MICHELE DILIETO ET AL. *v.* COUNTY OBSTETRICS AND GYNECOLOGY GROUP, P.C., ET AL.
(SC 18838)

Palmer, Zarella, DiPentima, Gruendel and Bear, Js.

Argued December 3, 2012—officially released August 27, 2013

Steven D. Ecker, with whom were *Rodney S. Margol* and, on the brief, *William F. Gallagher*, *Hugh D. Hughes*, and *C. Rufus Pennington III*, for the appellant (named plaintiff).

Jeffrey R. Babbin, for the appellees (named defendant et al.).

Opinion

PALMER, J. The named plaintiff, Michele DiLieto,[1] commenced this medical malpractice action against the named defendant, County Obstetrics and Gynecology Group, P.C. (County Obstetrics), and the defendants Scott Casper, a physician employed by County Obstetrics, and Yale University School of Medicine,[2] alleging that they negligently had removed her reproductive organs and pelvic lymph nodes. Following a trial, the jury found the defendants liable and awarded $5,200,000 to the substitute plaintiff, Michael J. Daly, who was DiLieto's bankruptcy trustee.[3] After awarding Daly $5,886,113.64 in interest under the offer of judgment statute, General Statutes (Rev. to 1997) § 52-192a,[4] as well as costs, the trial court rendered judgment for Daly in the total amount of $11,110,045.79. The defendants appealed to this court, and we affirmed the judgment of the trial court except with respect to the amount of interest awarded under § 52-192a, which we concluded should have been calculated from the date of Daly's substitution as plaintiff rather than from the date that the offer of judgment was filed. See *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 145, 154, 998 A.2d 730 (2010). We therefore remanded the case to the trial court with direction to award offer of judgment interest accruing from that date. Id., 164. Thereafter, Daly filed a motion in the trial court for, inter alia, postjudgment interest pursuant to General Statutes (Rev. to 1995) § 37-3b.[5] Prior to the filing of that motion, Ronald I. Chorches had been substituted for Daly as DiLieto's bankruptcy trustee, and, during the pendency of the motion, the trial court granted DiLieto's motion to substitute herself as the plaintiff. The trial court denied that portion of the motion seeking postjudgment interest under § 37-3b, concluding that DiLieto had failed to demonstrate that the defendants wrongfully detained money that was payable to her under the judgment, the standard that this court has deemed applicable to claims for interest under General Statutes § 37-3a.[6] On appeal,[7] DiLieto contends that the trial court should not have applied the wrongful detention standard of § 37-3a[8] in declining to award postjudgment interest under § 37-3b. We conclude that the proper standard for an award of interest under § 37-3a is the same standard for an award of interest under the version of § 37-3b in effect before the 1997 amendment, and that, under both provisions, a plaintiff who obtains a judgment is entitled to interest when the trial court determines, in the exercise of its sound discretion, that such an award would be fair and equitable. We also conclude that, although the trial court properly determined that the same standard applies to both provisions, the standard that the court actually did apply was incorrect. Accordingly, we reverse in part the judgment of the trial court and remand the case to that court for consideration of DiLieto's request for postjudgment

interest under the correct legal standard.

The following undisputed facts and procedural history are relevant to our resolution of this appeal. Following our remand in *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 105, Daly filed a motion for, inter alia, an award of postjudgment interest under § 37-3b, calculated at the maximum statutory annual rate of 10 percent, in the amount of $1,769,146. The defendants opposed the motion, arguing that, in accordance with *Carrano* v. *Yale-New Haven Hospital*, 112 Conn. App. 767, 773–74, 963 A.2d 1117 (2009), the wrongful detention standard applicable to an award of interest under § 37-3a applies to interest awarded under § 37-3b. The defendants further maintained that, because their appeal was brought in good faith, the money that was payable to Daly under the judgment, which had been stayed automatically by operation of Practice Book § 61-11,[9] was not wrongfully detained for the period that their appeal was pending.

DiLieto, who, by the time the court was considering Daly's motion, had been substituted as the plaintiff, claimed that, under *Gionfriddo* v. *Avis Rent A Car System, Inc.*, 192 Conn. 301, 304–305, 472 A.2d 316 (1984), a party who recovers offer of judgment interest under § 52-192a is entitled to postjudgment interest under § 37-3b as a matter of law. She also argued that, to the extent that *Carrano* holds that wrongful detention is an element of an award of interest under § 37-3b, that case was wrongly decided because it conflicts with *Gionfriddo* and, furthermore, that, in contrast to § 37-3a, § 37-3b does not contain language explicitly or implicitly conditioning an award of interest on a finding that money was wrongfully detained. She also argued that, even if wrongful detention is a requirement under § 37-3b, that requirement was met in the present case because this court determined in *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 105, that the defendants' failure to compensate her for her injuries was unreasonable beginning on January 27, 2000, the date on which the defendants were deemed to have rejected her reasonable offers to settle. See id., 158–59. According to DiLieto, if the defendants' detention of the money due under the judgment was sufficiently unreasonable to trigger six years of punitive offer of judgment interest under § 52-192a, "then [a fortiorari] their decision to withhold payment after [July 14, 2006] was sufficiently unreasonable to trigger [her] entitlement to postjudgment interest under . . . § [37-3b]."

