

**JUDICIARY COMMITTEE HEARING
IN THE MATTER OF CHARLA NASH
MARCH 21, 2014**

EXHIBITS

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1.	CGS §4-159(b)
2.	CGS §4-159(c)
3.	CGS §4-141
4.	CGS §4-158(a)
5.	CGS §4-160(a)
6.	CGS §4-160(c)
7A.	CGS §26-55 in effect at time of Feb. 16, 2009 attack
7B.	CGS §26-55 2003 Grandfather Amendment
7C.	CGS §26-55 2004 Travis Amendment
7D.	CGS §26-55 in effect after the Feb. 16, 2009 attack
8.	Judiciary Committee Issue and Scope of Review
9.	Timeline of Pertinent Facts
	A. Deposition Excerpt Arthur J Rocque, Jr.
	B. Email from Mary Krogh of Feb. 25, 2009
	C. Travis Amendment Legislative History
	D. Elaine Hinsch's 1 st Memorandum dated October 4, 2005
	E. Email from Mary Krogh of July 1, 2008
	F. Deposition Excerpt Marcella Leone
	G. Deposition Excerpt Elaine Hinsch
	H. Deposition Excerpt Elaine Hinsch
	I. Elaine Hinsch's 2 nd Memorandum dated October 28, 2008
	J. Deposition Excerpt Elaine Hinsch
	K. Deposition Excerpt Edward Parker
	L. Deposition Excerpt Dale W. May

- M. Pierce R. Onthank Arrest Warrant
N. Photos of Siamang primate and
Travis the chimpanzee
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10. Restatement (Second) of Torts §520
 11. *Wright v. Brown* Supreme Court of CT
 12. Pierce R. Onthank Arrest Warrant
 13. CGS §4-142
 14. Claims Commissioner's June 14, 2013,
Memorandum of Decision
 15. Summary of Salient Facts
- Charla Nash Link
to
Charla Nash 2014 video
911 Call
Edward Parker video

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-159. Submission of certain claims to legislature. Review and disposition of claims by legislature.

(b) The General Assembly shall:

(1) With respect to a decision of the Claims Commissioner ordering the denial or dismissal of a claim pursuant to subdivision (1) of subsection (a) of section 4-158:

(A) Confirm the decision; or

(B) Vacate the decision and, in lieu thereof, (i) order the payment of the claim in a specified amount, or (ii) authorize the claimant to sue the state;

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-159. Submission of certain claims to legislature. Review and disposition of claims by legislature.

(c) The General Assembly may grant the claimant permission to sue the state under the provisions of this section when the General Assembly deems it just and equitable and believes the claim to present an issue of law or fact under which the state, were it a private person, could be liable.

CONNECTICUT GENERAL STATUTES
CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-141. Definitions.

As used in this chapter: "Claim" means a petition for the payment or refund of money by the state or for permission to sue the state; "just claim" means a claim which in equity and justice the state should pay, provided the state has caused damage or injury or has received a benefit; "person" means any individual, firm, partnership, corporation, limited liability company, association or other group, including political subdivisions of the state; "state agency" includes every department, division, board, office, commission, arm, agency and institution of the state government, whatever its title or function; and "state officers and employees" includes every person elected or appointed to or employed in any office, position or post in the state government, whatever such person's title, classification or function...

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-158. Decision by Claims Commissioner. Request for legislative review. Payment of smaller claims.

(a) The Claims Commissioner may (1) order that a claim be denied or dismissed, (2) order immediate payment of a just claim in an amount not exceeding twenty thousand dollars, (3) recommend to the General Assembly payment of a just claim in an amount exceeding twenty thousand dollars, or (4) authorize a claimant to sue the state, as provided in section 4-160.

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-160. Authorization of actions against the state.

(a) When the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable.

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-160. Authorization of actions against the state.

(c) In each action authorized by the Claims Commissioner pursuant to subsection (a) or (b) of this section or by the General Assembly pursuant to section 4-159 or 4-159a, the claimant shall allege such authorization and the date on which it was granted, except that evidence of such authorization shall not be admissible in such action as evidence of the state's liability. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The 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.

CONNECTICUT GENERAL STATUTES
CHAPTER 490 – FISHERIES AND GAME

Sec. 26-55. Permit for importing, possessing or liberating fish, wild birds, wild mammals, reptiles, amphibians and invertebrates.

No person shall import or introduce into the state, or possess or liberate therein, any live fish, wild bird, wild mammal, reptile, amphibian or invertebrate unless such person has obtained a permit therefor from the commissioner, provided nothing in this section shall be construed to require such permit for any primate species that weighs not more than fifty pounds at maturity that was imported or possessed in the state prior to October 1, 2003. Such permit may be issued at the discretion of the commissioner under such regulations as the commissioner may prescribe. The commissioner may by regulation prescribe the numbers of live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates of certain species which may be imported, possessed, introduced into the state or liberated therein. The commissioner may by regulation exempt certain species or groups of live fish from the permit requirements. The commissioner may by regulation determine which species of wild birds, wild mammals, reptiles, amphibians or invertebrates must meet permit requirements. The commissioner may

totally prohibit the importation, possession, introduction into the state or liberation therein of certain species which the commissioner has determined may be a potential threat to humans, agricultural crops or established species of plants, fish, birds, mammals, reptiles, amphibians or invertebrates. The commissioner may by regulation exempt from permit requirements organizations or institutions such as zoos, research laboratories, colleges or universities, public nonprofit aquaria or nature centers where live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates are held in strict confinement. Any such fish, bird, mammal, reptile, amphibian or invertebrate illegally imported into the state or illegally possessed therein **shall** be seized by any representative of the Department of Environmental Protection and **shall** be disposed of as determined by the commissioner. Any person, except as provided in section 26-55a, who violates any provision of this section or any regulation issued by the commissioner as provided in this section shall be guilty of an infraction. Importation, liberation or possession of each fish, wild bird, wild mammal, reptile, amphibian or invertebrate in violation of this section or such regulation shall be a separate and distinct offense and, in the case of a continuing violation, each day of

continuance thereof shall be deemed to be a separate and distinct offense.

(1949 Rev, S. 4861; 1955, S. 2453d; 1967, P.A. 169; 1971, P.A. 174; 872, S. 251; P.A. 77-109, S. i; 2; P.A. 85-53, S. 4; P.A. 89-218, S. 1, 3; P.A. 03-192, S. 3; June 30 Sp. Sess. PA. 03-6, S. 242; PA. 04-97, S. 5; 04-257, S. 42.)



House Bill No. 6806

June 30 Special Session, Public Act No. 03-6

Sec. 242. Section 26-55 of the general statutes, as amended by public act 03-192, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

No person shall import or introduce into the state, or possess or liberate therein, any live fish, wild bird, wild mammal, reptile, amphibian or invertebrate unless such person has obtained a permit therefor from the commissioner provided nothing in this section shall be construed to require such permit for any live fish, wild bird, wild mammal, reptile amphibian or invertebrate that was imported, introduced into the state, possessed or liberated in the state prior to October 1, 2003. Such permit may be issued at the discretion of the commissioner under such regulations as the commissioner may prescribe. The commissioner may by regulation prescribe the numbers of live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates of certain species which may be imported, possessed, introduced into the state or liberated therein. The commissioner may by regulation exempt certain species or groups of live fish from the permit requirements. The commissioner may by regulation determine which species of wild birds, wild mammals, reptiles, amphibians or invertebrates must meet permit requirements. The commissioner may totally prohibit the importation, possession, introduction into the state or liberation therein of certain species which the commissioner has determined may be a potential threat to humans, agricultural crops or established species of plants, fish, birds, mammals, reptiles, amphibians or invertebrates. The commissioner may by regulation exempt from permit requirements organizations or institutions such as zoos, research laboratories, colleges or universities, public nonprofit aquaria or nature centers where live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates are held in strict confinement. Any such fish, bird, mammal, reptile, amphibian or invertebrate illegally imported into the state or illegally possessed therein shall be seized by any representative of the Department of Environmental Protection and shall be disposed of as determined by the commissioner. Any person, except as provided in section 26-55a, who violates any provision of this section or any regulation issued by the commissioner as herein provided shall be guilty of an infraction. Importation, liberation or possession of each fish, wild bird, wild mammal, reptile, amphibian or invertebrate in violation of this section or such

regulation shall be a separate and distinct offense and, in the case of a continuing violation each day of continuance thereof shall be deemed to be a separate and distinct offense.

CONNECTICUT GENERAL STATUTES
CHAPTER 490 – FISHERIES AND GAME

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totally prohibit the importation, possession, introduction into the state or liberation therein of certain species which the commissioner has determined may be a potential threat to humans, agricultural crops or established species of plants, fish, birds, mammals, reptiles, amphibians or invertebrates. The commissioner may by regulation exempt from permit requirements organizations or institutions such as zoos, research laboratories, colleges or universities, public nonprofit aquaria or nature centers where live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates are held in strict confinement. Any such fish, bird, mammal, reptile, amphibian or invertebrate illegally imported into the state or illegally possessed therein shall be seized by any representative of the Department of Environmental Protection and shall be disposed of as determined by the commissioner. Any person, except as provided in section 26-55a, who violates any provision of this section or any regulation issued by the commissioner as provided in this section shall be guilty of an infraction. Importation, liberation or possession of each fish, wild bird, wild mammal, reptile, amphibian or invertebrate in violation of this section or such regulation shall be a separate and distinct offense and, in the case of a continuing violation, each day of

continuance thereof shall be deemed to be a separate and distinct offense.

(1949 Rev, S. 4861; 1955, S. 2453d; 1967, P.A. 169; 1971, P.A. 174; 872, S. 251; P.A. 77-109, S. i; 2; P.A. 85-53, S. 4; P.A. 89-218, S. 1, 3; P.A. 03-192, S. 3; June 30 Sp. Sess. PA. 03-6, S. 242; PA. 04-97, S. 5; 04-257, S. 42.)

CONNECTICUT GENERAL STATUTES
CHAPTER 490 – FISHERIES AND GAME

Sec. 26-55. Permit for importing, introducing into state, possessing or liberating live fish, wild birds, wild mammals, reptiles, amphibians and invertebrates. Regulations. Exemptions. Seizure, relocation and disposal. Penalties.

(a) Except as provided in subsection (c) of this section, no person shall import or introduce into the state, or possess or liberate therein, any live fish, wild bird, wild mammal, reptile, amphibian or invertebrate unless such person has obtained a permit therefor from the commissioner. Such permit may be issued at the discretion of the commissioner under such regulations as the commissioner may prescribe. The commissioner shall by regulation prescribe the numbers of live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates of certain species which may be imported, possessed, introduced into the state or liberated therein. The commissioner may by regulation exempt certain species or groups of live fish from the permit requirements. The commissioner shall by regulation determine which species of wild birds, wild mammals, reptiles, amphibians or invertebrates must meet permit requirements. The commissioner may totally prohibit the importation, possession, introduction into the state or liberation therein of certain species which the commissioner has determined may be a potential

threat to humans, agricultural crops or established species of plants, fish, birds, mammals, reptiles, amphibians or invertebrates. The commissioner shall by regulation exempt from permit requirements organizations or institutions such as municipal parks, zoos, laboratories and research facilities maintained by scientific or educational institutions, museums, public nonprofit aquaria or nature centers where live fish, wild birds, wild mammals, reptiles, amphibians or invertebrates are held in strict confinement. For the purpose of this subsection and any regulation adopted pursuant to this subsection, ferrets (*Mustela putorius*), hedgehogs of the family Erinaceidae, genera *Atelerix*, sugar gliders (*Petaurus breviceps*) and degu (*Octodon degus*) shall not be deemed to be wild mammals.

(b) Any such fish, bird, mammal, reptile, amphibian or invertebrate illegally imported into the state or illegally possessed therein may be seized by any representative of the Department of Energy and Environmental Protection and may be relocated or disposed of as determined by the commissioner. The Department of Energy and Environmental Protection shall issue a bill to the owner or person in illegal possession of such animal for all costs of seizure, care, maintenance, relocation or disposal for such animal.

(c) Any person who violates any provision of this section or any regulation adopted by the commissioner pursuant to this section shall be assessed a civil penalty not to exceed one thousand dollars, to be fixed by the court, for each offense. Each violation shall be a separate and distinct offense. In the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Commissioner of Energy and Environmental Protection may request the Attorney General to institute an action in Superior Court to recover such civil penalty and any amounts owed pursuant to a bill issued in accordance with subsection (b) of this section and for an order providing such equitable and injunctive relief as the court deems appropriate.

(d) Any person who wilfully violates any provision of this section or any regulation adopted by the commissioner pursuant to this section shall be guilty of a class C misdemeanor.

Footnote: P.A. 09-198 designated existing provisions as Subsecs. (a) and (b), amended Subsec. (a) by adding Subsec. (c) exception and deleting exemption for certain primate species weighing not more than 50 pounds at maturity, making regulations mandatory and adding regulatory exemption for certain organizations and institutions, amended Subsec. (b) by making seizure, relocation and disposal discretionary, deleting infraction penalty

and adding bill of costs provision, added Subsec. (c) re civil penalty and Attorney General action and added Subsec. (d) re criminal penalty; pursuant to P.A. 11-80. Effective 10/1/09.

Judiciary Committee Issue and Scope of Review

In reference to the facts culminating in Charla Nash's injury, if the DEEP was acting as a private person could a court of law find the DEEP had liability (although not necessarily sole liability) for Charla's injury and would it be just and equitable to allow Charla Nash to have her day in court.

TIMELINE OF PERTINENT FACTS

Charla Nash submits the following timeline for the convenience of the Legislators derived from the documents, exhibits and deposition excerpts submitted to the Claims Commissioner.

