

Construction Law Update

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Property Owners Not Entitled to Interest on Relocation Benefits Following Condemnation Proceedings

Washington property owners' right to recover interest on relocation assistance benefits following an eminent domain case was short-lived, as the Washington Supreme Court has reversed last year's Court of Appeals decision granting that right. The Supreme Court's ruling in *Union Elevator & Warehouse Co. v. Department of Transportation* means that property owners are no longer entitled to seek interest on relocation assistance benefits and, therefore, will bear the cost of any delays if a dispute arises over entitlement to the award.

Typically, the government is not liable for interest on a judgment unless it has waived sovereign immunity. Washington state statute expressly waives state immunity for an award of interest in condemnation proceedings, but the issue in *Union Elevator* was whether that waiver applies to interest for relocation assistance benefits. Union Elevator sought interest on the \$235,000 awarded to it for moving the contents of its grain elevator business following a partial taking by eminent domain.

In a 2-1 decision in January 2010, the Court of Appeals ruled that "compensation" in an eminent domain action included moving costs and interest on those costs in order to make the owner "whole so far as possible and practicable." Barely a year later, the Supreme Court, in a unanimous decision, has now held that the Relocation Assistance and Real Property Acquisition Policy Act, RCW 8.26, does not contain any express waiver of sovereign immunity and "the statutes imposing condemnation award damages cannot be reasonably construed to waive sovereign immunity for interest on relocation assistance awards."

Union Elevator spent seven years litigating its right to receive relocation assistance benefits (from 2001 to 2008) and has been litigating the issue of its entitlement to interest since 2008. The Supreme Court's decision not only puts a definitive end to Union Elevator's case, but also effectively raises the costs for any property owner seeking relocation benefits who might encounter a government challenge. Without the prospect of recovering interest for the delay, property owners may have to think twice about contesting relocation benefit awards at all.

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