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The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

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D'AURIA, J., with whom, PALMER and MULLINS, Js., join, dissenting. I would affirm the judgment of the Appellate Court on the first certified issue,[1] and I therefore respectfully dissent.

The plaintiff, Barry Graham, alleges that on December 12, 2011, he was driving his pickup truck in the northbound lanes of the Gold Star Memorial Bridge, about one-tenth of one mile south of the New London-Groton town line, when at 6:38 a.m. his vehicle slid on black ice, rolled over on its side and collided with a bridge structure, causing him serious injuries. *Graham* v. *Commissioner of Transportation*, 168 Conn. App. 570, 575, 148 A.3d 1147 (2016). The record discloses that the state police first notified the Department of Transportation (department) of icing on the bridge at 5:49 a.m. that same morning in a call to the department's Bridgeport operations center. Id., 578. That call—one of several accounts of ice related accidents on the bridge that the state police relayed to the department early that morning—reported that an ice related accident had occurred on the bridge at 5:40 a.m. Id., 578, 602.

Because it was so early in the morning, the department implemented its "off-hour" protocols, and department personnel were dispatched to salt the bridge. Id., 578–79. The Appellate Court held that there is a genuine issue of material fact as to whether and when the department received actual notice of what the plaintiff alleges to be the highway "defect" (i.e., ice) that caused his injuries.[2] Id., 595. The issue of the department's negligence is not before us.

The Appellate Court also held that there was a "genuine issue of material fact as to whether the state police responded unreasonably to the icing condition of the bridge by failing to close the road before the plaintiff's accident." Id., 601–602. Assessing the response of the state police to "off-hour" highway conditions within an action brought pursuant to our defective highway statute, General Statutes § 13a-144, is not without precedent. This court had a very similar case more than thirty years ago in *Lamb* v. *Burns*, 202 Conn. 158, 520 A.2d 190 (1987). In that case, this court rejected the argument by the defendant, the Commissioner of Transportation (commissioner), that "because the statutory duty of maintaining and repairing the state's highways is upon the [commissioner] and his agents alone . . . the negligence of the state police cannot properly underlie a cause of action against the defendant under § 13a-144." (Citations omitted.) Id., 169. Rather, the court held that the language of § 13a-144 "unambiguously support[s] the conclusion that the statute waives sovereign immunity for defective highway claims based upon the 'neglect or default' not merely of the commissioner of

transportation, *but 'of the state or any of its employees,' at least when performing duties related to highway maintenance.*" (Emphasis added.) Id.

Today's majority, however, distinguishes the present case from *Lamb*, holding instead that whether a court has jurisdiction to entertain a claim by a motorist injured on our state highways under our defective highway statute turns on whether the plaintiff brings forth evidence "sufficient to establish a connection between the negligent actions of the state employee in remedying the highway defect and the commissioner's statutory duty, such that the commissioner can be found to have breached his [statutory] duty." I disagree with the majority's interpretation of our defective highway statute and its reinterpretation of *Lamb* v. *Burns*, supra, 202 Conn. 158, a precedent that has governed how persons injured on this state's highways have brought claims against the state for more than thirty years, without legislative reaction.

First, the text of § 13a-144 does not limit its waiver of sovereign immunity in the way the majority holds. Second, I do not agree with the majority's view that *Lamb* "narrow[ed] the scope of potential liability" under the defective highway statute by requiring evidence of what the majority refers to as a "*Lamb* type relationship" between the commissioner and the negligent state employee to fit within the statute's sovereign immunity waiver when a plaintiff alleges that someone other than the commissioner's employees was negligent. Obviously, *Lamb* could neither have added to nor subtracted from the statute's meaning. Third, although the majority declines the commissioner's invitation to overrule *Lamb*, it has, in my view, reinterpreted its holding in a way that mixes concepts of sovereign immunity, duty and liability. In doing so, I believe the statutory right of recovery for those injured on our state highways has been limited in a way the legislature did not intend, and in a way that is impractical and will lead unnecessarily to multiple actions.