The trial court agreed with the defendants that, under *Carrano*, the wrongful detention standard of § 37-3a also applies to an award of postjudgment interest under § 37-3b. The trial court further observed that, under *Hartford Steam Boiler Inspection & Ins. Co.* v. *Underwriters at Lloyd's & Cos. Collective*, 121 Conn. App.

31, 994 A.2d 262, cert. denied, 297 Conn. 918, 996 A.2d 277 (2010), "in the context of [§ 37-3a], wrongful is not synonymous with bad faith conduct. Rather, wrongful means simply that the act is performed without the legal right to do so." (Internal quotation marks omitted.) Id., 63. The trial court therefore concluded that, because the judgment had been stayed by operation of Practice Book § 61-11, the defendants had a legal right to withhold payment of the judgment while their appeal was pending, and, consequently, their failure to pay the judgment during the pendency of the appeal reasonably could not be characterized as wrongful. Specifically, the trial court stated: "[DiLieto has] presented no authority to [impose] a legal obligation [on] the defendants to [satisfy] the judgment while the appeal was pending. Or, put another way, [she has] failed to show that the defendants had no legal right to withhold payment during that time. . . . [The] court finds that the defendants' appeal [in *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 105] . . . was bona fide and made in good faith. Taking into account the circumstances of this case and all equitable considerations, [the court concludes that] nothing has been presented . . . by way of evidence or argument to compel the conclusion that the money payable to [DiLieto] under the judgment has been wrongfully detained by the defendants." In reaching its conclusion, the court did not address DiLieto's contention that *Gionfriddo* established a right to postjudgment interest as a matter of law when, as in the present case, the plaintiff is entitled to offer of judgment interest under § 52-192a.

On appeal to this court, DiLieto claims that the trial court incorrectly applied the wrongful detention standard of § 37-3a in concluding that she was not entitled to postjudgment interest under § 37-3b. DiLieto also renews her claim that she is entitled to § 37-3b interest by virtue of our decision in *Gionfriddo*. Although we are unpersuaded by DiLieto's claim under *Gionfriddo*, we agree that the trial court applied the wrong legal standard in denying the motion for postjudgment interest under the version of § 37-3b in effect before the 1997 amendment.[10] In particular, we conclude that the standard to determine an award of interest under § 37-3a is no different from the standard to determine an award of interest under the version of § 37-3b in effect before the 1997 amendment and, further, that interest is authorized under those provisions when the trial court determines, in its discretion, that considerations of fairness and equity warrant such an award. We also conclude that the trial court misperceived the standard applicable under § 37-3a and that, because the court applied that same incorrect standard to the motion at issue, that portion of the judgment denying an award of postjudgment interest must be reversed.

As with all claims involving statutory interpretation,

we begin our analysis with the language of the relevant statutory provision. The applicable version of § 37-3b, which was enacted in 1981; see Public Acts 1981, No. 81-315, § 2; provides: "For a cause of action arising on or after October 1, 1981, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date of judgment." General Statutes (Rev. to 1995) § 37-3b. Thus, by its plain terms, § 37-3b authorizes an award of postjudgment interest in any negligence action, to be computed from the date of judgment. It also is apparent that such an award is discretionary because the statute provides that interest at a rate of up to 10 percent per year "*may* be recovered and allowed . . . ." (Emphasis added.) General Statutes (Rev. to 1995) § 37-3b. As this court previously has observed, the use of the term " 'may' . . . 'ordinarily does not connote a command. Rather, the word generally imports permissive conduct and the conferral of discretion.' " *Weems* v. *Citigroup, Inc.*, 289 Conn. 769, 790 n.22, 961 A.2d 349 (2008).

In addition, the legislature amended § 37-3b in 1997 by replacing the word "may" with "shall," thereby evidencing an intent that postjudgment interest not exceeding 10 percent is mandatory for actions governed by the statute as amended. See P.A. 97-58, § 2; see also, e.g., *Stewart* v. *Tunxis Service Center*, 237 Conn. 71, 78, 676 A.2d 819 (1996) (" '[t]he legislature's use of the word "shall" generally evinces an intent that the statute be interpreted as mandatory' "). This legislative genealogy leaves no doubt that the legislature, in amending the statute, was seeking to convert § 37-3b from a statute that permitted an award of postjudgment interest in the discretion of the trial court into one that mandates such an award. Under the version of § 37-3b applicable to the present case, therefore, the trial court had discretion to award postjudgment interest.

