provides in relevant part: "If a beneficiary of aid under [various programs including state administered general assistance] has or acquires property of any kind or interest in any property, estate or claim of any kind, except moneys received for the replacement of real or personal property, the state of Connecticut shall have a claim subject to subsections (b) and (c) of this section . . . against such beneficiary *for the full amount paid*, subject to the provisions of section 17b-94, to the beneficiary or on the beneficiary's behalf under said programs . . . ." (Emphasis added.) General Statutes § 17b-93 (a).

This court long ago recognized the important governmental interest reflected in the predecessors to § 17b-93 and related provisions. "[T]he underlying purpose for which [these provisions] were intended . . . [is] the recoupment of public assistance funds from those now able to make repayment. The legislature and the courts recognize that public assistance grants to those in need are a worthy necessity. No less necessary is the availability of funds to these programs and it is for this purpose that the legislature has enacted such

provisions as those under consideration." *Thibeault* v. *White*, 168 Conn. 112, 118, 358 A.2d 358 (1975); see also *McDougald* v. *Norton*, 361 F. Sup. 1325, 1328 (D. Conn. 1973) (stating with respect to predecessors to §§ 17b-93 and 17b-94, "[i]n view of the severe shortage of public assistance funds and the ever mounting demands on them, there is certainly a bona fide governmental interest in recouping such funds from persons who subsequently receive funds from other sources").

Section 17b-93 (a), however, expressly recognizes two limitations on the state's right to recoup public assistance funds when beneficiaries of such funds acquire property. First, the state's claim is "subject to subsections (b) and (c)" of that section. General Statutes § 17b-93 (a). Those subsections preclude claims against persons who received public assistance when under eighteen years of age; General Statutes § 17b-93 (b); and claims against funds derived from certain sources not relevant to the present case. General Statutes § 17b-93 (c).[12] Second, the state's claim for the full amount of aid paid is "subject to the provisions of section 17b-94 . . . ." General Statutes § 17b-93 (a). Section 17b-94 addresses two circumstances in which a beneficiary may acquire property or an interest subject to a claim by the state: subsection (a), at issue in the present case, addresses a beneficiary's cause of action, and subsection (b) addresses a beneficiary's inheritance of an estate.[13]

Turning to subsection (a) of § 17b-94, we note that, although the plaintiff relies specifically on the 50 percent limitation contained therein, the broader question to be addressed is whether the provision applies generally to causes of action brought against the state.[14] We therefore examine the full scope of that provision. Section 17b-94 (a) provides in relevant part: "In the case of causes of action of beneficiaries of aid under [various programs including state administered general assistance] . . . the claim of the state shall be a lien against the proceeds therefrom in the amount of the assistance paid or fifty per cent of the proceeds received by such beneficiary . . . after payment of all expenses connected with the cause of action, whichever is less, for repayment under section 17b-93, and shall have priority over all other claims except attorney's fees for said causes, expenses of suit, costs of hospitalization connected with the cause of action [not covered by insurance or other such benefits], physicians' fees for services during any such period as are connected with the cause of action over and above medical insurance or other such benefits; and such claim shall consist of the total assistance repayment for which claim may be made under said programs. The proceeds of such causes of action shall be assignable to the state for payment of the amount due under section 17b-93, irrespective of any other provision of law. Upon presentation to the attorney for the beneficiary of an assignment

of such proceeds executed by the beneficiary or his conservator or guardian, such assignment shall constitute an irrevocable direction to the attorney to pay the Commissioner of Administrative Services in accordance with its terms, except if, after settlement of the cause of action or judgment thereon, the Commissioner of Administrative Services does not inform the attorney for the beneficiary of the amount of lien which is to be paid to the Commissioner of Administrative Services within forty-five days of receipt of the written request of such attorney for such information, such attorney may distribute such proceeds to such beneficiary and shall not be liable for any loss the state may sustain thereby." It is apparent that this provision imposes two potential limitations on the state's recovery of the "full amount" of assistance payments as provided in § 17b-93 (a): the state's claim is subordinate to claims for expenses and costs relating to the cause of action; and the state's recovery from the proceeds remaining following payment of those claims cannot exceed 50 percent of the proceeds. General Statutes § 17b-94 (a). That much is clear.

