SUPREME COURT

OF THE

STATE OF CONNECTICUT

SC 20418

TOWN OF LEDYARD

v.

WMS GAMING, INC.

BRIEF OF DEFENDANT–APPELLEE WMS GAMING, INC. WITH ATTACHED APPENDIX PART 2

ATTORNEYS FOR DEFENDANT-APPELLEE:

Aaron S. Bayer
David R. Roth
WIGGIN AND DANA LLP
265 Church Street
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400
abayer@wiggin.com
droth@wiggin.com
Juris No. 067700

TO BE ARGUED BY:
AARON S. BAYER

TABLE OF CONTENTS

COUNTERSTATEMENT OF THE ISSUE

In 2006, the Mashantucket Pequot Tribal Nation sued the Town of Ledyard in federal court alleging that the Town's effort to levy taxes on personal property leased to the Tribe for use on its reservation infringed the Tribe's sovereign rights under federal law. Two years later, the Town filed this action against WMS Gaming, seeking to collect taxes on gaming equipment it leased to the Tribe. In this circumstance, did the Appellate Court correctly rule that General Statutes § 12-161a does not permit the Town to collect from WMS the attorneys' fees the Town incurred defending against the Tribe's pre-existing, seven-year-long federal lawsuit regarding the Tribe's sovereignty, a suit to which WMS was never a party?

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

This appeal stems from two disputes. The first is whether federal law preempts the Town of Ledyard's efforts to levy property taxes on equipment leased to the Mashantucket Pequot Tribal Nation ("MPTN") and used exclusively on its reservation for federally sanctioned gaming. In 2006, MPTN sued the Town over that issue in federal court, which MPTN and the Town then litigated for seven years. At no time was WMS a party to that federal litigation. The second dispute—the above-captioned matter—is an action commenced by the Town in 2008 against WMS Gaming, seeking to collect $18,251.23 in personal property taxes on equipment WMS leased to MPTN.

The issue before this Court is whether the Town can use this action, filed in 2008, as a retroactive bootstrap to make WMS pay the attorneys' fees the Town incurred defending against MPTN's pre-existing federal suit regarding MPTN's sovereignty. It claims General Statutes § 12-161a, which allows the Town to recover reasonable fees incurred "as a result of and directly related to" this tax-collection action, provides a basis for doing so.

A review of the history of the two proceedings makes clear that the fees the Town incurred defending against MPTN's federal suit were not the "result of" this tax-collection action, because it would have had to defend against MPTN's existing federal suit and incurred the same attorneys' fees even if this tax-collection action had never been filed at all. The Town's federal-court attorneys' fees were also not proximately caused by or "directly related to" this tax-collection action, because it incurred those fees litigating a suit brought by someone else in another court over that party's own federal rights, not any rights of WMS. The federal courts that heard MPTN's federal suit have already recognized as much, rejecting the Town's arguments that the federal suit was just a backdoor way for WMS to challenge its tax liability. Those courts explicitly held that the federal suit was not

about WMS at all; it was about whether the Town's efforts to tax property within the Tribe's federally recognized reservation violated the Tribe's sovereign rights. The Town's argument that it can recover from WMS the attorneys' fees the Town incurred in MPTN's federal suit—on the theory that the two suits were really about the same the thing—directly contravenes the federal courts' rulings that the two suits are fundamentally different.

For all these reasons, the Appellate Court rightly held that Section 12-161a does not make WMS liable for the fees the Town incurred defending against MPTN's pre-existing federal lawsuit. Its well-reasoned, unanimous decision should be affirmed.

COUNTERSTATEMENT OF FACTS AND PROCEEDINGS

The history of the proceedings at issue in this appeal make it clear that MPTN's federal lawsuit, to which WMS was never a party, was not a result of or directly related to the collection action against WMS. Section 12-161a's plain language, then, does not allow the Town to make WMS pay for the attorneys' fees the Town incurred in MPTN's suit.

I. In the 1990s, the Town began taxing personal property leased to MPTN for use on its reservation.

Connecticut law authorizes towns to assess personal property taxes on property owned by out-of-state residents that is located within the town's jurisdiction. *See* Conn. Gen. Stat. § 12-43. Federal law preempts these taxes to the extent they would reach property owned by MPTN located on its reservation. *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995). Thus, gaming equipment owned by MPTN for use in its casino is not subject to the Town's personal property tax.

In 1997, MPTN began leasing slot machines from several gaming-equipment manufacturers. These manufacturers included Atlantic City Coin & Slot Company ("AC Coin"), WMS, and others. *See Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d

457, 461, 474 n.18 (2d Cir. 2013) (noting that MPTN also leases slot machines from International Gaming Technology and Bally Technologies). These leases were necessary because many proprietary casino games are available only by lease. *Id.* at 461. Because this gaming equipment was owned by the out-of-state vendors, not MPTN, the Town began assessing personal property taxes against the vendors. MPTN analyzed the issue and concluded that these taxes should be preempted by federal law, because the taxes invaded the Tribe's sovereignty over its reservation. *Id.* at 462. Nonetheless, the vendors continued to pay personal property taxes for several years. *Id.*

The legality of the Town's taxes on property leased to MPTN was not limited to taxes assessed on gaming equipment. In the late 1990s, the Town also taxed motor vehicles leased to MPTN and used exclusively on its reservation. In 2001, MPTN and the lessor of these vehicles sued the Town arguing, among other things, that federal Indian law preempted the Town's collection of property taxes on the leased vehicles. *See Auto Rental Corp. v. Town of Ledyard,* No. CV-01-0122127S (Conn. Super. Ct. 2001). That case was subsequently settled, but the broader dispute remained unresolved.

II. In 2006, MPTN sued the Town in federal court over its sovereign rights.

In 2006, AC Coin pursued an administrative appeal of the Town's assessment of personal property taxes. *See Mashantucket Pequot Tribe*, 722 F.3d at 462. After the Town rejected AC Coin's appeal, MPTN filed a federal lawsuit in the District of Connecticut. Complaint, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:06-cv-01212-WWE (D. Conn. Aug. 3, 2006), ECF No. 1, WMS A33–41 ("MPTN's First Complaint").[1] While AC Coin

[1] Citations to the Town's appendix are denoted A[page]. Citations to WMS's appendix are denoted WMS A[page].

was initially named as a plaintiff, *id.*, it withdrew a few months later, leaving MPTN alone as plaintiff. *See* First Amended Complaint, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:06-cv-01212-WWE (D. Conn. Dec. 13, 2006), ECF No. 35, WMS A42–49. WMS—and MPTN's other gaming equipment vendors—were never a party to this federal suit.

MPTN's suit asserted that federal Indian law prohibited the Town from levying taxes on property "that the Tribe leases from out-of-state vendors and uses in connection with its tribal governance and gaming operations." *Id.* at 1, WMS A42. MPTN's complaint sought a declaration "that the property taxes are void and illegal, and a permanent injunction preventing the defendants from assessing illegal taxes on personal property on the Reservation in the future." *Id.* Because MPTN's suit challenged the Town's authority to impose personal property taxes under a state statute, the State of Connecticut intervened. *See* Order, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:06-cv-01212-WWE (D. Conn. Jan. 25, 2007), ECF No. 41, WMS A9. MPTN, the Town, and the State then litigated this case in federal court for two years, with the Town engaging a national law firm, Perkins Coie LLP, to represent it in federal court.

