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DUPONT, J., dissenting. The plaintiff, James DePietro, appeals from the judgment of the trial court dismissing his action to recover monetary damages from the defendant, the department of public safety. The defendant's motion to dismiss was premised on the application of the doctrine of sovereign immunity, which the defendant claimed barred the plaintiff's claim for damages because the doctrine divested the court of subject matter jurisdiction. The trial court agreed. The basic issue to be decided is whether the plaintiff, a member of the Bridgeport police department who was assigned to the defendant's statewide firearms trafficking task force (task force), could, pursuant to General Statutes §§ 29-177<sup>1</sup> and 29-178,<sup>2</sup> bring an action for monetary damages against the defendant. I would conclude that the plaintiff could sue the defendant for the underinsured motorist benefits to which I believe he is entitled by virtue of § 29-178 and that the defendant waived its sovereign immunity against such claims by the passage of that legislation. Accordingly, I would reverse the judgment of the trial court.

The genesis of the plaintiff's action is a motor vehicle accident in which the plaintiff, while driving a state owned vehicle and while acting as a special state police officer carrying out the duties of the defendant's task force, and acting within the scope of that employment, was injured seriously due to the negligence of the driver of another vehicle, a private citizen who was underinsured. The plaintiff alleged in his complaint that the defendant "was self-insured for underinsured motorists benefits coverage pursuant to [General Statutes] § 38a-371" and that he "was an insured under the self-insurance policy of the . . . [s]tate, which policy provides for underinsured motorist benefits in the amount of [\$1 million] per accident involving a [s]tate of Connecticut police officer." He also alleged that the vehicle he operated on that date "was a motor vehicle insured for underinsured motorist benefits pursuant to said . . . [s]tate self-insured policy."

In its answer, the defendant admitted that, at the time of the accident, the plaintiff was operating a state owned vehicle as a state employee acting within the scope of his employment with the defendant's task force, the defendant was self-insured for underinsured motorist benefits coverage pursuant to § 38a-371, and the plaintiff was an insured for underinsured motorist benefits through the defendant by virtue of his status as a special state police officer assigned to the defendant's task force. The defendant's admissions in its answer are judicial admissions and relieve the plaintiff of the burden of proving by a preponderance of the evidence the factual allegations admitted. See *Reese v. First Con-*

*necticut Small Business Investment Co.*, 182 Conn. 326, 329, 438 A.2d 99 (1980). Such admissions are conclusive upon the defendant in this case. See *Webster Bank v. Zak*, 259 Conn. 766, 777, 792 A.2d 66 (2002).<sup>3</sup>

The majority opinion concludes that, although the state's insurance policy appears to provide underinsured motorist coverage to the plaintiff, this court need not decide if § 29-178 applies to the plaintiff.<sup>4</sup> As is noted by the majority opinion, no case interpreting whether the words "powers, duties, privileges and immunities," as used in that statute, include persons such as the plaintiff who were injured while assigned to the defendant's task force, has yet been decided. The majority concludes that because the allegations of the plaintiff's complaint do not establish either that the legislature had statutorily waived the state's sovereign immunity or that the claims commissioner had authorized the action, the court properly determined that sovereign immunity deprived the court of subject matter jurisdiction and, therefore, barred the plaintiff's action for money damages. I conclude that § 29-178 grants persons such as the plaintiff the same powers and privileges as are conferred on a state police officer, that a regular state police officer would receive underinsured benefits under the state's policy and that the defendant's motion to dismiss should not have been granted. The defendant admits that the plaintiff was insured for underinsured motorist benefits through the state by virtue of his status as a special state police officer assigned to the defendant's task force.

The state obtained its insurance policy pursuant to the collective bargaining agreement between the state and the state police union and pursuant to § 38a-371. Paragraph C of the policy is entitled "Who is An Insured" and lists state police officers employed by the defendant as insured. If an insured includes a state police officer, as is stated in paragraph C, because § 29-178 treats a special state police officer as a regular state police officer, the plaintiff is covered as an insured under the policy. No mention is made in § 29-178 that members of a municipal force assigned temporarily to the state police must be members of the state police union.<sup>5</sup> In fact, the collective bargaining agreement between the state and the state police union specifically states in art. VI, § 1, that "[d]uring the life of this Agreement, an employee retains the freedom of choice whether or not to become or remain a member of the Union which has been designated as the exclusive bargaining agent." I conclude that whether the plaintiff is a member of the union is irrelevant with regard to whether he is entitled to coverage under the state's insurance policy. It is undisputed by the defendant that the plaintiff, by virtue of his status as a member of the task force while acting within the scope of his authority, was insured for underinsured motorist benefits through the state. Section 29-178 provides in relevant part that "[a]ny municipal

police officer, while assigned to duty with the task force and working at the direction of the [defendant] . . . shall, when acting within the scope of his authority, have the same powers, duties, privileges and immunities as are conferred upon him as a state police officer.” As discussed herein, I conclude that coverage by such underinsured motorist insurance is a privilege that inures to the plaintiff by virtue of his status as a member of the task force.

