DOCKET NO. LND-CV-11-6026501-S	:	SUPERIOR COURT
COMMISSIONER OF ENERGY & ENVIRONMENTAL PROTECTION	: :	LAND USE LITIGATION DOCKET
V.	:	AT HARTFORD
BIC CORPORATION	:	NOVEMBER 9, 2015

MEMORANDUM OF DECISION

I

On or around September 24, 2003,[1] the plaintiff, the commissioner (commissioner) of the department of energy and environmental protection (department), issued order SRD-153 requiring the defendant, BIC Corporation (BIC), to conduct an investigation on its property at 500 and 565 Bic Drive in Milford[2] and neighboring property to determine the potential impact of manufacturing activities on the environment and the existing and potential extent and degree of soil, groundwater, and surface water pollution. The commissioner issued modified order SRD-153 to BIC on December 10, 2003. On July 6, 2004, the commissioner and BIC entered into partial consent order SRD-153 (order) requiring BIC to investigate potential releases of pollutants on its property. The commissioner approved the Phase I report with conditions on August 17, 2004, and the Phase II report with conditions on March 29,

[1] The facts are alleged in the commissioner's revised complaint and BIC's amended counterclaim.

[2] As of December of 2005, BIC no longer owns the property.

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2006. On April 7, 2010, the commissioner issued a partial approval of BIC's Phase III investigation.

Alleged releases of trichloroethylene (TCE), BIC's involvement and, among other things, BIC's responsive actions were discussed by this court in greater detail in the private cause of action *Liss* v. *Milford Partners, Inc.*, Superior Court, complex litigation at Hartford, Docket No. X07 CV-04-4025123-S (April 11, 2011, *Berger, J.*). After *Liss*, the commissioner obtained meeting notes in 2011 from BIC's environmental consultant concerning interviews with past BIC employees conducted in December of 2003. As a result of those notes, on July 28, 2011 the commissioner revoked his approvals of the Phase II and III scopes of study and BIC's Phase II report, disapproved the Phase III report, and requested that BIC conduct additional studies which it refused to do.

On October 27, 2011, the commissioner commenced this action against BIC seeking injunctive relief and penalties and stayed the administrative enforcement proceeding. The commissioner's revised complaint, filed on March 14, 2012, alleges that BIC failed to comply with the order.

On March 30, 2012, BIC filed a counterclaim against the commissioner and amended it on February 24, 2014, alleging a breach of the order and a breach of the covenant of good faith and fair dealing based upon the approvals that BIC received in the process of the investigation that were revoked by the commissioner. In its prayer for relief, BIC asks the court to order the commissioner to comply with the

requirements of the order and to pay fees, costs, and other expenses associated with this action.

On October 21, 2014, the commissioner revoked the order[3] and on October 22, 2014, the commissioner withdrew his complaint against BIC.[4] On January 14, 2015, the commissioner filed a motion to dismiss BIC's counterclaim on the grounds that it was barred by the doctrine of sovereign immunity and because BIC failed to exhaust its administrative remedies. BIC filed its memorandum of law in opposition to the commissioner's motion to dismiss on January 30, 2015, arguing that the court does have subject matter jurisdiction over its counterclaim and that pursuing any administrative remedies would be futile. The commissioner filed a memorandum in

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[3] According to exhibit A attached to BIC's memorandum of law in opposition to the commissioner's motion to dismiss, a deputy commissioner commented during a ruling on November 14, 2011, on a stay of the underlying (and pending) administrative enforcement action that "information gathered and considered during the court proceeding could better inform the hearing. The action in court . . . will address whether BIC has complied with the Partial Consent Order or has adequately investigated its site." It should be also noted that BIC installed thirty groundwater wells and sampled and analyzed 786 soil samples as part of the Phase I, II, and III studies. Indeed, as early as 2011, this court found in *Liss* v. *Milford Partners, Inc.*, supra, Superior Court, Docket No. X07 CV-04-4025123-S, that "[f]rom 2004 [to] 2010, BIC has investigated its complex, collecting over 718 soil samples, installing thirty monitoring wells, investigating over 109 potential release areas and conducting multiple soil gas studies at a cost of over $1.6 million." In light of this extensive investigation and litigation, the comments of the deputy commissioner, and the filing of the complaint seeking enforcement of the order, this court can only speculate as to why the commissioner revoked the order and withdrew its complaint after three years of litigation – it is, to say the least, curious.

