

New York's highest court dismisses lawsuits filed by several municipalities against five Long Island contractors

New York's highest court, in a decision handed down on December 17th, 2013, sided with five Long Island contractors in dismissing as untimely lawsuits filed by several municipalities for property damage allegedly caused by faulty construction performed by those contractors in the 1970s and 1980s.

The contractors had been hired by Nassau and Suffolk Counties to install a sewer system throughout Long Island, and completed their work decades ago. The Town of Oyster Bay, the Village of Babylon and the Village of Lindenhurst claimed that the areas surrounding the sewer lines had settled because of improper excavation and backfilling, eventually damaging the adjacent roads, sidewalks and curbs, but that they did not become aware of the damage until well after the completion of construction. The court of appeals held that the statute of limitations on the municipalities' claims began to run when the work was substantially completed, not when the damage became apparent. Thus, as the contractors finished their work on the sewers, at the latest, by 1987, the lawsuits filed in 2009 were more than 15 years too late.

The court also rejected the municipalities' argument that the contractors' alleged wrongful acts constituted a continuous wrong and stated that the date of "injury" for purposes of determining when a property damage claim accrues in a construction project setting is when the discrete, negligent acts were committed, which cease, at the latest, also upon completion of the construction.

Joseph Asselta, Esq. and David Loglisci, Esq., of Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, who represented one of the contractors sued, said the court's ruling will not only prevent stale claims for property damage, but will also provide certainty and finality to contractors and their insurers, as the timeliness of all such lawsuits will be determined based on the date of completion of the work. Ultimately, they said, the taxpayers will be the real beneficiaries of the court's ruling, because contractors will not have to increase their bids to account for potential liability in connection with lawsuits brought decades after project completion.

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