Our plenary review requires us to decide if the sovereign immunity doctrine prevents the plaintiff from suing the defendant without authorization from the claims commissioner, and our answer depends on whether statutory authority for the claim exists.<sup>6</sup> It is necessary, therefore, to know which statute authorizes the plaintiff’s action. In the plaintiff’s complaint, he alleged only that the defendant was self-insured for underinsured motorist benefits pursuant to § 38a-371 and the relevant facts to support his claim that he is entitled to those benefits pursuant to § 29-178.<sup>7</sup> As discussed herein, I do not believe that the plaintiff must cite a particular statute in order to provide this court with subject matter jurisdiction as long as the court can establish such jurisdiction.

The primary question for resolution is whether the plaintiff was required to obtain permission from the claims commissioner before instituting this action for money damages against the defendant. In order to circumvent the doctrine of sovereign immunity, a plaintiff must show that the legislature, either expressly, or by force of necessary implication, statutorily waived that immunity. *Miller v. Egan*, 265 Conn. 301, 314, 828 A.2d 549 (2003). The state cannot be sued for money damages without its consent except as permitted by the legislature. *Id.*, 317. Thus, the plaintiff, in order to negate the doctrine of sovereign immunity, must either show an authorization by the claims commissioner<sup>8</sup> or a statutory exemption allowing such a claim against the state. I conclude that the claims commissioner lacked subject matter jurisdiction to hear the defendant’s claim.

The standard procedure for making claims for money damages against the state is through a petition to the claims commissioner to waive sovereign immunity. See General Statutes §§ 4-141 through 4-165. General Statutes § 4-142 provides in relevant part that the commissioner “shall hear and determine all claims against the state *except* . . . claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts . . . .” (Emphasis added.) Our Supreme Court has explained that “in order for statutory language to give rise to a necessary implication that the state has waived its sovereign immunity, [t]he probability . . . must be apparent, and not a mere matter of conjecture; but . . . necessarily such that from the words employed an intention to the

contrary cannot be supposed. . . . In other words, in order for a court to conclude that a statute waives sovereign immunity by force of necessary implication, it is not sufficient that the claimed waiver reasonably may be implied from the statutory language. It must, by logical necessity, be the only possible interpretation of the language.” (Citation omitted; internal quotation marks omitted.) *Envirotest Systems Corp. v. Commissioner of Motor Vehicles*, 293 Conn. 382, 388–90, 978 A.2d 49 (2009).

Section 29-178 provides that an officer such as the plaintiff, who was assigned to duty with the task force and working at the direction of the defendant and acting within the scope of his authority, shall “have the same powers, duties, privileges and immunities as are conferred upon him as a state police officer.” A privilege, as defined by Ballentine’s Law Dictionary (3d Ed. 1969), is “[a]n advantage held by way of . . . permission, not possessed by others.” See also *Hartford v. Powers*, 183 Conn. 76, 83 n.3, 438 A.2d 824 (1981) (“Webster’s Third New International Dictionary defines privilege as ‘a right or immunity granted as a peculiar benefit, advantage, or favor; special enjoyment of a good or exemption from an evil or burden; a peculiar or personal advantage or right esp. when enjoyed in derogation of common right; prerogative’ ”). I would conclude that coverage pursuant to the defendant’s underinsured motorist insurance plan is such a privilege afforded to persons such as the plaintiff.

The defendant admitted in its answer that the plaintiff was an insured for underinsured motorist benefits because of his status as a special state police officer assigned to the task force and that the state was self-insured for underinsured motorist benefits coverage pursuant to § 38a-371. As noted by the majority, on the face of the underinsured motorist policy at issue, the policy appears to provide coverage to the plaintiff. The defendant has impliedly conceded that a regular state police officer would be entitled to pursue such an action. The defendant contends that the state could, but in its “benevolence” could choose not to, raise the issue of sovereign immunity when a state police officer commences an action in the Superior Court to recover underinsured motorist benefits and admitted that on one occasion the state paid such a claim brought by a municipal police officer assigned to a state police task force. The policy of self insurance was provided because of a collective bargaining agreement between the state and the state police union and admittedly covers regular police officers. If a regular state police officer can pursue an action in Superior Court to recover underinsured motorist benefits, it defies both logic and the plain meaning of § 29-178 to conclude that the plaintiff cannot do so as well. I would hold that § 29-178 gave the plaintiff a statutory right to sue the state because a state police officer had the same right,

which waived the sovereign immunity of the state that would otherwise exist.

In this case, the plaintiff's action is otherwise authorized by law by the force of necessary implication by § 29-178 because a regular state police officer would be covered by the policy. Whether the plaintiff provided an adequate record of the claims commissioner's ruling is irrelevant because the plaintiff did not have to seek the commissioner's permission to sue the state. Although I would conclude that § 29-178 contains a statutory exception to the doctrine of sovereign immunity, a subsidiary question is whether a reviewing court may so conclude when the plaintiff has not cited a particular statute that he claims waives sovereign immunity.