Because I believe the Appellate Court properly construed and applied § 13a-144 and our decision in *Lamb*, I would affirm its judgment on the first certified question.

I

As we did in *Lamb*, we must first consider the language of the statute before turning to case law. See General Statutes § 1-2z.[3] The first sentence of § 13a-144, which contains an express legislative waiver of sovereign immunity, provides in relevant part: "Any person injured in person or property through the neglect or default *of the state or any of its employees* by means of any defective highway, bridge or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair . . . may bring a civil action to recover damages sustained thereby against the commissioner

in the Superior Court. . . ."[4] (Emphasis added.) It is true that we are obliged to construe waivers of sovereign immunity narrowly. *Hicks* v. *State*, 297 Conn. 798, 801, 1 A.3d 39 (2010). But the plain language of the waiver contained in § 13a-144 sweeps broadly, reaching allegations of neglect or default "of the state or any of its employees," and not just of the department, its employees or those with a relationship to the commissioner. In contrast, the legislature took pains to limit otherwise broad language within the same statute. For example, the broad term, "[a]ny person injured," is limited by the manner ("through the neglect or default") and means ("by means of any defective highway") of the injury. General Statutes § 13a-144. Similarly, the broad term, "any defective highway, bridge or sidewalk," is limited by the duty of the commissioner ("which it is the duty of the Commissioner of Transportation to keep in repair"). General Statutes § 13a-144; see *Lamb* v. *Burns*, supra, 202 Conn. 170. In my view, if the legislature had intended the scope of the waiver to reach only "the neglect or default" of those with some demonstrable "relationship" to the commissioner, it would not have included the broad and unqualified phrases, "of the state" (i.e., the entire state), or "any of its employees . . . ." General Statutes § 13a-144.

A conclusion that the waiver of immunity extends beyond the negligence of department employees—and beyond employees in some "relationship" with the commissioner—is bolstered by a review of the entire statute, which we are obliged to consider. See, e.g., *Bennett* v. *New Milford Hospital, Inc.*, 300 Conn. 1, 22, 12 A.3d 865 (2011). It is true the statute requires that any action must be brought against the commissioner, that notice must be provided to the commissioner, and that the commissioner may make an offer of judgment with the attorney general's approval and the trial court's consent. General Statutes § 13a-144. However, the statute also refers to "the state" generally as the party ultimately responsible to the injured person. The state is referred to as holding the relevant insurance policies, paying the judgment, and "be[ing] subrogated to the rights of such injured person . . . ." General Statutes § 13a-144; see footnote 4 of this dissenting opinion.

The fact that the statute's text directs plaintiffs to bring the action against the commissioner is unremarkable. After all, an action brought under § 13a-144 is brought against the commissioner in his official capacity; *Rivers* v. *New Britain*, 288 Conn. 1, 5, 950 A.2d 1247 (2008); and a "suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state." (Internal quotation marks omitted.) *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 79–80, 74 A.3d 1242 (2013); see also *Hillson* v. *State*, Superior Court, judicial district of Hartford, Docket No. CV-12-6030605-S (August 20, 2014) (58 Conn. L. Rptr. 836) (§ 13a-144 action against

the state). Ultimately, any adverse judgment is "paid by the state" out of the commissioner's appropriation for highway repairs. General Statutes § 13a-144. Moreover, as with the "neglect or default" requirement, a conclusion that § 13a-144 extends to employees beyond the department comports with the other elements of a § 13a-144 action, as laid out in *Ormsby* v. *Frankel*, 255 Conn. 670, 675–76, 768 A.2d 441 (2001). Specifically, the plaintiff in a § 13a-144 action must prove, among other things, that the defendant knew of the highway defect. Just like the "neglect or default" element, this can be satisfied by pointing to evidence that "the state or any of its employees"—and not only the commissioner—had the requisite knowledge. General Statutes § 13a-144.