III. Two years into MPTN's suit, the Town brought this action against WMS.

While MPTN's suit against the Town was ongoing, another of MPTN's gaming-equipment vendors, WMS, stopped paying personal property taxes to the Town. In June 2008, nearly two years after MPTN commenced its federal suit, the Town filed this action in state court, seeking to collect unpaid personal property taxes in the amount of $18,251.23, plus interest and penalties. A8–10 (Complaint). The Town also sought attorneys' fees from WMS under General Statutes § 12-161a. *Id.*

Shortly thereafter, MPTN brought a second federal suit, identical to its pending suit concerning AC Coin, alleging that the taxes levied on WMS were illegal for the same

reasons. Complaint, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:08-cv-01355-WWE (D. Conn. Sept. 8, 2008), ECF No. 1, A144–51 ("MPTN's Second Complaint"). With the Town's consent, MPTN promptly moved to consolidate the two cases. Unopposed Motion to Consolidate Case, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:08-cv-01355-WWE (D. Conn. Dec. 4, 2008), ECF No. 18, WMS A71–73. The district court immediately granted MPTN's request. Order, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:08-cv-01355-WWE (D. Conn. Dec. 5, 2008), ECF No. 19, WMS A61. The only pleadings the Town ever filed in this second federal case before consolidation was a notice of appearance and a nine-page answer, which was in all relevant respects identical to the answer the Town had previously filed in the first MPTN suit. *See* Docket, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:08-cv-01355-WWE (D. Conn.), WMS A59–61; *compare* Answer, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:08-cv-01355-WWE (D. Conn. Nov. 10, 2008), ECF No. 12, WMS A62–70 ("Town's Second Answer"), *with* Answer, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:06-cv-01212-WWE (D. Conn. Dec. 20, 2007), ECF No. 73, WMS A50–58 ("Town's First Answer"). Because the resolution of the Tribe's federal suit could moot the Town's collection action, WMS sought and obtained a stay of the Town's state-court action. A73–74 (Superior Court Decision). At no point was WMS a party to the Tribe's federal suit. *Id.*

IV. The district court and the Second Circuit recognized that MPTN's suit concerned its own rights under federal law, not the rights of AC Coin or WMS, but ultimately upheld the Town's taxing authority.

Following consolidation, MPTN, the Town, and the State litigated MPTN's claims for five more years in the district court and then the Second Circuit. Among the defenses the Town raised to the consolidated suit was that MPTN lacked standing because the vendors (AC Coin, WMS, and others) were the ones liable for the taxes and hence the only ones

injured by the Town's actions. WMS A55–56 (Town's First Answer) ("The Tribe has no standing to challenge the personal property tax because the tax is not assessed against the Tribe, the Tribe has no obligation to pay personal property tax, except that which it has elected to pay an owner or owners of personal property in order to maintain this suit, and the Tribe suffers no direct or personal harm from the incidence of taxation it challenges."). The district court rejected this argument, holding that MPTN had standing because it alleged its own injury distinct from any injury to the vendors: "the Town's tax regulation presents an injury to the Tribe's interest in sovereignty and self-government as well as an imminent threat to its autonomy within its physical boundaries." *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3:06-cv-01212 (WWE), 2012 WL 1069342, at *5–6 (D. Conn. Mar. 27, 2012). The Second Circuit agreed. It recognized that the Town's taxes caused an injury "distinct from the monetary injury asserted by the taxed parties, implicat[ing] the substantive interest which Congress has sought to protect in tribal self-government." *Mashantucket Pequot Tribe*, 722 F.3d at 463 (internal quotation marks and alterations omitted).

A second defense raised by the Town was that the federal Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, barred MPTN's suit. The TIA generally prohibits federal courts from enjoining the collection of any state tax so long as the tax can be challenged in state court. *Mashantucket Pequot Tribe*, 2012 WL 1069342 at *6. But under U.S. Supreme Court precedent, the TIA does not bar a suit by an Indian tribe when the tribe "is seeking to vindicate the rights of the tribe rather than suing as a representative of an individual seeking refund of taxes." *Id.* The district court held that because MPTN's suit concerned whether Ledyard's taxes "infringe[d] upon [MPTN's] sovereignty," the TIA did not bar its suit. *Id.* The Second Circuit agreed, noting that if MPTN were "suing on behalf of the third-party vendors [like WMS] who are the taxed parties, its suit (like theirs) [would be] barred

by the TIA." *Mashantucket Pequot Tribe*, 722 F.3d at 464. But since MPTN was "suing to defend against the Town's and State's alleged encroachment upon aspects of tribal sovereignty protected by" federal law, rather than suing on behalf its vendors, the TIA did not bar its claims. *Id.* at 464–65.[2]

MPTN prevailed on the merits in the district court, but not in the Second Circuit. The district court held that the Town's taxes on property leased to MPTN were preempted by the Indian Trader Statutes, 25 U.S.C. §§ 261–64, and the Indian Gaming Regulatory Act ("IGRA"). *Mashantucket Pequot Tribe*, 2012 WL 1069342 at *7–9. It also found them invalid under the *Bracker* balancing test, *see White Mountain Apache v. Bracker*, 448 U.S. 136 (1980), a doctrine that balances conflicting state, federal, and tribal interests. *Mashantucket Pequot Tribe*, 2012 WL 1069342 at *9–12. But the Second Circuit disagreed, concluding that the taxes were not preempted on any of these grounds. *See Mashantucket Pequot Tribe*, 722 F.3d at 466–77.

None of the preemption issues litigated in MPTN's consolidated federal suit depended in any way on the details of the vendors' tax liability to the Town. *See id.* Instead, the issue the federal courts were called on to resolve was whether the Tribe's unique sovereign rights as a federally recognized Indian tribe preempted the Town's authority to impose taxes on property leased to MPTN and used in gaming operations on its reservation. At the end of MPTN's suit, neither the Town nor the State asked the federal

[2] The Second Circuit also rejected the State's argument that MPTN's suit should be dismissed based on principles of comity, in favor of a state-court forum. *Id.* at 465–66. Among other reasons, the court found comity doctrines inapplicable because the Town did not bring any state-court actions to collect unpaid taxes until two years after MPTN had commenced its federal suit, which significantly undermined any reason for the federal courts to defer to pending state-court proceedings. *Id.* at 466 n. 6.

courts to award them the attorneys' fees they incurred defending against MPTN's federal-law claims.

V. The trial court ruled that the Town can recover from WMS the fees it incurred defending against MPTN's suit, but the Appellate Court reversed based on a plain reading of Section 12-161a.

Soon after the Second Circuit's decision, WMS and the Town resumed this case. WMS promptly paid all outstanding taxes, interest, and penalties, which by now had mushroomed to $372,629.44. *See* A34–35 (Stipulation); A74–75 (Superior Court Decision). The parties also agreed that under General Statutes § 12-161a, the Town could recover the reasonable court costs and attorneys' fees it incurred in this state-court collection action. A34 (Stipulation). Because the tax-collection action was stayed almost immediately after filing and then promptly resolved by stipulation following the end of MPTN's federal suit, those costs and fees will be minimal.

This case should have been settled in its entirety, based on WMS's payment of all taxes, interest, and penalties and its agreement to pay the Town's costs and fees incurred in the collection action. But the Town wanted more. It asserted that Section 12-161a also allowed it to recover from WMS all of the attorneys' fees the Town paid Perkins Coie over seven years to defend against MPTN's claims in federal court, a suit that WMS was never a party to and that began two years before this tax collection action was even filed. The Town has advised WMS that the fees it incurred in MPTN's federal suit exceed one million dollars. Unsurprisingly, WMS objected. The parties agreed to submit this issue for decision to the trial court via motions for summary judgment. A34 (Stipulation); A75 (Superior Court Decision).

Following discovery and briefing, the trial court agreed with the Town, concluding that Section 12-161a allowed the Town to recover the fees it incurred in MPTN's federal

suit. The trial court interpreted Section 12-161a to permit recovery of any attorneys' fees incurred as a proximate result of this state-court collection action. A79 (Superior Court Decision). But the trial court then adopted an expansive and unprecedented view of what "proximate cause" means in this context, citing various connections between MPTN and WMS[3] and finding that the Town's federal attorneys' fees were proximately caused by the state-court collection action because the federal suit "was an action to prevent the Town from taxing the same WMS gaming machines that were the subject of the instant case." *Id.* Accordingly, the court granted summary judgment to the Town and directed it to file a motion for attorneys' fees. A81. WMS promptly appealed.

