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Offit Kurman Represents AEC Associations Before Pennsylvania Supreme Court in Construction Statute of Repose Case

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In *Clearfield County, Pennsylvania v. Transystems Corporation & Leonard S. Fiore, Inc.*, the Pennsylvania Supreme Court will decide a case that could alter future construction contracts with the Commonwealth and its political subdivisions. Several Pennsylvania professional associations join the brief of amici curiae, including:

- American Council of Engineering Companies of Pennsylvania
- American Institute of Architects of Pennsylvania
- Associated Builders and Contractors – Eastern PA, Keystone and Western PA Chapters
- Pennsylvania Society of Professional Engineers
- Pennsylvania-Delaware Chapter of the American Society of Landscape Architects and
- Structural Engineers Association of Pennsylvania and Delaware Valley Structural Engineers.

The question raised in the Pennsylvania Supreme Court appeal relates to the application of an ancient common law doctrine, *nullum tempus*. Translated from Latin, *nullum tempus* means “time does not run against the king”. The doctrine provides that statutes of limitation do not apply to the Commonwealth and derives from sovereign immunity. In this case, Clearfield County asserts that the doctrine of *nullum tempus* tolls Pennsylvania’s 12-year Construction Statute of Repose.

In the amicus brief, the AEC Associations assert that *nullum tempus* does not apply to toll the statute of repose where the government voluntarily enters into construction contracts. First, the Pennsylvania Construction Statutes of Repose eliminates a cause of action after a period of 12 years, statutorily abrogating the common law doctrine. Unlike statutes of limitation, statutes of repose cannot be tolled. Second, *nullum tempus* is a privilege stemming from sovereign immunity, which does not apply to political subdivisions such as

Related People

- Anthony Potter
- Franklin C. Miller, Jr.

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counties and municipalities. Finally, the common law doctrine of nullum tempus does not apply to breach of contract actions where the Commonwealth or political subdivision voluntarily and knowingly entered into an agreement with licensed design professionals and construction contractors.

The brief, submitted by Anthony Potter and Franklin Miller, reflects interests in upholding statutes protecting the architectural, engineering, landscape architects, and contractors working in the AEC industry. The associations collectively support the Pennsylvania Construction Statute of Repose and urge the Pennsylvania Supreme Court to uphold the current statutory interpretation.