Applying the plain language of the statute's sovereign immunity waiver, the Appellate Court concluded that "there is a genuine issue of material fact as to whether the failure of the state police to close the bridge before the plaintiff's accident occurred was unreasonable . . . ." *Graham* v. *Commissioner of Transportation*, supra, 168 Conn. 603. If, as the Appellate Court construed his claim, the plaintiff contends that state police employees breached their duty to close the bridge under the circumstances; see id., 601–602; his claim surely constitutes an allegation of "neglect or default of the state or any of its employees" pursuant to § 13a-144.

In my view, this was this court's interpretation of the statute in *Lamb* and should remain our interpretation.

II

The majority posits that our decision in *Lamb* "narrow[ed] the scope of potential liability" under § 13a-144 by waiving sovereign immunity for the "actions of state employees other than those employed by the commissioner, but only to the extent that they are performing duties related to highway maintenance and the plaintiff proves that a relationship exists between the commissioner and the state employee . . . ." I do not agree, however, that our decision in *Lamb*, like the statute itself, requires proof of such a relationship to overcome sovereign immunity.

Lamb involved facts similar to the present case. The plaintiffs in both cases claimed their injuries were caused by icy road conditions: in *Lamb*, on a Saturday afternoon; *Lamb* v. *Burns*, supra, 202 Conn. 159; in the present case, at 6:38 a.m. *Graham* v. *Commissioner of Transportation*, supra, 168 Conn. App. 575. In both cases, department officials and crews were not on duty, and the plaintiffs claimed that the state police had failed to take appropriate steps to remedy the icy conditions. *Lamb* v. *Burns*, supra, 160, 169; *Graham* v. *Commissioner of Transportation*, supra, 582. In *Lamb*, a state police trooper called for a sand truck, lit flares and left the site. *Lamb* v. *Burns*, supra, 160. After the flares had

expired, but before the sand truck arrived, the plaintiffs slid on the ice, and struck a guard post and a concrete bridge abutment. Id., 159–60. In the present case, the plaintiff argues that the state police failed to close the bridge, despite knowing that other cars had slid on the black ice.

Important to an understanding of the court's precise reasoning in *Lamb* is that, like the present case, the proceedings in the trial court did not involve the issue of sovereign immunity. A jury had found for the plaintiff in *Lamb* and awarded damages. Id., 159. On appeal, this court reversed the judgment on the basis of our conclusion that the trial court had unduly limited the commissioner's voir dire of prospective jurors. Id., 165–66. The court went on to address whether the jury was properly instructed that a breach of duty by the state police—and not just the department—could serve as a basis for a defective highway action only because it "may arise at a new trial." Id., 166; see Practice Book § 84-11 (c); *Weaver* v. *McKnight*, 313 Conn. 393, 397, 97 A.3d 920 (2014) (reviewing, pursuant to Practice Book § 84-11, evidentiary rulings of trial court likely to arise on remand).

The court in *Lamb* rejected the commissioner's "general claim" that "the trial court erred in instructing the jury that negligence on the part of the state police could provide a basis for finding the defendant liable under § 13a-144." *Lamb* v. *Burns*, supra, 202 Conn. 166. Specifically, the court rejected the commissioner's argument that "because the statutory duty of maintaining and repairing the state's highways is upon the defendant and his agents alone . . . the negligence of the state police cannot properly underlie a cause of action against the defendant under § 13a-144." (Citations omitted.) Id., 169.

We held instead that "[t]he words the legislature employed in § 13a-144 unambiguously support the conclusion that the statute waives sovereign immunity for defective highway claims based upon the 'neglect or default' *not merely of the commissioner of transportation*, but 'of the state or any of its employees,' at least when performing duties related to highway maintenance." (Emphasis added.) Id. We rejected the commissioner's argument that the phrase, "highway . . . which it is the duty of the highway commissioner to keep in repair," in any way limited the state employees whose negligence might lead to liability. (Internal quotation marks omitted.) Id., 169. Rather, the phrase described "those highways to which the state's liability may attach." Id. In short, the phrase is about roads, not employees: that is, the phrase, "highway . . . which it is the duty of the highway commissioner to keep in repair"; (internal quotation marks omitted) id.; describes the roads for which the state may be liable under the statute, not the employees whose negligence

is covered by the statute. See *Amore* v. *Frankel*, 228 Conn. 358, 368–69, 636 A.2d 786 (1994) (upholding dismissal of action under § 13a-144 when plaintiff did not respond to commissioner's affidavits averring that department was not responsible for driveway at issue); see also *Cairns* v. *Shugrue*, 186 Conn. 300, 310, 441 A.2d 185 (1982) (plain meaning of § 13a-144 renders state liable for defects on any highway that commissioner has duty to maintain).