A unanimous Appellate Court reversed.[4] *Town of Ledyard v. WMS Gaming, Inc.*, 192 Conn. App. 836, 218 A.3d 708 (2019). It began with the words of Section 12-161a. That statute permits municipalities in a personal property tax collection action to recover attorneys' fees incurred "as a result of and directly related to" the tax collection action. The court noted that "as a result of" has consistently been interpreted as requiring a showing of proximate cause. 192 Conn. App. at 844. But the statute also requires that any attorneys' fees be "directly related to" the tax collection action. *Id.* at 844–45. In order to avoid treating

[3] The court relied on the fact that the Tribe, as part of its contractual relationship, agreed to indemnify WMS for any liability it incurred as a result of the Town's collection action and the fact that some of the Tribe's lawyers also represented WMS. As discussed below, neither of these facts has anything to do with the proper construction of Section 12-161a. *See infra* Argument Section IV.A.

[4] The Appellate Court initially dismissed WMS's appeal as premature, concluding that the superior court's decision was not final and appealable until the court determined the amount of fees. *See Town of Ledyard v. WMS Gaming, Inc.*, 171 Conn. App. 624, 157 A.3d 1215 (2017). This Court subsequently reversed, holding that the superior court's conclusion that WMS was liable under Section 12-161a for the Town's federal-court attorneys' fees was final and appealable. *Town of Ledyard v. WMS Gaming, Inc.*, 330 Conn. 75, 191 A.3d 983 (2018).

"directly related to" as superfluous, the Appellate Court reasoned that this phrase must impose a more restrictive "proximal nexus" than proximate cause. *Id.*

Applying this standard to the facts of this case, the Appellate Court concluded that the fees the Town incurred defending against MPTN's federal suit were not the "result of and directly related to" this tax-collection action. *Id.* at 845–49. First, though MPTN's suit was related to this one, it was collateral to the tax-collection action because it did not reach any final determination regarding the rights and obligations of WMS. *Id.* at 845. Second, the court noted that both the district court and Second Circuit had already decided in the context of MPTN's standing and the TIA that the federal suit was *not* about WMS's tax liability but about MPTN's sovereign rights as a federally recognized Indian tribe. *Id.* at 846. Third, given the history of MPTN's suit, the Appellate Court concluded that the Town's federal attorneys' fees could not be "the result of and directly related to" the tax-collection action, since the Town would have incurred these same fees even if it had never commenced the tax-collection action at all. *Id.* Finally, the Appellate Court noted that its decision was consistent with lower courts' and this Court's resolution of fee disputes involving other statutes. *Id.* at 847–49. The Appellate Court therefore vacated the trial court's grant of summary judgment in favor of the Town and directed the lower court to grant WMS's motion for summary judgment. *Id.* at 850.

The Town filed a motion for rehearing en banc or reargument, which was denied by the Appellate Court. A131 (Appellate Court Order). Thereafter, the Town filed a petition for certification in this Court. On December 5, 2019, this Court granted certification on the following question:

> Did the Appellate Court correctly conclude that General Statutes § 12-161a, which allows trial courts to award attorney's fees incurred by a municipality "as a result of and directly related to" state court proceedings to collect unpaid

> personal property taxes, did not authorize the award of attorney's fees incurred by a municipality in defending a collateral action in federal court that challenged the municipality's authority to collect the personal property taxes at issue in the state court action?

334 Conn. 904, 220 A.3d 35.

ARGUMENT

I. Standard of Review and Legal Principles

This appeal asks whether General Statutes § 12-161a permits the Town to recover the attorneys' fees it spent defending against MPTN's federal suit. Because this is a question of the proper interpretation of Section 12-161a, this Court exercises plenary review. *See, e.g.*, *Colangelo v. Heckelman*, 279 Conn. 177, 182–83, 900 A.2d 1266 (2006).

The principles of statutory interpretation are well established. When construing a statute, the "fundamental objective is to ascertain and give effect to the apparent intent of the legislature." *Perry v. Perry*, 312 Conn. 600, 622, 95 A.3d 500 (2014) (internal quotation marks omitted). In trying to determine a statute's meaning, the Court should first "consider the text of the statute itself and its relationship to other statutes." 312 Conn. at 622 (internal quotation marks omitted). If the meaning of the text "is plain and unambiguous and does not yield absurd or unworkable results," the Court should apply the statute's plain meaning without considering extratextual evidence. *Id.* (internal quotation marks omitted). But if the statute is ambiguous, meaning that it is "susceptible to more than one reasonable interpretation," the Court may consider extratextual evidence regarding its intended scope. *Id.* (internal quotation marks omitted).

In addition to these general principles, two specific rules of statutory interpretation are relevant here. First, statutes in derogation of common law must "receive a strict construction." *Id.* at 623 (internal quotation marks omitted). Section 12-161a is subject to

this rule of narrow construction, because it is an exception to the common-law American rule, under which the parties pay their own attorneys' fees. Section 12-161a therefore must be interpreted "strict[ly]"; it should not be "extended, modified, repealed or enlarged in its scope by the mechanics of statutory construction"; and its application should be "limited to matters clearly brought within its scope." *Id.* (internal quotation marks, alterations, and ellipses omitted).

Second, a "cardinal principle[] of statutory interpretation" is that statutes should not be interpreted in a manner that renders a word or phrase superfluous. *Am. Promotional Events, Inc. v. Blumenthal*, 285 Conn. 192, 203, 937 A.2d 1184 (2008). Instead, the Court must give effect to every word or phrase. *Id.* Any reading of a statute that results in certain language being surplusage must be rejected. *Id.*

II. The Appellate Court correctly construed Section 12-161a.

Section 12-161a provides:

> In the institution of proceedings by any municipality to enforce collection of any delinquent tax on personal property from the owner of such property . . . such person shall be required to pay any court costs, reasonable appraiser's fees or reasonable attorney's fees incurred by such municipality [1] as a result of and [2] directly related to [3] such . . . collection proceedings.

Conn. Gen. Stat. § 12-161a (numbers in brackets added). Three phrases of this statute, placed in numbered brackets above, govern how it applies to the facts of this case.

First, the statute limits municipalities to recovering attorneys' fees that were the "result of" a tax-collection proceeding. As the Appellate Court recognized, the phrase "'as a result of' has been interpreted . . . as synonymous with 'proximate cause,' that is, an actual cause that is a substantial factor in the result." *Town of Ledyard*, 192 Conn. App. at 844 (internal quotation marks, alterations, and ellipses omitted) (quoting *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306, 692 A.2d 709 (1997)). Proximate cause requires both

actual, or "but-for" causation, and that the casual connection be sufficiently strong to be a "substantial factor" in bringing about an event. *Stewart v. Federated Dep't Stores*, 234 Conn. 597, 605–06, 662 A.2d 753 (1995). On appeal, the Town purports not to dispute these points. Town Br. at 12 & n.4; *but see infra* Section IV.C.

Second, under Section 12-161a, a municipality can recover only those attorneys' fees that were "directly related to" the tax-collection proceeding. As the Appellate Court correctly held, this phrase must "import a more restrictive proximal nexus" than proximate cause. *Town of Ledyard*, 192 Conn. App. at 845. Interpreting "directly related to" as denoting proximate cause would make it duplicative of the phrase "as a result of," violating the cardinal rule of statutory interpretation that every phrase in a statute should be given meaning. *Id.*; *see Am. Promotional Events*, 285 Conn. at 203.