[4] The commissioner filed a previous motion to dismiss on October 22, 2014, alleging that the counterclaim was moot, which was denied by this court on January 9, 2015. The revocation is attached to the commissioner's memorandum in support of that motion to dismiss.

reply on February 6, 2015. On July 14, 2015, this court heard the motion to dismiss and BIC filed a supplemental memorandum of law on July 17, 2015. The commissioner also filed a memorandum in reply on July 20, 2015, and BIC filed a surreply on July 23, 2015.

II

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . [T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. . . .

"Sovereign immunity relates to a court's subject matter jurisdiction over a case . . . . The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Exceptions to this doctrine are few and narrowly construed under our jurisprudence. . . . To 'overcome the presumption of sovereign immunity'. . . a plaintiff seeking to bring a claim against the state must establish that an exception to the doctrine applies." (Citations omitted; internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 274-75, 21 A.3d 759 (2011).

"When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable

light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone." (Internal quotation marks omitted.) *Cuozzo* v. *Orange*, 315 Conn. 606, 614, 109 A.3d 903 (2015).

III

The commissioner argues that his motion to dismiss should be granted because the court lacks subject matter jurisdiction based upon the doctrine of sovereign immunity. "[T]he practical and logical basis of the doctrine [of sovereign immunity] is today recognized to rest . . . on the hazard that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds, and property. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. . . . Exceptions to this doctrine are few and narrowly construed under our jurisprudence." (Citations omitted; internal quotation marks omitted.) *Markley* v. *Dept. of Public Utility Control*, 301 Conn. 56, 65, 23 A.3d 668 (2011).

"[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a

necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority." (Citations omitted; internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 349, 977 A.2d 636 (2009).

In the present case, BIC does not argue legislature waiver or a violation of its constitutional rights; it only argues th at the commissioner acted in excess of his statutory authority by revoking the order. In *Miller* v. *Egan*, 265 Conn. 301, 314, 828 A.2d 549 (2003), the court held that "a plaintiff seeking to circumvent the doctrine of sovereign immunity must show that . . . in an action for declaratory or injunctive relief, the state officer or officers against whom such relief is sought acted in excess of statutory authority." (Citation omitted.) More recently, in *Columbia Air Services, Inc.* v. *Dept. of Transportation*, supra, 293 Conn. 349, the court held that plaintiff must make "a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officers statutory authority." BIC's amended counterclaim alleges that "the Connecticut environmental statutes [do not] make any provision authorizing the Commissioner to revoke previously approved documents or actions taken by BIC."

Regardless of whether BIC is required simply to allege that the commissioner acted in excess of his statutory authority or to make a "substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority,"[5] "[f]or a claim under the third exception, the plaintiffs must do more than allege that the defendants' conduct was in excess of their statutory authority; they also must allege or otherwise establish facts that reasonably support those allegations." (Internal quotation marks omitted.) Id., 350. "Although in reviewing a motion to dismiss we must construe the allegations of the complaint in the light most favorable to the plaintiff, to survive the defense of sovereign immunity the complaint must nevertheless allege sufficient facts to support a finding of unconstitutional or extra statutory state action. . . . In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Citation omitted; internal

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[5] When the court heard the motion to dismiss on July 14, 2015, BIC argued that the court should hold the trial and hear the evidence concerning the commissioner's actions which would show the wrongful purpose. Neither party sought, however, to introduce testimony or factual evidence. *After* oral argument on the motion to dismiss, BIC filed a supplemental memorandum of law and attached the affidavit of Frederick Johnson, a licensed environmental professional, providing his expert opinion on the actions of the commissioner and BIC. The commissioner argues, and this court agrees, that the submission of such an affidavit uncalled for by the court after the argument is procedurally improper. See Practice Book § 10-31. Additionally, the affidavit improperly purports to give an expert opinion on what is ultimately a matter of law, i.e., the statutory authority of the commissioner, which is for the court to decide. See, e.g., *Millward Brown, Inc.* v. *Commissioner of Revenue Services*, 73 Conn. App. 757, 761, 811 A.2d 717 (2002).

quotation marks omitted.) *Markley* v. *Dept. of Public Utility Control*, supra, 301 Conn. 66.