The trial court concluded, however, that its discretion to award interest on the judgment was constrained by the wrongful detention standard of § 37-3a, which, in the trial court's view, was applicable to § 37-3b by virtue of *Carrano*. The court further determined that, under the wrongful detention standard, DiLieto was required to prove that the defendants were legally obligated to pay the judgment during the pendency of their appeal, a showing that DiLieto could not make because the judgment had been stayed automatically by operation of Practice Book § 61-11. We conclude that, although the standard for an award of interest is the same under both § 37-3a and the version of § 37-3b in effect before the 1997 amendment, the trial court misconstrued that standard in denying DiLieto's motion for postjudgment interest under § 37-3b. As we explain more fully hereinafter, in the context of § 37-3a, a wrongful detention of money, that is, a detention of money without the legal

right to do so, is established merely by a favorable judgment on the underlying legal claim, so that the court has discretion to award interest on that judgment, without any additional showing of wrongfulness, upon a finding that such an award is fair and equitable. Consequently, contrary to the determination of the trial court, the fact that a defendant has a legal right to withhold payment under the judgment during the pendency of an appeal is irrelevant to the question of whether the plaintiff is entitled to interest under § 37-3a. We now turn to a brief discussion and analysis of § 37-3a to demonstrate why the trial court misconstrued the standard applicable to that provision.

Section 37-3a provides in relevant part: "(a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. . . ."[11] Like the version of § 37-3b in effect before the 1997 amendment, § 37-3a provides that interest "may be recovered" and, therefore, "does not require an award of interest in every case in which money has been detained after it has become payable. Rather, an award of interest is discretionary."[12] *Sosin* v. *Sosin*, 300 Conn. 205, 228, 14 A.3d 307 (2011).

Although § 37-3a does not use the word "wrongful" to describe a compensable detention of money under the statute, this court has long employed that term to describe such a detention. See, e.g., *Northrop* v. *Allstate Ins. Co.*, 247 Conn. 242, 254–55, 720 A.2d 879 (1998) ("[P]rejudgment interest is awarded in the discretion of the trial court to compensate the prevailing party for a delay in obtaining money that rightfully belongs to him. . . . The detention of the money must be determined to have been wrongful. . . . Its detention can only be wrongful, however, from and after the date on which the court, in its discretion, determines that the money was due and payable." [Citations omitted; internal quotation marks omitted.]). Our earliest cases interpreting § 37-3a reveal that the term "wrongful" invariably was used interchangeably with "unlawful" to describe the narrow category of claims for which prejudgment interest was allowed under the statute, namely, claims to recover money that remained unpaid after it was due and payable. See, e.g., *Fox* v. *Schaeffer*, 131 Conn. 439, 446, 41 A.2d 46 (1944) ("[i]nterest would be allowable because of the wrongful withholding from the plaintiffs after that day of money which they were entitled to receive"); *Wight* v. *Lee*, 101 Conn. 401, 405, 126 A. 218 (1924) ("[when] money belonging to another is not paid over to the person entitled to receive it at the time it should be paid over, interest is generally allowed as damages for such wrongful withholding thereof" [internal quotation marks omitted]); *Winsted*

Savings Bank v. *New Hartford*, 78 Conn. 319, 325, 62 A. 81 (1905) ("reason and justice alike support the view . . . that one who is unlawfully deprived of money which is his due, should . . . be entitled to recover, as damages for the unlawful detention, interest at not less than the legal rate, unless he has otherwise agreed"); *Loomis* v. *Gillett*, 75 Conn. 298, 300–301, 53 A. 581 (1902) ("[u]pon an action to recover damage[s] for the nonpayment of [a] debt, the plaintiff is entitled to recover damage[s] for the unlawful detention of the sum due, measured by the amount of interest thereon from the time it became due to the date of judgment"). Consistent with this precedent, we recently clarified that, under § 37-3a, proof of wrongfulness is not required "above and beyond proof of the underlying legal claim." *Sosin* v. *Sosin*, supra, 300 Conn. 230 n.18. In other words, the wrongful detention standard of § 37-3a is satisfied by proof of the underlying legal claim, a requirement that is met once the plaintiff obtains a judgment in his favor on that claim. Because, in the present case, the trial court concluded that DiLieto was required to prove, in addition to the underlying claim, that the defendants' detention of her money was "wrongful"—a standard that, in the trial court's view, could be met only upon proof that the defendants were actually obligated to pay the judgment during the pendency of their appeal—the legal standard that the court applied was incorrect.[13] In view of the fact that the trial court used an incorrect standard for purposes of § 37-3a, the court necessarily was incorrect in applying that same standard for purposes of § 37-3b.[14]

In fact, an award of interest under § 37-3a, like an award of interest under the version of § 37-3b in effect before the 1997 amendment, is discretionary with the trial court. Interest is awarded under both provisions when the court determines that such an award is appropriate to compensate the plaintiff for the loss of the use of his or her money. "Basically, the question is whether the interests of justice require the allowance of interest as damages for the loss of use of money." *Bertozzi* v. *McCarthy*, 164 Conn. 463, 466, 323 A.2d 553 (1973); see also 1 J. Berryman, Sutherland on the Law of Damages (4th Ed. 1916) § 329, pp. 1030–31 ("Interest is [permitted] . . . as damages for not discharging a debt when it ought to be paid. In this country the principle has long been settled that if a debt ought to be paid at a particular time and is not then paid through the default of the debtor, compensation in damages equal to the value of money, which is the legal interest upon it, [ought to] be paid during such time as the party is in default. The important practical inquiry, therefore, in each case in which interest is in question is, what is the date at which this legal duty to pay, as an absolute present duty, arose." [Footnote omitted.]).

