APPELLATE COURT

OF THE

STATE OF CONNECTICUT

AC 37328

BRIDGEPORT DENTAL, LLC

v.

COMMISSIONER OF SOCIAL SERVICES

BRIEF OF AMICI CURIAE CONNECTICUT STATE DENTAL ASSOCIATION, CONNECTICUT SOCIETY OF PEDIATRIC DENTISTS, CONNECTICUT SOCIETY OF ORAL & MAXILLOFACIAL SURGEONS, AMERICAN DENTAL ASSOCIATION, AMERICAN ACADEMY OF PEDIATRIC DENTISTRY, WALGREEN CO., AND ATG CONNECTICUT, INC. D/B/A NUMOTION IN SUPPORT OF PLAINTIFF-APPELLANT BRIDGEPORT DENTAL, LLC

ATTORNEY FOR AMICI CURIAE:

Jeffrey R. Babbin
WIGGIN AND DANA LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400
(203) 782-2889 (fax)
jbabbin@wiggin.com
Juris No. 67700

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STATEMENT OF INTEREST OF AMICI CURIAE

Connecticut State Dental Association, Connecticut Society of Pediatric Dentists, Connecticut Society of Oral & Maxillofacial Surgeons, American Dental Association, American Academy of Pediatric Dentistry, Walgreen Co., and ATG Connecticut, Inc. d/b/a Numotion (collectively, the "Amici") file this brief as amici curiae in support of the plaintiff-appellant Bridgeport Dental, LLC. The Court has granted the Amici the opportunity to address the important issues of Medicaid and administrative law raised by this appeal, specifically the defendant's use of sampling and extrapolation in Medicaid audits.

The Connecticut State Dental Association ("CSDA") is a statewide, professional membership organization representing Connecticut licensed dentists and staff. CSDA members are committed to protecting the health and well-being of people of all ages. The CSDA was established in 1864 to ensure that patients receive the highest quality of care from dental professionals. With a statewide membership of approximately 2,600 members, the CSDA represents more than 70% of all licensed dentists in Connecticut.

The Connecticut Society of Pediatric Dentists ("CSPD") is an organization of dental specialists within Connecticut dedicated to advancing public health and promoting the achievement of a high and ethical standard of practice, education, and research in the art and science of all phases of dentistry for children, adolescents, and children with special needs. The CSPD represents its members in matters concerning insurance programs, other health care groups, public relations, governmental agencies, and the lay public.

The Connecticut Society of Oral and Maxillofacial Surgeons, Inc. ("CSOMS") was founded in 1948.[1] It was created for the aims and purposes of developing professional competence, fostering professional cooperation, and protecting the interests of its members and the public-at-large, and to inform the dental and medical professions and the general

[1] Oral and maxillofacial surgery is the specialty of dentistry involving the diagnosis, surgical, and adjunctive treatment of diseases, injuries, and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

public of pertinent matters relating to oral and maxillofacial surgery.

The American Dental Association ("ADA"), founded in 1859, is the nation's largest dental association, representing more than 157,000 dentist members. The ADA has grown to become the leading source of oral health related information for dentists and their patients. The ADA is committed to its members and to the improvement of oral health for the public. The ADA's vision is to be the recognized leader on oral health with its mission to help all members succeed. Relevant to the present matter, it works to influence public policies affecting the practice of dentistry and the oral health of the American public. It is especially interested in removing impediments to participation in the Medicaid program.

The American Academy of Pediatric Dentistry ("AAPD") is the recognized authority on children's oral health. Founded in 1947, the AAPD is a professional membership association representing the specialty of pediatric dentistry. Its 9,500 members provide primary care and comprehensive dental specialty treatments for infants, children, adolescents, and individuals with special health care needs. As advocates for children's oral health, the AAPD promotes evidence-based policies and clinical guidelines; educates and informs policymakers, parents and guardians, and other health care professionals; fosters research; and provides continuing professional education for pediatric dentists and general dentists who treat children.

Walgreen Co., founded in 1901, is the largest drugstore chain in the United States with more than 8,200 stores nationally. Its mission is to promote the health and well-being of its customers. It filled 856 million prescriptions for its customers in fiscal 2014.

