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Connecticut Supreme Court Rules that State of Connecticut is not Bound by Statutory Time Limits for Civil Claims

By [Robert M. Barrack](#)

In a decision that is sure to have substantial and far-reaching impact on contractors, designers, suppliers, and others involved in State of Connecticut public works projects, the Connecticut Supreme Court has ruled that the State enjoys special privileges when it enters the private marketplace. In *State v. Lombardo Bros. Mason Contractors, Inc.*, ___ Conn. ___, 2012 Conn. LEXIS 443 (2012), officially released on November 13, 2012, the Court held that defenses based on the untimely commencement of a lawsuit by the State are invalid. Such time-based defenses are typically based upon statutes of limitations and repose, which limit the time for bringing a civil action. A statute of limitations will bar a claim brought a specified time after the plaintiff suffers harm or discovers the harm, while a statute of repose bars an action after a certain period of time regardless of any harm. The Supreme Court's ruling allows the State to pursue claims against private parties that provide goods and services to the State for an unlimited time after the services were provided or the goods were manufactured or delivered.

The *Lombardo Bros.* case involved the design and construction of the University of Connecticut School of Law Library. Design work on the library began in 1992, and construction was completed in 1996. Almost immediately after the students began using the library, it began to experience leaks. After several investigations, the State concluded that the building envelope had a number of defects, which allowed rainwater to infiltrate the library. The State then retained new design and construction teams to perform extensive renovation work and sought to recover the costs from the defendants. In 2008, 12 years after completion of the Library, the State initiated its lawsuit against the architects, engineers, construction manager, and various trade contractors, subcontractors and materials suppliers.

All defendants sought to dispose of the State's lawsuit based upon their time-based defenses, while the State responded that it was not bound by time limitations in an argument based on the ancient doctrine of *nullum tempus occurit regi* (time does not run against the sovereign). The trial court ruled in favor of the defendants and dismissed the case, finding that *nullum tempus*, which has been adopted in a number of other states and abolished in others, has never been adopted in Connecticut. The trial court also found that the doctrine was outmoded,

unfair, and impractical when the State was acting as an owner.

The Connecticut Supreme Court reversed the judgment and sent the parties back to the trial court to continue litigating the case. The Court flatly rejected the notion that *nullum tempus* was never adopted in Connecticut, noting that although Connecticut cases have not expressly discussed the doctrine over the years, *nullum tempus* has been an accepted part of Connecticut's common law since colonial times. The doctrine arose from a general principle dating back to medieval England that a statute limiting one's rights would not apply to the king, now the State, unless the statute expressly allows it or if it applies to the State "by necessary implication," a standard that is very difficult to satisfy.

The Court rejected the defendants' arguments that the statutory limitations at issue applied to the State by necessary implication, or that the State had waived its right to assert *nullum tempus*. The Court held that *nullum tempus* and sovereign immunity were closely related doctrines, essentially intended to protect the financial interests of the State. As with sovereign immunity, only the legislature is authorized to waive or abolish *nullum tempus*. The Court reasoned that, if the legislature disagreed with *nullum tempus*, it would have already acted to abolish or limit the doctrine.

The Court even went so far as to reject the CM's argument that the State was bound by a time limit set forth in its contract. The Court found that, as with sovereign immunity, no state official or agency has the authority to waive *nullum tempus*, even in a negotiated contract, without prior approval from the legislature. Therefore, the defendants were not allowed to raise time-based defenses against the State, though the same claims would have been time barred on a private project. Some public works designers and contractors are now concerned that the State will be encouraged to actively investigate long-completed projects and initiate claims long since believed to have expired. In fact, there are reports of this already happening.

Due to the expanded potential for liability, the *Lombardo Bros.* decision has important implications for those who do business with State agencies, including quasi-public agencies, such as the Connecticut Resources Recovery Authority and Metro North. *Nullum tempus* could also apply to claims by municipalities, but only to the extent that they involve statewide interests. For example, a municipal school project has been held to primarily implicate local interests; however, a regional charter school or waste treatment facility might implicate State interests. Those who do business with the State, or on municipal projects where extended liability could apply, might wish to plan accordingly, beginning with the preliminary estimation of costs. They might consider notifying their insurance carriers before submitting proposals for State jobs. It might not be possible to purchase insurance on a claims-made basis in perpetuity, which could be particularly problematic for design professionals. Project-specific insurance is frequently prohibitively expensive, which could result in certain jobs being uninsurable. The specific impact on sureties that issue performance bonds for public projects has yet to be tested. Consideration might be given to extended potential liability when selecting trade contractors, subcontractors, and suppliers. The case also impacts the long-term implications of decisions involving such things as value engineering, requests for information, change orders and substitution of materials.

Perhaps most importantly, designers and contractors will be required to defend against claims long after their work for the State is completed, so that managers and employees with knowledge of the project could have relocated, retired, or become unable to testify as witnesses. Therefore, without meticulous documentation throughout a project or business relationship with the State, including written, electronic, photographic, and videographic

records, one could be placed at a great disadvantage. Consideration might also be given to the adoption of document retention policies such that project records are maintained for decades, rather than years.

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