This court must also examine the relevant statutes to determine if the commissioner's conduct was in excess of his statutory authority. See *Miller* v. *Egan*, supra, 265 Conn. 327 ("when a process of statutory interpretation establishes that the state officials acted beyond their authority, sovereign immunity does not bar an action seeking declaratory or injunctive relief"). The commissioner argues that it had the statutory authority pursuant to General Statutes §§ 22a-5a, 22a-6 (a) (3), and 22a-424. Section 22a-5a provides: "Except as otherwise provided, whenever any section in this title authorizes the commissioner to order a person to abate, correct or remedy any violation, condition, pollution or potential source of pollution, such order may require investigation, study, data gathering or monitoring as the commissioner deems appropriate to assure that the violation, condition or pollution is abated, corrected or remedied." Section § 22a-6 (a) (3) provides: "The commissioner may . . . initiate and receive complaints as to any actual or suspected violation of any statute, regulation, permit or order administered, adopted or issued by him. The commissioner shall have the power to hold hearings, administer oaths, take testimony and subpoena witnesses and evidence, enter orders and institute legal proceedings including, but not limited to, suits for injunctions, for the enforcement of any statute, regulation, order or permit administered, adopted or issued by him . . . ." Section § 22a-424, in relevant part, provides: "The commissioner shall have the following powers and duties: (a) To exercise general supervision of the administration and

enforcement of this chapter; (b) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state . . . (f) To issue, modify or *revoke orders* prohibiting or abating pollution of the waters of the state, or requiring the construction, modification, extension or alteration of pollution abatement facilities or monitoring systems, or any parts thereof, or adopting such other remedial measures as are necessary to prevent, control or abate pollution . . . ." (Emphasis added.)

BIC argues that consent orders are not orders because of both the absence of "consent orders" in the environmental legislation and also because of the sparse use of the term.[6] It notes that the legislature utilized the term in General Statues § 22a-

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[6] The commissioner, on the other hand, argues that the order is not an agreement, This court does not agree. First, the order itself uses the words "agree," "agreement" or "agreeing" on several occasions. Second, § 22a-3a-6 (l) of Regulations of Connecticut State Agencies, in relevant part, provides:
"(l) Disposition of proceeding by *agreement*
"(1) The Department encourages disposition of proceedings by *agreement* when the *agreement* is consistent with the policies and purposes of relevant provisions of law. Settlement discussions among parties shall not affect the obligation to file a timely answer or request for hearing.
"(2) With respect to an order, after the respondent has filed a timely answer or request for hearing pursuant to subdivision (I) (1) of this section, the proceeding may be disposed of by *agreement*, in whole or in part, only as follows:
"(A) (I) The Staff and the respondent shall file a proposed consent order, signed by at least the respondent, which sets out the terms of the *agreement* between the Staff and the respondent. . . ." (Emphasis added).

Third, our legislature has provided for consent orders in General Statutes § 42-110n. Indeed, General Statues § 22a-6dd provides for consent orders for remediation of land and demonstrates the legislature's recognition of the contractual nature of consent orders. Fourth, while our appellate courts have never expressly stated that a consent order is an agreement, the United States Supreme Court and the federal courts have. See, e.g., *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 238, 95 S. Ct. 926, 43 L. Ed. 2d 148 (1975) ("a consent decree or order

6dd[7] for remediation of land and argues that the omission of the term in the above statutes indicates that the legislature intended to distinguish between an "order" and a "consent order." This court does not agree.

"The principles that govern statutory construction are well established. When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a

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is to be construed for enforcement purposes basically as a contract"); *A.R. ex rel. R.V.* v. *New York City Dept. of Education*, 407 F.3d 65, 77 n.12 (2d Cir. 2005) ("[C]onsent orders incorporating settlements are an essential part of adjudicative decision-making. . . . A consent order is an agreement reached in an administrative proceeding between parties one of which is usually the agency's litigation staff. . . . If [the agency accepts the agreement], it issues an order much as a court issues a consent decree. . . . An administrative consent order is a final agency order which is reviewable as if it were the product of a hearing." [Citations omitted; internal quotation marks omitted.]). It is for all purposes similar to a stipulated judgment. See *Rocque* v. *Northeast Utilities Service Co.*, 254 Conn. 78, 83, 755 A.2d 196 (2000) ("A stipulated judgment is not a judicial determination of any litigated right. . . . It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. . . . [It is] the result of a contract and its embodiment in a form which places it and the matters covered by it beyond further controversy. . . . The essence of the judgment is that the parties to the litigation have voluntarily entered into an agreement setting their dispute or disputes at rest and that, upon this agreement, the court has entered judgment conforming to the terms of the agreement." [Internal quotation marks omitted.]).

[7] Section 22a-6dd provides: "Notwithstanding any provision of the general statutes, whenever the Department of Energy and Environmental Protection enters a consent order with a party concerning one or more parcels of land and such consent order requires, in whole or in part, the remediation of such land, the requirements and standards for such remediation shall not be modified by the department unless both the department and such party agree to such modification."

