

ALAN BOUCHER, SR., : CLAIM NO. 20694
Claimant :
V. :
STATE OF CONNECTICUT, :
Respondent : SEPTEMBER 18, 2006

**REQUEST TO GENERAL ASSEMBLY TO
OVERRIDE CLAIMS COMMISSIONER'S DECISION**

Pursuant to Connecticut General Statutes §§ 4-158 and 4-159, Claimant in the above-captioned matter requests the Connecticut General Assembly to reject the ruling of the Claims Commissioner, granting a Motion to dismiss dated August 25, 2006.

The Claims Commissioner's decision to effectively grant immunity to a broad class of public officials, who give statements to the public as part of their official duties, violates public policy by significantly altering the legislative intent to waive sovereign immunity to liability and suit, as found in Conn. Gen. Stat. §§ 4-141, 4-160 (a) (c), and 4-165, and the general intent found in §§ 4-141 through 4-165. Under the *Boucher* ruling, public officials who negligently cause damage or injury to private citizens, during the performance of their speaking duties, are immune from liability and suit for defamatory statements that injure individual citizens who are business owners. If this is allowed to stand as precedent, every business owner, who is injured by negligently issued defamatory statements made by any public official who speaks to the media, will have no

recourse for damages. In effect, the Commissioner's ruling allows public officials to freely make defamatory comments about business owners that damage their business reputation in the community.

A private person would be liable for a false, defamatory, and publicized remark that struck at an individual's business reputation and, as a matter of law, so should public officials. Section 4-160 (c) states "[t]he state waives its immunity from liability and from suit in each such action...[t]he rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances". After reviewing Conn. Gen. Stat. §§4-141 through 4-165b, the Connecticut Supreme Court concluded that the manifest legislative intent expressed by chapter 53, of which § 4-160 is a part, "is that an employee is immune *where and because the state may be sued*, and that the state may be sued in instances where a private person would be liable. See [General Statutes] § 4-160 a." Spring v. Constantino, 168 Conn. 563 (1975).

Public officials, such as the Commissioner in the *Boucher* matter, are "employees", under sections 4-165 and 5-141, which refers to section 4-141 for the definition of the term "employees". Section 4-141 provides that the term "employees" includes every person elected or appointed to or employed in any office, position, or post in the state government, whatever his title, classification or function and whether he

serves with or without remuneration or compensation. Hunt v. Blumenthal, 238 Conn. 146, 152 (1996). The Claims Commissioner has ruled that his office has no subject matter jurisdiction over public officials who make statements to the public in the course of their duties, based upon his previous ruling in Claim of Belanger, #18101. Notwithstanding the fact that *Boucher* is distinguishable on the facts, the Claims Commissioner's ruling is circular in that he is stating that his office has no subject matter jurisdiction over a broad class of public officials, because of his own previous ruling. The Claims Commissioner clearly has subject matter jurisdiction over all State employees under the relevant statutes.

The Claims Commissioner has no authority to change the class of people who come under his jurisdiction, as found in Sections 4-141 through 4-165. The Connecticut Supreme Court stated "Because the state has permitted itself to be sued in certain circumstances, this court has recognized the well established principle that statutes in derogation of sovereign immunity should be strictly construed...where there is any doubt about their meaning or intent they are given the effect which makes the least rather than the most change in sovereign immunity..." Alex Martinez v. Department of Public Safety, (2003); quoting White v. Burns, 213 Conn. 307, 312-313 (1990). The Connecticut Legislature enacted a number of statutes, which erode the doctrine of sovereign immunity as applied to State employees or officials. If the General Assembly wishes to eliminate a

cause of action against the State of Connecticut, thereby reversing or revising previously enacted laws, by not allowing claims by business owners for defamatory remarks made by public officials, which cause monetary damages and damages to their business reputation, the General Assembly should change Conn. Gen. Stat. §§ 4-141, 4-160, and 4-165 to reflect this intention after a full, open debate on the merits. If the General Assembly intends to keep the laws as they were written, and/or how they have been interpreted by the Connecticut Courts, then this Assembly must overrule the Claims Commissioner's decision in *Boucher*.

For all of the above reasons, the Claimant, Alan Boucher respectfully requests the General Assembly to reject the Claims Commissioners decision, in the above-referenced matter, and not allow such a broad change to the legislative intent in the affected statutes. If allowed to stand, the Commissioner's ruling in *Boucher* will forever change the Connecticut laws regarding sovereign immunity and the rights of Connecticut business owners to conduct business in an atmosphere where public officials are held accountable for their defamatory comments that injure Connecticut businesses.

THE CLAIMANT
ALAN BOUCHER

By 
Leonard A. McDermott
Employee Advocates, LLC

297 (1982). "A motion to dismiss...properly attacks the jurisdiction of the court (Commissioner), essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court (Commissioner)." Gurliacci v. Mayer, supra at 544-45 (Emphasis in original; citations omitted; internal quotations omitted; reference to Commissioner added).

