No. 96941-8

SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

SEATTLE TUNNEL PARTNERS, a joint venture; TUTOR PERINI CORPORATION; and DRAGADOS USA, INC.,

Defendants.

SEATTLE TUNNEL PARTNERS, a joint venture,

Third Party Plaintiff,

v.

HITACHI ZOSEN U.S.A. LTD., a Delaware corporation; HITACHI ZOSEN CORPORATION, a foreign corporation; and HNTB CORPORATION, a Delaware corporation,

Third Party Defendants.

HITACHI ZOSEN U.S.A. LTD., a Delaware corporation,

Fourth Party Plaintiff,

v.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND; ZURICH AMERICAN INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA; FEDERAL INSURANCE COMPANY; and SAFECO INSURANCE COMPANY OF AMERICA,

Fourth Party Defendants.

HITACHI ZOSEN U.S.A. LTD.,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION and SHANNON & WILSON, INC.,

Defendants.

SEATTLE TUNNEL PARTNERS, a joint venture,
Plaintiff/Petitioner,

v.

SHANNON & WILSON, INC., a Washington corporation; and WSP USA, Inc., formerly known as PARSONS BRINCKERHOFF, INC. a New York corporation,

Defendants/Respondents.

JOINT ANSWER TO PETITION FOR REVIEW

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A. Introduction.

The Court of Appeals held that Washington's three-year statute of limitations, RCW 4.16.080(2), begins to run when an injured party has identified the defendant's alleged negligent acts as a likely cause of its damages. It concluded that petitioner Seattle Tunnel Partners' ("STP") negligence claims were time barred because undisputed facts established it was on notice and alleged, more than three years before filing suit, that its tunnel boring machine sustained damage after it ran into the steel casing of a test well previously installed by respondents Shannon & Wilson and WSP in a location disclosed in STP's contract with the Washington State Department of Transportation ("WSDOT").

The Court of Appeals' unpublished decision applied settled law to undisputed facts, consistent with established precedent from this Court and the Court of Appeals. By contrast, STP's petition advocates an unprecedented expansion of the "discovery rule" to require conclusive proof of a claim, rather than inquiry notice, to trigger a statute of limitations period. The petition presents no issue of substantial public concern, particularly because STP has implied indemnity claims against respondents and breach of contract and related claims against WSDOT and Hitachi set for imminent trial that would moot the issue presented for review.

B. Restatement of Issues Presented by Petition.

1. Do STP's own reports, memoranda and internal emails establish that STP was indisputably aware of its negligence claims against Shannon & Wilson and WSP over three years before it filed its lawsuit?

2. Does routine application of the statute of limitations present any issue of substantial public concern where STP continues to pursue in the trial court implied indemnity claims against respondents and breach of contract claims against other parties that would moot the negligence claims decided on interlocutory review?

C. Restatement of the Case.

The Court of Appeals' decision comprehensively recites the undisputed facts establishing petitioner STP's knowledge, more than three years before filing its lawsuit, that its tunnel boring machine ceased mining and allegedly suffered damage when it chewed through TW-2, a pumping well installed by respondent geotechnical firm Shannon & Wilson pursuant to a subcontract with respondent engineering firm WSP. STP's statement of the case ignores that a reviewing court is not free to disregard undisputed evidence presented to the court below on summary judgment. *See Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998) ("An appellate court would not be properly accomplishing its charge if the

appellate court did not examine *all* the evidence presented to the trial court . . .") (emphasis in original). This restatement of the case recites the undisputed evidence—most generated by STP itself—on which the Court of Appeals relied:

1. Respondents installed TW-2 and disclosed its location in documents incorporated in STP's contract with WSDOT.

In 2001, the Washington State Department of Transportation engaged WSP (then known as Parsons Brinckerhoff, Inc.), as an engineering consultant to evaluate design options for the repair or replacement of the State Route 99 Alaskan Way Viaduct and to prepare an environmental impact statement. (Op. 4; CP 492, 539, 548-97) WSP subcontracted with geotechnical firm Shannon & Wilson to conduct geologic profile logs, groundwater pumping tests, and to prepare technical memoranda relating to replacement alternatives and related geotechnical issues. (CP 492) Between 2001 and 2010, Shannon & Wilson installed numerous investigatory wells along the potential alignment of a tunnel path. These included Test Well 2 (TW-2), which had an eight-inch steel casing. (Op. 4; CP 493)