On October 21, 2015 this court held a status conference with the parties concerning the applicability of this statute to the present proceedings. Each side filed a supplemental memorandum and it is apparent that they each agree that it applies to a change in remediation standards adopted after the parties entered into the consent order. It is not directly applicable to this case.

reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Southern New England Telephone Co.* v. *Cashman*, 283 Conn. 644, 650-51, 931 A.2d 142 (2007). The legislature knows how to enact legislation consistent with its intent. See *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 770-71 n.17, 900 A.2d 1 (2006). Moreover, "the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature." (Internal quotation marks omitted.) *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 316 Conn. 790, 803, 114 A.3d 1181 (2015).

BIC's argument that a consent order, as the product of an agreement, is different from a unilateral order issued by the commissioner is reasonable, but the legislature did not carve out such a difference. "It is not the province of this court, under the guise of statutory interpretation, to legislate such a policy, even if we were

to agree with the defendants that it is a better policy than the one endorsed by the legislature as reflected in its statutory language." Id., 803-804. Additionally, in *C.R. Klewin Northeast, LLC* v. *Fleming*, 284 Conn. 250, 254, 932 A.2d 1053 (2007), the plaintiff filed a mandamus action seeking an order to require the state to pay the plaintiff pursuant to a fully executed settlement agreement. The Supreme Court concluded the action "did not come within the 'in excess of statutory authority' exception to sovereign immunity in the absence of any statute imposing on the state a mandatory duty to implement settlement agreements, even though the state plainly is not statutorily authorized to breach settlement agreements." *Gold* v. *Rowland*, 296 Conn. 186, 222, 994 A.2d 106 (2010) (summarizing conclusion of court in *C.R. Klewin Northeast*).

In the present case, "order" is defined in § 22a-3a-2 (a) (1) of the Regulations of Connecticut State Agencies as "unless otherwise indicated by the context, all or part of a Department order to enforce a statute, regulation or license, or of a notice to revoke, suspend, or modify a license, or of a notice under section 22a-6b of the General Statutes, or of a notice under section 22a-52 of the General Statutes, or any other Department action with respect to which there is an opportunity for hearing under the terms of an applicable statute or regulation. An order does not include a ruling as defined in this subsection."[8] The consent order, which is utilized by

[8] In the department's regulations pertaining to civil penalties, § 22a-6b-3 (19) of the Regulations of Connecticut State Agencies also defines "order" referring to the definition found in § 22a-3a-2 (a) (1) .

agreement to enforce statutes, is an order. As the commissioner has the authority to issue, modify, and revoke an order; see, e.g., General Statutes § 22a-424 (f); his action in revoking the consent order was not in excess of his statutory grant.

Finally, BIC contends that the commissioner waived its sovereign immunity by commencing this action seeking equitable relief, which is an exception our Supreme Court recognized in *State* v. *Kilburn*, 81 Conn. 9, 69 A. 1028 (1908).[9] Recently the Supreme Court revisited *Kilburn* in *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 83-84, 74 A.3d 1242 (2013): "[T]his court's emphasis on the equitable nature of *Kilburn*, provided the foundation for its willingness to consider the defendant's equitable counterclaims in that case. Given that this court construes exceptions to sovereign immunity narrowly . . . and the

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[9] In *Kilburn*, "the state had obtained a mortgage on a parcel of property located in . . . Hartford . . . to secure a loan from the state's school fund. . . . Thereafter, the city obtained liens upon the same property for a sewer assessment and an assessment for the expense of removing snow from the sidewalks on the property, which, pursuant to General Statutes (1902 Rev.) § 1954, had priority over mortgages to private individuals previously existing and recorded. . . . When the state sought to foreclose its mortgage upon the property, the city, which, as a lienholder on the property, was made a defendant in the foreclosure action, filed a cross complaint claiming that its sewer and snow removal assessment liens had priority over the state's mortgage under § 1954. . . . The state moved to dismiss the city's cross complaint on the basis of sovereign immunity. . . . This court concluded that, '[t]his action being an equitable one, the [s]tate, by bringing it, opened the door to any defense or cross-complaint germane to the matter in controversy, that the city might see fit to interpose. A sovereign who asks for equity must do equity.'. . . The court further concluded, however, that there was 'no equity in favor of the city' and that liens for municipal assessments may override a prior mortgage to a private individual, but they could not take priority over a prior mortgage to the state. . . . The court, therefore, ordered the trial court to grant the state's motion to dismiss the city's cross complaint." (Citations omitted; internal quotation marks omitted.) *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 82-83, 74 A.3d 1242 (2013).