- July 15, 1994** Sandra Herold purchases an infant chimpanzee, born on June 21, 1994, in Missouri, names it Travis and brings it to reside at her home in Stamford, Connecticut. Travis is the only chimpanzee known to be present in the State of Connecticut at that time.
- October, 2003** Travis escapes in downtown Stamford. The escape puts Travis on the DEEP "radar". The DEEP's knowledge of Travis reaches the Commissioner level as then Commissioner Arthur Rocque (he left the DEEP in 2004) testified in his deposition that Travis was commonly referred to as the "gorilla" in Stamford.
- Early 2003** Pursuant to Connecticut General Statutes Section 26-55, a chimpanzee is not permitted to be possessed in the state unless a permit for the animal has been issued by the DEEP. In 2003, the statute was amended, exempting from the permitting requirements under C.G.S. Section 26-55, all primates which had been in the state prior to October 1, 2003. This amendment is referred to as the "grandfather" provision.
- May 10, 2004** The DEEP spearheads an amendment (effective May 10, 2004) to C.G.S. Section 26-55 specifically aimed at preventing the grandfather clause from applying to Travis. Under the "Travis Amendment", the owner of a primate, even if the primate has been possessed in the state prior to October 1, 2003, is required to obtain a permit for the primate if the primate weighs over fifty pounds. If no permit is issued, the statute continued to require the DEEP to seize and dispose of the primate. During the legislative hearing process, it is confirmed that this amendment was identified as applying to only one animal.
- October, 2005** Elaine Hinsch, DEEP employee in the Division of Wildlife and the primary person addressing exotic animals in the state of Connecticut issues her first Memorandum wherein she states that Travis was not grandfathered under the law. She also confirms the DEEP's knowledge that Travis weighs over 100 pounds at that time and frequently travels in its owner's car.
- 2006 – 2008** Travis grows to full maturity and weighs approximately 200 pounds.

July, 2008

Mary Krogh, a private citizen involved with the Simian Society, sends an electronic mail to Elaine Hinsch. Ms. Krogh states that she kept "a tab on all the private monkey owners that I'm aware of and make certain that the public is not at risk and that their monkeys are staying home (the only exception is Travis and I believe your department keeps an eye on that situation.)".

September, 2008

Marcella Leone, owner of Lion Share Farm, a nature center/private zoo, plays back on her voicemail a nearly hysterical telephone call from Sandra Herold asking Marcella Leone to bring a dart gun to her residence as Travis is out of control. In her deposition, Leone describes the call as similar to the 911 call Herold made when Travis was mutilating Charla Nash. Leone plays this recording for Elaine Hinsch to show the urgency of the situation.

September, 2008

After speaking with Marcella Leone, Hinsch is concerned enough to discuss Travis' situation with Dale May, the Director of the Wildlife Division of DEEP and Edward Parker, the Bureau Chief of the Bureau of Natural Resources (the Wildlife Division reports to Edward Parker). They advise Hinsch to talk to the Environmental Conservation Police (ENCON), the DEEP police division, about Travis.

September, 2008

ENCON advises Hinsch that it lacks the knowledge or resources to handle the removal of Travis from Sandra Herold's residence and suggests, as a solution to the Travis issue, that Hinsch issue a permit to allow Travis to remain in the Herold residence. Hinsch and Parker both refuse to issue a permit but take no further action.

October, 2008

Marcella Leone calls Elaine Hinsch again voicing her concern for workmen performing renovation work at the Herold residence. She questions the strength of Travis' cage from a safety perspective.

October 28, 2008

Hinsch issues her second Memorandum, transmitting it via electronic mail and labeling it "High Importance". She observes that Travis is now an adult weighing 200 pounds, has tremendous strength and "is an accident waiting to happen." Hinsch e-mails her Memorandum to her supervisors, May and Parker, both of whom have desks twenty-five feet away from her desk at the DEEP offices. May never opens his e-mail. Parker advises Hinsch to work with May, as Parker planned to retire and would not be able to see the matter through to conclusion. Parker, at the time, does not realize that May was also planning to take advantage of the state's early retirement package and retire. The DEEP takes no further

action to investigate or to seize Travis but, during this same time period, Hinsch and ENCON pursue a criminal prosecution against Pierce Onthank for his illegal possession of a sixteen pound primate. The stated basis of the prosecution as set forth on the arrest warrant is the failure of Onthank to obtain a permit pursuant to C.G.S. §26-55.

November, 2008 Edward Parker has weekly meetings with Susan Frechette, the Deputy Commissioner of the DEEP (she started at the agency in April of 2008). During these weekly meetings, Parker advises Frechette of DEEP related issues. Parker never raises the Hinsch Memorandum with Frechette.

February 16, 2009 Travis brutally mauls and nearly kills Charla Nash.

February, 2009 Ed Parker of the DEEP gives a televised interview on Face the State. Parker, a recipient of the Memorandum stating that the chimpanzee was an accident waiting to happen, stated that he was not aware of any reports of violent behavior by the chimpanzee and that it had not been a problem until the attack. He also stated that the DEEP did have the authority to have removed the chimpanzee from its owner at the time of the attack.

March/April 2009

During her deposition, Susan Frechette said that she relied upon her staff to bring issues of importance to her attention, that she had no knowledge until a month after the attack that the DEEP had jurisdiction over wild animals and that if she had been made aware that there was a large chimpanzee running around she would have commenced an investigation of it. She admitted that the DEEP's "system" concerning wild animals needed improvement. Frechette read the Hinsch Memorandum one and one half months after the attack. She then spoke with Dale May who said that he must have "missed the memo". Frechette said she would have given the Travis situation a different level of priority had she been given a copy of the Memorandum when it was written. She also testified at her deposition that the DEEP had the authority to order a seizure of the chimpanzee.

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OFFICE OF THE CLAIMS COMMISSIONER

* * * * *

MICHAEL J. NASH, CONSERVATOR
OF THE ESTATE OF CHARLA NASH,

Claimant,

VS.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.

* * * * *



File No. 22046

Hartford, CT
March 29, 2011
9:35 a.m.

DEPOSITION OF ARTHUR J. ROCQUE, JR.

APPEARANCES:

FOR THE PLAINTIFF:

LAW OFFICE OF WILLINGER, WILLINGER & BUCCI
BY: MARK H. MIDDLEN, ESQ.
CHARLES WILLINGER, ESQ.
855 Main Street
Bridgeport, CT 06604

FOR THE DEFENDANT:

OFFICE OF THE ASSISTANT ATTORNEY GENERAL
BY: NYLE K. DAVEY, ESQ.
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120

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1 ROCQUE - DIRECT - MIDDLEN
2 species that were kept in captivity
3 illegally.

4 And I think that my recollection is that
5 the thrust was the list, the lions, the leopards,
6 the cheetahs and whatever the heck else on that
7 list.

8 Q. Okay. And you believe that's what
9 was changed or added to the statutes --

10 A. Yes.

11 Q. -- during your tenure?

12 A. Yes. It is my belief that we (A)
13 sought that list and expansion of that list
14 and, as I said earlier in response, that the
15 list that we submitted was not the list that
16 came out of the 2003, 2004 general assembly.

17 Q. Okay. Mr. Rocque, let's talk about
18 Travis the chimpanzee in Stamford. Have you
19 heard that name before?

20 A. Unfortunately, I have simply
21 because there was broad news coverage --

22 Q. Okay.

23 A. -- within the last couple three
24 years maybe.

25 Q. Well, regarding Travis, is it

1 ROCQUE - DIRECT - MIDDLEN
2 accurate to say that DEP had concerns about
3 Travis that actually dated back to the late
4 1990's?

5 A. You caught me at a memory lapse or
6 disadvantage. There was -- and I think the
7 word we commonly used at the agency at the
8 time, a term of art -- a gorilla in Stamford
9 that was causing some of my conservation
10 officers concerns. I don't know that I ever
11 knew his name or that he had a name.

12 Q. Okay.

13 A. Nor do I recall that he was ever
14 identified as a chimpanzee. It was always a
15 gorilla. And it had to do, interestingly
16 enough, my recollection with him driving an
17 automobile.

18 Q. Okay.

19 A. Which I mean, again, it doesn't
20 take a huge leap of fate to come to the
21 conclusion that that might not be the best
22 of situations.

23 But my conservation officers do not have
24 authority or my conservation officers at the time
25 did not have authority over the traffic laws in

Parker, Edward

From: Marquez, Brenda
Sent: Wednesday, February 25, 2009 11:08 AM
To: Parker, Edward
Subject: FW: Travis-solution

FYI...

From: Colon, Carmen
Sent: Wednesday, February 25, 2009 9:20 AM
To: Frechette, Susan
Cc: Marquez, Brenda
Subject: FW: Travis-solution

For your information.

Thank you.
 Carmen

From: TKrogh9424@aol.com [mailto:TKrogh9424@aol.com]
Sent: Wednesday, February 25, 2009 9:15 AM
To: Colon, Carmen; matthew.salner@po.state.ct.us
Subject: Travis-solution

Matt & Carmen, Please make certain that our Attorney General and Commissioner read this.

I still would like a meeting however let's begin via email.

- FACTS-**
- a. The Travis incident occurred. As the saying goes, it's water over the dam. Placing blame, saying we should have, could have, etc. doesn't matter. What's important now is how we go forward.
 - b. The lobbyist, Mr. Balducci and myself were instrumental in getting the initial grandfather's clause through. (100% grandfather)
 - c. At the meeting which was held between myself and DEP officials (Commissioner Less, Tom Tyler, Ed Powers and I believe 3 others) Chatham Carrillo (Senator Dalley's aid) and myself we had a good open discussion on primates. At that meeting Commissioner Less asked me if there were any potentially dangerous situations in Conn., I brought up Travis. As a result of that meeting it was agreed:
 1. to amend the grandfather's clause to exclude Travis
 2. I would do my best to prevent Conn from having any incidents. (excluding Travis since the state would handle that). In the interim I have been instrumental in:
 3. convincing three unrelated people they should move out of state or give up their primates. One person moved out of state. (Donna Musto) and the second person (Candy Wing) placed her primate in an out of state sanctuary. The third person was an 80 year woman that had her primate for over 40 years. She went into a home and I "babysat" the primate for her until it died which was within 6 months.
 4. Assisted many primate owners on better ways to cage and treat their primates.

- 5. When necessary I have contact DEP employee, Eileen Hirsch to intervene when I saw ads on primates and other exotics or in a few other instances.
- d. I have owned primates for almost 20 years. I do not buy, broker or sell. Mine are rescues. I firmly believe they do not belong in the homes of 99% of private individuals.
- e. I have always stayed low profile with mine. I have refused several interviews in the past with radio and television stations wanting to do a story on what it's like to live with a primate 24/7. (Even with what's going on, I do not want to be brought into it.)
- f. I have a good rapport with most of the primate pet owners in Conn. At the same time I have a relationship with HSUS, sanctuaries and other groups that are against pet ownership.
- g. I am pleased to report that to the best of my knowledge there is less than 20 households in the state that possess primates. **TO THE BEST OF MY KNOWLEDGE NONE HAVE CHIMPS.**

SOLUTION

- Having said that, here's my opinion:
 - a. give ALL owners of primates a 60 day window to register their primates. (do not exclude zoo's or research facilities because there has been more incidents in those facilities than in private homes)
 - b. set regulations- cage requirements, etc.
 - c. primates cannot be taken out in public except for USDA exhibitors.

With my experience and first hand knowledge I would be interested in this position.

I think this would be a non controversial solution to the issue and hopefully quiet things down.

Sincerely,

Mary Krogh

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!
 (http://pr.atwola.com/promoclk/100126575x1218822736x1201267864/aol?redir=http:%2F%2Fwww.freecreditreport.com%2Fpm%2Fdefault.aspx%3Fsc%3D668072%26hmpgID%3D62%26bcd%3Dfebe_mallfooterNO62)

prh

292

002183

House of Representatives

Thursday, April 22, 2004

Commissioner to have licensed both the commercial fisherman and seafood dealer for a commercial fisherman to sell for resale to a seafood dealer certain species that he caught in Connecticut.

The bill also makes some changes that affect charter, party and -- party boats. It expands what is considered a charter or party boat. It requires a person operating these vessels for fishing to hold a current U.S. Coast Guard-issued passenger for hire license. It allows the owner, operator or captain of these vessels to sell only tuna species rather than any of their catch.

It allows an unlicensed person to accompany and assist a person who has a commercial license. It corrects a glitch in the implementer from the summer which it removes the exemption from a DEP permit requirement for live fish, wild bird, wild mammal, reptile, amphibian or invertebrate that were imported or introduced in the state before October 1, '03. Under the bill, only primates that weigh 50 pounds or less and were imported into the state before October '03 remain exempt from the permit requirement.

REP.
WIDLITZ:

I move adoption, Mr. Speaker.

SPEAKER HYSLOP:

Will you remark?

prh

293

002184

House of Representatives

Thursday, April 22, 2004

Representative Chapin.

REP. CHAPIN:

(67th)

Thank you, Mr. Speaker. I rise in support of this bill, Sections 1 through 4. But I do have a question for the Chairman of the Environment Committee on Section 5.

SPEAKER HYSLOP:

Proceed, sir.

REP. CHAPIN:

(67th)

Thank you. In Lines 519 and 520 regarding primate species that weigh not more than 50 pounds at maturity, would you have any idea as to how many species that may include?

Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ:

(98th)

Through you, Mr. Speaker. I happen to know that only applies to one distinct primate. One.

Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Chapin.

REP. CHAPIN:

(67th)

Thank you, Mr. Speaker. I stand in support of this bill.

Hinsch, Elaine

From: EHinsch@DEPHTFD.FRANKLIN_PO
Sent: Tuesday, October 04, 2005 8:43 AM
To: EParker@DEPHTFD.ADMIN_PO
Subject: Summary: Non-human primates in private ownership
Attachments: primates.doc; CG92855.doc

For your review. If you would prefer this document to be in outline form, let me know and I will revise it.

Ex. D.

DRAFT

Summary: Non-human primates in private ownership

Background: Currently the Department is aware of 4 situations in which non-human primates are in private ownership in the State. It is reasonable to assume that there may be many other non-human primates that are being kept, legally or illegally, in private ownership, though no information is available.