With respect to whether these limitations apply in the present case, however, even putting aside the circular cross-references to §§ 17b-93 and 17b-94,[15] it is apparent that § 17b-94 (a) is ambiguous. On the one hand, the subject matter of § 17b-94 (a)—"causes of action of beneficiaries of aid"—lacking any express exclusion, would be sufficiently broad to encompass actions brought against the state, at least when such actions are brought under a valid waiver of sovereign immunity. On the other hand, the remaining essential terms suggest a contrary conclusion. The state's claim is deemed a *lien* against the proceeds. The statute further provides for the *assignment* of the proceeds of such causes of action to the state and, upon presentation of that assignment following judgment or settlement, directs the beneficiary's attorney to pay the commissioner of administrative services in accordance with the assignment's terms. "A lien is [a] hold or a claim which one person has upon the property of another as a security for some debt or charge. It is a qualified right which in certain cases may be exercised over the property of another." (Internal quotation marks omitted.) *Interstate Fur Mfg. Co.* v. *Redevelopment Agency*, 154 Conn. 600, 604, 227 A.2d 425 (1967); accord Black's Law Dictionary (9th Ed. 2009) (defining "lien" as "[a] legal right or interest that a creditor has in another's property, lasting [usually] until a debt or duty that it secures is satisfied"); 51 Am. Jur. 2d 94, Liens § 1 (2011) ("[a] 'lien' is a security interest in property"). "An 'assignment' is a transfer of property or some other right from one person . . . to another . . . which confers a complete and present right in the subject matter to the assignee." 6 Am. Jur. 2d 145–46, Assignments § 1 (2008); accord Black's Law Dictionary, supra (defining assignment as "[t]he trans-

fer of rights or property").

The use of the terms lien and assignment suggests that the overarching purpose of § 17b-94 (a) is to provide the state with a mechanism to secure and obtain payment on the debt owed to it under § 17b-93 before the funds can be disbursed by the beneficiary's attorney and thereafter dissipated by the beneficiary. See *State* v. *Blawie*, 31 Conn. Sup. 552, 555, 334 A.2d 484 (App. Div. 1974) (noting that "[s]tatutes such as [the predecessor to § 17b-94 (a)] . . . are intended to secure efficient avenues to state governments for reimbursement from welfare beneficiaries for public assistance granted to them, when such reimbursement arises out of personal injury causes of action belonging to the welfare beneficiaries"), cert. denied, 167 Conn. 693, 333 A.2d 70 (1975); see also *Gaskill* v. *Robert E. Sanders Disposal Hauling*, 249 Ill. App. 3d 673, 676–77, 619 N.E.2d 235 (1993) ("A lien is a right, which the law gives, to have a debt satisfied out of a particular thing and affords a supplemental and additional remedy for the collection of debt. . . . If no lien exists, a fund may be dissipated before a creditor is able to prove his right to recover." [Citation omitted.]). If the state fails to provide timely notice of the amount of the lien, the statute also protects the beneficiary's attorney from liability for the dissipation of such funds. See, e.g., *Commissioner of Administrative Services* v. *Gerace*, 40 Conn. App. 829, 834–35, 673 A.2d 1172 (1996) (concluding that trial court properly granted judgment in favor of beneficiary's attorney in state's conversion action because state failed to conform with notice requirements of § 17b-94 [a]), appeal dismissed, 239 Conn. 791, 686 A.2d 993 (1997); cf. *State* v. *Angelo*, 39 Conn. App. 709, 713, 667 A.2d 81 (1995) (affirming judgment in favor of state on conversion action against beneficiary's attorney for disbursing proceeds in disregard of state's lien), cert. denied, 236 Conn. 901, 670 A.2d 322 (1996); *State* v. *Blawie*, supra, 558 (holding that state properly could bring conversion action against beneficiary's attorneys).

There is no need for any such mechanism or protection, however, when a beneficiary brings an action against the state. In such cases, the state must prove to the court the amount of the beneficiary's debt and the court determines the amount of setoff to which the state is entitled. Following that determination, the damages award is reduced accordingly and the state simply retains possession of those funds. When the beneficiary's action is against the state, therefore, the beneficiary's debt need not be secured by a lien, the beneficiary need not assign its interest in the cause of action to the state, and the state need not make a demand on the beneficiary's attorney to pay the debt.

Instead, by statute and under the common law, the state has a mechanism that, unlike the lien and concomitant assignment, is fully consistent with application to a

cause of action brought against the state. Under General Statutes § 17b-96,[16] the attorney general is authorized to bring an action to collect any claim owed to the state for public assistance. Although General Statutes § 52-139 et seq. specifically sets forth a procedure for setoff of mutual debts, "[l]ong before statutes of set-off were enacted, courts of equity recognized and enforced the right of set-off." *Sullivan* v. *Merchants National Bank*, 108 Conn. 497, 499, 144 A. 34 (1928); see also id. ("Under the common law, where two persons held mutual debts against the other each must be prosecuted separately. The right of set-off of mutual debts was a doctrine of courts of equity, which came to hold that mutual debts should be set off against each other and only the balance recovered. Its foundation was the prevention of circuity of actions . . . ." [Internal quotation marks omitted.]). In numerous statutes, the legislature has demonstrated its understanding that a setoff and a lien serve different functions. See, e.g., General Statutes § 7-562 (g) ("[t]he debt service payment fund and all moneys or securities therein or payable thereto are hereby declared to be property of the depositing municipality devoted to essential governmental purposes and accordingly . . . shall not be subject to any order, judgment, lien, execution, attachment, set-off or counterclaim by any creditor of the municipality, except the trustee"); see also, e.g., General Statutes §§ 36a-428n and 42a-9-109. Had the legislature intended § 17b-94 (a) to apply to causes of action against the state as well as third party tortfeasors, it could have made that intent clear by providing that the state's claim "shall be a lien *or setoff*" of no more than the specified amount.