The Town criticizes this aspect of the Appellate Court's decision, arguing at length that Section 12-161a *only* requires proximate cause. Town's Br. at 13–23. Ultimately, this issue makes no difference to the outcome of this case, because none of attorneys' fees the Town incurred defending against MPTN's federal lawsuit were proximately caused by this tax-collection action against WMS.[5] Regardless, the Town's criticism of the Appellate Court's decision is wrong. The Town cites various dictionary sources or cases discussing the plain meaning of the words "direct" or "related," either alone or in combination with other words, but it does not cite any source addressing the meaning of the phrase "directly

[5] The Town tries to assert that WMS previously agreed that Section 12-161a only requires proximate cause. *See* Town Br. at 12–13 & n. 3. That is not correct. WMS has repeatedly argued that the Town's attorneys' fees incurred in MPTN's federal suit were not directly related to this tax-collection action because the two suits were about different things. *See, e.g.*, WMS's Appellate Court Br. at 15–18. In its prior briefing, WMS simply focused primarily on proximate cause because the Town cannot meet even that standard, much less the more-demanding proximal nexus required by "directly related to."

related to" as a whole. Town Br. at 14–17. While "related" occasionally denotes a causal relationship, it is used most often to mean some *substantive* connection between two things. *See, e.g.*, Black's Law Dictionary, "Related" (11th ed. 2019) (using three examples of the word "related," none of which is causal).[6] The Town also ignores the Appellate Court's reasoning that interpreting "directly related to" to mean proximate cause would make it duplicative of "as a result of," violating a cardinal rule of statutory interpretation. Treating "directly related to" as superfluous is particularly flawed in this context, because Section 12-161a is in derogation of the common-law rule and hence must be strictly construed. *Perry*, 312 Conn. at 623. For these reasons, read as a whole, Section 12-161a limits the Town to recovering attorneys' fees that are proximately caused by and have a significant substantive connection with this tax-collection proceeding against WMS.[7]

[6] As courts in other jurisdictions have recognized, "directly related to" is naturally read as requiring a close connection between two things. *See, e.g.*, *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 23, 433 P.3d 248 (2019) ("The plain meaning of 'directly related' is an immediate or straightforward connection or relationship between two things."); *Christus Health Gulf Coast v. Carswell*, 505 S.W.3d 528, 536 (Tex. 2015) ("[T]he plain and common meaning of the phrase 'directly related to' is an uninterrupted, close relationship or link between the things being considered.") (internal quotation marks omitted).

[7] The Town also mischaracterizes the Appellate Court's decision, asserting that the Appellate Court held that municipalities could *never* recover attorneys' fees incurred in a separately captioned action under Section 12-161a. Town Br. at 17–18. The Appellate Court held no such thing: It simply held that *in this particular case*, the only fees that the Town could recover were the fees it incurred in this state-court action. *Town of Ledyard*, 192 Conn. App. at 845. In the Appellate Court, WMS offered examples of collateral suits that a town might file as a result of and directly related to a collection action (e.g., suits intended to discover and preserve a taxpayer's assets). The Town claims those examples support its argument, but none of WMS's hypotheticals discussed in its Appellate Court brief involved a town recovering fees incurred defending against a pre-existing suit about another matter that it would have faced even if the tax-collection action was never filed. In any event, the Appellate Court rightly found it unnecessary to decide whether Section 12-161a would reach those hypotheticals, leaving those questions for future cases. Since the

Finally, the fees incurred by a municipality must be the result of and directly related to the Town's "collection proceeding[]." The statute does *not* allow municipalities to recover any fees related to the taxpayer's *tax liability*. It is therefore not enough for the Town to establish that its attorneys' fees were proximately caused by and related to some aspect of the dispute about WMS's tax obligations. Instead, it must show that its fees resulted from and were directly related to this specific tax-collection action that the Town filed against WMS in 2008. On appeal, the Town appears to agree that the fees must be causally connected with this tax-collection proceeding, not the abstract issue of WMS's tax obligations. *See, e.g.*, Town Br. at 12 & n.3.

III. The fees the Town incurred defending against MPTN's 2006 lawsuit were not the result of and directly related to this action filed in 2008 against WMS.

While the Town spends most of its brief disputing the Appellate Court's well-reasoned interpretation of Section 12-161a, it provides only a brief explanation for why the attorneys' fees the Town incurred defending against MPTN's 2006 lawsuit were the result of and directly related to this 2008 action. When the facts of MPTN's suit against the Town are correctly understood, there should be no dispute that the fees the Town incurred in that suit were neither the result of nor directly related to this case.

A. This state-court collection action was not the actual cause of the federal-court attorneys' fees the Town seeks.

The simplest problem with the Town's effort to foot WMS with the bill for its defense of MPTN's 2006 federal suit is that the Town would have incurred the same fees defending that federal suit if it had never brought this case against WMS at all. The core federal

---

only question in this appeal is how Section 12-161a applies *in this case*, this Court should do the same.

issues involving the Tribe's sovereign rights were already being litigated and were going to be litigated through to conclusion whether or not the Town filed a collection action against WMS. Since this tax-collection action was not even the actual cause, much less the proximate cause, of the fees the Town seeks to collect, Section 12-161a provides no basis for the Town to collect its attorneys' fees from MPTN's federal suit.

Throughout its brief, the Town tries to conceal this basic problem with its theory by suggesting that all it seeks are its attorneys' fees for the "WMS Federal Action." For all practical purposes, there was no such thing. MPTN's federal suit against the Town began not in 2008, but in 2006, when it filed its complaint in *Mashantucket Pequot Tribe v. Town of Ledyard*. *See* WMS A33–41 (MPTN's First Complaint). That complaint sought to enjoin the Town from assessing taxes on personal property owned by ***any*** out-of-state vendor and leased to MPTN for use in its gaming facilities on its reservation. WMS A33, 40. MPTN alleged that all such taxes imposed by the Town were preempted by federal law and that they interfered with the Tribe's federally recognized sovereign rights. WMS A38–39. The suit addressed a longstanding dispute with the Town about whether taxiing property leased to MPTN violated the Tribe's sovereignty. WMS A38.[8] While MPTN's suit was immediately prompted by the Town's efforts to tax another vendor, AC Coin, its claims were not limited to taxes imposed on that vendor alone, nor did its claims depend in any way on the specific circumstances of AC Coin or its tax liability. Instead, MPTN's original 2006 complaint asserted claims and sought declaratory and injunctive relief that would have prohibited the Town from assessing taxes against WMS as well. WMS A40.

[8] MPTN had previously sued the Town over that issue, *see Auto Rental Corp. v. Town of Ledyard,* No. CV-01-0122127S (Conn. Super. Ct. 2001), but that suit had been settled. WMS A38.

For the next two years, the Town incurred attorneys' fees litigating MPTN's claims in federal court that the Town's taxes on vendors like WMS were preempted and invalid under federal law. Two years into that case, the Town filed this tax-collection action, seeking to collect taxes on WMS for gaming equipment it had leased to the Tribe. A8–10 (Complaint). MPTN promptly filed a suit in federal court, identical in all material ways to its 2006 lawsuit, alleging that the taxes now assessed against WMS were also preempted by federal law. A144–51 (MPTN's Second Complaint). With the Town's consent, MPTN's two federal cases were promptly consolidated. Order, *Mashantucket Pequot Tribe v. Town of Ledyard*, No. 3-08-cv-01355-WWE (D. Conn. Dec. 5, 2008), ECF No. 19, WMS A61. Before that consolidation, the only thing the Town had ever filed in MPTN's second federal suit was a notice of appearance and an answer, one that was (like MPTN's complaint) substantively identical to the answer the Town had already filed years earlier in MPTN's pre-existing suit. *See* WMS A59–61 (Docket); *compare* WMS A62–70 (Town's Second Answer) *with* WMS A50–58 (Town's First Answer).

