



Congratulations to Tom Glassman and Pat Trombetta of our Cincinnati office who recently won a decision in the Fifth District Court of Appeals for Stark County in an important case involving Ohio's construction statute of repose under R.C. 2305.131. The Fifth District held that Ohio's 10 year statute of repose applied to breach of contract claims in addition to negligence claims.

The lawsuit stemmed from a construction project for a new high school building for the Tuslaw Local School District. Plaintiff alleged the roof was defectively installed and inadequate materials were used. The project was substantially completed in 2005, but Plaintiff did not file suit until 2018. Ohio's construction statute of repose imposes a ten year repose period for construction claims. Because suit was filed more than ten years after the construction was completed, Plaintiff attempted to avoid the impact of the ten year statute of repose for construction claims by pleading breach of contract and breach of warranty. Plaintiff contended the statute of repose applied only to negligence claims and not breach of contract and warranty claims. The trial court disagreed and dismissed the claim.

The Fifth District upheld the dismissal in holding that the statute of repose applied to breach of contract claims in addition to negligence claims. The Fifth District did not reach a decision whether the statute of repose applies to breach of warranty claims as the Court determined Plaintiff failed to properly plead a warranty claim. The Ohio Supreme Court is currently considering whether to accept an appeal.

This is an important issue for construction and design claims as it prevents plaintiffs from relabeling their claims from negligence to breach of contract in order to avoid the statute of repose.

The decision can be found at <https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-1731.pdf>.