Like § 37-3a, § 37-3b does not identify the factors to be considered by the trial court in exercising its

discretion under the statute. Accordingly, the court is free to consider whatever factors may be relevant to its determination. "Judicial discretion, however, is always a legal discretion, exercised according to the recognized principles of equity. . . . Such discretion . . . imports something more than leeway in decision making and should be exercised in conformity with the spirit of the law and should not impede or defeat the ends of substantial justice." (Citation omitted; internal quotation marks omitted.) *Burton* v. *Browd*, 258 Conn. 566, 569–70, 783 A.2d 457 (2001).

"Inherent [therefore] in the concept of judicial discretion is the idea of choice and a determination between competing considerations. . . . A court's discretion must be informed by the policies that the relevant statute is intended to advance." (Internal quotation marks omitted.) *Bank of New York* v. *Bell*, 120 Conn. App. 837, 848, 993 A.2d 1022, cert. dismissed, 298 Conn. 917, 4 A.3d 1225 (2010). As we have indicated, regardless of whether a statute provides for mandatory or discretionary postjudgment interest, the policy behind any such provision is to compensate the successful party for "the loss of the use of the money that he or she is awarded from the time of the award until the award is paid in full." *Thames Talent, Ltd.* v. *Commission on Human Rights & Opportunities*, 265 Conn. 127, 144, 827 A.2d 659 (2003); see also *Poleto* v. *Consolidated Rail Corp.*, 826 F.2d 1270, 1280 (3d Cir. 1987) ("[p]ostjudgment interest represents the cost of withholding the amount owed the plaintiff once that sum has been determined in a court proceeding"); *Life Ins. Co. of Georgia* v. *Johnson*, 725 So. 2d 934, 943 (Ala. 1998) (postjudgment interest is "just compensation to ensure that a money judgment will be worth the same when it is actually received as when it was awarded" [internal quotation marks omitted]).

In the present case, the trial court did not exercise its discretion in consideration of the equities, as required. Rather, the court misconstrued the standard of § 37-3a as requiring proof of wrongfulness over and above proof of the underlying legal claim. Because the trial court did not exercise the discretion contemplated by the statute, its decision to deny DiLieto postjudgment interest under § 37-3b cannot stand.[15] See, e.g., *Higgins* v. *Karp*, 243 Conn. 495, 504, 706 A.2d 1 (1998) ("[when] . . . the trial court is properly called [on] to exercise its discretion, its failure to do so is error" [internal quotation marks omitted]); *State* v. *Lee*, 229 Conn. 60, 73–74, 640 A.2d 553 (1994) ("[i]n the discretionary realm, it is improper for the trial court to fail to exercise its discretion").

We, however, are unpersuaded by DiLieto's contention that, under *Gionfriddo* v. *Avis Rent A Car System, Inc.*, supra, 192 Conn. 301, a party entitled to punitive prejudgment interest under § 52-192a necessarily

is entitled to postjudgment interest under § 37-3a.[16] Although DiLieto refers to certain language in *Gionfriddo* that, on its face, may appear to support her contention, we reject her claim because, in that case, the issue of whether discretionary postjudgment interest is mandatory when the prevailing party is entitled to prejudgment interest under § 52-192a was not before this court. The issue that we addressed, rather, was whether, in ruling on a motion for offer of judgment interest under § 52-192a, a trial court must compare the offer of judgment to the verdict amount or to the judgment amount, which, in *Gionfriddo*, included statutory treble damages. See id., 304–305.

The trial court in *Gionfriddo* had determined that the statutory damages award should not be included in the comparison and, on that basis, concluded that the plaintiff was not entitled to offer of judgment interest because the offer of judgment had exceeded the verdict amount. Id., 302. We reversed the judgment of the trial court; see id., 310; concluding that an offer of judgment is an offer to settle the entire case, including any counts to which statutory damages may apply, and, therefore, the trial court should have compared the offer of judgment to the entire award under the judgment. See id., 306–307. Because we were remanding the case to the trial court for an award of interest under § 52-192a, we considered an issue that the trial court had not addressed but that was likely to arise on remand, namely, whether interest authorized by § 52-192a continues to accrue until the judgment is paid in full or terminates at the time of judgment. See id., 307–308. In concluding that such interest terminates at the time of judgment, we observed: "[T]he rules of § 52-192a determine prejudgment interest, [whereas] the rules of § 37-3a determine postjudgment interest. Such a reading is consistent with the directions for calculation specified in § 52-192a and the statutory ceiling provided in § 37-3a. Reading these two statutes in conjunction with each other, as we must . . . we conclude that the plaintiff is entitled to 12 percent interest from . . . the date when the offer of judgment was filed . . . until . . . the date of the judgment. Thereafter, [the plaintiff] is entitled to interest at the rate of 8 percent on whatever amounts remain unpaid on the judgment rendered in his favor." (Citations omitted.) Id., 308. We also stated that the plaintiff's "entitlement to interest, under § 52-192a, [was] superseded by statutory interest of 8 percent, under § 37-3a, as of the date of the judgment . . . ." Id., 310.