The plaintiff's reliance on language in § 17b-94 (a) providing that the state's claim "*shall* be a lien"; (emphasis added); as evidence of legislative intent to supplant the state's equitable right of setoff under the common law suffers from several defects in addition to those previously stated.[17] First, the mere use of the word "shall," without any additional language plainly limiting the right of the state, falls well short of a clear manifestation of the legislature's intent to abrogate a common-law right. See *Spears* v. *Garcia*, 263 Conn. 22, 28, 818 A.2d 37 (2003). Second, such a construction is undermined by the genealogy of §§ 17b-93 and 17b-94.

The language referencing a lien was added to the predecessor to § 17b-94 in 1969. Public Acts 1969, No. 730, § 29. Since at least 1947, however, the public assistance scheme has provided for a claim by the state against beneficiaries for the full amount of aid paid, when such beneficiaries acquired property; General Statutes (Cum. Sup. 1947) §§ 457i, 463i; and the attorney general has been vested with authority to bring a civil action to vindicate such claims. General Statutes (1949 Rev.) § 2881. At that time, separate provisions governed treatment of "Aid to Dependent Children" and "Assistance for the Aged," but both programs were governed

by essentially the same terms as in the present case. In the 1950s, the legislature continued to require as part of the eligibility provision for assistance for the aged, the blind and the totally disabled that a beneficiary assign his or her interest in personal property; see General Statutes (1958 Rev.) § 17-114; and later specified that a beneficiary's interest in a decedent's estate or the proceeds of a cause of action was subject to assignment.[18] See Public Acts 1959, No. 557. The legislative history to the later change indicates that the amendment was not intended to make material changes in the law, but to clarify the scope and effect of the scheme, particularly as it applied to the proceeds of a cause of action. See 8 S. Proc., Pt. 7, 1959 Sess., p. 3246, remarks of Senator Frank A. Piccolo. In 1961, the same assignment requirements were added to that portion of the scheme relating to aid to dependent children.[19] Public Acts 1961, No. 244. The stated purpose of the bill ultimately enacted was "[t]o give the state a right to assignment of the proceeds of causes of action owned by parents of children aided under the program of Aid to Dependent Children in order that the right to reimbursement be properly implemented." Senate Bill No. 168, 1961 Sess. In committee hearings, Assistant Attorney General Ernest Halstedt testified on behalf of the welfare commissioner that the act "would merely give us the tools . . . to make workable the duty which is already resting upon the welfare commissioner under the provisions [giving the state a claim against the beneficiary]." Conn. Joint Standing Committee Hearings, Public Welfare and Humane Institutions, 1961 Sess., p. 221. Finally, in 1969, the legislature enacted "An Act concerning the Combining of Public Assistance Statutes" (act). Public Acts 1969, No. 730. The net effect of this act, insofar as the issue in the present case is concerned, was to create one statute applicable to all assistance programs for: the state's claim for repayment of the full amount of aid (§ 28 of act, codified as General Statutes § 17-83e, predecessor to § 17b-93); the assignment of a beneficiary's cause of action (§ 29 of act, codified as General Statutes § 17-83f, predecessor to § 17b-94 [a]); and the attorney general's authorization to enforce the state's claim (§ 31 of act, codified as General Statutes § 17-83h, predecessor to § 17b-96). It was at this time that the scheme first characterized the state's claim as a "lien" on the proceeds of a cause of action, in § 29 of the act. In remarks explaining the purpose of the bill during debate in the House of Representatives, Representative John D. Prete stated that "[§§] 15 through 31 are housekeeping matters combining existing statutes where possible but *make no other difference in the overall welfare program*."[20] (Emphasis added.) 13 H.R. Proc., Pt. 12, 1969 Sess., p. 5665. Thus, the aforementioned genealogy and legislative history reveal no support for the proposition that the legislature intended to supplant the state's common-law right of setoff by providing for a lien against the proceeds of a beneficia-

ry's cause of action. Rather, this evidence supports the conclusion that the lien was a mechanism to support the recovery of the existing claim in connection with the assignment of proceeds to the state.