emphasis that this court placed on the equitable nature of the claims raised in *Kilburn* by qualifying the sentence in which the court set forth the items to which the state had opened the door by initiating the foreclosure action with the phrase: '[t]his action being an equitable one,' and further justifying its conclusion by stating that '[a] sovereign who asks for equity must do equity'. . . we conclude that the applicability of the exception to sovereign immunity recognized in *Kilburn* was intended to extend only to suits in equity and the related equitable counterclaims that would allow the court to make a full determination of the equities in that case." (Citations omitted; footnote omitted; internal quotation marks omitted.) The *Chief Information Officer* court concluded that "*Kilburn* does not provide authority justifying the extension of the recognition of equitable counterclaims in an equitable action to any and all counterclaims a defendant may wish to bring when it has been sued by the state." (Citation omitted.) Id., 90.

In BIC's post-hearing memorandum of law, filed July 17, 2015, BIC stresses that two Texas Supreme Court cases, *Reata Construction Corp.* v. *City of Dallas*, 197 S.W.3rd 371 (Tex. 2006) and *City of Dallas* v. *Albert,* 354 S.W.3rd 368 (Tex. 2011), provide support for its argument. This court does not agree; both cases involved monetary claims filed by the city and corresponding defensive maneuvers. In *Reata*, the court held that "the decision by the City of Dallas to file suit for damages encompassed a decision to leave its sphere of immunity from suit for claims against it which are germane to, connected with and properly defensive to claims the City asserts. Once it asserts affirmative claims for monetary recovery, the City must

participate in the litigation process as an ordinary litigant." *Reata Construction Corp.* v. *City of Dallas*, supra, 197 S.W.3rd 377. In *Albert*, the city responded to a suit for a declaratory judgment and breach of contract by its police and firefighters by seeking damages and monetary relief. *City of Dallas* v. *Albert*, supra, 354 S.W.3rd 370. Thereafter, the city withdrew its monetary claim and raised a governmental immunity defense. Id., 371. The court held that, "it put the Officers in the posture of other similarly situated claimants: they could not prevail on their breach of contract claims because they could not recover a judgment for damages and the City was not pursuing a claim for damages to which an offset would apply." Id., 376.

In the present case, the commissioner was not seeking monetary relief; hence, the Texas cases are inapposite. The commissioner only sought equitable relief in its original complaint and BIC also seeks only equitable relief in its counterclaim. Thus, while the commissioner's case was pending, the counterclaim fell within the *Kilburn* rule. However, the commissioner has revoked the order and withdrawn his complaint and – notwithstanding Practice Book § 10-55[10] – the counterclaim must now be treated as a direct claim against the state and must overcome the sovereign immunity defense. As discussed previously, BIC's counterclaim does not meet any of the three

[10] Section 10-55 provides: "The withdrawal of an action after a counterclaim, whether for legal or equitable relief, has been filed therein shall not impair the right of the defendant to prosecute such counterclaim as fully as if said action had not been withdrawn, provided that the defendant shall, if required by the judicial authority, give bond to pay costs as in civil actions."

exceptions to sovereign immunity. Accordingly, the commissioner's motion to dismiss is granted.[11]

Berger, J.

[11] Because the motion to dismiss is granted on the grounds of lack of subject matter jurisdiction based upon sovereign immunity, the court does not address the motion to dismiss based upon the failure to exhaust administrative remedies. Additionally, in light of BIC's extensive and expensive investigation as more thoroughly discussed in *Liss*, BIC's defense in *Liss* and its multi-week trial, and the many years that both parties have spent on this litigation and the underlying administrative process, this court questions the commissioner's unilateral revocation of the consent order and the withdrawal of this suit. This was, after all, a matter brought to determine whether BIC had complied with the order. To paraphrase *State* v. *Kilburn*, supra, 81 Conn. 12, a sovereign who asks for equity should do equity without throwing up the wall of sovereign immunity because doing so compromises the trust of the governed. One wonders whether the commissioner's tactics may have the undesired and surely unintended consequence of precluding resolution of other cases in the future. See § 22a-3a-6 (l) of Regulations of Connecticut State Agencies. While it would seem from the commissioner's articulation of the revocation that the reason for his unilateral actions is the former employee interviews, he knew about this information at least as early as the filing of his complaint. As mentioned, the administrative action is still pending and presumably the very same issue of compliance will return to us in the future.