ATG Connecticut, Inc. d/b/a Numotion ("Numotion") is an innovative, multi-state provider of custom wheelchairs and other mobility equipment, headquartered in Rocky Hill, Connecticut. Numotion serves the lifelong needs of its customers, from birth through adulthood, through individualized health and mobility solutions. It works with numerous state agencies administering the Medicaid Program, including DSS, to ensure that its customers can obtain the equipment needed for an independent, fulfilling life.

ARGUMENT OF AMICI CURIAE[2]

Extrapolation is a statistical concept. If DSS, when auditing a Medicaid provider, does not perform extrapolation in accordance with statistical principles, the outcome may have no resemblance to the actual overpayments made to the provider during the audit period. The state agency is then engaging in an arbitrary guess, yet is employing the authority of the State to impose a considerable financial penalty on the Medicaid provider. Not only is the State's flawed exercise of that power unfair and unlawful, but it undermines the foundation of the Medicaid Program, which requires that health care providers voluntarily enroll in the Program to treat the vulnerable Medicaid population. Thus, this case goes beyond one dental practice's finances, and its outcome has implications for the ability of health care providers to provide service to Medicaid patients in this state.

A. DSS's Extrapolation Methods Can and Must Be Reviewed by the Courts.

This appeal raises important issues regarding audits of health care providers who, like plaintiff Bridgeport Dental, LLC, provide services to eligible clients of the Connecticut Medical Assistance Program. The Department of Social Services ("DSS") administers that Program, which includes the Title XIX Medicaid Program. DSS's Office of Quality Assurance oversees audits of providers who receive payments under the Medical Assistance Program for items and services provided to recipients of Medical Assistance.

Under the authority of C.G.S. § 17b-99(d), DSS audited the Medicaid claims paid to Bridgeport Dental during a two-year period, July 1, 2008, through June 30, 2010. DSS calculated that it had paid 1,295 Medicaid claims to the plaintiff, totaling $873,744, during the audit period. DSS's auditors sampled 100 of those claims, purportedly as a random sample, and determined that some instances of inadequate documentation, incorrect

[2] In accordance with Practice Book § 67-7, the Amici state that no counsel for a party to this case wrote this brief in whole or in part and that no such counsel or a party contributed to the cost of the preparation or submission of the brief. No persons, other than the Amici, its members or its counsel, made such a monetary contribution.

procedure codes, patients seen by one dentist not yet properly enrolled in the Medicaid program, and failure to properly credit private insurance payments resulted in DSS overpaying the dental practice in the amount of $6,600.60. But that is not what DSS sought to recover. Instead, DSS employed an arithmetic formula, dividing $6,600.60 by the 100 sampled claims, and multiplying that average of $66.01 by the universe of 1,295 Medicaid claims in the two-year period, resulting in an "extrapolated" sum of $85,477.77. DSS then added $21,373.76 in additional disallowances[3] for a total of $106,851. DSS required Bridgeport Dental to repay that six-figure sum to the State.

Bridgeport Dental requested review of its items of aggrievement by a designee of the Commissioner under C.G.S. § 17b-99(d)(8). The reviewing officer received written materials and issued a final decision, declining to adjust the audit. Pertinent to the topic of this brief, the reviewing officer rejected the challenge to DSS's use of extrapolation in the audit. Bridgeport Dental appealed to the Superior Court under C.G.S. §§ 17b-99(d)(9) and 4-183, again challenging the extrapolation. The court (Schuman, J.) also rejected the challenge and otherwise sustained the agency's final decision.

The trial court's rationale was stated succinctly: "This [extrapolation] method is almost exactly the same method used and approved by our Supreme Court in the Medicaid context in *Goldstar Medical Services, Inc. v. Dept. of Social Services,* 288 Conn. 790, 813-18, 955 A.2d 15 (2008)." Appellant's Appendix, A23. In footnote 6 on that page, the trial court described the methodology used in the *Goldstar* audit, which it found dispositive.

The trial court was mistaken. *Goldstar* did not approve the particular arithmetic exercise used in that case (and again in the present matter) as an appropriate statistical method for extrapolating the overpayments in a sample of claims to the universe of a provider's paid Medicaid claims over a multi-year period. The issue of an appropriate

[3] This was an additional audit adjustment for some services by the one dentist not yet enrolled in Medicaid, for which DSS agreed not to extrapolate to the universe of claims.

methodology has not been decided on appeal and is an open issue.