In addition to the evidence relating to the history and effect of the lien and assignment mechanisms provided under the scheme, the purpose of the subsequent amendment limiting the amount of the state's lien is inconsistent with its application to a cause of action brought against the state. The language limiting the state's lien to the lesser of the amount of the assistance paid or 50 percent of the proceeds was added to the scheme in 1984. See Public Acts 1984, No. 84-455, § 1. There is no legislative history related to that change. The following year, however, a similar limitation was added to subsection (b) of § 17-83f, the predecessor to § 17b-94, capping the amount of the state's recovery in the case of a beneficiary's inheritance of an estate to no more than 50 percent of the assets of the estate payable to the beneficiary.[21] Public Acts 1985, No. 85-564, § 10. In *State* v. *Marks*, 239 Conn. 471, 477–78, 686 A.2d 969 (1996), this court examined the purpose of the 50 percent limitation, specifically as it applied to § 17b-94 (b), but also drawing on the parallel to subsection (a). In *Marks*, the issue was whether, under § 17b-93 (a) and General Statutes § 17b-95, the state was entitled to all of the assets of the estate of the defendant's decedent as part of a claim for reimbursement for public assistance payments made on behalf of the decedent, or whether, under § 17b-94 (b), the state was entitled to only 50 percent of the assets of that estate. Id., 472–74. This court first noted that § 17b-93 (a) "provides the general rule for reimbursement"; id., 476; under which "the state has a claim, for the full amount of its payments, against a public assistance beneficiary who 'has or acquires property of any kind.' " Id. We went on to explain: "Section 17b-94 (b) . . . provides one of the exceptions to the general rule of full reimbursement to the state." Id., 477. "The purpose of this provision is to encourage public assistance beneficiaries who inherit property from others to seek and accept that property. In the absence of such a provision, public assistance beneficiaries would in many cases have no incentive to obtain their inheritances, because in many cases the entire inheritance would be subject to the state's claim for full reimbursement under § 17b-93. In such cases, the public assistance beneficiaries who have inheritances coming to them would likely waive or forgo them because those inheritances would ultimately go to the state pursuant to the state's claims for full reimbursement. Under § 17b-94 (b), however, a public assistance beneficiary has incentive to take an inheritance, as he or she gets to retain the unassigned balance of that inheritance.

"Concomitantly, this provision benefits the state. First, even while the public assistance beneficiary is

alive, the state does receive up to 50 percent of the inheritance, whereas, if the beneficiary refused the inheritance, the state would receive nothing. Second, a public assistance beneficiary, by retaining the balance of his or her inheritance, may in many cases thereby become ineligible for continued public assistance due to applicable asset limitation rules. . . . In those cases, therefore, the state would save money by not having to continue to pay public assistance benefits. Thus, as the [state] argues, § 17b-94 (b) applies to living public assistance beneficiaries, because they are the persons to whom this calculus of incentives and benefits applies.

"This common sense reading of this statutory scheme is supported by the legislative genealogy and legislative history of § 17b-94. As originally enacted in 1969 as General Statutes § 17-83f, and until 1982, what is now § 17b-94 applied only to causes of action held by public assistance beneficiaries, and not to inheritances by such beneficiaries, and provided for reimbursement to the state for the full amount of the proceeds of any such cause of action. See General Statutes (Rev. to 1977) § 17-83f. In 1982, the statute was amended by adding a provision regarding inheritances by public assistance beneficiaries, and the same rule of full reimbursement to the state out of such inheritances was applied. See General Statutes (Rev. to 1983) § 17-83f. In 1984, the statute was again amended to reduce the amount of the state's lien against the proceeds of causes of action held by public assistance beneficiaries to the lesser of 50 percent thereof or the amount of assistance paid, but the amendment did not disturb the rule of full reimbursement out of inheritances by such beneficiaries. See General Statutes (Rev. to 1985) § 17-83f. *The obvious purpose of reducing the amount of the state's lien on such proceeds and, thereby, affording some of the recovery to the public assistance beneficiary, was to give an incentive to the beneficiary to prosecute his or her cause of action, thus benefiting the beneficiary and, possibly, the state as well, as described previously.*

"In 1985, however, by enacting No. 85-564 of the 1985 Public Acts, the legislature inserted the 50 percent rule into the provision regarding inheritances by public assistance beneficiaries as well, thereby providing that such beneficiaries could retain at least 50 percent of their inheritances, just as they could retain at least 50 percent of the proceeds of their causes of action. See General Statutes (Rev. to 1987) § 17-83f. *The legislative debate on the bill supports the inference we have drawn from the structure and genealogy of the statutory scheme,* namely, that the purpose of the 50 percent rule is to give an otherwise absent incentive to public assistance beneficiaries to take their inheritances, thus benefiting both the beneficiaries and the state. See 28 S. Proc., Pt. 11, 1985 Sess., p. 3527, remarks of Senator Joseph C. Markley; 28 H.R. Proc., Pt. 31, 1985 Sess., pp. 11401–11402, remarks of Representative James T.