To summarize, current law states, "No person shall import or introduce into the state, or possess or liberate therein, any live fish, unless such person has obtained a permit therefore from the commissioner, provided nothing in this section shall be construed to require such permit for any primate species that weighs not more than fifty pounds at maturity that was imported or possessed in the state prior to October 1, 2003. Such permit may be issued at the discretion of the commissioner under such regulations as the commissioner may prescribe". (CGS section 26-55 attached) The commissioner may totally prohibit the importation and possession of certain species which may be a potential threat to humans, agricultural crops or established species of plants, fish, birds, mammals, reptiles, amphibians or invertebrates. The commissioner may also, by regulation, exempt zoos, research laboratories, colleges or universities, public nonprofit aquaria or nature centers.

Non-human primates have become popular pets, with an estimated 15,000 maintained in captivity in the United States. Zoonotic diseases are a major concern with the potential for transmission of these diseases to humans. Some of the diseases of concern are tuberculosis, hepatitis, and herpes B. In 1975, due to the health and safety hazards associated with non-human primates, the U.S. Centers for Disease Control prohibited them from being imported into the United States for use as pets. Another issue of concern is that once non-human primates reach maturity, many of them develop aggressive and dangerous behavior. Many people still remain unconcerned by the risks of owning a non-human primate and will pay thousands of dollars to have one.

Persons in Connecticut who are currently in possession of non-human primates.

Donna Musto - Montville

On January 26, 2004, Ms. Musto contacted the Department relative to a baby java monkey that she had recently (after October 1, 2003) obtained from a supplier in North Carolina. This is the second monkey Ms. Musto has purchased from the North Carolina supplier. The first animal died. She said she had the animal because she has a debilitating disease and needs to have the animal to train it to help her. Ms. Musto is under going therapy and the therapist said she would sign whatever paperwork she needs to keep the monkey. She was told at this time that she imported the monkey illegally into the State. Recently, concerned persons in the public have reported that Ms. Musto has also taken possession of a capuchin monkey. Though most of this information is unconfirmed, it may warrant investigating.

Ms. Musto decided to pursue maintaining the monkey on the basis that she qualifies under ADA to have it as a service animal. The request was made that she submit documentation to justify her situation. On February 13, 2004, Ms. Musto faxed two letters to the Department, one from her psychologist and the other from her health care provider. Neither of these persons attested that Ms. Musto needs the animal to function in her daily life. The issue seems to be more of an emotional attachment to the monkey.

On March 4, 2004, Ms. Musto contacted the Department again to request a permit for the java monkey. She needed the permit because the veterinarian would not treat the animal without a valid permit. At that time the monkey was six months old and, according to Ms. Musto, the vaccinations for this animal should have started at 16 weeks. Ms. Musto was told again that she was in illegal possession of the monkey.

In 2004, Mary Krogh commented relative to Ms. Musto's situation and had concerns regarding Ms. Musto's ability to care for the monkey. Recently, I have been contacted by Linda Howard from Texas and Sara Whalen, Executive Director of Pets Alive, Inc. (a rescue organization) from New York regarding Ms. Musto and her monkey. Apparently, the situation has come to their attention through their contacts and information that was on a web chat site. Both of these people have requested that the Department take action in this situation.

Mary Krogh - Simeon Society

Ms. Krogh has macaque monkeys that have been in her possession prior to the change in the importation/possession statute (CGS 26-55) which grandfather's her animals. However, Ms. Krogh mentioned in a phone conversation that she has been taking in other non-human primates that are in need of homes. She may be eventually placing them in other locations, but there is no record of how many animals she has in permanent possession or how many are actually grandfathered in under the law. Also there was no mention as to whether these animals were in state or from out-of-state.

Tammy Santelli

Ms. Santelli owns Travis the chimpanzee. The Santelli's have had this animal for many years. Reportedly, he weighs 100+ pounds. Due to the fact that the animal weighs over the 50-pound exception, this animal is not grandfathered in under the law. Apparently the Santelli's own a business in Stamford and they use to travel the chimpanzees around in their car. On one occasion, the chimpanzee got out of the car and ran around the city for hours before the police could secure the animal back into the car. Due to this incident, persons from the general public contacted the Department with safety concerns.

Marcella Leone - Lionshare Farm Exotics

Ms. Leone has a gibbon ape that she has illegally imported from Florida. During September 2005, Ms. Leone submitted documentation to be considered a traveling zoo. She is affiliated with the "Hole in the Wall Gang Camp" and hopes to use the ape and other animals in programs at the facility.

Conclusion:

Under the law the Department has the authority to address the issue of importation and possession of non-human primates. The Departments of Agriculture and Health are lending to DEP to determine who should be allowed to possess one of these animals and under what conditions. Department of Health staff has expressed concerns with ownership of these animals because of the non-human primate/human disease cross over issues. However, their Department does not have any legal authority in the way of preventive measures to prohibit the possession of non-human primates. The Department of Agriculture requests that person have their non-human primates be tuberculosis tested but do not have laws to substantiate this policy. Agriculture regulates and inspects pet shops, and could prohibit the sale of non-human primates in the stores. However, that would not prevent a person from buying them out-of-state. The fact that all three Departments have concerns regarding non-human primates should warrant the necessity of joining forces in a coordinated effort to alleviate the problem of these animals in private ownership.

9/16/05

Hinsch, Elaine

From: TKrogh9424@aol.com
Sent: Tuesday, July 01, 2008 3:06 PM
To: Hinsch, Elaine
Subject: Re: Connecticut

Hi Elaine,

A few of us continually "police" around so we don't have any monkey issues in Conn. With all the issues in the other

states, we don't want to bring any to Conn and are attempting to prevent any issues.

I'm sure you're aware of the show that's on this evening. It's really going to bash the pet monkey trade and some of the

private monkey owners. I have not had any contact with the new commissioner and don't see a reason to at this point. If

you should be asked: we have no monkey brokers in this state nor do we have any that advertise in this state nor do we

have any monkey breeders in this state. I keep a tab on all the private monkey owners that I'm aware of and make

certain that the public is not at risk and that their monkeys are staying home. (the only exception is Travis and I believe

your department keeps an eye on that situation.)

If you get any calls after the show from someone wanting to talk to a private owner in Conn, feel free to give them

my name and number PROVIDING they are not from the general public. (reporter, politician, etc is fine)

Mary

 COPY

OFFICE OF THE CLAIMS COMMISSIONER

MICHAEL J. NASH, CONSERVATOR
OF THE ESTATE OF CHARLA NASH, X

Claimant

FILE NO. 22046

-vs-

X

STATE OF CONNECTICUT,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

DECEMBER 17, 2010

X

Respondent

DEPOSITION OF MARCELLA LEONE

Pretrial deposition taken in the above-entitled action on behalf of the claimant, before Jean Carreiro Velez, a Notary Public, Shorthand Reporter, License No. 170, pursuant to the Practice Book Civil Rules of Procedure, at the Law Offices of Ivey, Barnum & O'Mara, 170 Mason Street, Greenwich, Connecticut, at 10:06 a.m.

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Herold back in 2008?

MR. JONES: In 2008 or October of
2008?

MR. NEWMAN: Well, October of 2008.

A Well, okay. I know what you're trying to
get at. Yes, I called her in 2008 and it was about
Travis.

Q Was it in October, if you recall?

A I believe so.

Q Okay. And what was the substance of that
conversation?

A I was away for the weekend with my son
exploring colleges. And as you may know, I've
had -- I was trying to be -- make myself available
to Ms. Herold so if something went wrong I would
know and be there. And I -- she had left a message
on my answering machine that was very disturbing.
It was very similar to the recordings that you would
hear on that 911 call.

Q And what was it that she said?

A She was yelling at me to get my dart gun
and get over there and help her.

Q And did she say why?

A Well, I could hear him screaming and she --

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it was, you know, kind of a jumbled call.

Q Okay. And so this was in October 2008?

A Yes.

Q And you recall specifically because you were traveling with your son to visit colleges? Is that what you said?

A Yes.

Q What's your son's name?

A Peter.

Q And do you recall where you were visiting?

A I was at Franklin & Marshall.

Q Okay. And was the message Ms. Herold left a voice mail on your cell phone?

A No. It was on my house phone.

Q And how did you access that while you were away?

A I didn't. It's when I got home. That's why it was distressing, --

Q Okay.

A -- because it was after the fact.

Q I didn't understand that. Okay. Thank you. So, you listened to this message when you returned home?

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to think about placing animal -- placing Travis right away. And she actually hung up on me. And I waited a day and I tried again.

Q Did you reach her?

A To Sandy, yeah, I did. And she was very annoyed at me and wouldn't hear of it. And that's when I called Elaine Hinsch.

Q Okay. So, when you say this second call you made to her, you said she was very annoyed at you?

A Yes.

Q Because you had continued with your suggestions that Travis needed to be placed?

A Uh-huh.

Q You have to just say yes.

A Yes.

Q Thank you. And did she hang up on you again?

A One of the times she hung up on me. She was not happy either time.

Q Okay. So, is it fair to say she wasn't receptive to your suggestions?

A Yes.

Q Okay. And then you called Elaine Hinsch?

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A Yes.

Q Do you recall what you said to her?

A I initially told her that I -- that I think that Travis was not in the right situation and that I was concerned and that I knew that there were problems there and that something needed to be done.

Q What was her response to you?

A I don't remember exactly. I know one thing was she -- I don't know if she realized how -- you know, because I was not just to inflame the situation. She may not have realized how serious I was about it. She talked about possibly placing Travis at my facility, which I didn't want to do. And I, you know, wanted to, you know, kind of make a move to either being able to assist or know that something was -- you know, what was going on. And I ended up -- to show her how serious the situation was, I played the answering machine recording so she could hear it.

Q What was her reaction after listening to that tape?

A She was concerned and she said that she was going to do something.

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Q Was she specific about what she was going to do?

A No.

Q Did you have any further conversation with her beyond what you've already described?

A No.

Q Besides Ms. Hinsch did you contact anyone else about this?

A No.

Q Did you subsequently follow up with Ms. Hinsch after that conversation?

A I did.

Q When was that?

A I don't remember, but you know, maybe a week or so later.

Q And do you recall what that conversation was?

A I remember, you know, asking her, you know, what was happening and if something was going to happen. She said that they were handling it or they would handle it or something.

Q Was there anything else the two of you spoke about?

A That's the gist of it. I don't remember

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MICHAEL J. NASH, CONSERVATOR	:	FILE NO. 22046
OF THE ESTATE OF CHARLA NASH	:	
	:	
Claimant	:	
	:	
VS	:	
	:	
STATE OF CONNECTICUT, DEPARTMENT	:	
OF ENVIRONMENTAL PROTECTION	:	
	:	
Respondent	:	MARCH 16, 2011

CONTINUED DEPOSITION OF ELAINE HINSCH

A P P E A R A N C E S :

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MARK H. MIDDLEN, ESQ.

For the Claimant.

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55 Elm Street
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BY: NYLE K. DAVEY, ESQ.

For the Respondent.

Ruth E. Prescott, LSR
COMPUTER REPORTING SERVICE, LLC
1 Grandview Terrace
North Haven, Connecticut 06473-2043
(203) 234-1144

1 BY MR. NEWMAN:

2 Q Did Mr. Parker express any thoughts to you that he
3 had as to how to address the issue with the chimpanzee?

4 A I don't know.

5 Q Did he say anything to you about the situation?

6 A Yes.

7 Q What did he say?

8 A We agreed that issuing a permit in my words would
9 be irresponsible to issue a permit for this animal.

10 Q So you were both in agreement with your
11 assessment?

12 A Yes.

13 Q Was there any other discussion?

14 A I don't recall.

15 Q Did you ask Mr. Parker something to the effect so
16 what are we going to do?

17 A I don't recall.

18 Q Did Mr. Parker ask you something to that effect,
19 what are we going to do?

20 A No.

21 Q So the two of you were in agreement that you
22 couldn't issue a permit but neither of you then discussed
23 any other action to be taken?

24 A Not that I recall.

25 Q Was it your belief that during that time in the

1 late summer of 2008 Connecticut General Statute
2 Section 26-55 gave the Department of Environmental
3 Protection the authority to seize the chimpanzee?

4 A Yes.

5 Q And was it your belief that in the late summer of
6 2008 the Department of Environmental Protection -- let me
7 withdraw that question. And was it your belief in the late
8 summer of 2008 that Travis the chimpanzee was possessed
9 illegally by Ms. Herold?

10 A Would you please ask the question again?

11 Q Yeah, sure. Was it your belief that in the late
12 summer 2008 pursuant to Connecticut General Statute
13 Section 26-55 that Ms. Herold illegally possessed Travis the
14 chimpanzee?

15 MR. DAVEY: I object to the form of the
16 question.

17 A Yes.

18 Q And do you know whether or not Mr. Parker shared
19 those beliefs?

20 MR. DAVEY: Objection to the form of the
21 question.

22 A Yes.

23 Q So it's your understanding that Mr. Parker shared
24 those beliefs with you?

25 MR. DAVEY: Objection to the form of the

1 question.

2 A Yes.

3 Q After that late summer 2008 meeting with
4 Mr. Parker, do you know whether or not Mr. Parker discussed
5 this Travis situation with anyone else?

6 A Yes.

7 Q Do you know with whom he spoke?

8 A Dale May.

9 Q Did you participate in that discussion as well?

10 A No.

11 Q So how do you know that Mr. Parker spoke with Dale
12 May?

13 A Because Dale came to me, said they had discussed
14 it at their staff meeting.

15 Q Do you know when that meeting took place?

16 A September, a Monday in September 2008.

17 Q So this Monday in September 2008 was subsequent to
18 the meeting you had with Mr. Parker subsequent to your
19 meeting with the EnCon police?

20 A Yes, I believe so.

21 Q And so Mr. May told you after this staff meeting
22 in September 2008 that there had been a discussion regarding
23 the Travis situation?

24 A Actually, I think I need to retract.

25 Q Okay.

1 A Had the discussion with Mr. May, Mr. May brought
2 it to the staff meeting, thereby I was instructed to bring
3 the issue to Mr. Parker.