In *Lamb*, we also disagreed with the commissioner's contention that the word "any" within the phrase, "through the neglect or default of the state or any of its employees," in § 13a-144 should "be interpreted in a restrictive sense to refer only to [department] employees." *Lamb* v. *Burns*, supra, 202 Conn. 169. Rather, we stated simply: "There are no words in § 13a-144 limiting or restricting the scope of the phrase 'the state or any of its employees' to [department] employees only." Id., 170.

Having concluded that we "perceive[d] no ambiguity in the language" used in the statute; id.; we nonetheless went on to note that there was no legislative history "to shed light on the original purpose of the phrase 'through the neglect or default of the state or any of its employees' " in § 13a-144. Id. We observed, however, that both earlier and present revisions of the statute "implie[d] that the commissioner is not relieved of potential liability when he calls upon the assistance of a contractor or other person from outside his department to perform highway maintenance operations." Id., 171.

Finally, we noted in *Lamb* that the evidence indicated "that by custom the commissioner of transportation has availed himself of the assistance of the state police and that the state police have assumed such duties." Id. Because there was evidence that the state police had assumed a duty that the department had relied on, we concluded that "[t]he trial court's jury instructions to that effect, therefore, were not erroneous." Id.

My reading of *Lamb* is that all a plaintiff must allege to fit within the sovereign immunity waiver embodied in § 13a-144 is that the "neglect or default of the state or any of its employees" (including state police employees) took place while performing duties related to highway maintenance. I do not read *Lamb* to restrict the otherwise broad reach of the statute's unambiguous sovereign immunity waiver. Nor could it. The breadth of the statute speaks for itself. As I discuss next, the portion of *Lamb* the majority relies on as now requiring proof of the negligent employee's "relationship" with the commissioner was not dispositive of the sovereign immunity issue but, at most, went to the issue of whether the jury was properly instructed on the issue of duty.

III

Although the majority indicates it is reaching only the first certified question (sovereign immunity) and not the second certified question[5] (duty), I believe it has mixed the concepts of sovereign immunity and duty. This is understandable because *Lamb* had to discuss both concepts to determine whether the jury was properly instructed that a breach of duty by the state police could result in a violation of the defective highway statute. But I believe blending these distinct doctrines will thwart injured parties seeking to vindicate statutory rights in a way the legislature did not intend.

It is true that *Lamb* noted that the commissioner had "availed himself of the assistance of the state police" in maintaining the highways. *Lamb* v. *Burns*, supra, 202 Conn. 171. In my view, however, that evidence was not necessary to the court's construction of the statute's sovereign immunity waiver. Rather, recalling that the issue on appeal in *Lamb* was whether the jury was properly instructed that "negligence on the part of the state police could provide a basis for finding the defendant liable under § 13a-144"; id., 166; the court in *Lamb* concluded only that state police officers sometimes performed duties relating to highway maintenance, and that "neglect or default of the state police in safeguarding the hazardous ice condition . . . provided a basis for the defendant's liability under § 13a-144." Id., 171. Therefore, *Lamb* held, the trial court's jury instructions were not erroneous.

In the present case, the Appellate Court concluded that the statute's plain language waived the state's sovereign immunity and further determined that (1) the state police owed the plaintiff a duty, and (2) there was a genuine issue of material fact as to whether the failure of the state police to close the bridge was unreasonable and a breach of that duty. *Graham* v. *Commissioner of Transportation*, supra, 168 Conn. App. 601–602. To prove liability, the plaintiff would still have to establish at trial that the state police breached any duty owed to him.