When, in 2009, WSDOT chose a deep bore underground tunnel as the preferred viaduct replacement option, it consulted with WSP to assist in preparing the Request for Proposals. WSP and

Shannon & Wilson jointly prepared the Geotechnical Baseline Report ("GBR") setting baselines for "subsurface conditions expected to be encountered in the performance of the Work." (Op. 4; CP 1011) Shannon & Wilson also prepared the Geotechnical & Environmental Data Report ("GEDR") that accompanied the GBR, to "present[] geotechnical and environmental data collected for the current and previous alignments of the project" in the replacement of the viaduct with the deep bore tunnel. (Op. 4; CP 493, 1022) Both the GBR and GEDR prominently identify Shannon & Wilson and WSP as the documents' authors. (CP 1005, 1014)

WSDOT designated both the GBR and GEDR as "Contract Documents" in its May 2010 Request for Proposals for the design and construction of the replacement tunnel. (CP 1011, 1057) STP, in turn, identified both the GBR and GEDR in its December 2010 bid, certifying it would "design and construct the Project in accordance with the terms and conditions of the Contract Documents." (CP 782, 777, 783) STP admits it knew that Shannon & Wilson and WSP prepared the Contract Documents containing the GEDR and GBR. (CP 988)

WSDOT awarded the design-build contract to STP in January 2011. (Op. 4) STP agreed to procure, and oversaw the design and construction of, a tunnel boring machine ("TBM") commonly known as

"Bertha," which STP and the TBM's manufacturer, Hitachi Zosen U.S.A. Ltd, billed as the largest earth pressure balance TBM in the world. (CP 924; *see* CP 377)

2. STP knew almost immediately that it had potential claims arising from TW-2, which STP identified as the "primary cause" of damage in early January 2014.

STP's selective recitation of its own communications and reports ignores the undisputed fact that it almost immediately asserted potential claims that TW-2 caused damage to its TBM. The only uncertainty was the extent and dollar amount of STP's direct and consequential damages once its TBM could no longer tunnel.

STP launched the TBM on July 30, 2013. (Op. 4; CP 379) On December 4, 2013, the TBM struck an eight-inch diameter hollow steel well casing, a portion of which was ejected from the ground directly above where the TBM was mining. (CP 812, 861-64, 924 969) The TBM continued tunneling, but its rate of advancement substantially slowed until, unable to continue boring, it stopped completely on December 6, 2013. (CP 925, 969)[1]

Shortly thereafter, STP identified the steel casing as TW-2 and gave WSDOT notice of a potential claim that TW-2 constituted a

[1] After attempting to restart its TBM, STP was forced to shut the TBM down on February 2, 2014. The TBM did not restart again for nearly two years (CP 928-29).

"Differing Site Condition" ("DSC") for which STP was entitled to additional compensation under its Prime Contract with WSDOT. (CP 893-94) On December 9, 2013, an STP project manager reported to STP executive Jack Frost that "the DSC has been identified" and that Bertha "hit it right where WSDOT left it in the ground." (Op. 5; CP 872) On December 10, 2013, STP identified TW-2 from the GEDR prepared by respondents, as the obstruction "in front of us" (CP 869), and opened Potential Change Order #250 for STP's claim against WSDOT for the "Steel Casing in TBM Boring near STA 204+00." (CP 896) STP instructed employees to separately record any additional work and costs related to the stoppage to include in its differing site conditions claim. (CP 896)

On December 11, STP's construction manager noted that the extent of "damages in the cutterhead . . . is unknown at this point, although it is a given there will be some," advising his colleagues to begin collecting data to support a claim for additional compensation due to a differing site condition: TW-2. (CP 893-94) In an email that same day to STP's CEO Dixon, STP staff attached a portion of the GEDR, identifying TW-2 and explaining that it had been installed at Shannon & Wilson's direction. (CP 874)

