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March 4, 2013

TESTIMONY OF ATTORNEY LEE SAMOWITZ IN OPPOSITION TO *H.J. No. 56 (COMM)
RESOLUTION CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DENY
THE CLAIM AGAINST THE STATE OF CHRISTIAN PEREZ.

THE HONORABLE SENATOR ERIC COLEMAN, REPRESENTATIVE GERALD FOX AND
MEMBERS OF THE COMMITTEE:

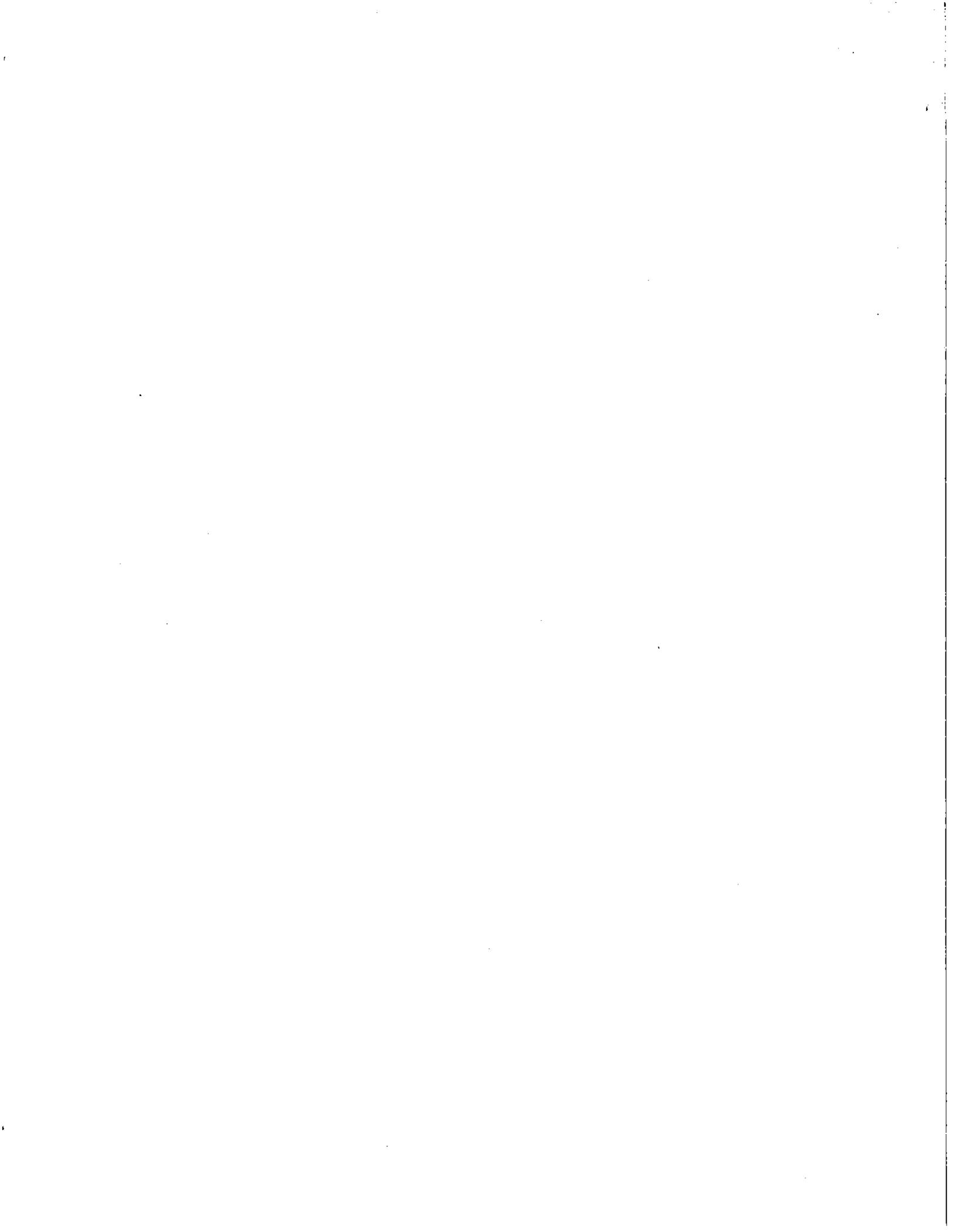
My name is Lee Samowitz. I am a former member of the General Assembly and this Judiciary Committee, but I come before you as an attorney representing Christian Perez on an Appeal to the General Assembly seeking justice. Christian Perez went to Central Magnet High School in Bridgeport with my daughter. He was the first member of his family to want to attend college. He was bright and hard working kid. During the summer, I hired him as my paralegal because I wanted to inspire him to become a lawyer. The reason he cannot be here today is that he is pursuing his Doctorate in Economics at the University of Puerto Rico and he will not miss classes unless he is ill or the school calls off classes. When it came time to picking colleges I encouraged him to go to UConn, but had we picked a private college we would not be here on appeal. On February 23, 2009 while in his junior year at Storrs, Christian Perez, slipped on ice covered by snow in a parking lot behind Gampel Pavilion and seriously tore his cartilage in his knee requiring surgery that left him and his family with \$16,000 in medical bill. Unlike a normal tort case, since UConn is a state institution, we cannot go directly before a jury instead we had to have a hearing before the Claims Commissioner. At the hearing, the Athletics Facility Director, Evan Feinglass admitted that his Department was