The question of subject matter jurisdiction addresses the basic competency of the court and can be raised at any time by a court sua sponte. A reviewing court has a duty to dismiss, even on its own initiative, any appeal that it lacks jurisdiction to hear. *Webster Bank v. Zak*, supra, 259 Conn. 774. Thus, even if the plaintiff has not identified a particular statute that he claims waives sovereign immunity, we have a duty to determine whether such statutory authority exists because without the statutory authority, or approval of the claims commissioner, we would lack subject matter jurisdiction. The reviewing court is not an officious intermeddler or an advocate for either party when it determines its jurisdiction. Rather, it is engaging in a necessary quest to establish its power, and the trial court's power, to determine the issue.

Unlike the majority, I would therefore conclude that the plaintiff, as a special state police officer injured while acting in the scope of that employment and driving a state owned vehicle, was covered by the self-insured defendant's underinsured motorist coverage and that he comes within the purview of § 29-178. That statute gives persons such as the plaintiff the same powers, duties, privileges and immunities as are conferred on state police officers, including the right to pursue this action. The defendant admitted in its answer that the plaintiff was an insured entitled to underinsured motorist benefits because of his status on the task force. I submit that the plaintiff did not need to file his claim with the claims commissioner because the claims commissioner did not have jurisdiction to consider the plaintiff's claim. The statutory authority in § 29-178 allows the plaintiff to bring a direct action for monetary damages against the state in the Superior Court. On the facts of this case, the doctrine of sovereign immunity did not deprive the court of subject matter jurisdiction, and the defendant's motion to dismiss the plaintiff's claim should have been denied. Therefore, I would reverse the court's judgment dismissing the plaintiff's action and remand the case for further proceedings.

<sup>1</sup> General Statutes § 29-177 provides: "(a) The Commissioner of Public

Safety may from time to time select such number of police personnel of any municipality of the state to act temporarily as special state policemen to carry out the duties of the task force as he deems necessary. Such policemen shall be appointed from a list of names of persons recommended to the State-Wide Narcotics Task Force Policy Board by the chiefs of police of the municipalities and approved by said board.

“(b) Each municipality shall be responsible for the full payment of the compensation of personnel temporarily assigned to the state-wide narcotics task force and such salary shall be payable to such assigned personnel while on duty with said task force.

“(c) For purposes of indemnification of such personnel and its municipalities against any losses, damages or liabilities arising out of the service and activities of the task force, personnel while assigned to, and performing the duties of, the task force shall be deemed to be acting as employees of the state.”

<sup>2</sup> General Statutes § 29-178 provides: “Any municipal police officer, while assigned to duty with the task force and working at the direction of the Commissioner of Public Safety or his designee, shall, when acting within the scope of his authority, have the same powers, duties, privileges and immunities as are conferred upon him as a state police officer.”

<sup>3</sup> Because the defendant admitted in its answer that the plaintiff was an insured under the state’s self-insured policy for underinsured motorist benefits, it could not negate that admission at oral argument before this court. The vital force of a judicial admission is that it is conclusive on the party making it and prohibits any further dispute of the fact. *Webster Bank v. Zak*, supra, 259 Conn. 777.

<sup>4</sup> The majority correctly notes that the plaintiff has not identified any statute that he claims waives the sovereign immunity of the state. Therefore, the majority reasons that we, as the reviewing court, should not “sua sponte” identify such a statute. The majority also argues that even if § 29-178 applies to this plaintiff, he has not established that a regular police officer would be entitled to recover monetary damages against the state under the same factual conditions that exist in this case.

<sup>5</sup> The plaintiff admits that he is not a member of the state police union.

<sup>6</sup> In cases involving the subject matter jurisdiction of the court, we can and should raise and review such an issue sua sponte, even if the plaintiff has not provided a particular statute on which he relies to waive the state’s sovereign immunity. See *Miller v. Egan*, 265 Conn. 301, 324, 828 A.2d 549 (2003); *Webster Bank v. Zak*, supra, 259 Conn. 774.

<sup>7</sup> The plaintiff argued to the trial court the applicability of General Statutes § 52-556. The trial court correctly rejected the argument that § 52-556 applies. That statute waives the defendant’s sovereign immunity when a state official operates a state vehicle negligently. Here, the negligent operator was a private citizen.

<sup>8</sup> As the majority points out, the plaintiff did not provide this court with a record of the proceedings before the claims commissioner. In a memorandum of law before the trial court that is part of the record before this court, the plaintiff represented that he sought permission from the claims commissioner on January 20, 2004, and that the commissioner dismissed the plaintiff’s notice of claim on June 18, 2004, citing a lack of subject matter jurisdiction. The plaintiff provided documentation that the defendant filed a motion to dismiss his claim before the claims commissioner, citing several grounds, including the ground that the plaintiff could pursue a direct action against the state to recover money damages, thus depriving the commissioner of subject matter jurisdiction. The record does not reflect the commissioner’s actual ruling on this motion.

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