First, *Goldstar* addressed a challenge to DSS's authority to engage in extrapolation but not to the methodology itself.[4] The Supreme Court recognized that DSS lacks resources to audit the entire universe of claims, and it concluded that DSS was authorized to use extrapolation in Medicaid audits. *See Goldstar*, 288 Conn. at 33. The issue arose only because the audit statute, at the time of the audit, made no mention of extrapolation, although the Court noted that the legislature had since amended C.G.S. § 17b-99 to reference the use of extrapolation when certain conditions are met. *See id.* at 31 n.12 (citing Public Act 05-195).

Second, while *Goldstar* described the agency's methodology for extrapolation, it did not decide whether the particular methodology was appropriate in that or any other case. The issue was not litigated or decided. *See generally id.* at 31-33. *Goldstar*, decided in 2008, was not an appeal from the final decision in a Medicaid audit. It was not until 2010 that the legislature authorized judicial review of Medicaid audit final decisions.[5] *See* Public Act 10-116 (adding C.G.S. § 17b-99(d)(9)). Rather, *Goldstar* was an appeal from a final decision (following a hearing) finding fraudulent practices, suspending the provider's status as a Medicaid provider, and ordering restitution. *See Goldstar*, 288 Conn. at 22-23. The earlier Medicaid audit was used as evidence of the provider's systemic failure to adhere to the conditions of participation in the Medicaid program, and the provider complained in the suspension proceedings that "the department employed [in the audit] an improper method

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[4] The Supreme Court's opinion explained the issue before the Court:

> Specifically, the plaintiffs contend that the department was not authorized to use an extrapolation method because state regulations do not authorize the use of this process, and the federal regulation on which the trial court relied is not applicable. The department responds that the use of a method of extrapolation is appropriate, legal and sanctioned by federal regulations. We agree with the department.

Goldstar, 288 Conn. at 31.

[5] Because final decisions were issued on a paper review of the record, without the requirement of a hearing (*see* C.G.S. § 17b-99(d)(8)), there was no final decision in a contested case for which judicial review was allowed by the terms of C.G.S. § 4-183.

of assessing Goldstar's compliance with medicaid regulations," *id.* at 29, by employing extrapolation to measure his non-compliance, *id.* at 31. The Supreme Court rejected the argument that the use of extrapolation was "improper rule making," *id.*at 29, and found authority for its use, *id.* at 31-33, but went no further in examining the methodology.

Third, the Supreme Court's rationale for upholding DSS's authority to use extrapolation actually underscores why DSS's methodology may be inappropriate and warrants judicial scrutiny. The Supreme Court relied on "a federal regulation [that] mandates that [DSS] conduct a statistics based evaluation of medicaid providers," *id.* at 32, along with federal agency rulings in the analogous Medicare context permitting "statistical sampling" to project overpayments, *id.* at 32-33. The Supreme Court adopted as a matter of state law "a practice that is recognized at the federal level." *Id.* at 33. Yet, the particular methodology employed by DSS is not based on statistics nor is it a practice recognized by the federal agency overseeing Medicaid and Medicare. It is "extrapolation" in name only.

DSS's method of extrapolation requires no training or expertise in statistics. It is the experience of the Amici that DSS uses a sample of 100 regardless of the size of the universe of claims. It engages in an arithmetic exercise of using the mean overpayment in that sample (*i.e.*, the total overpayments divided by 100) and multiplying that by the universe of claims. Solving a simplistic math problem does not make the exercise a "statistics based evaluation of medicaid providers," *id.* at 32, and does not comply with the principles that the federal government requires for Medicare audits.

The federal Centers for Medicare and Medicaid Services ("CMS") publishes the Medicare Program Integrity Manual to provide guidance based on CMS's interpretation of its governing statutes and regulations.[6] Chapter 8 of the Manual provides directions to auditors of health care providers' paid Medicare claims, including on the subject of

[6] The Manual is available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019033.html.

extrapolation: "These instructions are provided to ensure that a statistically valid sample is drawn and that statistically valid methods are used to project an overpayment where the results of the review indicate that overpayments have been made." Manual ch. 8.4.1.1. "The sampling methodology used to project overpayments must be reviewed by a statistician, or by a person with equivalent expertise in probability sampling and estimation methods. This is done to ensure that a statistically valid sample is drawn and that statistically valid methods for projecting overpayments are followed." *Id.* ch. 8.4.1.5. "The size of the sample (i.e., the number of sampling units) will have a direct bearing on the precision of the estimated overpayment, but it is not the only factor that influences precision." *Id.* ch. 8.4.4.3. In many instances, stratified sampling will improve accuracy, meaning dividing the universe of claims into distinct, non-overlapping subsets and sampling each subset separately. *Id.* ch. 8.4.4.1.3 and 8.4.11.1.