Fleming "[22] (Citations omitted; emphasis added.) *State* v. *Marks*, supra, 239 Conn. 478–80.

Viewing this history in light of the issue in the present case, it seems exceedingly unlikely that the legislature intended to incentivize actions against the state by public assistance beneficiaries. In such cases, the action would not result in the replenishment of the state coffers to make funds available for others in need. See *Thibeault* v. *White*, supra, 168 Conn. 118. No benefit would inure to the state. A beneficiary might have less of a need to rely on public assistance if he or she was permitted to retain a larger share of the proceeds of a cause of action against the state, but the state simply would pay out of one pocket instead of the other. The net effect would be the same. Although reading § 17b-94 (a) to apply to actions brought against the state undoubtedly would result in a benefit to the beneficiary, as *Marks* indicates, that benefit merely provides the incentive to achieve the state's ultimate goal of recovering more money; that benefit is not a goal in and of itself. Moreover, the beneficiary obtains some benefit from bringing an action against the state even without application of § 17b-94 because the beneficiary is relieved of the debt owed under § 17b-93 in the amount of the setoff.

We recognize the possibility that the provision of a lien and assignment in § 17b-94 (a) may simply reflect that the legislature never considered the circumstance of an action by a beneficiary against the state and, in turn, never considered whether the state's recovery should be limited in such circumstances. In light of the applicable rules of strict construction favoring the state, as we previously have discussed, we are not at liberty to interpret the statute more expansively than originally intended if the result in doing so is to limit the state's common-law right of setoff for the full debt. Indeed, even if we were free to do so, the fact that the purpose of the limitation on the lien is inconsistent with its application to a claim against the state would counsel against reading the statute to embrace such claims.

Finally, we are not persuaded by the plaintiff's argument that it would contravene public policy to construe § 17b-94 (a) to apply only to actions brought against third parties and, thus, the legislature could not have intended such an effect. Specifically, the plaintiff contends that allowing setoff of the state's claim for the full amount of repayment owed would create a class of people against whom the state could commit torts with little fear of consequence. We reject this argument for several reasons. First, there is nothing in the legislative history to suggest that this concern played any part in the adoption of the limitation on the state's lien. Second, we are unwilling to presume that the state would act in so cynical and improper a manner; indeed, it is far more likely that any claim against the state by

a plaintiff beneficiary of general assistance payments would be based on state conduct that had nothing whatsoever to do with the identity of the plaintiff as a beneficiary of such payments. Third, when the state's conduct harms beneficiaries, the state still could be exposed to substantial liability in cases in which the damages are high and the debt relatively low. Finally, for approximately forty years, there was no limit on the state's ability to recoup financial assistance aid from a beneficiary, and for twenty-five years there was no limit on the state's ability to recoup such aid from the proceeds of a beneficiary's cause of action. Thus, whatever the merits might be to the argument that it would be better or fairer to limit the recovery of public assistance benefits when a beneficiary brings an action against the state,[23] there is no basis to conclude that the legislature would have deemed full recovery of the debt contrary to sound public policy.

The judgment is reversed in part and the case is remanded with direction to render judgment in favor of the state on its counterclaim for the full amount of the setoff.

In this opinion the other justices concurred.

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

[1] General Statutes § 17b-93 (a) provides: "If a beneficiary of aid under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program or state-administered general assistance program has or acquires property of any kind or interest in any property, estate or claim of any kind, except moneys received for the replacement of real or personal property, the state of Connecticut shall have a claim subject to subsections (b) and (c) of this section, which shall have priority over all other unsecured claims and unrecorded encumbrances, against such beneficiary for the full amount paid, subject to the provisions of section 17b-94, to the beneficiary or on the beneficiary's behalf under said programs; and, in addition thereto, the parents of an aid to dependent children beneficiary, a state-administered general assistance beneficiary or a temporary family assistance beneficiary shall be liable to repay, subject to the provisions of section 17b-94, to the state the full amount of any such aid paid to or on behalf of either parent, his or her spouse, and his or her dependent child or children, as defined in section 17b-75. The state of Connecticut shall have a lien against property of any kind or interest in any property, estate or claim of any kind of the parents of an aid to dependent children, temporary family assistance or state administered general assistance beneficiary, in addition and not in substitution of its claim, for amounts owing under any order for support of any court or any family support magistrate, including any arrearage under such order, provided household goods and other personal property identified in section 52-352b, real property pursuant to section 17b-79, as long as such property is used as a home for the beneficiary and money received for the replacement of real or personal property, shall be exempt from such lien."