In my view, the question of duty on the part of the state police is distinct from and not dispositive of the first certified question, which concerns the scope of the sovereign immunity waiver. Rather, the question of duty falls within the ambit of the second certified question, which the majority does not reach in favor of its sovereign immunity ruling. If indeed the state police had a duty to close the road in this case, I believe the plaintiff should have the opportunity to prove a breach of that duty at trial.

Because I believe that the majority has mixed sovereign immunity (the first certified question) with the concepts of duty and breach (the second certified question), I do not feel compelled in this opinion to measure

whether the evidence was sufficient in this case to demonstrate that the state police had a duty to close the bridge or breached that duty. It bears emphasis, however, that the Appellate Court noted that the record contains evidence that "the state police have the authority to close the road if they believe it is in the interest of public safety to do so." Id., 602. Also, the record contains evidence that the "[d]epartment relies on calls into its highway operations centers during off hours to advise it of road conditions," and that "off-hour calls . . . come predominately from state and local police," who "are advised to call the operations center" when conditions require the department's response. In my view, the plaintiff should be afforded the chance to develop this evidence at trial.

IV

The majority worries that if we construe the statute's waiver of sovereign immunity to include the factual scenario in this case, the "floodgates" will open and plaintiffs will bring claims about the neglect of all sorts of state employees, thereby subjecting the state to additional—and perhaps fanciful—lawsuits. I don't see it.

Although I suppose it is (and has been) true under *Lamb* that an allegation that the failure of a Department of Social Services employee, a correction officer or a judge(!) to take some action to close a highway could fall within the scope of the waiver of sovereign immunity ("neglect or default of the state or any of its employees"), I am hard-pressed to think of an instance in which such specious allegations could state a claim that might lead to liability. Again, in my view, the majority infuses the concept of duty into the question of the scope of a sovereign immunity waiver. In those clearly more attenuated situations the majority imagines, it is unlikely those state employees or officers would have any duty to keep the highway in repair. Although this might necessitate the commissioner's having to file a motion to strike based on lack of duty; see, e.g., *Jarmie* v. *Troncale*, 306 Conn. 578, 580, 50 A.3d 802 (2012) (affirming trial court's granting of motion to strike based on lack of duty); rather than a motion to dismiss based on sovereign immunity, that is only because of the legislature's exercise of its prerogative to enact a broad waiver of the state's sovereign immunity. Any (in my view, minimal) "interference with the performance of [the state's] functions"; (internal quotation marks omitted) *Horton* v. *Meskill*, 172 Conn. 615, 624, 376 A.2d 359 (1977); is a result of that broad waiver. Even *Lamb* itself, in construing the waiver as reaching state employees beyond the department, limited that waiver to the negligence of only those employees "performing duties related to highway maintenance." *Lamb* v. *Burns*, supra, 202 Conn. 169.

Moreover, as the commissioner admits candidly in his brief, the sovereign immunity question he advances

is not about the state's ultimate fiscal liability: it is about deflecting responsibility for certain lawsuits to a different forum (i.e., the Claims Commissioner instead of the Superior Court) or to a different agency (i.e., the Department of Emergency Services and Public Protection instead of the Department of Transportation). As discussed in part V, I do not believe that the statute's plain language reflects an expressed concern by the legislature about which agency would be named a defendant, but instead was intended to provide a forum for all motorists injured by the negligence of "the state or any of its employees . . . ." General Statutes § 13a-144.

V

Even when it comes to interpreting sovereign immunity waivers, which are narrowly construed, I do not "presume that the legislature intended [a] bizarre and potentially inequitable result." *Lyon* v. *Jones*, 291 Conn. 384, 404 n.10, 968 A.2d 416 (2009). Rather, I would credit the legislature with having understood when it used the broad phrase, "the neglect or default of the state or any of its employees," in § 13a-144, that state agencies other than the department, or employees other than those of the department, at times might bear responsibility for "performing duties related to highway maintenance"; *Lamb* v. *Burns*, supra, 202 Conn. 169; and might act negligently in performing those duties, resulting in a defective highway, bridge or sidewalk.