Following consolidation, MPTN and the Town continued to litigate the very same issues—the legality of the Town's taxes on vendors' property under federal law—for five more years. But the introduction of WMS into MPTN's pre-existing federal suit changed nothing: MPTN was still pursuing the same claims and raising the same theories against the same parties as it was before the Town filed this tax-collection action against WMS in 2008. The Town was presenting the same defenses as well. That is hardly surprising because MPTN's federal suit was never concerned with the tax liability of any of MPTN's vendors but with whether the Town's efforts to tax property on the Tribe's reservation infringed MPTN's own sovereign rights as a federally recognized Indian Tribe or was

preempted by federal law. MPTN's second federal complaint and the consolidation of the two federal suits changed nothing about MPTN's two-year-old case.

Given this, none of the attorneys' fees the Town incurred defending against MPTN's consolidated federal suit, before or after the consolidation, were actually caused by the Town's filing of this tax-collection action against WMS. "[I]f the plaintiff's injury would have occurred regardless of the defendant's conduct, then the defendant's conduct was not a cause in fact of the plaintiff's injury." *Stewart*, 234 Conn. at 605. And if one event was not a cause in fact of a second, it cannot be a proximate cause of it either. *Id.* (noting that proximate cause is a subset of actual cause). Imagine that WMS had fully paid its property taxes, so that the Town never commenced this 2008 tax-collection action at all.[9] Or imagine that WMS did not pay its taxes, but the Town concluded it was unnecessary or unwise to bring this tax-collection action against WMS until MPTN's suit was resolved. In this counterfactual world where the Town never commenced this tax-collection action, MPTN would have continued to litigate its federal suit, and the Town would have continued to defend against that suit and to incur the same attorneys' fees. Since the Town's federal-court attorneys' fees were not actually caused by the filing of this state-court collection action, they were not proximately caused by it either.

[9] Because of the nature of MPTN's claims—challenging the authority of the Town to impose taxes on any out-of-state vendors who leased property to the Tribe—it made no difference whether the vendors had paid their taxes or not. Indeed, MPTN's first suit was immediately prompted by the Town's taxes on another vendor, AC Coin, which had fully paid its taxes. *Mashantucket Pequot Tribe*, 722 F.3d at 461. Thus, WMS's failure to pay its personal property taxes was not a condition precedent to MPTN suing.

B. None of the fees incurred by the Town in defending against MPTN's federal lawsuit were proximately caused by or directly related to this action.

Even if there were some fees the Town incurred in MPTN's federal suit that were actually caused by the Town's filing of this tax-collection action,[10] Section 12-161a prohibits the Town from making WMS pay for the Town's federal-court attorneys' fees for a second reason: The fees the Town incurred defending against MPTN's suit were not *proximately* caused by or *directly related to* this tax-collection action against WMS. Several facts about the nature of MPTN's federal suit establish this.

First, the fees the Town seeks to recover from WMS now are not fees it incurred prosecuting the Town's own case. They are fees it incurred defending against a suit brought by someone else. And that someone else was not WMS; it was MPTN, an entity that was never a party in this tax-collection proceeding. Likewise, WMS was never a party to any of MPTN's suits, which were brought in another jurisdiction, namely federal court. WMS exercised no control over those suits and had no say in the claims or arguments that the Town spent attorneys' fees litigating.

Second and more importantly, the fees the Town spent defending against MPTN's pre-existing suit in another court were not proximately caused by or directly related to this action against WMS, because the two suits were about different things. As the district court and the Second Circuit explained, MPTN's federal suit was *not* about the tax liability of WMS, the sole issue in this tax-collection proceeding. Instead, MPTN was suing "to defend

[10] The Town might argue that the de minimis fees it incurred in MPTN's second federal suit in the brief period before it was consolidated with the first were actually caused by this tax-collection action. That argument is wrong, because MPTN could have brought its second suit even if WMS had paid the disputed property taxes, as AC Coin had done. Since MPTN could have filed its second lawsuit even if this tax-collection action were never filed, the fees the Town incurred in that short-lived second MPTN suit did not "result from" this one.

against the Town's and State's alleged encroachment upon aspects of tribal sovereignty protected by" federal law. *Mashantucket Pequot Tribe*, 722 F.3d at 464–65. MPTN's suit was about its own rights and obligations, not those of WMS.

This is not some small point or irrelevant dicta. The Town repeatedly argued that MPTN's suit should be dismissed because it was *really* just an underhanded way for MPTN's vendors, like WMS, to resist paying taxes. For example, the Town argued that MPTN lacked standing, because the only injury caused by the Town's taxes was felt by vendors like WMS. But the district court and the Second Circuit rejected that argument. The Tribe's suit was not seeking to protect its vendors from taxes; it was trying to remedy an injury to "its interest in sovereignty and self-government as well as an imminent threat to its autonomy within its physical boundaries." *Mashantucket Pequot Tribe*, 2012 WL 1069342, at *5–6. MPTN was the proper party, because the injury it was trying to remedy was "distinct from the monetary injury asserted by the taxed parties." *Mashantucket Pequot Tribe*, 722 F.3d at 463–64 (internal quotation marks omitted).

Likewise, the district court and the Second Circuit rejected the Town's argument that MPTN's suit should be dismissed under the TIA, 28 U.S.C. § 1341, which generally prohibits federal courts from enjoining the collection of any state tax so long as the tax can be challenged in state court. *Mashantucket Pequot Tribe*, 2012 WL 1069342 at *6. Both courts held MPTN's federal suit was proper, because the TIA does not bar a suit by an Indian tribe when it is trying "to vindicate the rights of the tribe rather than suing as a representative of an individual seeking refund of taxes." *Id.* As the Second Circuit noted, *if* MPTN were "suing on behalf of the third-party vendors [like WMS] who are the taxed parties, its suit (like theirs) [would be] barred by the TIA." *Mashantucket Pequot Tribe*, 722 F.3d at 464. MPTN's suit was not barred by the TIA because that was not what MPTN's

suit was about. Instead, it was suing "to defend against the Town's and State's alleged encroachment upon aspects of tribal sovereignty protected by" federal law. *Id.* at 464–65.

The Town's basic position on appeal is directly contrary to these courts' holdings. Again and again in its brief, it describes MPTN's federal suit as an action "brought to enjoin the collection action and prevent the Town from collecting the personal property taxes at issue in this case." *E.g.*, Town's Br. at 1. But the district court and the Second Circuit squarely held that is not what MPTN's federal suit was about. The Town is trying to convince this Court that MPTN's federal suit was really about WMS's tax liability rather than MPTN's federal rights, directly contravening what the federal courts hearing MPTN's suit held. Collateral estoppel prevents the Town from trying to relitigate this issue about the nature of MPTN's federal suit that the federal courts have already decided against it. *See, e.g.*, *Doyle v. Universal Underwriters Ins. Co.*, 179 Conn. App. 9, 15, 178 A.3d 445 (2017) (noting that defensive collateral estoppel "prevent[s] a plaintiff from relitigating an issue that the plaintiff had previously litigated in another action against the same defendant or a different party").

Even if the Town could relitigate this issue, the district court and the Second Circuit were right. Nothing in the merits of the decisions by the district court and the Second Circuit turned in any way on the details of WMS's or any other vendors' tax liability. Instead, the questions those courts addressed were all about MPTN's rights and obligations: Did the federal Indian Trader Statutes, 25 U.S.C. §§ 261–64, and IGRA preempt *any* effort by the Town to tax property owned by out-of-state entities that was located on MPTN's reservation? Were these taxes an invasion of MPTN's sovereign rights under the *Bracker* balancing test? The fees the Town incurred in MPTN's federal suit were spent litigating

these issues. *Mashantucket Pequot Tribe*, 2012 WL 1069342 at *7–12; *Mashantucket Pequot Tribe*, 722 F.3d at 466–77.

