

ALERTS AND UPDATES

Public Entities Can Contractually Waive Their Right to Invoke the Doctrine of Nullum Tempus in Pennsylvania

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Nullum tempus occurrit regi, sometimes abbreviated *nullum tempus*, is a Latin phrase that means "no time runs against the king." Today, *nullum tempus* is a common-law doctrine holding that the statute of limitations does not apply to governmental entities. As a result, governmental entities may initiate certain causes of actions that would be time-barred, if brought by an individual or private company.

Pennsylvania has adopted the *nullum tempus* doctrine, and courts have repeatedly found that "statutes of limitations are not applicable to actions brought by the Commonwealth or its agencies unless a statute expressly so provides." *Delaware County v. First Union Corporation*, 929 A.2d 1258, 1261 (Pa. Cmwlth. 2007) (quoting *City of Phila. v. Lead Indus. Ass'n, Inc.*, 994 F.2d 112, 118 (3d Cir. 1993)).

The Pennsylvania Commonwealth Court, however, in a case of first impression, recently held that the *nullum tempus* doctrine can be waived by a governmental entity, if that governmental entity agrees to contract language that provides the time period that "any applicable statute of limitations shall commence to run."

In [*Selinsgrove Area Sch. Dist. v. Lobar, Inc.*](#), 2011 Pa. Commw. LEXIS 475 (September 27, 2011), a school district contended that a roofing contractor negligently installed a roof on a school building. The roofing contractor and its subcontractor filed a motion for summary judgment, asserting that the school district's negligence claim was barred by the statute of limitations. In response, the school district maintained that the doctrine of *nullum tempus* applied, because the building of a school is an obligation imposed by law, and, therefore, the statute of limitations would not run against the school district.

The Commonwealth Court held that, although the *nullum tempus* doctrine would ordinarily apply in a case where a school district is suing for damages resulting from negligence in the construction of its facilities, the school district in this particular instance by entering into a contract with the contractor that included a

clause which merely identified when specific claims accrued, waived its right to invoke the doctrine of *nullum tempus*.

Although the correctness of the decision may be viewed by some as questionable, unless and until the Pennsylvania Supreme Court reviews this decision, public owners should review their construction contracts carefully. Because the alleged waiver in *Selinsgrove* was inferred (there was no specific waiver language) from contract language that provides that "any applicable statute of limitations" would commence at substantial completion, final completion and other specific milestones, public entities may want to review promptly any contracts they are about to enter to ensure that they are not inadvertently waiving the *nullum tempus* doctrine.

For Further Information

If you have any questions regarding this *Alert* or would like more information, please contact [Robert A. Prentice](#), any [member](#) of the [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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