

CLIENT ALERT

Ohio Supreme Court Rules that Statute of Repose Applies to Contract Claims

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On July 17, 2019, the Supreme Court of Ohio announced a major victory for the Ohio construction industry in the ongoing battle over whether Ohio's construction statute of repose, R.C. 2305.131, bars claims for breach of contract as well as tort claims. In *New Riegel Local School District v. Buehrer Group Architecture & Engineering, Inc., et al.*, the Ohio Supreme Court ruled the construction statute of repose **does** apply to breach-of-contract claims as well as tort claims.

The Court concluded that, if the General Assembly had intended to limit the statute to tort claims only, it could have done so by changing a few specific words in the statute. However, the General Assembly did not do that and, in fact, used much broader language which indicated an intent that the statute apply to contract claims as well as tort claims. The majority also emphasized that the 10-year period defined in the statute of repose begins to run from the date of substantial completion and, since that date is determined by reference to the requirements of the contract, it further supports the conclusion that the statute applies to contract claims. The majority also reasoned that certain provisions of the statute, such as the exception for express warranty claims at R.C. 2305.131(D), would not be necessary if the statute only applied to tort claims. Therefore, applying Ohio principles of statutory construction, the Court determined that the statute applies to both contract claims and tort claims.

The majority also agreed that it was not required to follow a 1986 opinion from the Supreme Court of Ohio which had determined that the then-current version of the statute applied only to tort claims. The majority reasoned that the construction statute of repose had been significantly amended since 1986 and was no longer "substantially the same" as the version of the statute addressed in the 1986 case.

The *New Riegel* opinion did not fully dispose of the case, however. The Court's majority reasoned that, although they had determined the statute applies to contract claims as well as tort claims, they could not address the question of whether the statute actually barred New Riegel's claims because that question was outside the scope of the issues the Court agreed to decide. Therefore, the case was referred back to the lower courts for further proceedings. However, two justices (who agreed that the statute applied to both contract and tort claims) argued the Court can and should decide the issue against New Riegel. This portion of the case relates to how to interpret the statute's language that "no cause of action . . . shall **accrue**" after the 10-year period provided in the statute. New Riegel argued that this language allows it to bring a claim outside the 10-year period as long as the claim "accrued" within the 10 years. However, the contractors and designer argued (and the two justices agreed) that the language still required claims to be brought within the 10-year period unless they fit within one of the narrow exceptions defined by the statute. This issue will likely come back to the Supreme Court of Ohio to decide in the near future.

The *New Riegel* decision is a major win for Ohio's construction industry. The Supreme Court of Ohio's confirmation that the construction statute of repose applies to contract as well as tort claims will prevent owners from trying to avoid the statute of repose by creatively pleading their claims.

For additional information on the statute of repose or updates on the Ohio Supreme Court's decision, we invite you to visit our Construction Practice website at <https://www.hahnlaw.com/services/construction>.



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