STP's relies on its subsequent "root cause" investigation to claim the discovery rule was not triggered despite STP's contemporaneous and indisputable notice that the well casing had allegedly caused the stoppage and damage. (Pet. 6-7) STP undertook its "root cause" investigation to prove out its DSC claim, nothing more. In other words, STP sought to prove what it already believed: that TW-2 was a DSC which damaged the TBM and caused Project delays. (CP 866) In informing WSDOT of STP's investigation on December 12, 2013, CEO Dixon told WSDOT that "the TBM had encountered the eight (8) inch diameter steel pipe, one-hundred nineteen (119) feet in length, which was left in place by WSDOT." (CP 866) STP claimed that the Contract Documents "are defective in that they did not show the existence of this pipe, although its existence was known by WSDOT, resulting in STP not being able to advance the TBM" (CP 867), but in response, WSDOT noted that STP knew or should have known of the existence of TW-2 prior to drilling because it was plainly identified in the Contract Documents. (CP 916)

STP similarly mischaracterizes its December 13, 2013 "TBM Stoppage Report," (CP 879-87), emphasizing that it only hypothesized potential causes that prevented the TBM from advancing. (Pet. 7) STP ignores that it identified TW-2 as a cause of the stoppage in each of its

hypotheses, and that its investigation instead focused on determining the extent to which parts of TW-2 were stuck in the cutterhead or remained in the ground, obstructing the TBM from advancing. (CP 885-86)

STP continued to identify TW-2 as the basis of its claim while investigating the extent of damage to its TBM. In a December 31, 2013, letter to WSDOT, Dixon repeated STP's claim that its TBM's encounter with TW-2, "left in place by WSDOT as part of previous explorations for the Alaskan Way Viaduct Replacement Project[,] . . . is preventing STP from advancing the TBM, resulting in the current stoppage to tunneling." (CP 919-20)

STP's attempt to spin its unequivocal assertion on January 15, 2014 of its belief that "***the steel pipe is the primary cause of the damage to the cutting tools***" is similarly unavailing. (CP 1269, emphasis added) This was not a routine response to "questions regarding the functioning of the TBM," or "'wear' on cutting tools since the start of mining in July 2013" (Pet. 8), but a direct response to WSDOT's request to STP to provide facts supporting its DSC claim. (CP 1268-75)

3. STP timely sued WSDOT, but waited until January 26, 2017 to sue respondents.

The delay in completing the viaduct replacement tunnel generated many lawsuits, most of which have been consolidated in Thurston County Superior Court. In March 2016, WSDOT sued STP for breach of the design-build contract related to stoppage of the TBM. (CP 1-8) STP timely counterclaimed on July 6, 2016, alleging that WSDOT failed to adequately disclose TW-2 in the Contract Documents, and that TW-2 was a differing site condition under the contract. (CP 10-26) STP also asserted timely third-party claims against TBM designers Hitachi and HNTB Corporation. (CP 26-40)

STP did not, however, assert any claims against either Shannon & Wilson or WSP in March 2016. Although Hitachi had timely sued Shannon & Wilson on December 2, 2016 (CP 257-74), STP waited until January 26, 2017 to sue Shannon & Wilson – three years, one month, and three weeks after the TBM struck TW-2. (CP 319-29) The following day, January 27, 2017, STP amended its complaint to add WSP as a defendant. (CP 375-92)

STP alleged three causes of action, for negligence, negligent misrepresentation, and implied indemnification. (CP 380-88) On summary judgment, the trial court ruled that Shannon & Wilson and WSP had met their burden to establish STP's knowledge of duty,

breach, and damages, but found "material factual issues . . . as to whether STP had actual knowledge of the causation element prior to February 2014 . . ." (CP 1318-21, 1331) After accepting discretionary review, Division Two reversed, holding in an unpublished decision that "STP had sufficient notice of TW-2's role in the TBM's damage by January 15, 2014" to trigger the three year statute of limitations under the "discovery rule." (Op. 12) STP's indemnity claims remain pending in the trial court, along with STP's, Hitachi's and WSDOT's contract claims. (Op. 17-18)

D. Argument Why Review Should Be Denied.

1. The Court of Appeals applied settled law in holding that STP had ample notice of all elements of its negligence claims more than three years before bringing suit.

