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In the News

Unanimous Pennsylvania Supreme Court Ruling Affirms 12-Year Construction Statute of Repose

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In *Clearfield County, Pennsylvania v. Transystems Corporation & Leonard S. Fiore, Inc.*, the Pennsylvania Supreme Court has issued a unanimous 7–0 decision that strongly affirms the application of Pennsylvania’s 12-year Construction Statute of Repose, 42 Pa. C.S. § 5536, and rejects the application of the common law doctrine of *nullum tempus* to toll that statute.

Several design and construction associations joined the brief of amici curiae submitted by Offit Kurman, 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
- Structural Engineers Association of Pennsylvania and Delaware Valley Structural Engineers

The appeal raised a significant question regarding the scope of the common law doctrine *nullum tempus*, which translates to “time does not run against the king” and has roots in sovereign immunity. Clearfield County argued that this doctrine circumvented Pennsylvania’s Construction Statute of Repose when a public entity brings suit for design and construction defect claims.

The Supreme Court squarely rejected that argument, holding that Section 5536 is a true statute of repose that creates a jurisdictional bar to suit once the 12-year period expires. The Court further concluded that the doctrine of *nullum tempus* does not apply and cannot toll or avoid the statute of repose, even when the claim is brought by the

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Commonwealth or a political subdivision.

In reaching this conclusion, the Court confirmed that:

- Section 5536 extinguishes the cause of action itself after 12 years, not merely the remedy presenting a jurisdictional bar and resolved the question presented as a matter of law;
- Statutes of repose, unlike statutes of limitation, are not subject to tolling; and
- The common law doctrine of nullum tempus cannot override the legislative mandate embodied in Pennsylvania's Construction Statute of Repose.

This outcome represents the precise result urged by the AEC Associations as amici, which argued that allowing nullum tempus to defeat the statute of repose would undermine the certainty and finality the statute of repose was enacted to provide to design professionals and construction contractors. Furthermore, the Supreme Court clearly recognized the historical context and legislative history stretching back to its 1969 enactment, which was heavily influenced by many of the same AEC associations that OK represented before the Supreme Court.

The decision is a significant victory for the design and construction industry in Pennsylvania, providing the clarity necessary to reinforce the jurisdictional bar established by the Construction Statute of Repose.

The amicus brief was submitted by Anthony Potter, and Franklin C. Miller, Jr., on behalf of the design and construction associations, reflecting their shared interest in protecting the construction industry from the economic consequences of indeterminate liability.