



American Council of Engineering Companies of New York

NEW YORK STATE NEEDS STATUTE OF REPOSE TO REMAIN COMPETITIVE

The high cost of doing business in New York State is plaguing design professionals. Professional engineers view professional liability insurance as one of the higher costs associated with providing design services. Considering the state of the New York economy, decreasing the cost of business should be essential to fixing the problem. New York has always been a leader in business and commerce, but it falls short in certain tort reforms. When it comes to design professionals, a statute of repose should be put in place to protect them from third-party lawsuits after a certain period of time.

A time limit should be set in order to remove responsibility from design professionals. Legislation introduced – A.5301 (Pretlow)/S.3334 (Griffo) creates a balance between injured parties and those involved with the responsible entity. After ten years of a project's completion, any type of malpractice claim is hard to defend for many reasons, and often times, no longer the responsibility of the design professional. In most cases, once a building or other structure has proven itself over time, liability for failure rests in those who maintain, inspect or make design alterations after construction was completed. Liability in these cases continues to be a threat to design professionals even after they have no authority to oversee the maintenance of the entity. These types of cases face many legal issues, and historically have resulted in a dismissal for lack of evidence. Witnesses are often no longer available and the limits of memory become obvious. Records of such instances are often not useful in these types of lawsuits due to time lapse.

Under the current law, engineers and other design professionals can be faced with cases involving personal injury and its associated liability for an indefinite period of time. An engineer may be called upon to defend a claim in perpetuity. These defense costs are a major factor in the high cost of design liability insurance. The considerable time required of the licensee to work with defense attorneys and court procedures places an added fiscal burden on the design professional, and in most cases, is a waste of time, energy and money. Many smaller businesses choose to operate without insurance because it is simply too costly. The vast majority of claims against engineers do not result in recovery.

The significant majority of states have enacted some form of statute of repose applicable to design liability cases. This concept was embraced because it establishes a time frame in law, starting at the date of completion of a project, within which a claim of negligence or malpractice may be brought. Without a statute of repose in New York State, many design professionals may choose to relocate their business elsewhere. Considering the severe shortage of engineers in the United States already, New York's withholding of a statute of repose is decreasing its competitiveness in the national and global economy. Within the state itself, engineers and design professionals are not on an equal playing field with their colleagues around the country. It is time for New York to step up and join those who have instituted a statute of repose.

Founded in 1921, the American Council of Engineering Companies of New York (ACEC New York) is the state's premier organization for consulting engineering firms, representing 280 companies and over 20,000 employees in New York. The organization's mission is to further the business interests of its members through advocacy, networking, education and business services. For more information, visit www.acecnny.org.