

## Connecticut Supreme Court Clarifies the Procedure for Officers to Bring Indemnification Actions, as well as the Range of Economic Losses that Qualify for Such Indemnification

### Description

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On April 26, 2011, the Supreme Court of Connecticut issued its opinion on a case which Daigle Law Group, LLC defended on behalf of the subject officer. The decision will impact both police departments, municipalities, and individual officers concerning the ability of officers to seek indemnification for economic losses incurred in defense of criminal charges arising out of the performance of their duties, when either such charges are dismissed or the officers are acquitted.<sup>[1]</sup> In *Nyenhuis v. Metropolitan District Commission*, the Court analyzed Sections 33-51bb and 53-39a of the Connecticut General Statutes. Section 33-51bb allows officers to bring lawsuits concerning claims under state laws, and Section 53-39a authorizes indemnification of officers for economic losses and legal fees under circumstances described above.

The underlying facts of *Nyenhuis* are straight-forward. During the performance of her duties, Officer Nyenhuis had an altercation with a citizen concerning a dispute over access to a reservoir, which resulted in the use of pepper spray against the citizen. The next day, the citizen filed a complaint against Officer Nyenhuis. After an investigation, during which Officer Nyenhuis was assigned to administrative duty instead of uniformed officer duty, Officer Nyenhuis was arrested and charged with third-degree assault, reckless endangerment, and second-degree falsifying an incident report. A jury ultimately acquitted Officer Nyenhuis of all charges. The Defendant then reinstated Officer Nyenhuis to her previous status as a uniformed officer.<sup>[2]</sup>

Pursuant to an underlying collective bargaining agreement, Officer Nyenhuis then brought two complaints against the Defendant, seeking reinstatement in time bank for vacation and earned time used and to be made whole for loss of overtime from [the date she was placed on administrative duty until her reinstatement].<sup>[3]</sup> While these grievances were pending, Officer Nyenhuis sued the Defendant in State Court, pursuant to 53-39a, seeking indemnification for, among other things, overtime, seniority, sick time, vacation time and attorney's fees and costs.<sup>[4]</sup> The Defendant argued that the trial court did not have jurisdiction over Officer Nyenhuis's claims because she had not exhausted her administrative remedies (that is, wait for a decision on her grievances) before filing suit. The court rejected this argument, citing Sections 33-51bb and 53-39a as allowing Officer Nyenhuis to pursue her claim for indemnification. After determining that Officer Nyenhuis's damages should be calculated from the date of the Incident through the date of her reinstatement, it awarded her \$73,072.50, which included awards for lost vacation time, lost earned time, lost sick time (collectively "Leave Time"), and lost overtime pay.<sup>[5]</sup>

The Defendant MDC then appealed, arguing that the trial court improperly concluded that Officer Nyenhuis: (1) did not need to exhaust administrative remedies before bringing an action in State Court; (2) was entitled to indemnification for economic loss starting on the date of the Incident that led to the

underlying criminal charges, rather than the date of her arrest; and (3) was entitled to indemnification for Leave Time that she used during the course of the prosecution, and lost overtime pay that she would have received but for the prosecution. [6] The Supreme Court concluded that Officer Nyenhuis was (1) not required to exhaust her remedies under the CBA; (2) entitled to indemnification for Leave Time used and overtime pay lost as a result of the prosecution; and (3) entitled to indemnification only for those economic losses, prearrest and postarrest, that have a clear nexus to the criminal prosecution[.]• The Supreme Court rejected the trial court’s conclusion that Officer Nyenhuis’s right to indemnification accrued automatically on the day of the Incident. [7]

The Connecticut Supreme Court held that Section 31-55bb gave the trial court jurisdiction over Officer Nyenhuis’s claims even though she had not yet exhausted her administrative remedies. The Court reasoned that Officer Nyenhuis had not based her claim for indemnification on a provision from the CBA. Rather, she expressly stated in her Complaint that she was seeking indemnification pursuant to Section 53-39a. Citing precedent, the Supreme Court explained that “an employee who does *not* exhaust the grievance process established in a [CBA] may pursue a cause of action in the Superior Court *if the cause of action is premised on an independent statutory claim* . . . .” [8] To hold otherwise, the Court acknowledged, “would be to deny such an employee the right to pursue a statutory cause of action solely because of the existence of a [CBA].” [9] Noting that Officer Nyenhuis cited only Section 53-39a as a basis for her claim for indemnification, the Supreme Court held that, pursuant to Section 31-51bb, Officer Nyenhuis did not have to exhaust the administrative remedies provided for in the CBA before bringing an action in State Court.[10]

The Connecticut Supreme Court focused its analysis of Section 53-39a on the issue of when the “prosecution” of an officer begins. The Defendant argued that the prosecution against Officer Nyenhuis did not commence until she was arrested, and, therefore, Officer Nyenhuis “was not entitled to economic losses occurring prior to the date of her arrest[.]” [11] The Supreme Court agreed with Officer Nyenhuis’s argument that “a prosecution necessarily encompasses any criminal investigations that may occur before an arrest is made or a criminal charge is filed . . . .” Id. The Court concluded that, under Section 53-39a, a police department’s prearrest liability “attaches only when there is a clear nexus between the economic losses and the prosecution[.]” [12] The Court further held that Section 53-39a provides indemnification only for prearrest economic losses that are: “(1) incurred by the police officer as a result of an unwarranted police investigation or criminal prosecution, or in anticipation of an unwarranted police investigation or criminal prosecution that actually occurs; or (2) precipitated by the employer’s adverse action against the officer, taken in response to that employer’s discovery of a police investigation or criminal prosecution.” [13] The Court also announced that the term “economic loss,” as used in Section 53-39a, “necessarily includes lost leave time attributable to a criminal prosecution.” [14]

In conclusion, the Supreme Court’s decision in Nyenhuis provides clarification and guidance on several issues relevant to claims by officers for indemnity for unwarranted police investigations or criminal prosecutions:

1. Officers who seek indemnification pursuant to Section 53-39a do not need to exhaust the administrative remedies required under the applicable CBA before they can sue in State Court.
2. The economic losses recoverable under Section 53-39a include lost overtime pay, vacation time, earned time, and sick time used as a result of the underlying prosecution.

3. Officers who seek indemnification for prearrest economic losses must prove that such losses have a clear connection to the criminal prosecution.

The claims of indemnification pursuant to 53-39a have been limited to a handful of officers and police chiefs need to be aware of the application of this Statute. It is strongly recommended that Police Chiefs be diligent in determining the strength of a criminal investigation against an officer for alleged criminal conduct which occurs on duty. In addition, if the officer is arrested, the Chief should advise his municipality that if the officer can successfully defend himself or herself from that criminal prosecution, the officer will have a legal basis to file an action against the municipality for economic damages, including attorney's fee for both defending the officer in the criminal action and also for prosecuting the collection of economic damages in the indemnification cases.

1. *Nyenhuis v. Metropolitan Dist. Comm'n*, 300 Conn. 708 (2011). [â??](#)
2. 300 Conn. at 712. [â??](#)
3. *Id.* at 712-713. [â??](#)
4. *Id.* at 713. [â??](#)
5. *Id.* at 714. [â??](#)
6. *Id.* at 711-712. [â??](#)
7. *Id.* at 712. [â??](#)
8. 300 Conn. at 716 (emphasis in original). [â??](#)
9. *Id.* [â??](#)
10. *Id.* at 718. [â??](#)
11. 300 Conn. at 718. [â??](#)
12. *Id.* at 724. [â??](#)
13. *Id.* [â??](#)

14. Id. at 729. [â??](#)

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