responsible for snow and ice removal of the parking lot behind Gampel, but they did not own or lease any ice sander equipment. In 2009 UConn had a winning boys and girls basketball teams and despite making millions off basketball at Gampel, they certainly could have afforded a sander so students who use their parking lot would be safe. The athletics department never bothered to clear the parking unless there was a game. There was no basketball game for the boys or girls in the week before the fall down. Everyone at UConn knew that regular students were known to regularly traverse the area, but no one made sure the area was safe. Had Christian gone to a private university instead of a state school, we could seek justice in court and we would not need to appeal the Claims Commissioner. As a matter of policy sovereign immunity should be waived for state universities and colleges. The Claims Commission as a creature of the Department of Administrative Services protects the General Funds for the state, but UConn generally does not receive any appropriations from the state coffers, but relies upon tuition, donations and payment for services like a private colleges. Nevertheless, state colleges and universities enjoy the legal protection of sovereign immunity that private institutions do not have. Most of the public is unaware that if something happens, they cannot sue. The personnel charged with the safety of UConn students like the facilities directors knew the Claims Commissioner and Attorney General Office would have their back so the state college administration acted in a very cavalier manner in safeguarding the campus for its students in ways that other fine private institutions like Trinity, Wesleyan, Yale, Tokyo-Post, University, Connecticut College, Quinnipiac, Hartford or Fairfield University in our state would never dare do to the public. You have the power to waive sovereign immunity for post secondary public education. Like other states in this nation have done. Only 5 states - Connecticut, Illinois, Kentucky, North Carolina and Ohio use a Claims Commission to limit claims