See footnote 12 of this opinion for the text of subsections (b) and (c) of § 17b-93.

Although § 17b-93 has been amended several times since the events giving rise to this appeal, because those changes have no bearing on the merits of this appeal, we refer to the current revision of the statute.

[2] General Statutes § 17b-94 (a) provides: "In the case of causes of action of beneficiaries of aid under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program or state-administered general assistance program, subject to subsections (b) and (c) of section 17b-93, or of a parent liable to repay the state under the provisions of section 17b-93, the claim of the state shall be a lien against the proceeds therefrom in the amount of the assistance paid or fifty per cent of the proceeds received by such beneficiary or such

parent after payment of all expenses connected with the cause of action, whichever is less, for repayment under section 17b-93, and shall have priority over all other claims except attorney's fees for said causes, expenses of suit, costs of hospitalization connected with the cause of action by whomever paid over and above hospital insurance or other such benefits, and, for such period of hospitalization as was not paid for by the state, physicians' fees for services during any such period as are connected with the cause of action over and above medical insurance or other such benefits; and such claim shall consist of the total assistance repayment for which claim may be made under said programs. The proceeds of such causes of action shall be assignable to the state for payment of the amount due under section 17b-93, irrespective of any other provision of law. Upon presentation to the attorney for the beneficiary of an assignment of such proceeds executed by the beneficiary or his conservator or guardian, such assignment shall constitute an irrevocable direction to the attorney to pay the Commissioner of Administrative Services in accordance with its terms, except if, after settlement of the cause of action or judgment thereon, the Commissioner of Administrative Services does not inform the attorney for the beneficiary of the amount of lien which is to be paid to the Commissioner of Administrative Services within forty-five days of receipt of the written request of such attorney for such information, such attorney may distribute such proceeds to such beneficiary and shall not be liable for any loss the state may sustain thereby."

Although § 17b-94 has been amended since the events giving rise to this appeal, because those changes have no bearing on the merits of this appeal, we refer to the current revision of the statute.

[3] The defendants appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[4] The health center joined in the state's brief. We refer herein to the health center and the state collectively as the state in this opinion.

[5] As we explain more fully hereinafter, the dual purpose of § 17b-94 (a) is to provide the beneficiary with an incentive to seek recovery against a third party in cases in which a 100 percent setoff would deprive the beneficiary of any net recovery—thereby eliminating the beneficiary's incentive to pursue its claim against the third party—with the ultimate goal that, in such cases, the state in turn will benefit from a recovery by the beneficiary against the third party. See *State* v. *Marks*, 239 Conn. 471, 477–78, 686 A.2d 969 (1996) (explaining rationale for 50 percent limitation).

[6] Section 17b-265 and §§ 1396a and 1396k of title 42 of the United States Code address the state's obligation as a participant in the federal Medicaid program to recoup medical expenses paid to Medicaid beneficiaries from liable third parties. See *State* v. *Peters*, 287 Conn. 82, 89–93, 946 A.2d 1231 (2008) (explaining state and federal scheme). Medical assistance payments made by the state to the plaintiff are not at issue in the present appeal.

[7] The general assistance program provides financial assistance to individuals who have insufficient assets or income to support themselves but are ineligible for other federal or state assistance programs. See General Statutes § 17b-191. The program is entirely state and locally funded.

[8] The commissioner of the department is responsible for the billing and collection of any money due to the state in public assistance cases. See General Statutes § 4a-12 (a) (3).

[9] The state unsuccessfully had sought to dismiss Hartford Elderly's intervening complaint on the ground that § 31-293, the statute under which Hartford Elderly sought reimbursement of the workers' compensation benefits, contains no waiver of sovereign immunity. The trial court, *Scholl*, *J.*, denied the motion, concluding that Hartford Elderly's claim was derivative of the plaintiff's claim against the state, for which she had received permission to bring an action against the state. The trial court, *Hon. Robert Satter*, judge trial referee, subsequently adopted Judge Scholl's decision as the law of the case in its judgment in favor of Hartford Elderly on its intervening complaint. The state filed separate appeals from the trial court's judgment in favor of Hartford Elderly and in favor of the plaintiff. The Appellate Court granted the state's request to consolidate the appeals, and following our transfer of the consolidated appeals to this court, the state withdrew its appeal as to that portion of the judgment in favor of Hartford Elderly.