Under the majority's reading of the statute, plaintiffs injured at times when employees within the department are not working could be left without a remedy or might have to pursue a remedy in a different forum with a different statute of limitations if they are unable to establish a "*Lamb* type relationship" between the commissioner and the state employee.[6] Because the majority concludes that this showing is necessary to overcome the sovereign immunity bar, and because sovereign immunity implicates subject matter jurisdiction, if the commissioner contested such a relationship the plaintiff would have to establish the requisite facts at a "trial-like hearing" before litigation could proceed one step further.[7] *Standard Tallow Corp.* v. *Jowdy*, 190 Conn. 48, 56, 459 A.2d 503 (1983); see also *Conboy* v. *State*, 292 Conn. 642, 652–53, 974 A.2d 669 (2009) (same); *Baldwin Piano & Organ Co.* v. *Blake*, 186 Conn. 295, 297, 441 A.2d 183 (1982) ("[w]henever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause" [internal quotation marks omitted]), quoting *Woodmont Assn.* v. *Milford*, 85 Conn. 517, 524, 84 A. 307 (1912).

Motorists injured on our roads likely have no understanding of—and little interest in—which state agency or employee should have taken action to abate a "high-

way defect." Extracting information about any relevant relationship between any negligent nondepartment employees and the commissioner is not likely to be immediately knowable, but might require protracted investigation or discovery. And this information is much more likely to be within the ken of the state generally, and the department specifically. See, e.g., *Arrowood Indemnity Co.* v. *King*, 304 Conn. 179, 203, 39 A.3d 712 (2012) (placing burden on insurer instead of insured because insured was "party least well equipped to know, let alone demonstrate" facts at issue); *Albert Mendel & Son, Inc.* v. *Krogh*, 4 Conn. App. 117, 124 n.6, 492 A.2d 536 (1985) ("[i]t is said that the burden properly rests upon the party . . . who has readier access to knowledge about the fact"). I find no evidence in the broad waiver of sovereign immunity contained in our defective highway statute that leads me to conclude that the legislature intended that those injured on state highways must engage in such sleuth work simply to meet a jurisdictional predicate.

Lamb involved an accident that occurred while the department was closed for the weekend. The present case involved a situation in which icy conditions arose before the department had opened for the day. Like the court in *Lamb*, therefore, I conclude, on the basis of the statute's plain language, that the legislature acted rationally to waive sovereign immunity as to claims of negligence by the state or *any* of its employees by means of any defective highway and directed the filing of *one* action naming the commissioner in his official capacity as a defendant. This avoids making injured parties bring different actions against different state actors in multiple forums, which advances neither the interests of the state nor its citizens and taxpayers.[8]

VI

Finally, if *Lamb* holds as the majority concludes it holds, I would be tempted to vote to overrule *Lamb* as not consistent with the statute. Of course, principles of stare decisis and legislative acquiescence would counsel against that position.

But in my view, *Lamb* held as the Appellate Court concluded, and as I have detailed previously: § 13a-144 unambiguously applies to the actions "of the state or any of its employees," regardless of their relationship to the commissioner. I believe that the legislature has acquiesced in *that* holding.

I acknowledge it must seem strange to the reader that both the majority and dissent conclude that the legislature has acquiesced in *Lamb*'s interpretation of the waiver of sovereign immunity contained in our defective highway statute, but disagree on what that interpretation was. But in my view, the legislature's acquiescence is also informed by the way the executive branch has treated *Lamb*. Specifically, the commis-

sioner in the present case—an executive branch official—has argued that *Lamb* was wrongly decided and should be overruled. Accordingly, this argument demonstrates the commissioner's own understanding that the Appellate Court's ruling was true to *Lamb*; it signals that this is the interpretation the state has relied on.