It is this language purporting to recognize the plaintiff's "entitlement" to postjudgment interest under § 37-3a that DiLieto relies on to support her claim of entitlement to postjudgment interest under § 37-3b. Id. A review of the records and briefs in *Gionfriddo* reveals that the issue of whether postjudgment interest is automatic under § 37-3a in cases in which the plaintiff is

entitled to prejudgment interest under § 52-192a was not before this court because the defendant in that case did not challenge the plaintiff's entitlement to postjudgment interest. The defendant simply argued that such interest should be calculated at the annual rate of 8 percent pursuant to § 37-3a, rather than at the higher annual rate of 12 percent pursuant to § 52-192a. Thus, although we agreed with the defendant that § 37-3a governed an award of postjudgment interest in that case, we were not required to decide whether such an award was mandatory. To the extent that we used language suggesting that it was mandatory, we now disavow any such suggestion.

This does not mean, however, that, on remand, the trial court should not consider DiLieto's entitlement to offer of judgment interest in considering whether she is entitled to postjudgment interest under § 37-3b. On the contrary, the underlying conduct of the parties, including the defendants' rejection of DiLieto's reasonable offers to settle; see *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 158 (observing that "[the defendants had] rejected [DiLieto's] reasonable offers of judgment in favor of costly and protracted litigation" and that, "on appeal, they simply hope[d] to capitalize on the fact that DiLieto did not understand that Daly [her bankruptcy trustee] was the proper party to bring her claims against them"); is certainly a relevant, equitable consideration.[17] This is so because the defendants had an opportunity, at a relatively early stage in the litigation, to settle the case on favorable terms, but elected not to do so, with the result that DiLieto was deprived of the use of the money owed to her by the defendants for a considerably longer period of time than if the defendants had settled the case in accordance with DiLieto's reasonable offers of judgment. Of course, a paramount factor for the trial court to consider in deciding whether to award postjudgment interest is the purpose of such interest, namely, to compensate the prevailing party for the loss of the use of the money owed from the date of the judgment until the date that the judgment is paid. In exercising its discretion under § 37-3b, the trial court should identify any other factors or considerations that may militate for or against an award of postjudgment interest. In sum, the trial court should consider any and all factors that are relevant to its determination.[18] Of course, the trial court's discretion under § 37-3b includes the discretion to choose a fair rate of interest not to exceed 10 percent per annum. See General Statutes (Rev. to 1995) § 37-3b.

The judgment is reversed insofar as the trial court denied postjudgment interest and the case is remanded for consideration of the named plaintiff's request for postjudgment interest in accordance with this opinion; the judgment is affirmed in all other respects.[19]

In this opinion the other justices concurred.

[1] Michele DiLieto's husband, Robert DiLieto, also is a plaintiff. We refer to Michele DiLieto by her surname throughout this opinion.

[2] Thomas P. Anderson, Vinita Parkash, Babak Edraki, Peter E. Schwartz, all of whom are physicians, and Yale-New Haven Hospital, also were named as defendants but are no longer involved in the case or in this appeal. We refer collectively to County Obstetrics, Casper and Yale University School of Medicine as the defendants.

[3] DiLieto and her husband; see footnote 1 of this opinion; commenced this action on February 7, 1997. Because the DiLietos had filed for bankruptcy protection prior thereto, their claims against the defendants were assets of their bankruptcy estate. Consequently, Daly was substituted as the plaintiff, but not until January 27, 2000.

[4] General Statutes (Rev. to 1997) § 52-192a provides in relevant part: "(a) After commencement of any civil action . . . seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may before trial file with the clerk of the court a written 'offer of judgment' signed by him or his attorney . . . offering to settle the claim underlying the action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of the offer of settlement to the defendant's attorney . . . . Within thirty days after being notified of the filing of the 'offer of judgment' and prior to the rendering of a verdict by the jury or an award by the court, the defendant or his attorney may file with the clerk of the court a written 'acceptance of offer of judgment' agreeing to a stipulation for judgment as contained in plaintiff's 'offer of judgment'. . . .

"(b) After trial the court shall examine the record to determine whether the plaintiff made an 'offer of judgment' which the defendant failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain stated in his 'offer of judgment', the court shall add to the amount so recovered twelve per cent annual interest on said amount . . . . In those actions commenced on or after October 1, 1981, the interest shall be computed from the date the complaint in the civil action was filed with the court if the 'offer of judgment' was filed not later than eighteen months from the filing of such complaint. If such offer was filed later than eighteen months from the date of filing of the complaint, the interest shall be computed from the date the 'offer of judgment' was filed. The court may award reasonable attorney's fees in an amount not to exceed three hundred fifty dollars, and shall render judgment accordingly. . . ."