This basic fact about the nature of MPTN's federal suit is fatal to the Town's argument. Section 12-161a limits the Town to recovering fees that had a *direct* relationship with this tax-collection action. A direct relationship is one without intervening or intermediate steps. *See, e.g.*, Black's Law Dictionary, "Direct" (11th ed. 2019).[11] Proximate cause incorporates similar concepts. *See, e.g.*, *Sanders v. Officers Club of Conn., Inc.*, 196 Conn. 341, 349, 493 A.2d 184 (1985) ("A proximate cause is a direct cause. It is an act or failure to act, followed in its natural sequence by a result *without the intervention of any other superseding cause*.") (emphasis added). The fees the Town incurred in MPTN's case were not spent litigating the issue raised in the Town's complaint in this collection proceeding: whether WMS owed $18,251.23 in property taxes. Instead, it spent those fees litigating a legally distinct question: whether the Town had the authority under federal law to tax property on the Tribe's reservation. While the fees spent litigating this second question might affect the first, this is a paradigmatic example of an indirect rather than a direct relationship. There is an intermediate step between the Town's federal-court fees and the outcome of this case. That intermediate step is decisive under Section 12-161a. The Appellate Court correctly recognized as much. *Town of Ledyard*, 192 Conn. App. at 845 (noting that the federal action was only collaterally, not directly, related to this one). Construing Section 12-161a strictly, as this Court must, no reasonable factfinder could

[11] The Town's dictionary definitions agree, Town Br. at 14–15, as do cases construing similar terms, *see, e.g.*, *Christus Health Gulf Coast*, 505 S.W.3d at 536 ("[T]he plain and common meaning of the phrase 'directly related to' is an uninterrupted, close relationship or link between the things being considered.") (internal quotation marks omitted).

conclude that this tax-collection action, brought by the Town in 2008 to collect $18,251.23 in unpaid personal property taxes from WMS, proximately caused or was directly related to the Town incurring millions of dollars in attorneys' fees defending against a suit commenced two years earlier by an Indian tribe alleging that the Town was infringing its sovereignty.[12]

IV. The Town's criticisms of the Appellate Court's decision are unpersuasive.

Because the Town cannot prevail on Section 12-161a's actual standard, it offers various arguments to distract from the statute's plain language. None is persuasive.

A. The facts relied on by the Town are irrelevant to the correct application of Section 12-161a.

The Town points to a handful of facts regarding the history of this case that it contends establish that the fees it incurred defending against MPTN's federal suit were the result of and directly related to this action. First, it points out that the MPTN's second complaint sought an injunction against the Town collecting taxes against WMS. Town Br. at 24. But it omits the fact that MPTN's first lawsuit, filed two years before this case, sought the same thing. WMS A33, 40 (MPTN's First Complaint). The fact that MPTN had already been seeking this exact same relief *for two years* shows that the Town's fees incurred in MPTN's suit were not the "result of" this action.

[12] The Town argues, in a footnote only, that WMS failed to meet the burden of proof for its motion for summary judgment because it did not provide evidence in support of its motion. Town Br. at 26 n.7. But WMS's motion for summary judgment was based on the pleadings and decisions in MPTN's case, which conclusively establish all the facts necessary to determine that the fees the Town incurred in that case were not the result of or directly related to this action. Courts can take judicial notice of public records like these. *See, e.g.*, *Conboy v. State*, 292 Conn. 642, 652, 974 A.2d 669 (2009) (noting that public records of which judicial notice can be taken may be considered in deciding a motion to strike).

Next, the Town claims that MPTN's suit was a mutually coordinated action directed at stopping the collection proceedings against WMS. Town Br. at 24–25. And it notes that MPTN agreed to indemnify WMS for any liability it may incur as a result of not paying taxes to the Town. *Id.* These arguments are just another attempt by the Town to relitigate what MPTN's federal suit was about, something the federal courts already decided against the Town repeatedly. *See supra* Section III.B. The Town also does not explain how WMS's alleged cooperation with MPTN's suit or MPTN's agreement to indemnify WMS for its tax liability has anything to do with whether the fees the Town incurred in MPTN's federal action were proximately caused by this one. If MPTN had not agreed to indemnify WMS, WMS might have paid the Town's taxes and the Town would have never commenced this tax-collection action at all. But the Town still would have incurred the same attorneys' fees litigating MPTN's pre-existing federal suit, because WMS's payment or non-payment of taxes did not change the course of MPTN's two-year-old suit in any way.

Finally, the Town relies heavily on the fact that WMS filed a motion to stay this tax-collection action while MPTN's suit was being litigated in the federal courts. Town Br. at 25–26. There is nothing strange about this: By the time the Town filed this tax-collection action, MPTN and the Town had already been litigating for years whether the Town had the authority under federal law to levy taxes on vendors like WMS. WMS moved to stay this case for the simple reason that the outcome of this two-year-old federal suit could very well moot or impact this tax-collection action. The Town also relies on WMS's motion for a stay to argue that the Appellate Court erred by concluding that MPTN's federal suit "did not result directly in a final determination of the rights and obligations of the parties relative to the claimed delinquent tax." *Town of Ledyard*, 192 Conn. App. at 845; *see* Town Br. at 9, 25. But the Appellate Court got that right too: The only thing the Second Circuit decided

was whether the Town's efforts to tax property leased to MPTN and located on its reservation infringed its sovereignty or were otherwise preempted by federal law. It was never asked to decide and did not decide whether WMS owed the Town $18,251.23 in personal property taxes, the issue in this proceeding. WMS's motion to stay this case pending the outcome of MPTN's pre-existing suit only further demonstrates that the Town's fees were not caused by this action.[13]

B. Court decisions involving similar statutes are consistent with the Appellate Court's decision and contrary to the Town's position.

The Town also argues that the Appellate Court's decision is contrary to decisions involving similar statutes. Town Br. at 29–33. Here again, careful scrutiny of the cases cited by the Town further supports the Appellate Court's decision.

No case before this one has construed Section 12-161a. But several superior court decisions have interpreted and applied General Statutes § 12-193, a parallel statute that allows municipalities to recover attorneys' fees incurred "as a result of any foreclosure action . . . and directly related thereto." These cases have consistently refused to award municipalities attorneys' fees incurred in a separate legal action, even when (unlike here) that action is brought against the taxpayer and is essential to the town's efforts to collect taxes. For example, in *Milford Tax, LLC v. Paradigm Milford, LLC*, No. CV146015774S, 2015 WL 3875386, at *2–4 (Conn. Super. Ct. May 28, 2015), and *Town of Groton v. First Groton, LLC*, No. CV085008750, 2011 WL 1470809, at *4 (Conn. Super. Ct. Mar. 25,

[13] The Town seizes on snippets of language in WMS's stay motion suggesting that the federal suit would be "determinative of the issues" in the collection action. Town Br. at 25–26. But the stay motion was clearly saying only that the already pending federal litigation had the potential to dispose of the collection proceeding if the federal court held that taxing the Tribe's leased personal property violated federal law, not that the federal court would decide the details of the collection suit if it rejected the Tribe's sovereignty claims. A20–32.

2011), the courts denied towns' request to recover attorneys' fees incurred in related bankruptcy proceedings against the delinquent taxpayers. Similarly, in *Town of Redding v. Elfire, LLC,* No. CV990337512S, 2004 WL 3090656, at *9 (Conn. Super. Ct. Dec. 1, 2004), the court refused to award attorneys' fees incurred in a separate suit brought by the taxpayer against the town, finding that those fees were not "directly related to" the foreclosure action. Finally, in *White Sands Beach Association, Inc. v. Bombaci,* No. CV040568713, 2009 WL 1622788, at *2 (Conn. Super. Ct. May 12, 2009), the court declined to award a municipal corporation the attorneys' fees it incurred defending against the taxpayer's counterclaim alleging that the municipal corporation lacked the legal status to levy taxes, because that claim raised issues distinct from the foreclosure action. *Cf. Town of Monroe v. Mandanici*, No. CV92 029 32 24 S, 1995 WL 107185, at *2 (Conn. Super. Ct. Mar. 2, 1995) (permitting town to recover attorneys' fees incurred defending against a counterclaim, because the counterclaim was asserted as a defense and setoff to the foreclosure claim, making the two directly related). If the fees a municipality incurs in a separate proceeding against the taxpayer or defending a counterclaim asserted by the taxpayer in the collection action are not the "result of" and "directly related to" the tax-collection action, then surely the fees a town incurs in a pre-existing suit brought by a third party (in which the taxpayer is not a party) seeking to vindicate that party's own rights are not either. While the Town criticizes the Appellate Court's reliance on these decisions, it does not cite a single decision that awarded fees incurred in another action, much less a pre-existing suit brought by someone other than the taxpayer regarding that person's own rights.