4 Q Okay, so let me just understand what you -- so
5 you're correcting some of your previous testimony as to the
6 sequence of events with regard to these conversations you
7 had?

8 A Um-hmm.

9 Q So if I understand you correctly, you had
10 previously testified that you had met with Mr. May and
11 Mr. May directed you to talk to Mr. Parker and then you
12 spoke to Mr. Parker who directed you to talk to EnCon
13 police, then you spoke to EnCon police and went back to
14 speak to Mr. Parker. That's what you had said before.

15 A Correct.

16 Q And if I understand now, your testimony is that
17 you spoke with Mr. May, Mr. May brought it up at a staff
18 meeting, the Travis situation, then after that staff meeting
19 Mr. May told you to talk about it with Mr. Parker and then
20 Mr. Parker told you to talk about it with the EnCon police
21 and then you went back after your conversation with the
22 EnCon police and had a second conversation with Mr. Parker?

23 A Yes.

24 Q And is your testimony still accurate then as to
25 when that staff meeting took place?

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OFFICE OF THE CLAIMS COMMISSIONER

MICHAEL J. NASH, CONSERVATOR : FILE NO. 22046
OF THE ESTATE OF CHARLA NASH :

Claimant

VS

STATE OF CONNECTICUT, DEPARTMENT :
OF ENVIRONMENTAL PROTECTION :

Respondent

: MARCH 16, 2011

CONTINUED DEPOSITION OF ELAINE HINSCH

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North Haven, Connecticut 06473-2043
(203) 234-1144

1 what information did she give to you?

2 A It's in the interrogatory.

3 Q Okay, you need to refresh your memory by referring
4 to these interrogatories?

5 A Page 31.

6 Q Page 31 of Claimant's Exhibit 1, and you're
7 referring to Answer 17.a that has the designation Marcella
8 Leone in the middle of the page?

9 A Yes.

10 Q Ms. Leone called you to tell you that she was
11 concerned about Sandra Herold and her chimpanzee, is that
12 correct?

13 A Yes.

14 Q And Marcella Leone stated -- and I'm reading from
15 the interrogatory answer, Marcella Leone stated that Sandra
16 Herold had workmen coming to her private residence in the
17 near future. Marcella Leone was concerned that the workmen
18 could be at risk. That's your answer?

19 A Yes.

20 Q Did Marcella Leone tell you anything else besides
21 what's contained in that interrogatory answer?

22 A Yes.

23 Q What else did she tell you?

24 A She was concerned that the chimpanzee's enclosure
25 may not be secure because it was old.

Hinsch, Elaine

From: Hinsch, Elaine
Sent: Tuesday, October 28, 2008 2:52 PM
To: May, Dale
Cc: Parker, Edward; Ganzer, Sara
Subject: Private ownership of a chimpanzee
Attachments: Travis 102808.doc
Importance: High

Please see attached regarding the private ownership of a chimpanzee.

Ex. I

Memo from DEP Biologist
October 28, 2008

Issue: Travis the Chimpanzee in Stamford

The issue of the private ownership of Travis the chimpanzee continues to be a concern as to public safety. The animal has reached adult maturity, is very large, and tremendously strong. I am concerned that if he feels threatened or if someone enters his territory, he could seriously hurt someone. It is my understanding that the animal is kept in the home with some type of enclosure (possibly an inside/outside enclosure). However, it has not been determined if the enclosure is strong enough to secure the animal.

As you are aware, this is the same chimpanzee that escaped from the owner's car and led the local police on a wild chase for hours in downtown Stamford until the animal could be secured back in the car. I have been told that the local police are friends with the owner and did not pursue the legality of a chimpanzee being housed in their town.

Clearly, CGS 26-55 prohibits the possession for a primate weighing more than fifty pounds. According to "Wikipedia", male chimpanzees typically weigh 75-155 lbs. Therefore, Travis does not meet the exemption for possession. This exemption was supported by those persons who own primates but recognized that a primate over 50lbs. has the size and strength to potentially inflict harm and damage.

The question remains, how should this situation be handled in an expedient manner?

Option: Send a letter to the owner explaining the situation, that she is in illegal possession of a primate and give her options as to how to resolve the problem.

Result: This appears to be the best option. It can be presented as a strong, but friendly gesture to resolving the problem. The Department can even offer to assist her with placement of the animal. It will give the owner time to consider the options and consequences, and hopefully come to a resolution. HOWEVER, a letter with a grace period may not be feasible at this point. Every day the animal stays on site, the likelihood of a problem occurring.

Option: Allow the owner to keep the animal, but determine that the enclosure is strong enough to maintain him.

Result: This would be the friendliest solution. However, it goes against CT law.

Option: Issue a permit to the owner to keep the animal as recommended by the EnCon police.

Result: The Department does not have the legal authority to issue a permit for this animal. Also, I feel it would be irresponsible to issue a permit if there is a potential public safety issue. We would just be condoning the activity.

Option: Have an EnCon Officer go to the house and speak to the owner, giving her the choice to relocate.

Result: The owner is unlikely to want to relocate the animal to a proper facility. She has had Travis a long time and is very attached to him. Also, the more serious issue is if an officer just shows up at the door, they may be putting themselves in a dangerous situation.

Option: Contact the owner and let her know that an EnCon Police officer would like to meet with her that day to discuss the primate.

Result: The officer may be able to evaluate the situation with less confrontation from the owner, and lessen the possibility of the animal reacting to a stranger in the house. Also, this is one way to act on the situation in an expedient manner. But I would still suggest that the officer take precautions and distance themselves from the animal.

Option: Contact the local police as to the situation with this animal: that is have they ever tried to address this concern; Is it within their local zoning laws to keep a wild animal in a residential area; because they know the owner, will they assist the Department with making contact with the owner?

Result: It would be helpful to have their support and help. However, at this point they have not expressed any concern with this animal being housed in the town. In my opinion, I would think that police officers, whose major concern is public safety, would be concerned about this animal.

Option: Work with a qualified veterinarian to tranquilize and remove the animal from the home.

Result: This would be extremely traumatic for everyone involved and riddled with problems.

I would like to express the urgency of addressing this issue. It is an accident waiting to happen.

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MICHAEL J. NASH, CONSERVATOR	:	FILE NO. 22046
OF THE ESTATE OF CHARLA NASH	:	
	:	
Claimant	:	
	:	
VS	:	
	:	
STATE OF CONNECTICUT, DEPARTMENT	:	
OF ENVIRONMENTAL PROTECTION	:	
	:	
Respondent	:	MARCH 16, 2011

CONTINUED DEPOSITION OF ELAINE HINSCH

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 1 Grandview Terrace
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 (203) 234-1144

1 Department, you know, overseeing that seizure of the animal.

2 Q And when you're talking about responsibilities,
3 were you thinking about legal responsibilities or were you
4 thinking more about the ethical responsibility as it relates
5 to humane treatment of animals?

6 A I think personally the humane treatment of
7 animals.

8 Q So that was your personal concern?

9 A Yes.

10 Q But as far as your concern for the departmental
11 responsibility, were you concerned about the legal
12 responsibilities of the Department or were you concern about
13 some other type of responsibility?

14 A If we took this action, that it would be done
15 responsibly and properly handled.

16 Q So you wanted to make sure that if the Department
17 made the decision to go ahead and seize this animal, that it
18 was done professionally, efficiently and designed in a way
19 to try to protect the wellbeing of the animal, is that a
20 fair statement?

21 A Yes.

22 Q And did you believe that those concerns outweighed
23 the concern for public safety?

24 A No.

25 Q So was the public safety concern presented by the

1 fact that an adult male chimpanzee was living in a
2 residential area, was that paramount in your mind?

3 A Yes.

4 Q And in the final sentence you wrote I would like
5 to express the urgency of addressing this issue. It is an
6 accident waiting to happen. You believed that?

7 A Yes.

8 Q And you honestly believed that if nothing was done
9 there would be some tragic result?

10 A Yes.

11 Q And you communicated this to your superiors,
12 Mr. Parker and Mr. May, correct?

13 A Yes.

14 Q And as far as you know, neither Mr. Parker nor
15 Mr. May took any action in response to this memo, correct?

16 A To my knowledge.

17 Q And in fact, you testified earlier that
18 Ms. Frechette was not even aware of the existence of this
19 memo until sometime in April of 2009.

20 A Correct.

21 Q After the accident happened, did you ask
22 Mr. Parker as to why he didn't do anything in response to
23 your October 2008 memo?

24 A I brought it to his attention.

25 Q And what exactly did you bring to his attention?

1. A That this memo had been written back in October.

2 Q And when did you have that conversation?

3 A February 17, 2009.

4 Q The day after the incident?

5 A Yes.

6 Q And was that the conversation you had with him
7 where he called you on your cell phone while you were at the
8 basketball game?

9 A Yes.

10 Q And what was his response when you brought the
11 memo to his attention?

12 A That he didn't recall the memo.

13 Q What was your reaction to that?

14 A As he was asking me questions I said please go
15 back and look at that memo because many of your questions
16 would be answered.

17 Q The phone conversation that occurred that evening
18 of February 17th, was that initiated by him?

19 A Yes.

20 Q When he called you, was he asking you questions
21 about what you knew about Travis and the situation that
22 existed in Stamford?

23 A Yes.

24 Q And one of your responses was to remind him that
25 you had written this memo?

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MICHAEL J. NASH, CONSERVATOR	:	FILE NO. 22046
OF THE ESTATE OF CHARLA NASH	:	
	:	
Claimant	:	
	:	
VS	:	
	:	
STATE OF CONNECTICUT, DEPARTMENT	:	
OF ENVIRONMENTAL PROTECTION	:	
	:	
Respondent	:	APRIL 20, 2011

DEPOSITION OF EDWARD PARKER

A P P E A R A N C E S :

WILLINGER, WILLINGER & BUCCI, P.C.
 Attorneys at Law
 855 Main Street
 Bridgeport, Connecticut 06604
 BY: MATTHEW D. NEWMAN, ESQ.
 MARK H. MIDDLEN, ESQ.

For the Claimant.

STATE OF CONNECTICUT
 Office of the Attorney General
 55 Elm Street
 Hartford, Connecticut 06141-0120
 BY: NYLE K. DAVEY, ESQ.

For the Respondent.

Ruth E. Prescott, LSR
 COMPUTER REPORTING SERVICE, LLC
 1 Grandview Terrace
 North Haven, Connecticut 06473-2043
 (203) 234-1144

1 issued for the possession of wild animals just for personal
2 use?

3 A I'm not aware of any permits issued for wild
4 animals for personal use.

5 Q But it's correct, isn't it, that the Department
6 issued permits despite the fact that there weren't specific
7 regulations promulgated by the commission?

8 A There weren't specific regulations for primates.
9 I can't recall if there were regulations for other types or
10 whether it was done by policy. I don't recall.

11 Q After you received this memo from Ms. Hinsch and
12 reviewed it, did you take any action in response to the
13 memo?

14 A I had told her prior to actually developing this
15 that she needed to work through Dale to -- once she got a
16 draft together which I consider this to be a first draft.
17 She sent it out as a memo. And the reason for that was I
18 had already begun to transition toward retirement and at the
19 time Dale had not made any retirement intentions known to me
20 or anyone else so my mind set was this issue was going to
21 continue on for the foreseeable future. I was not going to
22 be in a position in a relatively short period of time, a
23 matter of months, to be here and that she needed to work
24 directly with him to present the facts and information to
25 Dale, discuss it, resolve any conflicts, issues, whatever

1 the case may be and if necessary get me involved so I looked
2 at it as a cc. There were a lot of things in this memo that
3 I didn't agree with or didn't think were substantiated by
4 facts and I don't recall having conveyed that to Elaine. I
5 kind of assumed based upon the way it was written Dale would
6 have had the same conclusion and that I fully expected that
7 Elaine would follow up with Dale and discuss this and if
8 there were issues or concerns, one or both of those
9 individuals would bring it to my attention. There was no
10 feedback from Dale on this issue. There was no meeting or
11 conversation that I'm aware of and I didn't discover this
12 until after the Charla Nash incident with Dale and Elaine on
13 this issue and to the best of my knowledge, Elaine didn't
14 initiate any follow-up action that I'm aware of with Dale on
15 this particular issue.

16 Q So specifically you didn't have any discussions
17 with Mr. May about this memo prior to the attack on
18 Ms. Nash?

19 A I don't recall any discussion with Dale on this
20 prior to the attack of Charla Nash.

21 Q And you don't recall any discussion you had with
22 Ms. Hinsch about the memo after she issued it?

23 A I don't recall any specific -- there was no
24 specific meeting, there was no specific conversation, there
25 was no follow-up memos. I believe there may have been a

OFFICE OF THE CLAIMS COMMISSIONER

* * * * *

 COPY

MICHAEL J. NASH, CONSERVATOR
OF THE ESTATE OF CHARLA NASH,

Claimant,

VS.

File No. 22046

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
Respondent.

* * * * *

Hartford, CT.

April 8, 2011

9:05 a.m.

DEPOSITION DALE W. MAY

APPEARANCES:

FOR THE PLAINTIFF:

LAW OFFICE OF WILLINGER, WILLINGER & BUCCI
BY: CHARLES WILLINGER, ESQ.
MARK H. MIDDLEN, ESQ.
855 Main Street
Bridgeport, CT 06604

FOR THE DEFENDANT:

OFFICE OF THE ASSISTANT ATTORNEY GENERAL
BY: NYLE K. DAVEY, ESQ.
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120

COMPUTER REPORTING SERVICE, LLC - (203) 234-1144

1 MAY - DIRECT - NEWMAN
2 is Ed Parker's secretary.

3 Q. When is it dated?

4 A. It's dated October 28th, 2008,
5 regarding the private ownership of a
6 chimpanzee.

7 And then, basically, she is outlining
8 options as to what the department could do, because
9 she feels that the animal poses a safety threat.

10 Q. When is the first time you saw this
11 document?

12 A. First time I saw that document was
13 after the incident with Miss Nash.

14 Q. So it's your testimony, as you sit
15 here today, that you never saw this document
16 prior to February 16th, 2009?