All references in this opinion to § 52-192a are to the 1997 revision, unless otherwise indicated.

[5] Section 37-3b was amended by Public Acts 1997, No. 97-58, § 2 (P.A. 97-58), and the amendment was applicable to causes of actions arising on or after the effective date of the act, namely, May 27, 1997. Because the cause of action in this case arose in 1995, the 1995 revision of § 37-3b, which applies to causes of action arising on or after October 1, 1981, but before May 27, 1997, is the provision applicable in the present case.

General Statutes (Rev. to 1995) § 37-3b provides: "For a cause of action arising on or after October 1, 1981, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date of judgment."

Hereinafter, all references to § 37-3b in this opinion are to the 1995 revision, unless otherwise indicated.

For all claims arising on May 27, 1997, or thereafter, awards of interest under § 37-3b are mandatory. See P.A. 97-58, § 2. The current revision of § 37-3b provides in relevant part: "(a) For a cause of action arising on or after May 27, 1997, interest at the rate of ten per cent a year, and no more, *shall be* recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date that is twenty days after the date of judgment or the date that is ninety days after the date of verdict, whichever is earlier, upon the amount of the judgment. . . ." (Emphasis added.)

[6] General Statutes § 37-3a provides in relevant part: "(a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. . . ."

[7] The plaintiff appealed to the Appellate Court from the judgment of the

trial court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[8] In accordance with its terms, § 37-3a authorizes an award of interest in civil actions or arbitration proceedings as damages for the detention of money after it becomes payable. See General Statutes § 37-3a; see also footnote 11 of this opinion. As we explain more fully hereinafter, although the word "wrongful" is not found in the statute, this court historically has used that term to describe detentions of money that are compensable under the statute. E.g., *Blakeslee Arpaia Chapman, Inc.* v. *EI Constructors, Inc.*, 239 Conn. 708, 735, 687 A.2d 506 (1997) (for purposes of determining whether to award interest under § 37-3a, trial court first must determine whether party against whom interest is sought "has wrongfully detained money due the other party").

[9] Practice Book § 61-11 provides in relevant part: "(a) Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. . . ."

[10] We note that this case likely presents the only occasion on which we will have to interpret and apply the version of § 37-3b in effect before the 1997 amendment because that provision applies only to claims accruing prior to May 27, 1997. For negligence claims arising on that date or thereafter, postjudgment interest is mandatory. See P.A. 97-58, § 2, codified at General Statutes § 37-3b.

[11] It is well established that "[§] 37-3a provides a substantive right [to prejudgment interest] that applies only to certain claims." *Foley* v. *Huntington Co.*, 42 Conn. App. 712, 739, 682 A.2d 1026, cert. denied, 239 Conn. 931, 683 A.2d 397 (1996). "As early as 1814, [this] [c]ourt stated that [prejudgment] 'interest [under § 37-3a] ought to be allowed only . . . where there is a written contract for the payment of money on a day certain, as on bills of exchange, and promissory notes; or where there has been an express contract; or where a contract can be presumed from the usage of trade, or course of dealings between the parties; or where it can be proved that the money has been used, and interest actually made.' *Selleck* v. *French*, [1 Conn. 32, 34 (1814)]." *Travelers Property & Casualty Co.* v. *Christie*, 99 Conn. App. 747, 764, 916 A.2d 114 (2007). Section 37-3a also authorizes prejudgment interest in cases involving tortious injury to property when the damages were capable of being ascertained on the date of the injury. See *Sosin* v. *Sosin*, 300 Conn. 205, 235, 14 A.3d 307 (2011) (award of prejudgment interest for damage to property "is limited to cases in which the damage is of a sort [that] could reasonably be ascertained by due inquiry and investigation on the date from which the interest is awarded" [internal quotation marks omitted]). Prejudgment interest is permitted in such cases on the theory that "[a] loss of property having a definite money value is practically the same as the loss of so much money; the loss of the use of the property is practically the same as the loss of the use (or interest) of so much money." 1 J. Berryman, Sutherland on the Law of Damages (4th Ed. 1916) § 355, p. 1138. Thus, "[§ 37-3a] does not allow prejudgment interest on claims that are not yet payable, such as awards for punitive damages; *Westport Taxi Service, Inc.* v. *Westport Transit District*, [235 Conn. 1, 37, 664 A.2d 719 (1995)]; or on claims that do not involve the wrongful detention of money, such as personal injury claims . . . . *Gionfriddo* v. *Avis Rent A Car System, Inc.*, [supra, 192 Conn. 307]." *Foley* v. *Huntington Co.*, supra, 739. Prejudgment interest is not permitted on such claims for the simple reason that, until a judgment is rendered, "the person liable does not know what sum he owe[s], and therefore cannot be in default for not paying." 1 J. Berryman, supra, § 347, p. 1092; see also *Travelers Property & Casualty Co.* v. *Christie*, supra, 764 ("requests for prejudgment interest [on] personal injury claims do not typically constitute a claim for the wrongful detention of money before the rendering of judgment . . . [because] damages are typically uncertain [until that time]" [citation omitted; internal quotation marks omitted]); *Lockard* v. *Salem*, 130 W. Va. 287, 294, 43 S.E.2d 239 (1947) ("unless a claim is liquidated, or readily susceptible of ascertainment by computation, interest is not allowable until there is an ascertainment of the amount due"). Once a plaintiff's damages *are* known, however, which typically occurs at the time of judgment, they are due and payable for purposes of an award of postjudgment interest under § 37-3a. See *Gionfriddo* v. *Avis Rent A Car System, Inc.*, supra, 308 (indicating that damages in negligence action are payable at time of judgment); *Foley* v. *Huntington Co.*, supra, 741–42 (same).