Settled precedent supports Division Two's holding that the three-year statute of limitations, RCW 4.16.080(2), began to run when STP had inquiry notice of the factual bases of its tort claims. Applying the well-established CR 56 standard to undisputed facts, it held STP's negligence claims time-barred because STP had alleged that TW-2 was the primary cause of damage to its TBM by early January 2014, more than three years before filing suit. (Op. 12-16)

Division Two's application of settled law to undisputed facts presents no conflict with cases of this Court or the Court of Appeals.

See RAP 13.4(b)(1), (2). The appellate court's holding that the three-year statute of limitations for a negligence claim begins to run "when an injured party knows, or in the exercise of due diligence should have discovered, the factual bases of the cause of action" was compelled by established law. (Op. 11-12) (quoting *Beard v. King County*, 76 Wn. App. 863, 867, 889 P.2d 501 (1995)). *Accord, Allen v. State*, 118 Wn.2d 753, 759, 826 P.2d 200 (1992) (affirming summary judgment dismissing negligence action where "[t]he facts were all available" to plaintiff more than three years before filing suit) (Pet. 10-11); *Gevaart v. Metco Const., Inc.*, 111 Wn.2d 499, 501, 760 P.2d 348 (1988) (discovery rule tolls the statute of limitations period only until party "knew or should have known all the essential elements of the cause of action."); DeWolf & Allen, 16 *Wash. Prac., Tort Law and Practice* §10.3 (4th Ed. 2018 Supp.) (collecting cases).

STP's petition ignores this settled principle and mischaracterizes the authority relied upon by the Court of Appeals to reject STP's argument that its cause of action did not accrue until it had definitively eliminated all other possible causes of its damages. In *Beard*, Division One refused to adopt the very argument espoused here by STP, holding that the discovery rule does not "continue[] to toll the commencement of the limitation period after the injured party

has specifically alleged the essential facts, but does not yet possess proof of those facts." 76 Wn. App. at 867 (internal citations omitted).

The "narrow issue" in *Beard* was not, as STP contends, whether the discovery rule continues to toll a claim in the absence of "conclusive proof" where the claimant has previously filed "a detailed administrative complaint." (Pet. 18) Instead, the issue, as here, was whether "[a] smoking gun is . . . necessary" where an "injured claimant reasonably suspects that a specific wrongful act has occurred," and has identified each element of its cause of action with particularity more than three years before filing suit. *Beard,* 76 Wn. App. at 868 (quoted Op. 15). *See also Allen,* 118 Wn.2d at 758; *Germain v. Pullman Baptist Church*, 96 Wn. App. 826, 835, 980 P.2d 809 (1999), *rev. denied*, 139 Wn.2d 1026 (2000).

STP essentially argues that the statute of limitations is tolled whenever a defendant denies liability. But what the *defendant* knows or doesn't know about the plaintiff's claim is immaterial to operation of the discovery rule, which properly focusses on the *plaintiff's* knowledge. As an exception to the statutory requirement that a claim accrues within three years of injury, the discovery rule imposes upon the plaintiff the burden of proving that plaintiff lacked inquiry notice of its claim three years before filing suit. *Estates of*

Hibbard, 118 Wn.2d 737, 744-45, 826 P.2d 690 (1992). STP would instead toll the statute of limitations whenever plaintiff lacked the proof necessary to establish each element of a claim by a preponderance of the evidence. (Pet. 16-17) But that is the purpose of the civil discovery rules, which give plaintiffs the right to obtain the "evidence necessary to prove their cause of action." *Beard*, 76 Wn. App. at 868.

STP's reliance on *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 146 P.3d 423 (2006) is especially misplaced. There, this Court applied the discovery rule to a case involving a latent construction defect. Consistent with the Court of Appeals' decision here (Op. 12), the *Vertecs* Court held that one "who has notice of facts that are sufficient to put him or her upon inquiry notice is deemed to have notice of all facts that reasonable inquiry would disclose." 158 Wn.2d at 581, ¶ 24 (citing *Hawkes v. Hoffman*, 56 Wash. 120, 126, 105 P. 156 (1909)).