17 A. Correct.

18 Q. And it was e-mailed to you on
19 October 28th, 2008, correct?

20 A. Yes.

21 Q. And it's your testimony that you
22 never read the document?

23 MR. DAVEY: A point of
24 clarification, when you're using the term
25 "document" are you referring to the e-mail

1 MAY - DIRECT - NEWMAN

2 or are you referring to the attachment?

3 Q. Well, let's start: Is it your
4 testimony that you never read the e-mail?

5 A. I did not open the e-mail. In
6 fact, when Elaine gave me a hard copy of
7 this later, I went back to look.

8 On a typical day I would get between 100 or
9 200 e-mails. At certain times of the year some of
10 those would be extremely important. Some would
11 require a lot of time to respond to.

12 And, typically, the way I would try to scan
13 through them, I'd look at the topic, but I'd also
14 look at who it was from.

15 In the case of Elaine, because she did work
16 so closely to me, you know, if I had to prioritize
17 which ones I was going to open, sometimes the people
18 nearest to me I didn't, you knew, because I knew if
19 it was important, I would talk to them.

20 And I looked at the subject, title, you
21 know, private ownership of chimpanzee. It didn't
22 really catch my attention, I guess, as critical.

23 And then when I did go back and look and
24 refresh my memory -- that was before I retired I
25 went back and looked -- and there were several

DOCKET NO. _____

**INSTRUCTIONS
TO PREPARER**

1. Use only for misdemeanors.
2. Prepare in triplicate; retain a copy.
3. Appearance Date must be within 14 days date of summons.

TO OFFICER MAKING SERVICE

1. After serving a copy on the accused in accordance with Pl. Bk. 602, deliver the original clerk with the return of service complete

TO CLERK

1. Check return of service; assign docket #
2. Assign for hearing on date specified.

Name and address of accused

PIERCE R OINTHANK
1257 JENNINGS ROAD
FAIRFIELD, CT.

NOTE: Fold at mark and mail in a #10 window envelope.

Fold

NOTICE TO ACCUSED NAMED ABOVE

1. This paper summons you to appear in court.
2. If you do not appear at the time and place specified below, an application will be made for the issuance of a warrant for your arrest.
3. You are entitled to be represented by an attorney who should appear with you in court on the Court Appearance Data set out below.
4. If you are charged with an offense punishable by imprisonment you are unable to afford an attorney, you may be entitled to the services of a Public Defender and you should immediately contact the Defender's office.
5. If you are under the age of eighteen you must appear in court with your PARENT OR GUARDIAN.

SUMMONS

You are hereby summoned to appear before the Superior Court at:

ADDRESS OF COURT (Number, street and town)	JUDICIAL DISTRICT OR C.A.	COURT APPEARANCE DATE AND TIME
123 HOYT STREET STAMFORD, CT.	#1	JAN. 23, 2009 10:00

then and there to answer to the following complaint against you:

COMPLAINT

The undersigned prosecuting authority complains and alleges to the above-named court that on or about

DATE OF OFFENSE	AT (Town)
AUGUST 13, 2008	GREENWICH, CT. STAMFORD, CT

the above-named accused did commit the following misdemeanor(s):

MISDEMEANOR(S)	IN VIOLATION OF (statute of code)
ILLEGAL POSSESSION OF A PRIMATE	26-55

DATED AT (Town)	ON (Date)	SIGNED (Judge, Assistant State's Attorney)
STAMFORD	12-30-08	<i>[Signature]</i> (Witness)

FOR COURT USE

TO PREPARER: Complete the following if this information can be obtained:

DATE OF BIRTH OF ACCUSED	TEL. NO. OF ACCUSED	POLICE DEPT. WHERE CASE ORIGINATED	POLICE CASE NO.
10-23-1959	203-255-4241	CT. DEPT. ENVIRO. POLICE	08-11596

I hereby certify that I served the foregoing summons and complaint by: ("X" one)

- DELIVERING A COPY PERSONALLY TO THE ABOVE-NAMED ACCUSED.
- LEAVING A COPY AT THE USUAL PLACE OF ABODE OF THE ABOVE-NAMED ACCUSED WITH A PERSON OF SUITABLE AGE AND DISCRETION RESIDING THEREIN. NAME OF PERSON COPY LEFT WITH _____
- MAILING A COPY, CERTIFIED MAIL, TO THE ABOVE-NAMED ACCUSED AT HIS/HER LAST KNOWN ADDRESS. ("X" one below)
- RETURN RECEIPT ATTACHED. RETURNED UNDELIVERED.

DATE OF SERVICE	SIGNED (Server)	TITLE OF SERVER
1-7-09	<i>[Signature]</i> 622	Sgt. Enlon Police

ARREST WARRANT APPLICATION
D.C.R. 60b Rev 10-04
 C.G.S. 54-2a
 Pl. Bk. Sec 36-1, 36-2, 36-3

**STATE OF CONNECTICUT
 SUPERIOR COURT**
www.jud.state.ct.us

Supporting Affidavits Sealed	
<input type="checkbox"/> YES	<input type="checkbox"/> NO

Ino#: 08-11596 AGENCY NAME: CT State Environmental Conservation Police AGENCY NO. 5088
 NAME AND RESIDENCE (Town) OF ACCUSED: Pierce R. ONTHANK Fairfield COURT TO BE HELD AT (Town) Stamford G.A. NO. 1

APPLICATION FOR ARREST WARRANT

TO: A Judge of the Superior Court

The undersigned hereby applies for a warrant for the arrest of the above-named accused on the basis of the facts set forth in the:

AFFIDAVIT BELOW AFFIDAVIT(S) ATTACHED

DATE AND SIGNATURE	DATE	SIGNED (Prosecuting Authority)	TYPE/PRINT NAME OF PROSECUTING AUTHORITY
	12/30/08	<i>[Signature]</i>	WESS

AFFIDAVIT

The undersigned, being duly sworn, deposes and says:

That the undersigned, Sgt. Cynthia R. Schneider being duly sworn, does depose and state that he/she is a member of the Connecticut Department of Environmental Protection (D.E.P.), Division of Environmental Conservation Police and has been since 1/17/2000. At all times mentioned herein he/she was acting as a member of said department. The following facts and circumstances are stated from personal knowledge and observations as well as information received from other police officers acting in their official capacity and from official police reports and statements made by prudent and credible witnesses.

2. That, on October 28, 2008, this affiant was assigned to conduct an investigation involving illegal possession of a primate by Pierce R. Onthank, DOB 10/23/59. The complainant, Elaine Hinsch of the Department of Environmental Protection Wildlife Division, advised that Onthank had left a Slamang ape with Marcella Leone the owner of Lionshare Zoological Center in Greenwich and Stamford.

3. That, Pierce R. Onthank, does not and has never been issued a permit in Connecticut to possess or transport primates, dangerous, or endangered species. Onthank currently has no federal permits allowing him to possess or transport dangerous or endangered species.

4. That, this affiant has contacted Federal Agent Thomas Ricardi of the United States Fish and Wildlife Service; and advised him of this investigation. Agent Ricardi has initiated a federal investigation.

This is page 1 of a 5 page Affidavit.

DATE AND SIGNATURE	DATE	SIGNED (Affiant)
	Dec. 30, 2008	<i>[Signature]</i>
JURAT	SUBSCRIBED AND SWORN TO BEFORE ME ON (date)	SIGNED (Judge / Clerk, Comm. Sup. Ct. (Notary Public))
	DEC. 30, 2008	<i>[Signature]</i> 12/30/2008

FINDING

The foregoing Application for an arrest warrant, and affidavit(s) attached to said Application, having been submitted to and considered by the undersigned, the undersigned finds from said affidavit(s) that there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issuance of a warrant for the arrest of the above-named accused.

DATE AND SIGNATURE	SIGNED AT (city or town)	ON (DATE)	SIGNED (Judge/Judge Trial Referee)	NAME OF Judge/Judge Trial Referee
--------------------	--------------------------	-----------	------------------------------------	-----------------------------------

STATE OF CONNECTICUT
 Department of Environmental Protection
 Division of Law Enforcement
 79 Elm Street, Hartford, CT 06105

INCIDENT REPORT



ARREST SUPPLEMENTARY INVESTIGATION LOSS/DAMAGE OF STATE PROPERTY ATTACH EPC2-10 FATALITY

INCIDENT NO 08-11598	INCIDENT DATE 11:40	INCIDENT TYPE Illegal Possession of Primate	PG 1 OF 2
TOWN OF INCIDENT	CODE LOCATION	LATITUDE	LONGITUDE

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME ONTHANK	FIRST (ALL) Robert Pierce	SEX RACE DOB M/W 10/23/59	AGE 49.3	PHONE 203-255-4241
----------------------	------------------------------	------------------------------	-------------	-----------------------

NO 1257	STREET Jennings Rd.	CITY Fairfield	ST ZIP CT 06824	PREV REC MV	LIC TYPE LIC # 103403564	STATE CT
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G.A. 1	COURT DATE 01/23/09	BOND TYPE NA	BOND AMOUNT \$0.00	RELEASED ON SUMMONS NO Prosecutor's Summons	WEAPON CODE	ID PHOTOGRAPHS NONE
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OFFENSE # 1	28-55	Illegal Possession of a Primate Species
OFFENSE # 2		
OFFENSE # 3		
OFFENSE # 4		

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME	FIRST (ALL)	SEX RACE DOB	AGE	PHONE
-----------	-------------	--------------	-----	-------

NO	STREET	CITY	ST ZIP	PREV REC	LIC TYPE LIC #	STATE
----	--------	------	--------	----------	----------------	-------

G.A.	COURT DATE	BOND TYPE	BOND AMOUNT	RELEASED ON SUMMONS NO	WEAPON CODE	ID PHOTOGRAPHS
------	------------	-----------	-------------	------------------------	-------------	----------------

OFFENSE # 1		
OFFENSE # 2		
OFFENSE # 3		
OFFENSE # 4		

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME	FIRST (ALL)	SEX RACE DOB	AGE	PHONE
-----------	-------------	--------------	-----	-------

NO	STREET	CITY	ST ZIP	PREV REC	LIC TYPE LIC #	STATE
----	--------	------	--------	----------	----------------	-------

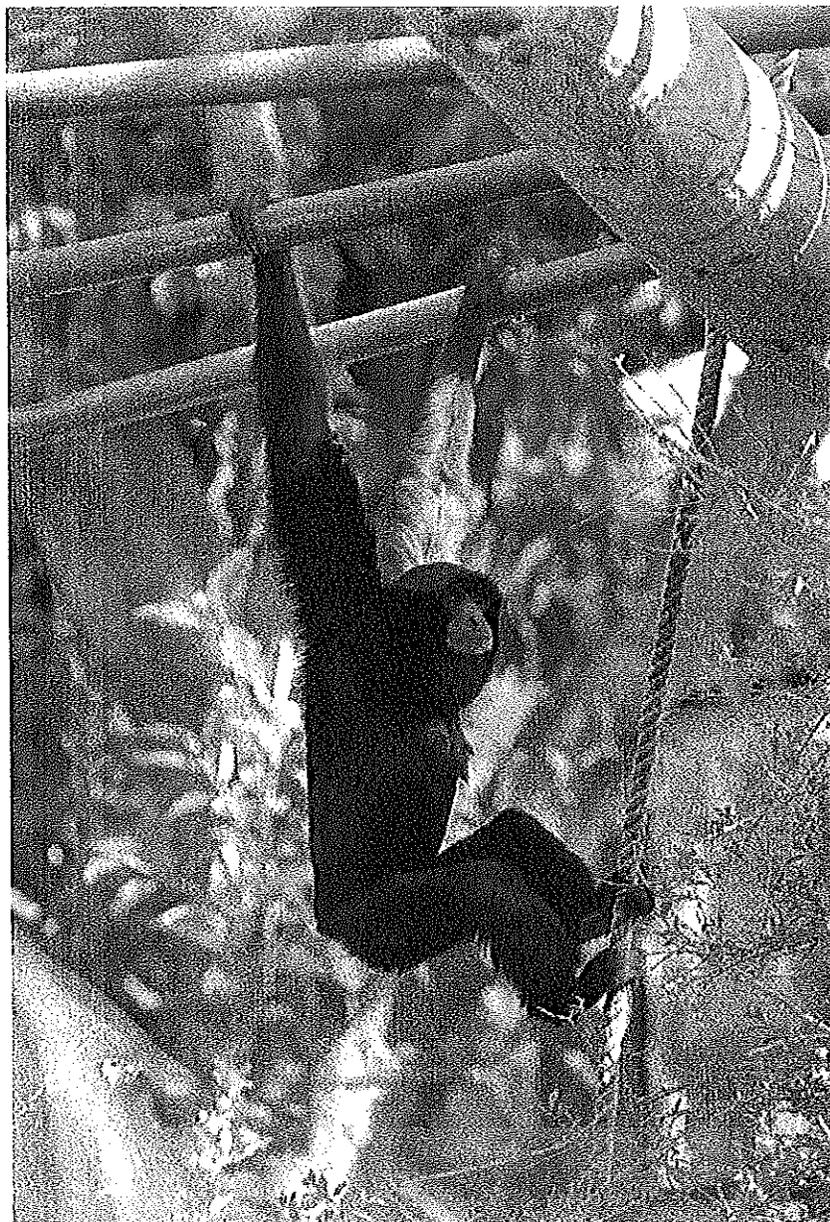
G.A.	COURT DATE	BOND TYPE	BOND AMOUNT	RELEASED ON SUMMONS NO	WEAPON CODE	ID PHOTOGRAPHS
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OFFENSE # 1		
OFFENSE # 2		
OFFENSE # 3		
OFFENSE # 4		