[10] The parties stipulated to the following deductions from the damages award prior to the application of the setoff: attorney's fees of $78,356.94; costs and trial expenses of $5739.93; a workers' compensation lien for $69,668.82; and state medical related expenses of $2408.41. The basis for

the stipulation is not reflected in the record before this court. We note that, under § 17b-93 (a), the state's claim "shall have priority over all other unsecured claims and unrecorded encumbrances" and that, under § 17b-94 (a), the state's lien applies to the proceeds "after payment of all expenses connected with the cause of action" and is second in priority to payment of various expenses. See footnotes 1 and 2 of this opinion for the full text of these provisions. It is unclear whether the state's stipulation was predicated on any of these requirements or simply its interpretation of the beneficiary's "interest" under § 17b-93 (a) to which the state's claim attaches.

[11] Although the parties dispute whether the predicate to its application is met in the present case, they agree that there also is "a universal rule in the construction of statutes limiting rights, that they are not to be construed to embrace the government or sovereignty unless by express terms or necessary implication such appears to have been the clear intention of the legislature, and the rights of the government are not to be impaired by a statute unless its terms are clear and explicit, and admit of no other construction." (Internal quotation marks omitted.) *State* v. *Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 445–46, 54 A.3d 1005 (2012); accord *State* v. *Shelton*, 47 Conn. 400, 404–405 (1879). Because the rule requiring strict construction of statutes in abrogation of a common-law right plainly is applicable and yields the same result as would application of this universal rule, we need not decide the applicability of the latter to the present case.

[12] General Statutes § 17b-93 provides in relevant part: "(b) Any person who received cash benefits under the aid to families with dependent children program, the temporary family assistance program or the state-administered general assistance program, when such person was under eighteen years of age, shall not be liable to repay the state for such assistance.

"(c) No claim shall be made, or lien applied, against any payment made pursuant to chapter 135, any payment made pursuant to section 47-88d or 47-287, any moneys received as a settlement or award in a housing or employment or public accommodation discrimination case, any court-ordered retroactive rent abatement, including any made pursuant to subsection (e) of section 47a-14h or section 47a-4a, 47a-5 or 47a-57, or any security deposit refund pursuant to subsection (d) of section 47a-21 paid to a beneficiary of assistance under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program or state-administered general assistance program or paid to any person who has been supported wholly, or in part, by the state, in accordance with section 17b-223, in a humane institution. . . ." Chapter 135 and General Statutes §§ 47-88d and 47-287 involve relocation payments for persons displaced from housing.

[13] The relationship between these two sources of property in connection with the state's claim is addressed subsequently in this opinion.

[14] As we explain subsequently in this opinion, the limitation on the amount of the state's lien in a cause of action was added many years after the scheme provided for such a lien. Because this limitation, in and of itself, provides no textual basis to conclude that this amendment was also intended to limit the scope of parties to whom the statute previously had applied, in our view, the fundamental question is not whether § 17b-94 (a) applied after the legislature limited the amount of the lien but whether that provision *ever* applied to actions brought against the state.

[15] Section 17b-94 (a) provides that the state's claim "shall be a lien against the proceeds [of the cause of action] in the amount of the assistance paid or fifty per cent of the proceeds received by such beneficiary . . . after payment of all expenses connected with the cause of action, *whichever is less*, for repayment under section 17b-93 . . . ." (Emphasis added.) That statutory subsection also provides that "[t]he proceeds of such causes of action shall be assignable to the state for payment of the *amount due under section 17b-93* . . . ." (Emphasis added.) General Statutes § 17b-94 (a). Thus, § 17b-94 (a) refers to the repayment required under § 17b-93, under which the state's claim is for "the full amount [of aid] paid, subject to the provisions of section 17b-94 . . . ." General Statutes § 17b-93 (a).

[16] General Statutes § 17b-96 provides: "The Attorney General shall collect any claim which the state may have hereunder against any person, or his estate, and any amount recovered shall be paid to the State Treasurer, to be placed to the credit of the state General Fund. The statute of limitations shall not apply to any action for such collection. In each case in which the state shall have recovered any amount with respect to assistance furnished any beneficiary, the federal portion of the amount so recovered shall be promptly paid to the United States, if required as a condition of federal

financial participation."

[17] The plaintiff also points to the phrase "irrespective of any other provision of law"; General Statutes § 17b-94 (a); as evidence that the legislature intended to supplant the state's right to assert a setoff and to proscribe a lien as the sole method for the state's recovery against public assistance beneficiaries. The plaintiff's reliance is misplaced. This phrase is not coupled with the lien language, but rather the part of the statute providing for the assignment of the proceeds of a cause of action to the state. See footnote 2 of this opinion. In that context, this phrase is intended to address statutes that otherwise would bar assignment. See, e.g., *McDougald* v. *Norton*, supra, 361 F. Sup. 1327 (recognizing that, in light of this phrase, state properly could seek assignment of workers' compensation benefits to recover debt for public assistance benefits despite statute that otherwise would bar such assignment).

