

CLIENT ALERT

Ohio Court of Appeals Applies Supreme Court's New Riegel Decision; Rejects School District's "Accrual" Argument to Resurrect Claims

By: [Matthew Grashoff](#)

The Seventh District Court of Appeals' decision in *Union Local School District v. Grae-Con Construction* is another important victory for the Ohio construction industry in the ongoing debate over the proper application of Ohio's construction statute of repose, R.C. 2305.131. The Seventh District Court of Appeals, applying the Supreme Court of Ohio's July 2019 decision in *New Riegel Local School District v. Buehrer Group Architecture & Engineering, Inc., et al.*, reaffirmed dismissal of stale breach-of-contract claims under Ohio's construction statute of repose. The Seventh District rejected three separate arguments advanced by Union Local, which was attempting to overturn the trial court's rejection of Union Local's breach of contract claims against contractors and other project participants. The *Union Local* opinion is yet another example of Ohio courts interpreting and applying the construction statute of repose to prevent prosecution of stale claims many years after project completion.

Union Local's first argument was that the construction statute of repose did not apply to breach of contract claims. The *Union Local* appeal had been stayed pending the outcome of *New Riegel*, so the Seventh District was able to swiftly dispose of Union Local's argument based on the Supreme Court of Ohio's July 2019 holding that Ohio's construction statute of repose bars breach of contract claims as well as tort claims filed more than 10 years after project substantial completion. (Hahn Loeser previously summarized the impact of *New Riegel* [here](#).)

Union Local's second argument focused on the "accrual" issue that the Supreme Court of Ohio did not resolve in *New Riegel*: essentially, whether plaintiffs can bring claims outside of the 10-year repose period provided the claims "accrued" within the 10-year period. The Seventh District rejected this argument for two reasons. First, Union Local had not made the argument in the trial court and, therefore, it was not permitted to raise it on appeal for the first time. Second, the Seventh District, relying on Justice Kennedy's concurring opinion in *New Riegel*, declared that the accrual argument would not have saved Union Local's claims even if the issue was properly before the court.

Lastly, the Seventh District rejected Union Local's third argument that the construction statute of repose was unconstitutional under the 1994 Supreme Court of Ohio decision in *Brennaman v. R.M.I. Co.* The Seventh District noted that *Brennaman* construed a previous version of the construction statute of repose. Furthermore, the Seventh District noted several decisions subsequent to *Brennaman* which questioned *Brennaman's* reasoning and limited its scope.

The *Union Local* decision reinforces the scope and application of repose defenses for project participants. In order to avail themselves to the protections afforded under the *New Riegel* and *Union Local* decisions, project participants must follow contract provisions and properly document project substantial completion. Additionally, experienced counsel must timely advance project participants' arguments and evidence required to advance (or overcome) the statutory defenses.



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