To ignore jurisdictional limitations when claims are made against the state would be contrary to the constitutional and legislative mandates and principles underlying the office of the Claims Commissioner.

In Claim of Belanger, #18101 the Commissioner held that when public officials have a duty to report to the public, statements made during the course of their duties which allegedly injure private citizens are not actionable since claims based on said statements would severely detract from the ability of public officials to perform their duties and

thus be injurious to the public good. Such claims therefore are not just and equitable and for that reason the Commissioner lacks subject matter jurisdiction.

Although claimant argues that the Commissioner has inherent subject matter jurisdiction under our statutes to entertain claims brought against the State not otherwise authorized by law, the Commissioner clearly is required to reject claims that he deems not to be “just and equitable”. Since the Commissioner has already ruled that claims such as the present claim are not “just and equitable” he lacks subject matter jurisdiction.

Thus it is the recommendation of the undersigned that the present claims be **DISMISSED**.



General Assembly

House Joint

Resolution No. 32

January Session, 2007

LCO No. 3522

03522 _____ JUD

Referred to Committee on Judiciary

Introduced by:

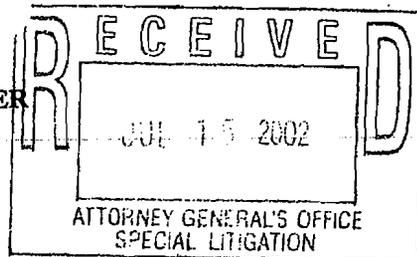
(JUD)

RESOLUTION CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DISMISS THE CLAIM AGAINST THE STATE OF ALAN BOUCHER, SR.

Resolved by this Assembly:

That the decision of the Claims Commissioner, file number 20694 of said commissioner, ordering the dismissal of the claim against the state in excess of seven thousand five hundred dollars of Alan Boucher, Sr., is confirmed.

STATE OF CONNECTICUT
OFFICE OF THE CLAIMS COMMISSIONER



CLAIM NUMBER: 18101

DAVID BELANGER

JULY 5, 2002

MEMORANDUM OF DECISION

The claimant, David Belanger, alleges that he suffered humiliation and physical and emotional distress and damage to his reputation as a result of public statements made by the Attorney General of the State of Connecticut. Claimant alleges that the statements made by the Attorney General were reported and aired on radio stations and published in the Norwich Bulletin. Claimant seeks damages of \$750,000.00 and permission to sue the state for "negligence, libel, slander and defamation".

The respondent filed a Motion to Dismiss the claim on April 3, 2002 asserting that the Attorney General is immune from suit for public statements regarding matters within the scope of his authority. Claimant filed a brief in opposition to that motion and oral argument was presented on July 1, 2002. There is no dispute as to the facts relating to this claim.

1. On September 16, 1998, Attorney General Richard Blumenthal held a press conference to disseminate to the media identifying information about six men who were the subject of civil arrest warrants issued for violation of child support orders ("Deadbeat Dads").
2. One of the individuals identified in the press release was "David Belanger". While the name of the delinquent David Belanger was correct, the address was not. The Attorney General mistakenly gave the address of the claimant, who has the same name.
3. On September 17, 1998, the claimant left a telephone message with an assistant attorney general in the Support Enforcement Department, advising him of the mistake.
4. On September 18, 1998, the Attorney General released additional information and issued the correct address of the delinquent David Belanger.
5. A formal letter of apology was sent to the claimant by the Attorney General and other agencies involved and the "wanted" posters bearing the incorrect address were destroyed.

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The statements of the Attorney General were pursuant to his duty to inform the Public of investigations and to give updates to the public concerning the cases handled by his office. Connecticut General Statute § 3-125; Hultman v. Blumenthal, 67 Conn. App. 613, 623 (2002). Government officials who issue statements to the public in the course of their official duties are protected by the doctrine of sovereign immunity and are therefore immune from legal actions in connection with those activities. Hultman, supra, 623. While dismissing the Hultman case on sovereign immunity grounds, the court found support for a broader immunity for that office in decisions from other jurisdictions. Barr v. Matteo, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 1434 (1959); Blake v. Rupe, 651 P.2d 1096 (Wyo. 1982), cert denied, 459. U.S. 1208, 103 S. Ct. 1199, 75 L. Ed. 2d 442 (1983). Those cases support a broader immunity for the head of an executive department engaged in the performance of the duties of that office. The fear is that the removal of immunity for actions not willful, wanton or malicious would seriously cripple the proper and effective administration of public affairs.

While a private citizen may be held liable for disseminating erroneous information, private citizens do not have a duty to report to the public. To expose the Attorney General to the distraction of lawsuits by anyone alleging to have been negatively impacted by statements made to the media would severely detract from his ability to perform his duties and be injurious to the public good. There is not a "just and equitable" basis for a grant of permission to sue the state here.

For the aforementioned reasons, this is not a "just claim" and in it would not be just and equitable to grant permission to sue the state. The claim is dismissed.

STATE OF CONNECTICUT
COMMISSIONER OF CLAIMS



James R. Smith

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