

Bond Case Briefs

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INDEMNITY - ARIZONA

City of Phoenix v. Glenayre Electronics, Inc.

Supreme Court of Arizona - May 10, 2017 - P.3d - 2017 WL 1929472

Worker sued city and others on theory of negligence after he developed mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping on water infrastructure projects.

Case was converted to one for wrongful death upon worker's death. City filed third-party complaint against eight contractors and 82 developers seeking indemnification from liability.

The Superior Court dismissed third-party complaint, and city appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court of Arizona held that:

- Eight-year statute of repose governing actions based in contract for improvements to real property applied to city's third-party claims against eight contractors, and
- Eight-year statute of repose did not apply to city's third-party claim against developers.

Eight-year statute of repose governing actions based in contract for improvements to real property applied to city's third-party claims against eight contractors hired by city on water infrastructure projects, seeking indemnification from contractors from liability for wrongful death of worker from mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping for contractors. Statute applied "notwithstanding any other statute" and thus, controlled over general statute exempting state from statutes of limitations and rendered inapplicable doctrine "nullum tempus occurrit regi" that time does not run against the king.

City code providing that developers granted permits for improvements to real property agreed to indemnify and hold city harmless city from suits arising out of any act or omission by permittee that resulted in injury to or death of any person did not create relationship between city and developers "based in contract" for development, sale, or improvements to real property, and thus, eight-year statute of repose governing actions based in such contracts did not apply to city's third-party claim against developers for indemnification from liability for wrongful death of worker from mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping on water infrastructure projects.