[18] General Statutes (Sup. 1959) § 17-114 provides: "(a) No person shall be ineligible to receive an award or to continue to receive grants of assistance by reason of insurance carried on his life by himself or legally liable relatives, or having a joint interest in a bank account, or an interest in a decedent's estate or in a cause of action, or owning other personal property, provided such insurance policy, including fraternal insurance or fraternal death benefits, or such joint interest or such other personal property or the proceeds therefrom shall be assigned, if in excess of six hundred dollars, to said commissioner, if required by him. Upon presentation of any such assignment to any person or corporation having charge, custody or possession of any such property or interest in property, such assignment shall constitute an irrevocable direction to pay the same to the welfare commissioner in accordance with its terms. Said commissioner shall have authority to determine the amount of any such joint interest.

"(b) In the case of causes of action, the claim of the state against the proceeds therefrom for repayment shall have priority over all other claims except attorneys' fees, expenses of suit, cost of hospitalization connected with the cause of action and, unless hospitalization was paid for by the state, physicians' fees for services connected with the cause of action; and such claim shall consist of the total assistance repayment for which claim may be made under the provisions of this chapter. Upon presentation to the attorney for the beneficiary of an assignment of such proceeds executed by the beneficiary, such assignment shall constitute an irrevocable direction to the attorney to pay the welfare commissioner in accordance with its terms."

[19] General Statutes (Cum. Sup. 1961) § 17-104a provides: "In the case of causes of action in which the parent has an interest, the claim of the state under the provisions of section 17-104 against the proceeds therefrom for repayment of grants of assistance for the parents or the children shall have priority over all other claims except attorney's fees, expenses of suit, cost of hospitalization connected with the cause of action and, unless hospitalization was paid for by the state, physician's fees for services connected with the cause of action; and such claim shall consist of the total assistance granted less exempted amounts as authorized under section 17-104. Upon presentation to the attorney for the beneficiary of an assignment of such proceeds executed by the parent or parents, such assignment shall constitute an irrevocable direction to the attorney to pay the welfare commissioner in accordance with its terms."

[20] The addition of language deeming the state's claim to be a "lien" to the existing provision for the assignment of the claim thus simply appears to be a "belt and suspenders" approach, the two mechanisms working in tandem to secure the state's recovery. Although Representative Prete's statement may have glossed over some minor changes made when combining all of these provisions, it appears to be a generally accurate assessment of the effect of the bill as written.

[21] General Statutes § 17b-94 (b), formerly § 17-83f (b), provides in relevant part: "[F]ifty per cent of the assets of the estate payable to the beneficiary or such parent or the amount of such assets equal to the amount of assistance paid, whichever is less, shall be assignable to the state for payment of the amount due under section 17b-93. The state shall have a lien against such assets in the applicable amount specified in this subsection. . . ."

[22] We note that the plaintiff contends that these comments are insufficiently probative for the state to rely on them as evidence of the legislature's purpose in limiting the state's recovery to 50 percent of the proceeds. The plaintiff fails to acknowledge that this court previously determined in *Marks* that these comments were persuasive evidence of legislative intent, and

that we viewed these comments as further confirmation of what the language of the statute itself suggested. Although *Marks* did not expressly so note, the legislative history to the 1985 amendment clearly is relevant to subsection (a) because, at that time, the legislature both adopted the limitation in subsection (b) that paralleled that in subsection (a) and amended subsection (a) to specify that the amount of the proceeds against which the state could assert a lien was no more than 50 percent of the proceeds "after payment of all expenses connected with the cause of action . . . ." Public Acts 1985, No. 85-564, § 10. With respect to the latter amendment, this legislative history includes comments specifically indicating an intention to create an incentive to bring a cause of action.

[23] A more realistic policy concern than the one raised by the plaintiff might arise in a case in which a beneficiary obtains employment that allows some measure of self-sufficiency and thereafter is injured *outside* the course of his or her employment. Unlike the present case, the beneficiary would lose wages and incur medical costs but would receive no workers' compensation benefits to offset any part of those losses. In such a case, the state's full recovery could deprive the beneficiary not only of compensation for the harm sustained but could force the beneficiary back into a state of financial dependence on public assistance benefits. There may be good cause to question whether the legislature would have intended such a result. We note, however, that such facts are not implicated in the present case. Thus, although there appears to be no department regulation prescribing or limiting the circumstances under which a claim is asserted by the state against beneficiaries, the record provides no basis for ascertaining whether that department, through some less formal mechanism, exercises discretion in deciding whether it is appropriate in a given case to seek repayment in light of the beneficiary's financial circumstances.