Unlike this case, *Vertecs* involved not an obvious obstacle, but a latent defect, which the Court analogized to a surgeon leaving behind a surgical sponge – the patient knows the fact of injury but has "no way of knowing" the cause. 158 Wn.2d at 579, ¶ 21. Vertecs was responsible for stucco work on plaintiff's building, but not for caulking, flashing, or

weather protection on the windows or vents, which leaked following completion of construction. When the homeowners asked Vertecs about the leaks in 1994, Vertecs told them the water intrusion was due to inadequate caulking. After recaulking, the windows and vents continued to leak; the homeowners sued Vertecs in 2002, after noticing cracks in the stucco. 158 Wn.2d at 571-72, ¶¶ 2-3. This Court held that the discovery rule tolled the statute of limitations because the homeowners "had no way of knowing" that Vertecs' defective stucco work caused the leaking windows, and that a question of fact remained whether they *could* have discovered Vertecs' defective work within the statutory period, particularly given Vertecs' (successful) attempt years earlier to deflect responsibility. 158 Wn.2d at 579-80, ¶ 21.[2]

Unlike the stucco contractor in *Vertecs*, neither WSDOT nor the respondents denied that the TBM struck the steel casing of TW-2, or claimed that some other party was responsible for its placement. Their defense was always that the Contract Documents accurately disclosed the existence and precise location of TW-2. (CP 916) STP

[2] The other cases relied upon by STP similarly give plaintiffs the benefit of the discovery rule when they have "no [] reason to believe that there was any defect in" the defendant's product, *North Coast Air Services, Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 327, 759 P.2d 405 (1988) (Pet. 11), or could not have discovered a latent defect's existence. *Mayer v. Sto Indus., Inc.*, 123 Wn. App. 443, 463, 98 P.3d 116 (2004), *aff'd in part, rev'd in part*, 156 Wn.2d 677, 132 P.3d 115 (2006) (dry rot) (Pet. 19).

discovered not just the fact of damage, but its cause and the role of Shannon & Wilson and STP in early December 2013, when it immediately knew that the TBM had hit a steel well casing, and had stopped mining. (CP 869-72) Shortly thereafter, STP opened its DSC claim against WSDOT alleging that the Contract Documents failed to adequately disclose TW-2, and began tracking the stoppage damages it incurred immediately upon cessation of tunneling. (CP 896) The TBM's progress and the entire SR-99 Project had been delayed for over a month when, in mid-January 2014, STP identified TW-2 as the "most likely cause for such serious damage," concluding the steel casing of TW-2 was the "primary cause of the damage to Bertha's cutter teeth." (CP 1269) While STP continued to investigate the extent of the damage, it never wavered from its contention, made well more than three years before filing suit, that TW-2 damaged the TBM and was the reason the TBM stopped mining.

Reviewing this undisputed evidence, Division Two held that it was "indisputable that by January 15, 2014, at the latest, STP knew that the factual elements of its claims against [Shannon & Wilson and WSP] existed," and that "its claims accrued at that point, and the statute of limitations began running." (Op. 13) The Court of Appeals' holding comports not only with *Vertecs*, but with established law that a

claim accrues when reasonable inquiry would give the plaintiff knowledge of each element of that claim. *Green v. A.P.C. (American Pharmaceuticals Co.)*, 136 Wn.2d 87, 95-97, 960 P.2d 912 (1998); *Steele v. Organon, Inc.*, 43 Wn. App. 230, 233-35, 716 P.2d 920, *rev. denied*, 106 Wn.2d 1008 (1986). *Green* and *Steele* are particularly on point because they specifically reject STP's argument that, notwithstanding its knowledge that it had suffered appreciable harm in January 2014, it could delay filing suit so long as its damages continued to accrue and the ultimate amount remained unliquidated.

Division Two's unpublished decision does not conflict with any cases of this Court or of the Court of Appeals. This Court should deny review.

2. The Court of Appeals properly applied CR 56's standard in conformance with established law.

STP's claim of a "conflict[] with this Court's precedent governing summary judgment standards" (Pet. 11) is similarly meritless. The Court of Appeals' exhaustive review of the undisputed documentary record supports its holding that "taking the evidence in the light most favorable to STP, the record shows that STP had sufficient notice of TW-2 role in the TBM's damage by January 15, 2014" to start the running of the three-year statute of limitations. (Op.

12) The Court of Appeals' routine application of CR 56 in an unpublished decision presents no issue for review.

