

Gallagher Sharp Newsflash: Ohio's Construction Statute of Repose

By Attorneys P. Kohl Schneider and Richard C.O. Rezie

Today, July 17, 2019, the Supreme Court of Ohio held that Ohio's construction statute of repose, R.C. 2305.131, applies to actions sounding in contract as well as to those sounding in tort.

In *New Riegel Local School Dist. Bd. of Edn. V. Buehrer Group Architecture & Eng., Inc.*, Slip Opinion No. 2019-Ohio-2851, a school district sued the contractor and architect involved in the design and construction of a public-school building. Although the project was substantially completed in December 2002, the school district did not file suit for breach of contract until April 2015. The school district alleged that the project had several deficiencies resulting in property damage. The contractor and architect moved to have the breach-of-contract claims dismissed based on R.C. 2305.131, the ten-year statute of repose. The trial court dismissed the claims against the contractor and architect; the school district appealed.

On appeal, the Third District Court of Appeals reversed the trial court's decision. The Third District stated that on its face R.C. 2305.131 appeared to bar the school district's claims for breach of contract. However, it determined that it was required to follow the Supreme Court of Ohio's decision in *Kocisko v. Shutrump & Sons Co.*, 21 Ohio St.3d 98, 488 N.E.2d 171 (1986), and to hold that R.C. 2305.131 does not apply to claims for breach of contract. The contractor, represented by P Kohl Schneider and Richard Rezie of Gallagher Sharp, and architect appealed.

The Supreme Court of Ohio reversed the Third District's decision. The Supreme Court determined that the Third District erred in applying *Kocisko* to the current version of R.C. 2305.131. The Supreme Court held that *Kocisko* interpreted the 1971 version of the statute, which the Supreme Court determined is significantly different from the current version of the statute.

The Supreme Court of Ohio conducted an independent review of R.C. 2305.131. Reading the statute as a whole, the Court noted that it contains several provisions which make it clear that the General Assembly did not intend to exclude claims for breach of contract from the ten-year repose period. Accordingly, the Supreme Court determined that R.C. 2305.131 applies to causes of action sounding in contract as well as in tort, as long as the cause of action meets the requirements of the statute such as allegations of injury to property. However, the Supreme Court remanded the matter to the Court of Appeals to determine, in the first instance, whether an action which accrues within the ten-year repose period but is brought ten years after substantial completion, is governed by: (1) the ten-year statute of repose; or (2) the separate contractual statute of limitations period running from the date of accrual.

The Slip Opinion can be found at: [2019-Ohio-2851](#).



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