The Town also relies on cases applying General Statutes § 49-7. That statute makes enforceable any "agreement" in a note "to pay costs, expenses or attorneys' fees . . .

incurred by the holder . . . in any proceeding for collection of the debt, or in any foreclosure of the mortgage, or in protecting or sustaining the lien of the mortgage." Under that statute, this Court has permitted mortgage holders to recover attorneys' fees incurred in separate actions, such as bankruptcy proceedings, where necessary to protect the mortgage. *See, e.g.*, *Mechanics Savings Bank v. Tucker*, 178 Conn. 640, 647–48, 425 A.2d 124 (1979). But this statute is plainly different from Section 12-161a: It does not itself authorize the award of attorneys' fees but simply makes enforceable *agreements* regarding the award of attorneys' fees. Section 12-161a has nothing to do with enforcing an agreement by the parties concerning payment of attorneys' fees, and there was no such agreement here. Moreover, Section 49-7 does not require that the fees have been incurred "as a result of and directly related to" a collection proceeding, as Section 12-161a does. Finally, Section 49-7 permits the recovery of fees related to the indebtedness itself, rather than the action to collect on a debt.[14] This materially different language means that cases involving Section 49-7 are of little guidance in applying Section 12-161a. Moreover, as the Appellate Court recognized, if the General Assembly intended Section 12-161a to have the same meaning as Section 49-7, it would have used the same language. *Town of Ledyard*, 192 Conn. App. at 848–49. The fact that it did not should be respected. *See, e.g.*, *Perry*, 312 Conn. at 624–25 (noting that the General Assembly knows how to convey its intent, and its use of a narrower phrase in one statute than in other statutes must be respected).[15]

---

[14] This differs from Section 12-161a, which allows towns to recover only those fees that result from and are directly related to the collection proceeding, not simply the tax liability. *See supra* Section II.

[15] The Town also relies on a case construing a federal fee statute, 29 U.S.C. § 1132(g). *See* Town Br. at 21–23. But that statute too contains nothing resembling Section 12-161a's "as a result of and directly related to" language. Moreover, the case the Town cites under that statute involved a party recovering the attorneys' fees it incurred in an arbitration and

Despite the fact that Sections 49-7 and 12-161a have materially different language, the Town relies on legislative history to argue that the two statutes mean the same thing. Town Br. at 32–33. The Town's argument is convoluted: It relies on one vague statement by a member of the General Assembly talking about the purpose of a different statute, Section 12-193, years before Section 12-161a was even enacted. Apart from that, the Town's reliance on legislative history is misplaced. General Statutes § 1-2z directs that courts should determine the meaning of a statute first by looking to the text itself and its relationship to other statutes. *See Perry*, 312 Conn. at 622. If that meaning is plain and unambiguous and does not lead to absurd or unworkable results, "extratextual evidence of the meaning of the statute shall not be considered." *Id.* The Town identifies nothing in the statute that is unambiguous or absurd: It agrees again and again that the plain language of the statute requires it to demonstrate the fees it seeks were proximately caused by this tax-collection action. *E.g.*, Town Br. at 15. Even if the statute were susceptible to multiple readings, this Court would be obligated to interpret it strictly and limit it to matters "clearly within its scope." *Perry*, 312 Conn. at 623 (internal quotation marks omitted). Finally, a single floor statement by a member of the General Assembly talking about a *different* statute is not enough to overcome Section 12-161a's plain meaning. Section 12-161a says "directly related to and as a result of," and that is what it means.

NLRB proceeding between the same parties involving the same issues and facts that were "essentially identical" as those in the pending case, where arbitration established liability and the NLRB proceeding established the damages and together effectively "resolved plaintiffs' ERISA claims" in in the pending court case. *See Trustees of E. States Health & Welfare Fund v. Crystal Art Corp.*, 132 Fed. Appx. 390 (2d Cir. 2005). That does not remotely resemble the facts here.

C. The Town's "necessary for success" standard would require this Court to rewrite Section 12-161a.

The Town's final major argument effectively asks the Court to rewrite the language of Section 12-161a. Throughout its brief, the Town admits that Section 12-161a limits municipalities to recovering attorneys' fees that were proximately caused by a tax-collection action. Apparently concerned that it cannot show that "this collection proceeding was a 'substantial factor' causing the Town to incur attorney's fees in the WMS Federal Action," Town Br. at 23, the Town suggests that a very different standard should be applied. Specifically, the Town asserts that Section 12-161a allows the recovery of any attorneys' fees that were "necessary for the municipality's success in the collection lawsuit." Town Br. at 20; *See also id.* at 18 (asserting that Section 12-161a allows the Town "to recover any attorneys' fees that it had to expend in order to prevail in the collection proceeding"). Thus, it argues, it can recover the attorneys' fees it incurred defending against MPTN's suit, because if it had not incurred those fees and prevailed in that suit, it would have been unable to collect taxes from WMS.

This "necessary for success" standard bears no resemblance to proximate cause or the plain language of Section 12-161a. Nothing in Section 12-161a speaks at all of whether the attorneys' fees incurred by the Town were necessary to prevail in a tax-collection action; it asks whether the fees were the "result of" and "directly related to" it. The Town's proposed "necessary for success" standard, by contrast, asks whether the Town would have been able to prevail in the tax collection action if it had not incurred the fees in question. This latter standard would plainly reach a great many fees that were not caused by a tax-collection action at all. With good reason, the General Assembly did not codify this broad standard in Section 12-161a.

Because nothing in the actual language of the statute comes close to the Town's "necessary for success" standard, the Town relies primarily on Section 12-161a's supposed statutory purpose to support this interpretation. It claims Section 12-161a *must* be read in this way, because otherwise the amount a town recoups from a tax-collection action would be reduced by the attorneys' fees it had to spend to prevail. Town Br. at 18–23. This argument fails for multiple reasons. First, and most simply, the Town is really complaining about the common-law American rule. It is frequently the case that the attorneys' fees a litigant must spend to prevail in an action will substantially reduce or even eliminate the litigant's ultimate recovery. But litigants nonetheless bear their own fees absent a statutory or contractual exception to the American rule. *Perry*, 312 Conn. at 623. While the General Assembly has adopted an exception to that rule here, that exception must be strictly construed and limited to the matters "clearly brought within its scope." *Id.* The exception the General Assembly created limits municipalities to recovering those fees that were incurred as a result of and directly related to a tax-collection action. If municipalities believe that standard is not enough to cover their costs, they should ask the General Assembly to amend Section 12-161a. But broadening Section 12-161a far beyond its plain language based on some theory about the statute's legislative purpose is precisely what cases like *Perry* forbid. *See id.* at 624–25 (interpreting fee award statute strictly to reach only those fees explicitly covered by it); *Ames v. Comm'r of Motor Vehicles*, 267 Conn. 524, 533–35, 839 A.2d 1250 (2004) (same).