[12] Section 37-3a is not limited by its terms to prejudgment interest, and,

consequently, as we have indicated, postjudgment interest also may be awarded under that provision. "Prior to July of 1983, [however] pursuant to statute, [postjudgment] interest was an automatic incident of [every] judgment. General Statutes (Rev. to 1983) § 52-349 provided in [relevant] part that after judgment was rendered upon a verdict, after denial of a motion to set aside, or upon affirmation of that ruling on appeal, 'legal interest [on] the amount of the verdict from the time it was rendered shall be collected on the execution upon the judgment.' That statute was repealed by No. 83-581 of the 1983 Public Acts, effective July 14, 1983." *Rizzo Pool Co.* v. *Del Grosso*, 240 Conn. 58, 68 n.12, 689 A.2d 1097 (1997). Since the repeal of General Statutes (Rev. to 1983) § 52-349 in 1983, § 37-3a has served as the source for postjudgment interest on claims to which § 37-3b does not apply.

[13] We recognize that, in recent years, our case law has not been a model of clarity with respect to whether § 37-3a requires proof of wrongfulness above and beyond proof of the underlying legal claim. Indeed, many cases have treated the wrongfulness of a detention of money as a separate and distinct inquiry from its unlawfulness. See, e.g., *Smithfield Associates, LLC* v. *Tolland Bank*, 86 Conn. App. 14, 26, 860 A.2d 738 (2004) ("[a] plaintiff's burden of demonstrating that the retention of money is wrongful requires more than demonstrating that the opposing party detained money when it should not have done so" [internal quotation marks omitted]), cert. denied, 273 Conn. 901, 867 A.2d 839 (2005); *Maloney* v. *PCRE, LLC*, 68 Conn. App. 727, 756, 793 A.2d 1118 (2002) (same). The confusion appears to have originated with *White Oak Corp.* v. *Dept. of Transportation*, 217 Conn. 281, 585 A.2d 1199 (1991) (*White Oak*), in which this court, without explanation and, it seems, without intending to do so, appeared to draw a distinction between a debt that was due and "payable" and money that was "wrongfully" detained. (Internal quotation marks omitted.) Id., 302; see id. ("[t]he trial court should have considered the claim for prejudgment interest on its merits and if it concluded that the amounts for which [the defendant] was liable were both 'payable' and 'wrongfully' withheld, should have awarded prejudgment interest at the rate set in the then effective version of § 37-3a"). Prior thereto, we never had suggested that an unlawful detention of money might not be wrongful for purposes of § 37-3a. Following *White Oak*, however, courts of this state began to require proof of wrongfulness separate and distinct from proof of the underlying legal claim. See, e.g., *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, 273 Conn. 634, 666, 872 A.2d 423 ("[t]he trial court cited as its primary reason for denying the plaintiff's motion for interest pursuant to § 37-3a that the defendant had not wrongfully withheld the money because its arguments in opposition to the application to confirm the award and in support of its motion to vacate the award were not frivolous"), cert. denied sub nom. *Vertrue, Inc.* v. *MedValUSA Health Programs, Inc.*, 546 U.S. 960, 126 S. Ct. 479, 163 L. Ed. 2d 363 (2005). In those cases, courts automatically denied interest upon finding that the defendant, although liable to the plaintiff, had not acted in bad faith. See, e.g., *Hoye* v. *DeWolfe Co.*, 61 Conn. App. 558, 564–65, 764 A.2d 1269 (2001); *Maluszewski* v. *Allstate Ins. Co.*, 34 Conn. App. 27, 39, 640 A.2d 129, cert. denied, 229 Conn. 921, 642 A.2d 1214 (1994). Indeed, until our decision in *White Oak*, a plaintiff's entitlement to prejudgment interest under § 37-3a generally was not questioned, at least as long as the plaintiff was not at fault for the defendant's delay in paying the money that was due. See, e.g., *Campbell* v. *Rockefeller*, 134 Conn. 585, 592, 59 A.2d 524 (1948) ("[u]pon an action to recover damage[s] for the nonpayment of [a] debt, the plaintiff is entitled to recover damage[s] for the unlawful detention of the sum due, measured by the amount of interest thereon from the time it became due to the date of judgment" [internal quotation marks omitted]); *Blake* v. *Waterbury*, 105 Conn. 482, 486, 136 A. 95 (1927) ("[i]nterest upon a demand which is unpaid when due is ordinarily not given as interest *eo nomine*, but as damages for the detention of the money, which, for the sake of convenience, are measured by interest on the sum due" [emphasis in original]); *Winsted Savings Bank* v. *New Hartford*, supra, 78 Conn. 325 ("reason and justice alike support the view . . . that one who is unlawfully deprived of money which is his due, should . . . be entitled to recover, as damages for the unlawful detention, interest at not less than the legal rate, unless he has otherwise agreed").