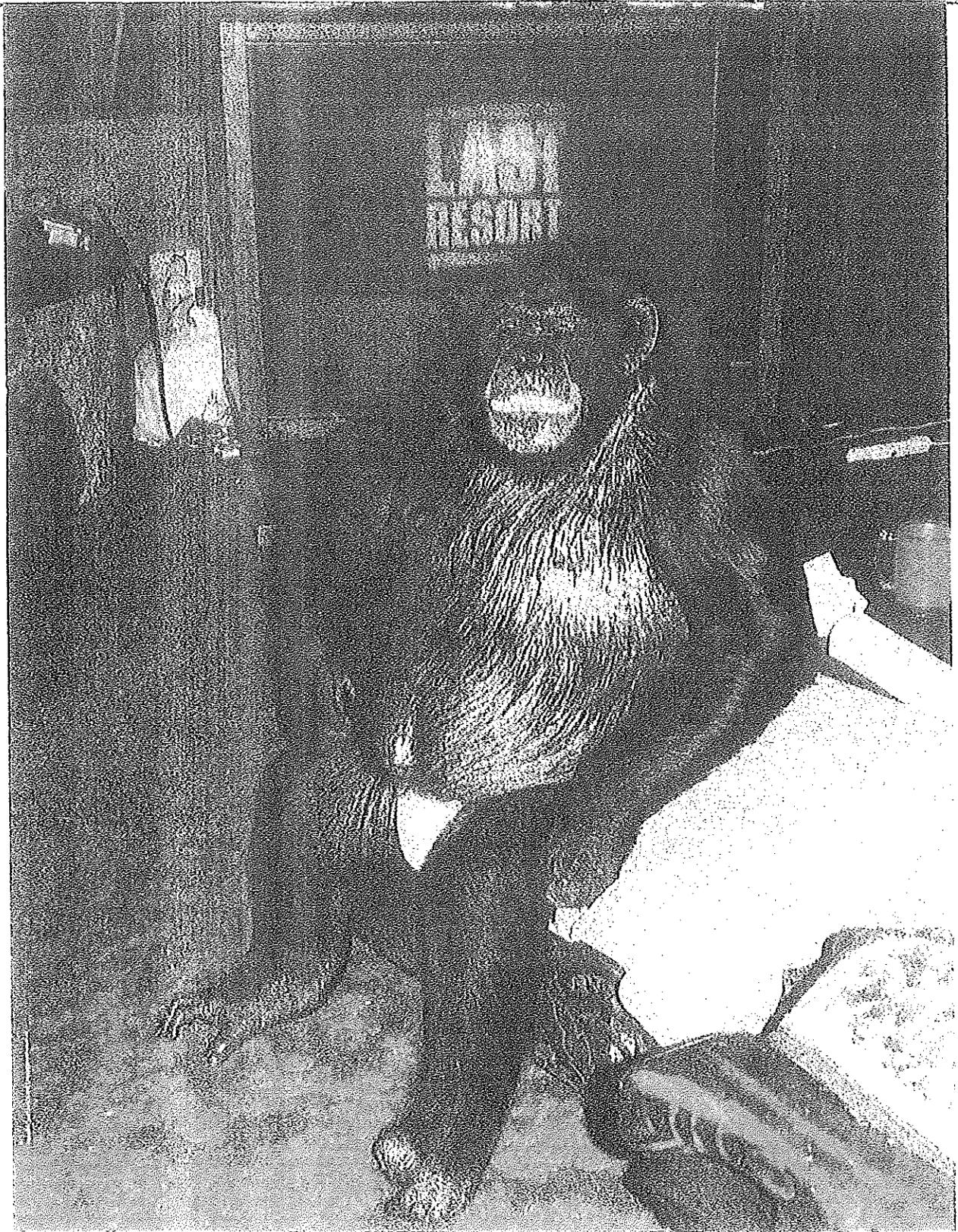
CASE STATUS Cld by Arrest	CODE 2	PROPERTY EVIDENCE SEIZED	PHOTOGRAPHS TAKEN
------------------------------	-----------	--------------------------	-------------------

INVESTIGATOR'S SIGNATURE <i>[Signature]</i>	BADGE NO 622	DATE 1/15/09	SUPERVISOR'S SIGNATURE <i>[Signature]</i>	BADGE NO 658	DATE 1/16/09
--	-----------------	-----------------	--	-----------------	-----------------

Siamang



PHYSICAL CHARACTERISTICS: The average adult Siamang is 2.5 to 3 feet long and weighs approximately 20 to 28 pounds.



COPY

OFFICE OF THE CLAIMS COMMISSIONER

MICHAEL J. NASH, CONSERVATOR : FILE NO. 22046
OF THE ESTATE OF CHARLA NASH :
 :
 :
 Claimant :
 :
 VS :
 :
 STATE OF CONNECTICUT, DEPARTMENT :
 OF ENVIRONMENTAL PROTECTION :
 :
 Respondent : APRIL 14, 2011

DEPOSITION OF SUSAN FRECHETTE

A P P E A R A N C E S :

WILLINGER, WILLINGER & BUCCI, P.C.
Attorneys at Law
855 Main Street
Bridgeport, Connecticut 06604
BY: MARK H. MIDDLEN, ESQ.

For the Claimant.

STATE OF CONNECTICUT
Office of the Attorney General
55 Elm Street
Hartford, Connecticut 06141-0120
BY: NYLE K. DAVEY, ESQ.

For the Respondent.

Ruth E. Prescott, LSR
COMPUTER REPORTING SERVICE, LLC
1 Grandview Terrace
North Haven, Connecticut 06473-2043
(203) 234-1144

1 obligations of the division.

2 Q From your review of this memo and your knowledge
3 of the incident on February 16, 2009, do you have a
4 different view than Mr. May as to the level of priority that
5 should have been assessed to this issue regarding Travis?

6 A I do.

7 Q And what is that?

8 A I believe that this should have been given more
9 attention.

10 Q Do you recall Elaine Hinsch issuing any other
11 memorandum regarding non-human primates in private ownership
12 in Connecticut?

13 A I know that subsequent to this matter with Travis
14 I became aware of another primate that the Department was
15 handling.

16 Q What primate was that?

17 A I believe it was a gibbon.

18 Q And was Ms. Hinsch involved in that matter?

19 A I believe so, yes.

20 Q How was she involved?

21 A I believe she was involved simply in that one of
22 her responsibilities is to, again, manage the permitting of
23 wild animals, and so in the course of her duties, this
24 animal came to her attention and she was responsible for
25 determining its fate.

1 A Yes.

2 Q On the third page of the report, page 3 of 9, the
3 complainant is listed as Elaine Hinsch?

4 A Yes.

5 Q And there's a statement from Elaine Hinsch
6 recorded on the second page where Officer Schneider says
7 that she on November 8th of '08 obtained a written statement
8 from Hinsch, do you see that?

9 A Yes.

10 Q And Hinsch went on to state and then it's in
11 quotes as to what was stated?

12 A Yes.

13 Q And this all dealt with Mr. Onthank's possession
14 of that primate without a permit, correct?

15 A Yes.

16 Q From your knowledge, do EnCon police have the
17 authority to arrest?

18 A Yes.

19 Q From your understanding, do EnCon police have the
20 authority to enforce the provisions of Connecticut General
21 Statutes Section 26-55?

22 A Yes.

23 Q And back in August of 2008, from your knowledge,
24 did EnCon police have those powers?

25 A Yes.

Restatement (Second) of Torts §520

The factors for a court to consider in determining whether an activity is abnormally dangerous are:

- (1.) The existence of a high degree of risk of some harm to the person;
- (2.) The likelihood that the harm that results will be great;
- (3.) The inability to eliminate the risk by the exercise of reasonable care;
- (4.) The extent to which the activity is not a matter of common usage;
- (5.) The inappropriateness of the activity to the place where it is carried on; and
- (6.) The extent to which its value to the community is outweighed by its dangerous attributes.

167 Conn. 464
Supreme Court of Connecticut

Mary F. WRIGHT
v.
William BROWN et al.

Jan. 14, 1975

Action, in five counts, to recover from city and its dog warden for injuries caused by dog bite. The Superior Court, Hartford County, Alexander, J., sustained defense demurrer to the last four counts and Parskey, J., rendered judgment for those defendants, and plaintiff appealed. The Supreme Court, Bogdanski, J., held that statute imposing on a dog warden the duty of quarantining for 14 days a dog found to have bitten a person who was not on the premises of the owner or keeper was intended not only to protect persons bitten by a dog from the threat of rabies but also to protect the general public from contact with diseased dog, that plaintiff, as a member of the general public, fell within that class, that alleged premature release of dog by the warden constituted a positive act sufficient to withstand demurrer to the negligence counts and that since duty to quarantine for 14 days was mandatory the city could not claim municipal immunity for any negligence in the breaking of the quarantine.

Error; judgment set aside and case remanded.

Attorneys and Law Firms

*465 Maxwell Heiman, Bristol, with whom, on the brief, was Louis P. Kocsis, Stamford, for appellant (plaintiff).

John W. Lemega, Hartford, with whom, on the brief, were Thomas J. Hagarty and Richard C. Tynan, Hartford, for appellees (defendants Gail Litke and the town of Plainville).

Before *464 HOUSE, C.J., and SHAPIRO, LOISELE, MacDONALD and BOGDANSKI, JJ.

Opinion

BOGDANSKI, Associate Justice.

This action seeking damages for injuries caused by a dog bite was brought by the plaintiff, Mary F. Wright, against the defendants, William Brown, the town of Plainville and Gail Litke, its dog warden. The dog warden and the town of Plainville demurred to the last four counts *466 of the five-count complaint. The trial court sustained the demurrer to all four counts and rendered judgment on the demurrer when the plaintiff failed to plead over. From that judgment the plaintiff appealed to this court, assigning error in the sustaining of the demurrer.

The complaint alleged that a dog owned by the defendant Brown attacked and injured the plaintiff; that less than fourteen days prior to this incident, the same dog had attacked another person resulting in the quarantine of the dog by the defendant dog warden; that the dog warden released the dog prior to the expiration of the fourteen-day quarantine period required by § 22-3581 of the General Statutes; that as a result of that premature release, the dog was placed in a situation where it attacked the plaintiff. The *467 second and fifth counts of the complaint were based on negligence, alleging that the dog warden and the town failed to comply with the standard of conduct required by § 22-358. The third and fourth counts were based on a theory of nuisance.

The dog warden and the town demurred to the complaint as follows: (a) to the second count 'on the grounds that any purported violation of . . . (§ 22-358) would not constitute negligence since the plaintiff was not within the class of persons which that statute was designed to protect'; (b) to the third and fourth counts on the ground that no positive act of the town or of its employee was alleged; and (c) to the fifth count on the grounds that (1) the plaintiff was not within the class of persons protected by § 22-358, and (2) since any act of the dog warden was governmental, the town was immune from liability.

The trial court concluded that § 22-358 was enacted to provide a period of quarantine to determine whether a person bitten by a dog required the administration of a rabies vaccine and 'to protect members of the community from being bitten by diseased dogs.' The court then concluded that the plaintiff was not within the class of persons protected by § 22-358 since she had not alleged that she was bitten by a diseased dog. The purpose of the quarantine requirement in § 22-358 is readily ascertainable from the meaning of that word. 'Quarantine' means to isolate as a precaution against contagious disease or a detainment to prevent exposure of others to disease. Webster's Third New International Dictionary 1859; 39 C.J.S., Health, s 15a. See *In re Halco*, 246 Cal.App.2d 553, 557, 54 Cal.Rptr. 661; *468 *Daniel v. Putnam County*, 113 Ga. 570, 572, 38 S.E. 980; 3A C.J.S., Animals, §73. While the specific concern of the legislature may have been to protect the victim of a dog bite from the threat of rabies,² that restricted purpose is not expressed in the language of § 22-358. Nowhere is the control of rabies mentioned. The intent expressed in the language of the statute is the controlling factor. *Kellems v. Brown*, 163 Conn. 478, 515, 313 A.2d 53; *United Aircraft Corporation v. Fusari*, 163 Conn. 401, 410, 311 A.2d 65. The trial court correctly concluded that § 22-358 was intended not only to protect persons bitten by a dog from the threat of rabies, but also to protect the general public from contact with diseased dogs.

'Where a statute is designed to protect persons against injury, one who has, as a result of its violation, suffered such an injury as the statute was intended to guard against has a good ground of recovery.' *Knybel v. Cramer*, 129 Conn. 439, 443, 29 A.2d 576, 577; *Coughlin v. Peters*, 153 Conn. 99, 102, 214 A.2d 127. That principle of the law sets forth two conditions which must coexist before statutory negligence can be actionable. First, the plaintiff must be within the class of persons protected by the statute. *Id.*, 153 Conn. 101, 214 A.2d 127; *Hassett v. Palmer*, 126 Conn. 468, 473, 12 A.2d 646; *Monroe v. Hartford Street Ry. Co.*, 76 Conn. 201, 207, 56 A. 498. Second, the *469 injury must be of the type which the statute was intended to prevent. *Toomey v. Danaher*, 161 Conn.

204, 212, 286 A.2d 293; *Longstean v. McCaffrey's Sons*, 95 Conn. 486, 493, 111 A. 788. See Prosser, *Torts* (4th Ed.) § 36; Restatement (Second), 2 *Torts* §§ 286, 288.

If we apply these principles to the purpose of § 22-358, it becomes clear that the class of persons protected is not limited; rather the statute was intended to protect the general public or, as stated by the trial court, 'members of the community.'

Since the demurrer to the second and fifth counts was addressed only to the class of persons protected by § 22-358, and since the plaintiff, as a member of the general public, is within that class, the demurrer should not have been sustained on that ground. See *Stradmore Development Corporation v. Commissioners*, 164 Conn. 548, 551, 324 A.2d 919; *Ross Realty Corporation v. Surkis*, 163 Conn. 388, 391, 311 A.2d 74; *Covino v. Pfeffer*, 160 Conn. 212, 213, 276 A.2d 895.

Although we have concluded that the second and fifth counts are not insufficient for the reason specified in the defendants' demurrer, we are not to be understood as holding that those counts can successfully withstand a claim that the plaintiff's injuries were not of the type which § 22-358 was intended to prevent. The second and fifth counts allege only that the plaintiff was attacked and injured by a dog that was prematurely released from quarantine. That allegation does not claim an injury of the type § 22-358 was intended to prevent. Cf. *Stiebitz v. Mahoney*, 144 Conn. 443, 448, 134 A.2d 71.