The auditor can then obtain a "point estimate," which is the mean (or average) overpayment in the sample (or stratified sample), multiplied by the total number of units—akin to what DSS calculates in its Medicaid audits. *Id.* ch. 8.4.5.1. But the point estimate is just a starting point for further statistical analysis:

> In most situations the lower limit of a one-sided 90 percent confidence interval shall be used as the amount of overpayment to be demanded for recovery from the provider or supplier. The details of the calculation of this lower limit *involve subtracting some multiple of the estimated standard error from the point estimate, thus yielding a lower figure*. This procedure, . . . through confidence interval estimation, incorporates the uncertainty inherent in the sample design . . . .

Id. (emphasis added). The auditor can demand repayment of the "point estimate" without a confidence interval adjustment *only* if "high precision is achieved" or there is "tight precision" from the sampling and stratification procedures used. *Id.*

The Amici are unaware of DSS adhering to this federal guidance, even though *Goldstar* approved of extrapolation by reference to federal practice. The record in the present matter comports with Amici's experiences with DSS. As far as health care

providers can discern, DSS does not have a statistician ensure the statistical validity of its sampling and extrapolation methodology, and DSS admittedly does not calculate an appropriate confidence interval to adjust the point estimate and therefore takes no steps to ensure the statistical validity of the projected overpayment before it orders recoupment based on extrapolation.[7]

If DSS did take these steps, the record would disclose them, but the record does not. Federal guidance, as set forth in CMS's Medicare Program Integrity Manual, requires disclosure of the auditor's methodology so that a health care provider can verify it. For example, the auditor "shall document all steps taken in the random selection process exactly as done to ensure that the necessary information is available for anyone attempting to replicate the sample selection." *Id.* ch. 8.4.4.2. Another example is that "documentation shall be kept so that the sampling frame can be re-created, should the methodology be challenged." *Id.* ch. 8.4.4.4.1. Federal guidelines require complete transparency and disclosure if extrapolation is used to calculate an overpayment. Absent that, the extrapolation cannot be upheld. *See, e.g.*, *In re Home Foot Care, LLC*, 2010 WL 7342874, at *8 (HHS Dep't Appeals Bd., Medicare Appeals Council Dec. 21, 2010) (extrapolated overpayment calculation vacated where record lacked auditor's documents pertaining to sampling methodology, preventing proper appellate review); CMS Ruling 86-1 (statistical sampling may not deprive provider of full opportunity to demonstrate error in methodology).

The above discussion belies the notion that DSS has carte blanche to engage in any exercise it wishes to in order to extrapolate from a sample to the universe of claims. *Goldstar* or any other precedent cannot be read to go that far. While there may not be just

[7] As cited above in text, CMS guidance is that a point estimate can fairly and legitimately be used for recoupment only when measures (such as a large sample size or stratification) ensure the "high precision" or "tight precision" of the point estimate as a statistically valid estimate of the overpayment. DSS cannot argue (whether on this or any record) that it forgoes the use of a statistical 90% confidence interval because it adheres to that guidance and takes additional steps to ensure statistical validity.

one single appropriate methodology, courts need to require some statistically appropriate measure to ensure that agency action is not arbitrary guesswork or punitive, and courts need to require transparency so that the methodology can be reviewed.

B. Judicial Scrutiny of DSS's Extrapolation Methods Comports with Public Policy as Set by the Legislature and Courts.

Judicial accountability also serves important public policy goals. Providers enrolled in the Medicaid program treat an underserved population, but earn thin profit margins in doing so. A class action lawsuit was brought in 2000 on behalf of a class of children who, although enrolled in Connecticut's Medical Assistance Program, could not obtain dental care because of a lack of enrolled dentists. A settlement in 2008, obtained in part through the efforts of amicus Connecticut State Dental Association and others, established an increase in Medicaid dental reimbursement rates (to the level of the 70th percentile of 2005 private insurance fees), better program administration, and targeted recruitment, which resulted in a marked increase in Connecticut dentists serving the Medicaid population. *See* Conn. Health Foundation, *Impact of Increased Dental Reimbursement Rates on HUSKY A-Insured Children: 2006–2011* in *Health Issues* (Feb. 2013).[8] But, DSS has also been engaging in more audits of dental practices, and DSS's unencumbered use of extrapolation to inflict financial penalties threatens the public policy goal of providing dental care to the state's low-income communities.[9]

The legislature has taken note of these issues. In December 2012, the Legislative

[8] This publication is available at www.cthealth.org/wp-content/uploads/2013/02/impact-of-increased-dental-reimbursement-rates.pdf.