In any event, we take this opportunity to underscore once again that an award of interest under § 37-3a does not require proof of wrongfulness in addition to proof of the underlying legal claim. *Sosin* v. *Sosin*, supra, 300 Conn. 230 n.18. Thus, interest may be awarded in the discretion of the trial court even when the liable party's failure to pay the judgment was not

blameworthy, unreasonable or in bad faith. See id. This interpretation of § 37-3a is "consistent with the primary purpose of [that provision], which is not to punish persons who have detained money owed to others in bad faith but, rather, to compensate parties that have been deprived of the use of their money. See *Neiditz* v. *Morton S. Fine & Associates, Inc.*, 199 Conn. 683, 691, 508 A.2d 438 (1986) (§ 37-3a is intended to compensate the prevailing party for a delay in obtaining money that rightfully belongs to him); *Paulus* v. *LaSala*, 56 Conn. App. 139, 151, 742 A.2d 379 (1999) (purpose of § 37-3a is to compensate plaintiffs who have been deprived of the use of money wrongfully withheld by defendants), cert. denied, 252 Conn. 928, 746 A.2d 789 (2000)." (Internal quotation marks omitted.) *Sosin* v. *Sosin*, supra, 230. Thus, going forward, we suggest that our courts refrain from characterizing the standard for an award of prejudgment interest under § 37-3a as requiring a determination that the liable party's detention of money was *wrongful*.

[14] We note that the trial court's application of the wrongful detention standard in the present case predated our decision in *Sosin*, which clarified that standard.

[15] We find no merit in the defendants' contention that the trial court, in deciding whether to award interest under § 37-3b, did in fact consider the relevant factors and, therefore, properly exercised its discretion under § 37-3b. In support of this contention, the defendants note that the trial court found that the defendants' appeal in *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 105, had been brought in good faith and, in addition, that this court, in *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, 273 Conn. 634, 665–66, 872 A.2d 423, cert. denied sub nom. *Vertrue, Inc.* v. *MedValUSA Health Programs, Inc.*, 546 U.S. 960, 126 S. Ct. 479, 163 L. Ed. 2d 363 (2005), affirmed the judgment of the trial court, which denied postjudgment interest under § 37-3a on the ground that the arguments in support of a motion to vacate an arbitration award had not been frivolous. Although we agree that a trial court properly may consider the relative merit of an appeal when weighing the equities under § 37-3b, it is clear that the trial court in the present case considered the merits of the defendants' appeal only insofar as they bore on the question of whether the defendants were legally entitled to withhold payment under the judgment during the pendency of the appeal.

[16] As DiLieto argues, if, in light of *Gionfriddo*, postjudgment interest is mandatory under § 37-3a, then it also is mandatory under the version of § 37-3b in effect before the 1997 amendment because the standard for an award of interest under § 37-3a and under that version of § 37-3b is the same.

[17] "Inherent in any action for money damages is a plaintiff's claim that the defendant has harmed the plaintiff, and that the plaintiff's injury can be remedied by a monetary award. In other words, the plaintiff claims that the defendant holds money that rightfully belongs to the plaintiff. At all times during the lawsuit, it is the defendant, not the plaintiff, who holds the money in dispute and, therefore, has the incentive to prolong litigation. . . . [T]he allocation of offer of judgment interest against a defendant, who has had the opportunity to invest the money at issue during the proceedings, has no parallel to a plaintiff, who claims that he or she has been deprived of that money." *Blakeslee Arpaia Chapman, Inc.* v. *EI Constructors, Inc.*, 239 Conn. 708, 755, 687 A.2d 506 (1997).

[18] The trial court need not ignore the fact that it was the public policy of this state to award postjudgment interest mandatorily in this type of action for many years prior to 1981; see *Little* v. *United National Investors Corp.*, 160 Conn. 534, 537, 280 A.2d 890 (1971) ("Connecticut has by statute long provided for interest on judgments. The first enactment appears to be chapter 34 of the Public Acts of 1860."); and that it has been this state's policy to do so since May 27, 1997, shortly after the present case was filed. Although these mandatory interest provisions are by no means binding on the trial court, they do tend to underscore that the purpose of postjudgment interest is not to punish defendants but, rather, to compensate plaintiffs for the loss of the use of their money, after the fact finder has determined that the money is due and owing, during the pendency of any appeals.

[19] We note that the motion at issue in the present case included a request for both *prejudgment* and *postjudgment* interest and that the defendants did not object to that portion of the motion concerning prejudgment interest. Our decision therefore does not purport to affect the trial court's award of prejudgment interest in this case.