More than thirty years have passed since this court decided *Lamb*, more than ample time for us to conclude that the legislature has acquiesced in *Lamb*'s holding. Indeed, if the legislature had any concerns about our conclusion in *Lamb* that the language "employed in § 13a-144 unambiguously support[s] the conclusion that the statute waives sovereign immunity for defective highway claims based upon the 'neglect or default' not merely of the commissioner of transportation, but 'of the state or any of its employees,' at least when performing duties related to highway maintenance"; *Lamb* v. *Burns*, supra, 202 Conn. 169; it could have, in the intervening three decades, amended the statute to avoid this result. "Once an appropriate interval to permit legislative reconsideration has passed without corrective legislative action, the inference of legislative acquiescence places a significant jurisprudential limitation on our own authority to reconsider the merits of our earlier decision." (Internal quotation marks omitted.) *State* v. *Flemke*, 315 Conn. 500, 512, 108 A.3d 1073 (2015).

Citizens injured by the neglect of the state's employees have come to rely on that holding and reasoning, and the state—through both the legislative and executive branches—has certainly been able to plan for any litigation and liability contingencies our precedent might have exposed it to. See *Conway* v. *Wilton*, 238 Conn. 653, 658–59, 680 A.2d 242 (1996) (noting that stare decisis "is justified because it allows for predictability in the ordering of conduct [and] promotes the necessary perception that the law is relatively unchanging"). We are particularly reluctant to overrule our precedents when they involve questions of statutory interpretation on the ground that the legislature is free to alter the statute to correct what it believes is a misinterpretation. *Florestal* v. *Government Employees Ins. Co.*, 236 Conn. 299, 305, 673 A.2d 474 (1996). I believe this should be especially so when, as here, one of other the branches of government is involved in the litigation. The decision in *Lamb* represents this court's considered judicial determination of the legislature's intent. If the other branches believe we misconstrued or overestimated the breadth of the legislature's intended waiver, or simply wish to change the policy of the state, the legislature can act to amend the statute. It has not.

For these reasons, I respectfully disagree with the majority's conclusions and would, instead, affirm the Appellate Court's judgment.

[1] See footnote 2 of the majority opinion.

[2] Specifically, the Appellate Court reversed the trial court's grant of summary judgment in favor of the defendant, the Commissioner of Transporta-

tion, holding that there is a genuine issue of material fact as to whether the department acted unreasonably in responding to notice of the icing condition, including whether it failed to make adequate use of available temporary remedies, such as electronic signs, while the icy condition was being remedied. *Graham* v. *Commissioner of Transportation*, supra, 168 Conn. App. 599–603. Thus, irrespective of today's holding in this certified appeal, there will be a trial on those issues. Id., 603.

[3] Although our decision in *Lamb* preceded the legislature's passage of § 1-2z in 2003, it is useful to consider the plain language of § 13a-144 because *Lamb* held the language to be "unambiguous"; see *Lamb* v. *Burns*, supra, 202 Conn. 169; and because we have held that the legislature did not intend by the passage of § 1-2z to upset any of this court's previous interpretations of statutes. See *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 501, 923 A.2d 657 (2007).