[9] At a Connecticut legislative hearing in 2014, Dr. Mark Desrosiers testified as President of the Connecticut State Dental Association (joined by Dr. Ira Greene, President of amicus Connecticut Society of Pediatric Dentists), citing extrapolation in audits among other factors for how "the current system is placing undue hardships on all providers who provide Medicaid services. If left unresolved, this may result in the unintended consequence of dismantling Connecticut's very successful program, which will have a great impact on the citizens in most need of dental care." Jt. Favorable Report, Human Services Ctee., on HB 5500 (March 2014) (proposing legislative reforms for audits).

Program Review and Investigations Committee—a bipartisan statutory committee of the Connecticut General Assembly—expressed concerns that DSS was not properly implementing its authority to use extrapolation when calculating and recouping overpayments. *See* Legislative Program Review and Investigations Committee, *Medicaid: Improper Payments* (Dec. 2012).[10] The Committee expressed "concerns about the statistical appropriateness [of] the methods used by DSS," including its failure to "calculate the precision or reliability of its sample estimates through the use of commonly accepted statistical measures such as a confidence intervals and confidence levels." *Id.* at 33. The Committee was concerned that "[i]f the audit process is considered too onerous and is combined with the fact that Medicaid pays substantially less than Medicare and private insurers, it could diminish providers' desire to participate in the Medicaid program." *Id.* at 34. The Committee recommended that "DSS should have its overall sampling and extrapolation methodologies reviewed by a statistician to ensure that statistically valid methods are used to draw samples and for projecting overpayments." *Id.* at 35. The Committee was unable to verify that DSS had ever done this. *See id.* at 34. The Committee recognized that *Goldstar* had upheld the "legal validity of using extrapolation," but observed (consistent with the argument in this brief) that "it does not appear that the court actually endorsed the precise statistical methodology used by DSS." *Id.* at 33.

Shortly before that Committee investigation, the legislature passed Public Act 10-116, which required DSS to promulgate formal regulations on its sampling and extrapolation methodology. *See* C.G.S. § 17b-99(d)(11). But DSS has never done so, and its efforts have been rejected by the legislature's Regulation Review Committee as inadequate. More recently, in 2015, the legislature involved itself more directly, deleting the ineffective requirement for regulations and installing a new statutory scheme mandating a sampling and extrapolation methodology that has been validated by a statistician and

[10] Online at www.cga.ct.gov/pri/docs/2012/Final_Full_Approved_Medicaid_Report.pdf.

employs a confidence interval, among other reforms. The new legislation also requires that the methodology be disclosed to the provider at the outset of the audit. A provider aggrieved by the audit can now obtain a full evidentiary hearing at the agency under the contested case procedures of the Uniform Administrative Procedure Act. *See generally* Public Act 15-5 (June Special Session), § 400, effective July 1, 2015.[11] The legislature has not deferred to DSS's unfettered use of extrapolation; instead, it has consistently imposed transparent and fair standards.

The Superior Court has also noted DSS's deficiencies and how they undermine the fairness of the system. Although Judge Schuman deferred to DSS's methodology in the October 20, 2014 decision on appeal, more recently Judge Schuman sustained Walgreens' appeal of a DSS audit decision. *See Walgreen Co. v. State of Conn. Dep't of Soc. Servs*., No. HHB-CV14-6027264-S (Conn. Super. Ct. May 8, 2015) (in Appellant's Appendix, A126). DSS had refused Walgreens' requests for documentation of the random sampling and other sampling and extrapolation procedures used. Although the arithmetic exercise used by DSS to extrapolate in *Goldstar*, in this case, and again in the Walgreens case was known, Judge Schuman found that the failure to disclose the documentation deprived Walgreens of the fundamental fairness required for all agency proceedings, namely that the regulated entity can fairly be apprised of the facts and determine whether to challenge the methodology. *See* A136 (*Walgreen Co.*'s holding that the absence of transparency "has injured the plaintiff's ability to challenge those [extrapolation] methods"). The *Walgreen Co.* court concluded: "The validity of the department's extrapolation method is, in turn, central to the fairness of the reimbursement order imposed by the department on the plaintiff." *Id.*

