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## **Week of August 26, 2019, (SC 20131) Department of Transportation v. White Oak Corporation (Collateral Estoppel and Statutory off-sets)**

### **August 30, 2019**

*Welcome to our Supreme and Appellate Court summaries webpage. For the past 10 years, Edward McCreery has summarized hundreds of Connecticut appellate court decisions which highlighted important issues and developments in Connecticut law and provided practical pointers to litigants. Upon joining Pullman & Comley earlier this year, Ed asked me to take on the role of writing brief summaries of recent rulings in civil litigation decisions and condense often long and confusing decisions down to their basic elements. Pullman & Comley's Appellate Practice Group, of which I am a member, includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at [dscholfield@pullcom.com](mailto:dscholfield@pullcom.com) or Ed McCreery at [emcreery@pullcom.com](mailto:emcreery@pullcom.com). I hope you find these summaries helpful. – Daniel P. Scholfield*

(SC 20131) Department of Transportation v. White Oak Corporation (collateral estoppel and statutory off-sets)

In this decision, the Supreme Court concluded that the State could reduce the amount of damages it was ordered to pay a private litigant pursuant to General Statutes §12-39g, which provides that the State Comptroller “shall” reduce any payment from the state by the amount of any unpaid taxes owed by the payee. Further, the State’s ability to do so in this case was not prevented by collateral estoppel, even though the parties had litigated the issue in a prior matter and the State came up short.

The parties were engaged in a long series of disputes arising out of two separate construction contracts for the construction of bridges in New Haven and Bridgeport. White Oak Corporation claimed it was owed money by the State on both despite having been unable to complete either project. With respect to each contract, the dispute went to arbitration. In the arbitration about the New Haven bridge, which proceeded first, the State claimed as a set-off back taxes that White Oak owed, but thereafter did not submit any evidence of back taxes, causing the arbitrator to conclude that the state had failed to carry its burden as to the same. White Oak ultimately lost the remainder of that arbitration. With respect to the second arbitration about the Bridgeport bridge, the State did not re-raise its back tax claims. The Bridgeport arbitration resulted in an judgement over \$8 million to White Oak, which was later affirmed by the Superior Court. The State

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Comptroller then issued payment to satisfy the judgment but, pursuant to §12-39g, reduced the amount by about \$1.2 million in back taxes that were owed by White Oak.

This caused White Oak to file a motion with the Superior Court to determine whether the judgment had been satisfied, claiming that the State was barred by the doctrine of collateral estoppel from exercising General Statutes §12-39g because the arbitrator in the New Haven arbitration found against the State as to its claim of back taxes. The Superior Court disagreed, and determined that, in accordance with §12-39g the judgment had been satisfied by the reduced payment the State Comptroller had issued.

The Supreme Court affirmed. In a unanimous opinion of a 5-judge panel authored by Justice Mullins, the Court first concluded that §12-39g obligates the State Comptroller to reduce any amounts paid by the amount of any back-taxes owed. In yet-another-iteration of the ongoing debate about whether the word “shall” means “shall,” as opposed to “may,” the Supreme Court concluded this time around that the language: “the Comptroller *shall* withhold any order upon the Treasurer for payment *unless* the amount so payable is reduced by the amount of such [back] taxes,” actually did mean “shall,” and thus prohibited the State Comptroller from doing anything other than what the statute directed. The Court also concluded that the doctrine of collateral estoppel did not change the above, because a mechanical application of collateral estoppel would “frustrate the well recognized social policy of tax collection.”

This decision causes some concern, because it suggests that it is irrelevant if the State, as a party to litigation, fails to prove an offset for back taxes, because it can simply apply it at the end on its own when it issues payment. General Statutes §12-39g does state that the Comptroller shall not withhold payment if a tax appeal is pending, which suggests that White Oak did have the ability to take at least some action to avoid the reduction. At the same time, it is unclear whether the Supreme Court was asked to address why White Oak should not be able to rely upon the State’s prior failure to press the claim, for which it submitted no evidence the first time around, and which was not even asserted in the Bridgeport bridge matter.

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The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.