*470 The demurrer to the third and fourth counts was sustained by the trial court because no positive act of the town or its employee was alleged. Those counts, based on nuisance, alleged that the dog warden and the town allowed the dog to roam freely, which gave rise to a condition the natural tendency of which was to create danger. Certain paragraphs of the second count were incorporated into the third and fourth counts and alleged that the dog warden had quarantined the dog pursuant to § 22-358 of the General Statutes and that prior to the expiration of the quarantine period the dog had attacked the plaintiff.

Liability in nuisance can be imposed on a municipality only if the condition constituting the nuisance was created by the positive act of the municipality. *Kostyal v. Cass*, 163 Conn. 92, 98, 302 A.2d 121; *Brennan v. West Haven*, 151 Conn. 689, 692, 202 A.2d 134; *Sheeler v. Waterbury*, 138 Conn. 111, 115-16, 82 A.2d 359; *Karnasiewicz v. New Britain*, 131 Conn. 691, 694, 42 A.2d 32. Failure to remedy a dangerous condition not of the municipality's own making is not the equivalent of the required positive act. *Brennan v. West Haven*, supra, 151 Conn. 693, 202 A.2d 134. In testing a complaint against attack by demurrer, the allegations of the complaint are construed in the manner most favorable to the pleader. *Senior v. Hope*, 156 Conn. 92, 97, 239 A.2d 486; *Rossignol v. Danbury School of Aeronautics, Inc.*, 154 Conn. 549, 557, 227 A.2d 418. 'If any facts provable under its allegations would support a cause of action, the demurrer must fail. *Cyr v. Brookfield*, 153 Conn. 261, 263, 216 A.2d 198. 'What is necessarily implied need not be expressly alleged.' *Wexler Construction Co. v. Housing Authority*, 144 Conn. 187, 193, 128 A.2d 540, 543.' *Senior v. Hope*, supra, 156 Conn. 98, 239 A.2d at 489.

*471 The allegations that the dog warden quarantined the dog and, prior to the expiration of the quarantine period, allowed the dog to roam freely on the streets necessarily imply that the dog was released by the dog warden. So construed, the complaint alleges more than passive negligence. The release of the dog by the dog warden constitutes a positive act sufficient to withstand the challenge of the demurrer. The demurrer to counts three and four should have been overruled.

The demurrer directed solely to the fifth count claimed that the town was immune from liability for alleged negligence because its employee was performing a governmental act. Where the municipality through its agent or employee acts in the performance of a governmental duty, it has a limited immunity from liability; *Cone v. Waterford*, 158 Conn. 276, 279, 259 A.2d 615; but when the act complained of is ministerial, the municipality is responsible for its negligent execution. *Spitzer v. Waterbury*, 113 Conn. 84, 88, 154 A. 157; 18 *McQuillin, Municipal Corporations* (3d Ed. Rev.) s 53.33. 'Ministerial' refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion. *Pluhowsky v. New Haven*, 151 Conn. 337, 347, 197 A.2d 645; *Blake v. Mason*, 82 Conn. 324, 327, 73 A. 782.

In this case, the dog warden was charged under § 22-358 with the duty of quarantining the dog for fourteen days once she found that the dog had *472 bitten a person who was not upon the premises of the owner or keeper of the dog. While the determination of that state of facts involved the exercise of judgment, the subsequent duty to quarantine for fourteen days was mandatory and, therefore, ministerial. See *Pluhowsky v. New Haven*, supra, 151 Conn. 347-348, 197 A.2d 645. Since the fifth count alleged negligence in the breaking of the quarantine, municipal immunity cannot be claimed.

There is error, the judgment is set aside and the case is remanded with direction to overrule the demurrer to the last four counts of the complaint.

In this opinion the other judges concurred.

Parallel Citations
356 A.2d 176

Footnotes

1

(General Statutes) Sec. 22-358. . . . Quarantine of biting dogs. . . . (b) Any person who is bitten, or shows visible evidence of attack by any dog, when such person is not upon the premises of the owner or keeper of such dog, may kill such dog during such attack or make complaint to the chief canine control officer, any canine control officer or the warden or regional canine control officer of the town wherein such dog is owned or kept; and such chief canine control officer, canine control officer, warden or regional canine control officer shall immediately make an investigation of such complaint. If such warden, chief canine control officer, canine control officer, or regional canine control officer finds that such person has been bitten or so attacked by such dog when such person was not upon the premises of the owner or keeper of such dog, such warden, chief canine control officer, canine control officer, or regional canine control officer shall quarantine such dog in a public pound or order the owner to quarantine it in a veterinary hospital or a kennel approved by the commissioner for such purpose; . . . and the commissioner, the chief canine control officer, any canine control officer, any warden or any regional canine control officer may make any order concerning the restraint or disposal of any biting dog as he deems necessary. . . . On the

fourteenth day of such quarantine said dog shall be examined by the commissioner or someone designated by him to determine whether such quarantine shall be continued or removed. . . .'

2

See 13 H.R.Proc., Pt. 2, 1969 Sess., p. 928, wherein Representative Stewart B. McKinney commented during debate of an amendment (H.B. 5522, Public Acts 1969, No. 35) to s 22-358 on the need to quarantine a biting dog in order to detect the presence of rabies. See also 2 Gray, Attorneys' Textbook of Medicine (3d Ed.) 40.27(3) wherein it is noted that if a dog lives and is well at the end of ten quarantine days, a rabies vaccine need not be given to the bitten victim.

3

Under certain circumstances s 7-465 of the General Statutes imposes liability on the municipality for damages caused by an employee. The fifth count, however, does not allege the facts essential to hold the municipality liable under that statute. See *Martyn v. Donlin*, 148 Conn. 27, 32, 166 A.2d 856.

Name and address of accused

TO
PIERCE R OINTHANK
1257 JENNINGS ROAD
FAIRFIELD, CT.

INSTRUCTIONS
TO PREPARER

1. Use only for misdemeanors.
2. Prepare in triplicate; retain a copy.
3. Appearance Date must be within 14 days date of summons.

TO OFFICER MAKING SERVICE

1. After serving a copy on the accused in accordance with Pr. Bk. 602, deliver the original clerk with the return of service complete

TO CLERK

1. Check return of service; assign docket
2. Assign for hearing on date specified.

NOTE: Fold at mark and mail in a #10 window envelope.

FOL

NOTICE TO ACCUSED NAMED ABOVE

1. This paper summons you to appear in court.
2. If you do not appear at the time and place specified below, an application will be made for the issuance of a warrant for your arrest.
3. You are entitled to be represented by an attorney who should appear with you in court on the Court Appearance Date set out below.
4. If you are charged with an offense punishable by imprisonment and you are unable to afford an attorney, you may be entitled to the services of a Public Defender and you should immediately contact the Defender's office.
5. If you are under the age of eighteen you must appear in court with your PARENT OR GUARDIAN.

SUMMONS	You are hereby summoned to appear before the Superior Court at:		
	ADDRESS OF COURT (Number, street and town) 123 HOYT STREET STAMFORD, CT.	JUDICIAL DISTRICT OR G.A. #1	COURT APPEARANCE DATE AND TIME JAN. 23, 2009 10:00
then and there to answer to the following complaint against you:			
COMPLAINT	The undersigned prosecuting authority complains and alleges to the above-named court that on or about		
	DATE OF OFFENSE AUGUST 13, 2008	AT (Town) GREENWICH, CT. STAMFORD, CT	
	the above-named accused did commit the following misdemeanor(s):		
	MISDEMEANOR(S) ILLEGAL POSSESSION OF A PRIMATE	IN VIOLATION OF (statute of order) 26-55	
DATED AT (Town) STAMFORD	ON (Date) 12-30-08	SIGNED (Judge or Assistant State's Attorney) <i>[Signature]</i> (WESS)	

FOR COURT USE

TO PREPARER: Complete the following if this information can be obtained:

DATE OF BIRTH OF ACCUSED 10-23-1959	TEL. NO. OF ACCUSED 203-255-4241	POLICE DEPT. WHERE CASE ORIGINATED CT. DEPT. ENVIRO. POLICE	POLICE CASE NO. 08-11596
--	-------------------------------------	--	-----------------------------

I hereby certify that I served the foregoing summons and complaint by: ("X" one)

DELIVERING A COPY PERSONALLY TO THE ABOVE-NAMED ACCUSED.

LEAVING A COPY AT THE USUAL PLACE OF ABODE OF THE ABOVE-NAMED ACCUSED WITH A PERSON OF SUITABLE AGE AND DISCRETION RESIDING THEREIN.
NAME OF PERSON COPY LEFT WITH: _____

MAILING A COPY, CERTIFIED MAIL, TO THE ABOVE-NAMED ACCUSED AT HIS/HER LAST KNOWN ADDRESS. ("X" one below)

RETURN RECEIPT ATTACHED. RETURNED UNDELIVERED.

DATE OF SERVICE 1-7-09	SIGNED (Server) <i>[Signature]</i> 622	TITLE OF SERVER Sgt. Enlon Police
---------------------------	---	--------------------------------------

Supporting Affidavits Sealed	
<input type="checkbox"/> YES	<input type="checkbox"/> NO

Inc#: 08-11596 AGENCY NAME: CT State Environmental Conservation Police AGENCY NO. 5084
 NAME AND RESIDENCE (Town) OF ACCUSED: Pierce R. ONTHANK Fairfield COURT TO BE HELD AT (Town) Stamford G.A. NO. 1

APPLICATION FOR ARREST WARRANT

TO: A Judge of the Superior Court

The undersigned hereby applies for a warrant for the arrest of the above-named accused on the basis of the facts set forth in the:

AFFIDAVIT BELOW AFFIDAVIT(S) ATTACHED

DATE AND SIGNATURE	DATE	SIGNED (Prosecuting Authority)	TYPE/PRINT NAME OF PROSECUTING AUTHORITY
	12/30/08	<i>[Signature]</i>	WESS

AFFIDAVIT

The undersigned, being duly sworn, deposes and says:

That the undersigned, Sgt. Cynthia R. Schneider being duly sworn, does depose and state that he/she is a member of the Connecticut Department of Environmental Protection (D.E.P.), Division of Environmental Conservation Police and has been since 1/17/2000. At all times mentioned herein he/she was acting as a member of said department. The following facts and circumstances are stated from personal knowledge and observations as well as information received from other police officers acting in their official capacity and from official police reports and statements made by prudent and credible witnesses.

- That, on October 28, 2008, this affiant was assigned to conduct an investigation involving illegal possession of a primate by Pierce R. Onthank, DOB 10/23/59. The complainant, Elaine Hinsch of the Department of Environmental Protection Wildlife Division, advised that Onthank had left a Slamang ape with Marcella Leone the owner of Lionshare Zoological Center in Greenwich and Stamford.
- That, Pierce R. Onthank, does not and has never been issued a permit in Connecticut to possess or transport primates, dangerous, or endangered species. Onthank currently has no federal permits allowing him to possess or transport dangerous or endangered species.
- That, this affiant has contacted Federal Agent Thomas Ricardi of the United States Fish and Wildlife Service; and advised him of this investigation. Agent Ricardi has initiated a federal investigation.

This is page 1 of a 5 page Affidavit.)

DATE AND SIGNATURE	DATE	SIGNED (Affiant)
	Dec. 30, 2008	Sgt. Cynthia R. Schneider
JURAT	SUBSCRIBED AND SWORN TO BEFORE ME ON (date)	SIGNED (Judge / Clerk, Comm. Sup. Ct., Notary Public)
	DEC. 30, 2008	<i>[Signature]</i> Notary Public LHP, 11/20/2009

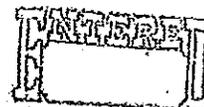
FINDING

The foregoing Application for an arrest warrant, and affidavit(s) attached to said Application, having been submitted to and considered by the undersigned, the undersigned finds from said affidavit(s) that there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issuance of a warrant for the arrest of the above-named accused.

DATE AND SIGNATURE	SIGNED AT (city or town)	ON (DATE)	SIGNED (Judge/Judge Trial Referee)	NAME OF Judge/Judge Trial Referee

STATE OF CONNECTICUT
 Department of Environmental Protection
 Division of Law Enforcement
 79 Elm Street, Hartford, CT 06106

INCIDENT REPORT



ARREST SUPPLEMENTARY INVESTIGATION LOSS/DAMAGE OF STATE PROPERTY ATTACH EPCP-10 FATALITY

INCIDENT NO 08-11596	INCIDENT DATE	TIME 11:40	INCIDENT TYPE Illegal Possession of Primate	PG 1 OF 2
TOWN OF INCIDENT	CODE	LOCATION	LATITUDE	LONGITUDE

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME ONTHANK	FIRST (M.I.) Robert Pierce	SEX RACE DOB M W 10/23/59	AGE 49.3	PHONE 203-255-4241
NO 1257	STREET Jennings Rd.	CITY Fairfield	ST ZIP CT 06824	PREVREG LIC TYPE LIC # MV 103403564
G.A. 1	COURT DATE 01/23/09	BOND TYPE NA	BOND AMOUNT \$0.00	RELEASED ON SUMMONS NO Prosecutor's Summons
			WEAPON CODE	ID PHOTO/PRINTS NONE
OFFENSE # 1	26-55	Illegal Possession of a Primate Species		
OFFENSE # 2				
OFFENSE # 3				
OFFENSE # 4				

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME	FIRST (M.I.)	SEX RACE DOB	AGE	PHONE
NO	STREET	CITY	ST ZIP	PREVREG LIC TYPE LIC #
G.A.	COURT DATE	BOND TYPE	BOND AMOUNT	RELEASED ON SUMMONS NO
				WEAPON CODE
				ID PHOTO/PRINTS
OFFENSE # 1				
OFFENSE # 2				
OFFENSE # 3				
OFFENSE # 4				

ARRESTED VICTIM COMPLAINANT SUSPECT

LAST NAME	FIRST (M.I.)	SEX RACE DOB	AGE	PHONE
NO	STREET	CITY	ST ZIP	PREVREG LIC TYPE LIC #
G.A.	COURT DATE	BOND TYPE	BOND AMOUNT	RELEASED ON SUMMONS NO
				WEAPON CODE
				ID PHOTO/PRINTS
OFFENSE # 1				
OFFENSE # 2				
OFFENSE # 3				
OFFENSE # 4				

CASE STATUS
Cld by Arrest

CODE
2

PROPERTY/EVIDENCE SEIZED

PHOTOGRAPHS TAKEN

INVESTIGATOR'S SIGNATURE

[Signature]

BADGE NO
622

DATE
1/15/08

SUPERVISOR'S SIGNATURE

[Signature]

BADGE NO
658

DATE
1/16/09

CONNECTICUT GENERAL STATUTES

CHAPTER 53 – CLAIMS AGAINST THE STATE

Sec. 4-142. Claims Commissioner. Excepted claims.