Thus, when Judge Schuman issued that decision in May 2015, he effectively acknowledged what was overlooked in the present matter, that *Goldstar* had not foreclosed

[11] The new Act, with slight modifications, is derived from HB 6550 (2015), as amended and passed by the House during the regular 2015 session. The Senate did not reach the bill before the regular session was adjourned.

judicial scrutiny of DSS's sampling and extrapolation methodology and that DSS's methods could no longer be hidden from view. Judge Schuman scolded DSS for never promulgating the regulations required by statute and then hiding its processes from health care providers subjected to financial penalties. Since *Walgreen Co.* was decided, DSS has finally begun to share with audited providers some of the documents underlying the agency's sampling and extrapolation methodology, both for ongoing audits and in cases with final audits on appeal to the Superior Court. For example, one of the Amici, ATG Connecticut d/b/a Numotion, recently entered into a stipulation with DSS, approved by the Superior Court (Schuman, J.), to remand an administrative appeal of a final audit to DSS for the agency to fully disclose all documents relating to its methodology, allow Numotion to supplement the record after reviewing the documents, and direct DSS to then issue a new decision—and the Superior Court retained jurisdiction to review the new decision. *See ATG Conn., Inc. d/b/a Numotion v. Bremby, Comm'r of Soc. Servs.*, No. HHB-CV15-6028616-S, Motion for Approval of Stipulation (entry 105.00) and Order (entry 105.01, filed 7/29/15).

DSS failed in this case to justify its methodology as statistically valid, and failed to disclose the methodology so that the plaintiff could have a fair chance to evaluate and challenge it. While that should be sufficient to sustain the plaintiff's appeal, if the Court nevertheless finds some deficiency in the appeal, it should still ensure its ruling is not so broad as to categorically bar judicial review of extrapolation. Under the amended statutory scheme effective July 1, 2015, *see supra* at 8-9, DSS will be subject to greater scrutiny, required by statute to use and disclose a statistically valid methodology and to hold an evidentiary hearing when requested. Because of *Walgreen Co.* and the new statute, the validity of DSS's methods will be reviewed by the courts on a more robust record. This Court should reject any argument by DSS that would foreclose the courts' ability to scrutinize DSS's methodology and reject it as improper. To do otherwise would nullify the judicial and legislative advances holding DSS accountable when the agency engages in extrapolation—purportedly on the basis of statistics—to measure a provider's overpayment.

Dated: August 5, 2015

Respectfully submitted,

THE AMICI CURIAE

By: /s/ Jeffrey R. Babbin_____

Jeffrey R. Babbin
WIGGIN AND DANA LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400 (tel.)
(203) 782-2889 (fax)
jbabbin@wiggin.com
Juris No. 67700

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 67-2, as follows:

§67-2(g):

(1) The electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

§67-2(i):

(1) A copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with P.B. § 62-7; and

(2) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically pursuant to P.B. § 67-2(g); and

(3) the brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(4) the brief complies with all provisions of this rule.

/s/ Jeffrey R. Babbin_____
Jeffrey R. Babbin

CERTIFICATION

I hereby certify that on this 5th day of August, 2015, a copy of the foregoing BRIEF OF AMICI CURIAE was e-mailed and sent by first-class mail, postage prepaid, to all counsel of record, and also sent by first-class mail to the trial court judge, as follows:

Jonathan J. Klein, Esq.
1445 Capitol Avenue
Bridgeport, CT 06604
Tel.: (203) 330-1900
Fax: (203) 330-1526
E-mail: jjkesq@hotmail.com

Robert B. Teitelman, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel.: (860) 808-5040
Fax: (860) 808-5033
E-mail: robert.teitelman@ct.gov

Hon. Carl J. Schuman
Connecticut Superior Court
20 Franklin Square
New Britain, CT 06051

/s/ Jeffrey R. Babbin_____
Jeffrey R. Babbin

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