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## Washington Supreme Court Holds the Statute of Limitations Does Not Apply to Safeco Field Construction

The Washington Supreme Court recently issued a decision in *Washington State Baseball Stadium Pub. Facilities Dist. v. Huber Hunt & Nichols-Kiewit Const. Co.* that may have far-reaching impact on other public construction projects. In that case, the Court held the statute of limitations does not apply to claims regarding the construction of Safeco Field brought by the owner, the Washington State Baseball Stadium Public Facilities District (the “PFD”), because the construction was for the common good of the state.

At issue were construction defect claims filed by the PFD against its general contractor. The PFD alleged the general contractor failed to follow the intumescent fire protection specification for structural steel members, causing a catastrophic failure of the fire protection. The PFD discovered the defect in 2005 and filed the lawsuit in 2006. This was more than seven years after substantial completion of Safeco Field. The applicable statute of limitations for contract claims is six years. RCW 4.16.040.

The Supreme Court overturned a summary judgment dismissal of the PFD’s claims granted by the trial court and held that the statute of limitations does not apply. The Court relied on statutory language providing that limitation periods do not apply “to actions brought in the name or for the benefit of the state.” RCW 4.16.160. The majority of the Court’s opinion grapples with the question of whether the PFD brought the construction defect action “for the benefit of the state.”

To decide whether the action was brought for the benefit of the state, the Court analyzed whether the action arose out of the PFD’s delegated sovereign state powers or its proprietary powers. Generally speaking, a municipal act arises out of sovereign powers if the act is for the common good, and it involves proprietary powers if it is for the specific benefit or profit of the particular public entity. In creating the PFD, the state legislature delegated broad state powers to the PFD to “acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium.” The Court noted it had previously held that providing public recreational benefits is traditionally a sovereign function. The PFD’s construction of Safeco Field was for the provision of public recreational benefits, and was therefore an exercise of the PFD’s sovereign powers. The Court ultimately decided the statute of limitations did not apply because the lawsuit arose out of these sovereign powers.

The Court gave some examples of sovereign powers, which may inform future court decisions:

- Operation of street lights and traffic signals
- Construction of schools
- Imposition of taxes

- Leasing of port yards
- Improvement, construction, and maintenance of public parks and swimming pools

The Court noted other prior decisions and gave some examples of proprietary powers as well:

- Production of electricity
- Operation of a municipal water system

The Court remanded for further consideration whether the general contractor's claims against the subcontractor that installed the intumescent fire protection were subject to the statute of limitations. A recent article in the Seattle Daily Journal of Commerce indicates that the general contractor also may raise issues about the design specifications for the fire protection once the case is resumed in the trial court.

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