according to NCSL rpt updated on Sept 8, 2010. <http://www.ncsl.org/issues-research/transport/state-sovereign-immunity-and-tort-liability.aspx> For the sake of the students, sovereign immunity should be waived for state universities and colleges. The problem I have maybe as a former legislator is the system gives state universities unfair advantage over students compared to private intuitions. It is unfair to demand tuition from the public and then hide behind sovereign immunity. Philosophically the state is treating students like inmates before the Claims Commission. The second problem I have is that the Claims Commissioner although an attorney is an employee of DAS the Department of Administrative Services. His job is to protect the state coffers which may make sense for agency funded by general fund, but UConn is self sustained by private funding through tuition, donations and what it sells and there is no reason to deprive Christian of justice. The sad reality is that Christian Perez not only lives with pain caused by the fall and the loss of his lifestyle not being able to do what he loved like playing basketball, volleyball and the lifestyle he enjoyed before the fall, but the Perez family now faces around \$16,000 medical owed to Windham Hospital and the Orthopedic doctors I wish I could go before a jury like a claim against a private college. Although I wish you would waive sovereign immunity for state schools and universities but for this appeal all we ask is that the General Assembly is to let us go to a real Court before a real Judge. Even if you grant me the right to sue I can only go before a judge and not a jury, but at least that's fairer than going before an employee of Administrative Services like the Claims Commissioner. The decision of the Claims Commission was a poor excuse for not sanding or caring like a reasonable institution, The Claims Commission denied Christian claims because there was alternative bus transportation and routes and found that going to class not cancelled in bad weather was assumption of risk or contributory negligence.

The legal argument relied upon by the Claims Commission is just wrong. The Claim Commissioner need only state a cause of action because the Claimant only must show a "cognizable claim". "When sovereign immunity has not been waived, the claims commissioner is authorized by statute to hear monetary claims against the state and **determine whether the claimant has a cognizable claim.** (Emphasis is my own). See General Statutes §§ 4-141 through 4-165b. The claims commissioner, if he deems it 'just and equitable,' may sanction suit against the state on any claim 'which, in his opinion, presents an issue of law or fact under which the state, were it a private person, could be liable.' General Statutes § 4-160(a)." *Crosser v. City of New Haven*, 562 A.2d 1080, 212 Conn. 415 (Conn. 1989). . The test of whether there is a "cognizable claim" is merely a test whether the Claimant has presented a cause of action that could survive a motion to strike because the Courts have recognized that cause of action. *Rizzio v. Davidson Ladders, Inc.*, 905 A.2d 1165, 280 Conn. 225 (Conn. 2006). The claimant has presented a claim sounding in negligence where the evidence not only shows a cognizant claim has been made , but if the University of Connecticut was a private institution, a trier of fact could easily find the evidence shows the University of Connecticut with a little reasonable care for its business invitee-students could have avoided this incident . UConn did not provide a safe environment for its students and can hide from responsibility through the Claims Commissioner. The argument for alternative routes and means of transportation is just silly. It is as absurd to say he would not have fallen if he taken another route as it is to say had he alternatively to go to University of Puerto Rico instead of UConn or any automobile accident on I-91 would not have happened if the driver would have taken the Wilbur Cross. As to the issue of contributory negligence or assumption of risk, it is the burden of the state to prove consent that he knew that ice was underneath the snow and accepted the risk of dangers. However, there was no evidence of

such. "The assumption of risk doctrine has no application unless there is knowledge of the existence of the risk, together with an appreciation of the extent of the danger. One cannot assume a risk unless one knows about it, appreciates it, and consents to assume it.' See also *Roberts v. Gray*, 119 Vt. 153, 157, 122 A.2d 855. *Berry v. Whitney*, 125 Vt. at 387, 217 A.2d 41" *Hoar v. Sherburne Corp.*, 327 F.Supp. 570, 573 (USDC Cir, D.Vt. 1971). The defendant cannot prevail with its assumption of risk, contributory negligence defense where he did not consent to assume the danger. The University was negligent in failing to sand the parking lot or failing to warn Christian Perez of the hazardous conditions or failing to delay class when they had the capacity and duty to their tuition paying invitee students. On the other hand there was neither contributory negligence, assumption of risk in taking the path he took to the class or in not taking any alternative paths because there was no consent to general danger where the University required him to attend classes not the specific danger he could not consent to dangers that he could not see ice where he fell was camouflaged by the snow. Nor did he consent to assume the general danger of going to class where the University required him to attend class and did not call off classes. The In other words , the defendant cannot prevail with its assumption of risk, contributory negligence defense Please let Christian Perez pursue justice and reject the decision of the Claims Commissioner.



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