There shall be a Claims Commissioner who shall hear and determine all claims against the state except: (1) Claims for the periodic payment of disability, pension, retirement or other employment benefits; (2) claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts; (3) claims for which an administrative hearing procedure otherwise is established by law; (4) requests by political subdivisions of the state for the payment of grants in lieu of taxes; and (5) claims for the refund of taxes.

STATE OF CONNECTICUT
OFFICE OF THE CLAIMS COMMISSIONER

CLAIM NUMBER: 22046

CLAIM OF STEVEN NASH, SUCCESSOR
CONSERVATOR OF CHARLA NASH

JUNE 14, 2013

MEMORANDUM OF DECISION: MOTION TO DISMISS

The Claimant, Steven Nash, Successor Conservator of Charla Nash (hereinafter "Nash" or "Ms. Nash"), filed a claim with the Office of the Claims Commissioner on November 3, 2009, seeking permission to sue the Respondent State of Connecticut Department of Energy and Environmental Protection¹ and for damages in the amount of \$150,000,000 for the catastrophic injuries Ms. Nash suffered as a result of an attack by a chimpanzee in Stamford, Connecticut. On February 16, 2009, Ms. Nash suffered catastrophic injuries as a result of an attack by a chimpanzee that was privately owned in Stamford, Connecticut. Ms. Nash is permanently disabled as a result of the attack and she requires extensive, 24 hour care. Ms. Nash alleges in the Notice of Claim that the State of Connecticut breached its duty of care by failing to remove the animal from the home of its owner.

The matter is before the Commissioner for decision on the Respondent State of Connecticut's Motion to Dismiss. The Respondent, State of Connecticut Department of Energy and Environmental Protection ("DEEP" or "DEP"), has filed a Motion to Dismiss claiming (1) that the claim is barred because the State of Connecticut Department of Energy and Environmental Protection has no legally cognizable duty to the claimant, and (2) that the DEEP's regulatory functions regarding permitting of animals does not create a duty of care to a private individual. The Claimant has objected to the Motion to Dismiss and requests that the Motion be denied and permission to sue be granted².

Article Eleventh, Section 4 of the Connecticut Constitution provides that, "Claims against the state shall be resolved in such manner as may be provided by law." This constitutional directive is codified in

¹ The agency was formerly known as the Department of Environmental Protection.

² As a procedural matter, while much of the Motion to Dismiss and the Objection to the Motion to Dismiss contains issues that are substantive to the claim, this case has not been subject to a formal hearing on the merits. A grant of permission to sue (or recommendation of damages outside of the jurisdictional limit of the Claims Commissioner) would take place only after a formal hearing.

Connecticut General Statutes, Chapter 53. The provisions of Chapter 53 constitute a limited waiver of the sovereign immunity of this state. It is a well established principle that statutes in derogation of sovereign immunity should be strictly construed so that the state's sovereign immunity may not be undermined. DeFonce Construction Corp. v. State of Connecticut, 198 Conn. 185, 188 (1979); Lussier v. Department of Transportation, 228 Conn. 343 (1994). Where there is any doubt about the meaning or intent of a statute, they are given the effect which makes the least rather than the most change in sovereign immunity. White v. Burns, 213 Conn. 307, 312 (1990).

The limited power of the Claims Commissioner is provided by the General Assembly pursuant to Connecticut General Statutes § 4-160 which reads in relevant part, "When the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable." Pursuant to Connecticut General Statutes § 4-158 et seq, the Claims Commissioner has the authority to pay, or recommend that the General Assembly pay, "just claims." The statutory language provides that a "just claim" is a "claim which in equity and justice the state should pay, provided the state has caused damage or injury or has received a benefit." Connecticut General Statutes § 4-141 (in relevant part). The Commissioner does have discretion pursuant to the standard of "justice and equity" in the statutes and the role of the Commissioner has been referred to as the "conscience of the state." Chotkowski v. State of Connecticut, 240 Conn. 246, 286 (1997). However, this discretion is curbed by the statutory requirement that the State must have *caused* the damage or injury.

"A motion to dismiss properly attacks the jurisdiction . . . essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard." Bacon Construction Company v. Department of Public Works, 294 Conn. 695, 706 (2010). "The doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." Amore v. Frankel, 228 Conn. 358, 364 (1994). While the doctrine of sovereign immunity is a common law principle that operates as a strong presumption in favor of the state's immunity from liability or suit, in consideration of a motion to dismiss for subject matter jurisdiction, every presumption favoring jurisdiction should be indulged. See CR Klewin Northeast, LLC v. Fleming, 284 Conn. 250 (2007); Envirotest Systems Corp. v. Commissioner of Motor Vehicles, 293 Conn. 382 (2009).

The relevant and undisputed facts are as follows:

1. Travis, a chimpanzee, was owned by Sandra Herold of Stamford at all times relevant to this claim.
2. On or about February 16, 2009, Charla Nash was attacked by the chimpanzee while she attempted to assist Ms. Herold in getting the escaped chimpanzee into the house.
3. The Respondent DEP was aware that the chimpanzee was privately owned and resided with owner(s) in a Stamford residence.
4. Elaine Hinsch, an employee of the DEP with knowledge regarding exotic animals in Connecticut, had proposed amendments to C.G.S. § 26-40a to categorize chimpanzees as dangerous animals and to prevent private ownership of same. The law was not changed until after Ms. Nash was attacked.

I. THERE IS NO DUTY AT COMMON LAW OWED TO THE CLAIMANT.

There is no dispute that Ms. Nash's injuries were caused by a chimpanzee that was owned and possessed by a third party. Ms. Herold owned and housed the chimpanzee and on the date of the attack by the animal, Herold failed to secure the chimpanzee as to avoid the attack. Connecticut General Statutes § 4-160 (a), in relevant part, authorizes the Commissioner to authorize suit "on any claim which ... in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable." (emphasis added.). The essential elements of a negligence action are well established: duty, breach of that duty, causation and actual injury. See Sturm v. Harbor Development LLC, 298 Conn. 124, 139 (2010).

The State of Connecticut, were it a private person would generally not have any duty to control the conduct of that third party absent some special relationship³. See Murdock v. Croughwell, 268 Conn. 559, 567 (Conn. 2004). Our Supreme Court in Murdock stressed that "there can be no actionable negligence ... unless there exists a cognizable duty of care" Id. at 566. The Court offers further that "there generally is no duty that obligates one party to aid or protect another party." Id. at 566. The Respondent, were it a private party could not be held liable to the claimant for her injuries as they were caused by the actions of the third party owner of the animal.

³ The exceptions that are referred to in Murdock are the exceptions in Restatement (Second) Torts § 315. These special relationships are delineated in Restatement §§ 316-319 and are not relevant to the facts of

II. THERE IS NO PRIVATE DUTY TO THE CLAIMANT CREATED BY C.G.S. § 26-55.

While it is lamentable that Ms. Nash was attacked and injured by the chimpanzee, in order to overcome the presumption of sovereign immunity and the challenge to subject matter jurisdiction, she must show that the legislature either expressly or by implication, waived the state's sovereign immunity. At the time Ms. Nash was attacked, there was no statute that *prohibited* the private ownership of the chimpanzee nor was there any statutory language that would have created a duty to Ms. Nash as a private person⁴.

The Claimant opines that Connecticut General Statutes §26-55, the DEP regulatory statutes regarding the permitting of certain animals created a private, legal duty of care to Ms. Nash. Specifically, Nash alleges that the DEP violated §26-55 by failing to seize and dispose of the chimpanzee "as required by this statute." See Claimant's Memorandum of Law at p. 23. I do not find that there was any compulsory language in §26-55 that required that the State of Connecticut seize and dispose of an animal that was privately owned and *not* specifically banned by any statute. Our Supreme Court has acknowledged that "statutory language is to be given its plain and ordinary meaning unless such meaning is clearly at odds with the legislative intent." State v. Taylor, 153 Conn. 72, 82 (1965). There is no language in the statute that creates a private duty of care to the claimant or any private person and it is clear that this statute created a duty to the general public only. If there was a failure by DEP to seize the animal pursuant to §26-55, the duty owed was to the general public and does not create a statutory obligation to ensure the safety of a private individual such as the Claimant.

The Claimant asserts that the language in § 26-55 was compulsory and required seizure of the chimpanzee. Our Courts have consistently opined that there is a broad interest in having government officers and employees "free to exercise judgment and discretion in their official functions," Violano v. Fernandez, 280 Conn. 310, 319 (2006); See also, Stiebitz v. Mahoney, 144 Conn. 443 (1957). The DEP was acting in its regulatory function in its application of Connecticut General Statutes § 26-55.

this claim. There is no duty by the Respondent, if it were a private person, to control the conduct of a third party, specifically Ms. Herold.

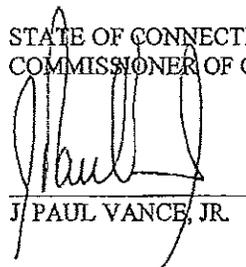
⁴ The legislature, ostensibly as a reaction to the horrific attack on Ms. Nash, amended state law to prohibit ownership of such wild animals as "the gorilla, chimpanzee and orangutan". See additions, 2009 Conn. Legis. Serv., P.A. 09-198 (H.B. 6552).

Further, there is no such regulatory function that exists for a private person and this Commission is not inclined to create a public policy where the legislature had not done so. The legislature did not create a private duty nor did it waive the State's immunity in the DEP's regulatory function regarding exotic and/or wild animals. Where there is no 'private person' function analogous to the regulatory function being exercised by the State, the Claims Commissioner lacks the jurisdiction and lacks statutory authority where the allegation is based on negligence regarding the regulatory function.

It would exceed the scope of the Commission's authority and jurisdiction to assume any intent of the legislature where there is no clear language or evidence of intent in the statute to support the claimant's position that §26-55 required seizure of the animal and also created a duty of care to the Claimant.

For the foregoing reasons, the Respondent's Motion to Dismiss is granted and the Claim is dismissed.

STATE OF CONNECTICUT
COMMISSIONER OF CLAIMS



J. PAUL VANCE, JR.

Summary of Salient Facts

1. October 2003 - the highest level of the DEEP, the Commissioner, knew a "gorilla" resided in a private Stamford residence and this was not the "best of situations" and he also knew the "gorilla" had escaped in downtown Stamford.
2. May 2004 - passage of the Travis Amendment.
3. September 2005 - Elaine Hinsch issues her first Memorandum specifically mentioning Travis the chimpanzee and her safety concerns.
4. September 2008 - Marcella Leone plays the tape of Sandra Herold's cry for help concerning the out-of-control chimpanzee to Elaine Hinsch.
5. Elaine Hinsch is referred by Edward Parker to ENCON for assistance. ENCON claims it lacks the resources and instead suggests Elaine Hinsch issue a §26-55 permit in lieu of seizure.
6. Elaine Hinsch and Edward Parker refuse to issue a §26-55 permit.
7. October 2008 - Elaine Hinsch issues her second, high priority Memorandum requesting DEEP address, on an urgent basis, the "accident waiting to happen".
8. Edward Parker reads the Memorandum but assumes Dale May will handle the issue as Parker is involved with his retirement. Dale May never opens the email as he is also involved with his retirement plans.

9. On the same day as Elaine Hinsch's second Memorandum, October 28, 2008, ENCON Sargent Cynthia Schneider is assigned to investigate the §26-55 illegal possession without a permit of a 16 pound gibbon/siamang owned by Mr. Pierce Onthank in Fairfield, CT. Elaine Hinsch is the complainant.

10. On January 16, 2009, exactly one month before the attack on Charla Nash, ENCON files its Incident Report concerning the arrest of Mr. Onthank and the seizure of his primate.

11. The DEEP fails to take any action concerning the seizure of the illegally possessed chimpanzee called Travis and on February 16, 2009, Charla Nash is attacked.

CHARLA NASH MATTER LINK

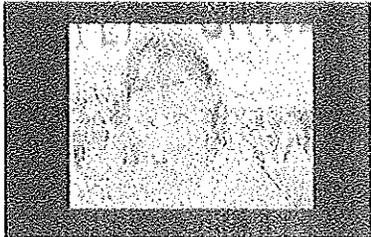
<http://vimeopro.com/geomatrixproductions/nash>

Charla Nash 2014 (video 06:54 minutes)

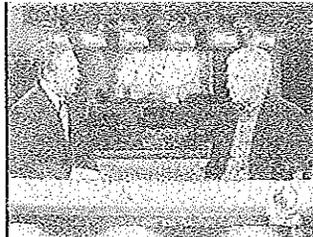
911 Call (audio 01:13 minutes)

Edward Parker Interview Face the State (video 17 seconds)

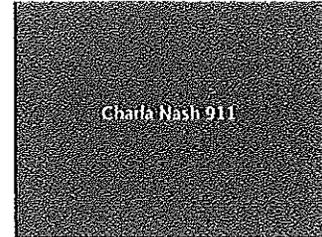
NASH



Charla Nash 2014



Face the State Clip



Charla Nash 911