

\$25 Million Lawsuit Dismissed Against Architect

On February 23, 2009, a Connecticut Superior Court Judge dismissed a \$25 million lawsuit brought by the State of Connecticut against an architect and other design professionals and contractors who designed and built the University of Connecticut Law Library. The law firm Donovan Hatem LLP represents the architect in the lawsuit, which was filed over 12 years after construction was completed. The decision, State of Connecticut v. Lombardo Brothers Mason Contractors, Inc. et al, granted the architect's summary judgment motion and held that the State lost its right to sue the architect by failing to bring its claims in a timely manner. The case creates new law in Connecticut and has wide-ranging implications for architects, engineers and others involved in public works projects under contracts with the State of Connecticut.

Waterbury Superior Court Judge William Cremins rejected the State's argument that the ancient maxim of *nullum tempus occurit regi* ("no time runs against the king") and the common law doctrine of sovereign immunity prevented the defendants from raising a statute of repose or statute of limitations as a defense to the State's claims. The court ruled that these exemptions, which exist in Connecticut as an element of English common law, were founded hundreds of years ago on considerations of public policy that are no longer valid in the context of a public works construction project.

The architect's summary judgment motion was based on a special statute of repose, § 52-584a, that limits actions against architects and engineers by barring claims brought more than seven years after substantial completion of a project. The architect argued that the State legislature has the power to enact statutes that abrogate any governmental immunity the common law gives to the State, and that the Connecticut Legislature enacted § 52-584a in order to end the perpetual liability of architects and engineers, and to allow them after the 7-year period to be free from liability and insurance coverage concerns. The court agreed, holding that "the legislative protection of certain industries is the exact type of change in circumstances that justifies abandoning the common law doctrine." The court's ruling departs from a long history of jurisprudence in Connecticut.

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Donovan Hatem LLP is a multi-practice law firm with offices in Boston and New York. We serve a diverse clientele of private companies, nonprofit organizations, government entities and individuals. Our clients rely on our experience and expertise for focused advice and counsel that can minimize risk exposure. The Professional Practices Group at Donovan Hatem includes more than 40 attorneys who provide highly-specialized counsel to architects, engineers, and construction managers. Our experienced trial lawyers represent design professionals in jury and non-jury cases in the northeast and nationwide, and at mediations, arbitrations, and other dispute resolution forums. In addition to professional liability claims defense, Donovan Hatem's scope of construction law expertise encompasses risk management, contract review, and general business matters.

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