While the Town argues that not endorsing its "necessary for success" standard would be unfair or lead to absurd results, it ignores the bizarre and unfair consequences of its proposed rule. For one, it would allow towns to make taxpayers pay the bill for lawsuits the taxpayers had nothing to do with. For example, imagine that two municipalities have a

dispute regarding their border, with each claiming authority to assess real property taxes on a particular neighborhood. The two municipalities bring their dispute to court, asking the court to decide the true border. Meanwhile, a taxpayer within the disputed neighborhood falls behind on his taxes, and one town brings a tax-collection action against the taxpayer. Can the town bill the taxpayer for the fees it incurred in the municipal-border dispute? Under the Town's "necessary for success" standard, it could, since the town had to prevail in the border suit in order to claim the right to assess taxes against the taxpayer.[16] Or imagine that a board of alders sues their city's mayor, alleging that the city's budget (establishing the mill rate for that year) was not enacted in the way required by the city's charter. Or that a group of taxpayers brings a civil-rights suit alleging that their municipality's method of assessing real property discriminates on the basis of race or religion. If the Town's reading of Section 12-161a were correct, municipalities could force random taxpayers who owe a few thousand dollars in back taxes to foot the bill for the municipality's legal fees incurred in another suit that had nothing to do with the taxpayer at all, save that the other suit called into question the municipality's taxing authority. If the General Assembly intended this result, it would have said so. It did not.

The Town also fails to acknowledge the gross unfairness of its proposed rule in this particular case. This tax-collection action began with the Town seeking to collect $18,251.23 in unpaid personal property taxes from WMS. WMS has already repaid the Town twenty times over for its delay in paying these taxes: When the parties finally settled

[16] This hypothetical describes the situation here: MPTN's suit against the Town was ultimately asking the federal courts to decide whether, as a matter of federal law, the Tribe's reservation fell outside of the Town's taxing authority. The nature of that suit had just as much to do with this tax-collection action against WMS as the border dispute in this hypothetical does with the taxpayer.

this action following the Second Circuit's decision in MPTN's federal case, WMS paid the Town $372,629.44 in taxes, fees, penalties, and interest. A34–35. Yet the Town wants to make WMS also pay its seven-figure legal bills incurred defending against a suit brought by MPTN in 2006. WMS was never a party to that suit: It had no say in whether the suit was brought, no control over the issues raised, and did not influence the scope and costs of the suit. Moreover, MPTN's suit was not limited to the validity of taxes assessed on WMS; it was about the much broader principle of whether the Town could tax the property of *any* vendors who leased property to the Tribe. Because some of the other vendors implicated in MPTN's suit, like AC Coin, paid their taxes to the Town (or because the Town never commenced collection proceedings against them for some other reason), there is no mechanism for the Town to recover its attorneys' fees from them. It makes little sense that WMS's failure to pay $18,251.23 in personal property taxes would subject it, years later, to a seven-figure attorneys' fee bill in a case to which it was not a party.

That MPTN agreed to indemnify WMS for liability it incurs does not change the analysis. The Town seeks an order that WMS itself is liable for the Town's attorneys' fees. WMS may be able to obtain indemnification, but perhaps it will not. Nor does the fact that MPTN may have indemnification obligations somehow make it the real party in this action. *See Lewis v. Clarke*, 137 S. Ct. 1285, 1292–93 (2017) (holding that a tribe's contractual obligation to indemnify an employee did not make the tribe the real party in interest). At the end of the day, WMS is the entity that would be legally obligated to pay the attorneys' fees.

Finally, forcing WMS to pay the Town's attorneys' fees incurred defending against MPTN's federal suit would create an end run around federal law and raise significant constitutional concerns. MPTN's suit was brought pursuant to a federal jurisdictional statute that gives Indian tribes a unique avenue for challenging the constitutionality of state and

local laws. *See* 28 U.S.C. § 1362. That statute was enacted for the purpose of allowing federally recognized tribes to challenge state and local encroachments on their sovereignty, without requiring the United States to sue on their behalf. *See Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 472–73 (1976) (discussing legislative purpose of 28 U.S.C. § 1362). When Congress created that remedy, it did not give defendants who prevail in these suits a special right to recover their attorneys' fees. Allowing the Town to use a state law, Section 12-161a, to recover its attorneys' fees does an end run around the remedy Congress has created: Only Congress has the power to restrict federal rights by making parties liable for attorneys' fees when they do not prevail on federal claims brought in federal court. Moreover, applying Section 12-161a to allow the Town to recover its attorneys' fees from MPTN's federal suit would itself likely be preempted by federal law, because it would undermine Congress's purpose in enacting 28 U.S.C. § 1362. *See, e.g.*, *Williams v. Murphy*, No. 3:13-cv-01154 (MPS), 2018 WL 2016850, at *7–14 (D. Conn. Mar. 29, 2018) (holding that Connecticut statutes permitting the state to indemnify its employees for civil-rights violations and to recover civil-rights judgments under cost-of-incarceration statutes were preempted because they impaired Congress's purpose in adopting 28 U.S.C. § 1983). There is no reason why this Court should reject the plain language of Section 12-161a in favor of a reading that, as applied here, is likely preempted or, at the very least, needlessly raises constitutional concerns. *See Kutcha v. Arisian*, 329 Conn. 530, 547–48, 187 A.3d 408 (2018) (noting that courts have "a duty to construe statutes, whenever possible, to avoid constitutional infirmities") (internal quotation marks omitted).

The Town could, of course, have sought to recover the fees it incurred in MPTN's federal suit from the federal courts that heard that suit, for example by arguing that the

Tribe's suit was frivolous or brought in bad faith. *See, e.g.*, *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257–62 (1975) (noting that federal courts have the inherent power to award attorneys' fees when the losing party acted in bad faith). It did not do so, no doubt because the Tribe's arguments were plainly reasonable: After all, it prevailed in the district court. If that were not enough, other courts have explicitly disagreed with the Second Circuit, finding identical local property taxes preempted by federal law. *See Video Gaming Techs., Inc. v. Rogers Cnty. Bd. of Tax Roll Corrections*, 2019 OK 83, 2019 WL 6877909 (Dec. 19, 2019) (rejecting Second Circuit's conclusion and holding that federal law preempts local property taxes on gaming equipment leased to tribes).[17] The Town's failure to even seek, much less obtain, its federal-court attorneys' fees from the federal courts should be the end of it. Section 12-161a should not be used as a workaround for the Town to recover from WMS the attorneys' fees it incurred defending against the Tribe's federal suit when no provision of law allowed the Town to recover its fees in the federal case itself.

For these reasons, this Court should reject the Town's argument that Section 12-161a allows it to recover any attorneys' fees it had to incur to succeed in this tax-collection action against WMS.

CONCLUSION

The Appellate Court's well-reasoned decision directing the trial court to grant WMS's motion for summary judgment should be affirmed.

[17] The Oklahoma Supreme Court's recent decision is the subject of a pending petition for certiorari in the U.S. Supreme Court. *See* Petition for Certiorari, *Rogers Cnty. Bd. of Tax Roll Corrections v. Video Game Techs., Inc.*, No. 19-1298 (May 14, 2020).

Dated: July 13, 2020

Respectfully submitted,

DEFENDANT-APPELLEE
WMS GAMING, INC.

By: */s/ Aaron S. Bayer*

Aaron S. Bayer
David R. Roth
WIGGIN AND DANA LLP
265 Church Street
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400
abayer@wiggin.com
droth@wiggin.com
Juris No. 067700

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 have 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 in compliance with P.B. § 62-7;

(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);

(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.

By: */s/ Aaron S. Bayer*
Aaron S. Bayer

Dated: July 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2020, a copy of the appellee's brief and appendix was sent by electronic mail and by first-class mail, postage prepaid, to all counsel of record, as follows:

Proloy K. Das, Esq.
Murtha Cullina LLP
CityPlace I
185 Asylum Street
Hartford, CT 06103
(860) 240-6000
pdas@murthalaw.com

Law Offices of Lloyd L. Langhammer LLC
38 Granite Street
New London, CT 06320
(860) 440-3340
llanghammer@hotmail.com

By: */s/ Aaron S. Bayer*
Aaron S. Bayer