The appellate courts routinely resolve statute of limitations issues on summary judgment in a variety of factual settings. In each case the question, as here, is whether undisputed facts establish that the plaintiff had inquiry knowledge of each element of a claim more than three years prior to bringing suit. *See Allen*, 118 Wn.2d 753 (wrongful death); *Reichelt v. Johns-Manville Corp.*, 107 Wn.2d 761, 772, 733 P.2d 530 (1987) (asbestos claim); *Clare v. Saberhagen Holdings, Inc.*, 129 Wn. App. 599, 123 P.3d 465 (same), *rev. denied*, 155 Wn.2d 1012 (2005); *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 120 P.3d 605 (2005) (attorney malpractice), *rev. denied*, 157 Wn.2d 1004 (2006); *Will v. Frontier Contractors, Inc.*, 121 Wn. App. 119, 125, 89 P.3d 242 (2004) (claim for damage to real property), *rev. denied*, 153 Wn.2d 1008 (2005); *Beard*, 76 Wn. App. at 866-69 (wrongful termination). The Court of Appeals properly relied on these cases here, recognizing that STP's mere allegation of "factual issues" was not sufficient to defeat judgment as a matter of law under CR 56 "when reasonable minds could reach but one conclusion. . ." (Op. 11, quoting *Clare*, 129 Wn. App. at 603)

STP's contention that a trial is necessary to eliminate other potential causes of "wear" (Pet. 13) ignores that the ultimate cause of TBM damage is not a "material issue of fact" with respect to the discovery rule. CR 56(c). If a party's claim did not accrue until it knew the actual cause of its damages, the discovery rule – an exception to the principle that the statute begins to run when a party suffers damage – would swallow the statute of limitations altogether. "If the discovery rule were construed so as to require knowledge of conclusive proof of a claim before the limitation period begins to run, many claims would never be time-barred." *Beard*, 76 Wn. App. at 868. The Court of Appeals properly applied CR 56 in holding that indisputable facts establish that STP had (at least) inquiry notice of each element of its claims more than three years before filing suit. Its decision presents no grounds for review.

3. The Court of Appeals' decision presents no issue of substantial public interest as it does not address the many Bertha claims awaiting trial.

While the travails of Bertha and the delayed SR-99 project have attracted their share of press, publicity alone does not establish "an issue of substantial public interest that should be determined by the Supreme Court," RAP 13.4(b)(4), as STP argues in its petition. (Pet. 19) Division Two's straightforward unpublished decision

applying the three-year statute of limitations to STP's negligence claims presents no such issue, particularly as it was made on interlocutory review, and STP retains implied indemnity claims that may moot STP's challenge to dismissal of its negligence claims.

The Court of Appeals refused to address on discretionary review the viability of STP's indemnity claims against Shannon & Wilson and WSP. (Op. 16-18) Were respondents to prevail on the merits of STP's indemnity claim that respondents breached a tort duty to STP, the statute of limitations issue will be mooted by a final judgment that Shannon & Wilson and WSP breached no duty to STP. And in the unlikely event that STP recovered all its claimed damages on the basis of indemnity, as it has argued it should (Resp. Br. 46-47), STP would have no right to recover those same damages under a negligence theory.

STP's negligence claims at issue in this review are but one small portion of the litigation arising from the SR 99 tunnel project that remain pending in the trial court. In addition to STP's indemnity claims against respondents, there are numerous breach of contract and related claims between WSDOT, Hitachi and STP, all of which remain to be decided in a trial set to start in October 2019. An additional suit pending in King County Superior Court addresses issues of insurance coverage. Those claims and the issues they

present may be comprehensively reviewed following entry of a final judgment. While such issues may ultimately be worthy of this Court's attention, it will not be simply because they arose in conjunction with the delay in replacement of the viaduct caused by the damage to the TBM. The Court of Appeals' routine application of the three-year statute of limitations does not foreclose STP's claims in this case and presents no issue of substantial public interest.

E. Conclusion.

The Court of Appeals' unpublished decision is correct on the law, based on indisputable facts, and presents no issue for this Court's review. This Court should deny the petition.

Dated this 18th day of April, 2019.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 18, 2019, I arranged for service of the foregoing Joint Answer to Petition for Review to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 18th day of April, 2019.

Sarah N. Eaton

SMITH GOODFRIEND, PS

April 18, 2019 - 10:20 AM

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