[4] General Statutes § 13a-144 provides: "Any person injured in person or property through the neglect or default of the state or any of its employees by means of any defective highway, bridge or sidewalk which it is the duty of the Commissioner of Transportation to keep in repair, or by reason of the lack of any railing or fence on the side of such bridge or part of such road which may be raised above the adjoining ground so as to be unsafe for travel or, in case of the death of any person by reason of any such neglect or default, the executor or administrator of such person, may bring a civil action to recover damages sustained thereby against the commissioner in the Superior Court. No such action shall be brought except within two years from the date of such injury, nor unless notice of such injury and a general description of the same and of the cause thereof and of the time and place of its occurrence has been given in writing within ninety days thereafter to the commissioner. Such action shall be tried to the court or jury, and such portion of the amount of the judgment rendered therein as exceeds any amount paid to the plaintiff prior thereto under insurance liability policies held by the state shall, upon the filing with the Comptroller of a certified copy of such judgment, be paid by the state out of the appropriation for the commissioner for repair of highways; but no costs or judgment fee in any such action shall be taxed against the defendant. This section shall not be construed so as to relieve any contractor or other person, through whose neglect or default any such injury may have occurred, from liability to the state; and, upon payment by the Comptroller of any judgment rendered under the provisions of this section, the state shall be subrogated to the rights of such injured person to recover from any such contractor or other person an amount equal to the judgment it has so paid. The commissioner, with the approval of the Attorney General and the consent of the court before which any such action is pending, may make an offer of judgment in settlement of any such claim. The commissioner and the state shall not be liable in damages for injury to person or property when such injury occurred on any highway or part thereof abandoned by the state or on any portion of a highway not a state highway but connecting with or crossing a state highway, which portion is not within the traveled portion of such state highway. The requirement of notice specified in this section shall be deemed complied with if an action is commenced, by a writ and complaint setting forth the injury and a general description of the same and of the cause thereof and of the time and place of its occurrence, within the time limited for the giving of such notice."

[5] See footnote 2 of the majority opinion.

[6] For example, under the majority's interpretation of the statute and *Lamb*, if the state police indeed had a duty to close the bridge, the plaintiff, rather than being able to bring an action under the defective highway statute's sovereign immunity waiver, would have to present a "claim" to the Claims Commissioner alleging negligence on the part of the state police. See General Statutes § 4-141 et seq. Rather than having the benefit of the two year statute of limitations under § 13a-144, the plaintiff would face a one year statute of limitations with the Claims Commissioner. See General Statutes § 4-148.

[7] Exactly what a plaintiff would have to establish at this hearing is not clear. The statute offers no guidance and the majority offers only that a plaintiff can establish this relationship by providing evidence of "custom," "usual procedure," "formal procedure," whether the commissioner "availed" himself of the police, and whether the police had "assumed" the duty. Whether these factors are exhaustive or are mandatory predicates is not clear, nor to what extent a plaintiff can rely on traditional tort law principles and case law regarding duty.

[8] Both the commissioner and the majority rely on language from our

decision in *White* v. *Burns*, 213 Conn. 307, 567 A.2d 1195 (1990), that reads: "[T]he terms 'neglect' and 'default' refer *solely to that action or failure to act by the commissioner* which triggers liability for breach of his statutory duty to *repair and maintain* the state highway." (Emphasis added.) Id., 323. *White* goes on to say that "[t]he commissioner . . . is the *only one* upon whom is imposed the duty *to repair* under § 13a-144." (Emphasis altered.) Id., 326. The majority concludes from these two quotations: "In other words, under § 13a-144, the commissioner alone is responsible for the maintenance of the state's highways and, accordingly, he alone is liable for a breach of that duty."

I do not agree with the conclusion the majority draws from this language. First, the only neglect or default at issue in *White* was the commissioner's; the court did not have to address the neglect or default of other state agencies or employees, as was at issue in *Lamb*. Thus, *White* in no way considers the broader language, "the state or any of its employees," while considering the commissioner's duties and, of course, does not in any way suggest that it overruled *Lamb*. Second, *White* was only about "sole proximate cause" and not about the scope of the legislature's waiver of sovereign immunity. *White* v. *Burns*, supra, 213 Conn. 327.

Finally, this syllogism does not work. It might be true that the commissioner has a duty to *repair and maintain* the state's highways; and he *alone* may have a duty to *repair* the state's highways. But that does not mean he alone has "duties related to highway maintenance." *Lamb* v. *Burns*, supra, 202 Conn. 169. Construing the phrase from *Lamb*, "at least when performing duties related to highway maintenance"; id.; the majority assumes that "at least" imposes a minimum condition. But the phrase can also mean "if nothing else" or "in any case." The former means that the condition is necessary while the latter means that it is merely sufficient. I read *Lamb* to contemplate the latter because we know from that case that at certain times, department officials or employees are not available, and others may be responsible for "duties related to highway maintenance" to make our roads safe for motorists. *Lamb* v. *Burns*, supra, 169.