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NEW SERVER

RIZZUTO *v.* DAVIDSON LADDERS, INC.—CONCURRENCE

PALMER, J., concurring. I join the majority opinion. I write separately simply to note that there is a way to achieve the result that the majority reaches without creating a new tort of intentional spoliation of evidence. That approach would be to extend our holding in *Beers v. Bayliner Marine Corp.*, 236 Conn. 769, 675 A.2d 829 (1996), to provide that a plaintiff may invoke the *Beers* adverse inference to satisfy his or her burden of production upon proof merely that the defendant had destroyed the evidence in bad faith, that is, with intent to deprive the plaintiff of his or her cause of action. Although I believe that such a modification of *Beers* would satisfy the concerns addressed by the majority, the plaintiff in the present action has not sought that remedy; indeed, the plaintiff has withdrawn his product liability claims, and, therefore, an extension of *Beers* in the manner suggested would not avail the plaintiff. In light of the procedural history of this case, and because I agree with the plaintiff that the currently available remedies for intentional, bad faith spoliation of evidence are inadequate, I join the majority opinion.
