

LEGAL ADVISOR

A PilieroMazza Update for Federal Contractors and Commercial Businesses

Litigation

IF YOU SNOOZE, YOU MAY LOSE – BE MINDFUL OF THE STATUTES OF LIMITATIONS IF YOU INTEND TO ENFORCE YOUR RIGHTS IN A COURT OF LAW

By Paul Mengel

Let's say you are a company performing on a contract and a dispute arises with regard to a payment. You insist that you have fully performed, but the client disagrees and refuses to pay all or a portion of what you contend you are due. Or perhaps you are a subcontractor who has performed and are awaiting payment under the terms of a "pay when paid" contract, but payment has not been forthcoming, despite the fact that you know the prime contractor has been paid by the client. And further assume that both of these failures to pay are breaches of the underlying contracts, but you continue to perform, with the intent to resolve the dispute "at the end of the day," perhaps by way of a mediation provision in the contract. Another possible scenario: your company has been bad-mouthed to potential clients by an over-served competitor at a convention, and you are convinced that the slanderous comments caused you to lose out on an opportunity.

You need to be aware that there is an invisible clock that is ticking away, and it started at the moment of the non-payment, or at the time of the slander. That clock is going to continue to tick, absent an express written (tolling) agreement between the parties. And on a date in the not-too-distant future, your right to sue for your damages is going to vanish, forever. This article is designed to make you mindful of statutes of limitations in general, and some that are specific to the Maryland-DC-Virginia area, so you will remember to mark your calendar with these critical, and absolute, deadlines.

Statutes of limitation date back thousands of years, to the times of Roman Law, and arose from the desire to provide for a reasonably limited period of time within which a legal action can be brought, which, among other things, protects defendants from defending stale claims. The Europeans incorporated such statutes into their legal systems, and thus

they found their way into U.S. law. By definition, these are statutes, meaning they are enacted by the legislature of the states. As a result, unlike federal laws whose requirements apply uniformly to all states, statutes of limitations can, and do, vary from state-to-state. And being statutes, in the absence of a circumstance that cause the running of the statutes to be put on hold, or "tolled," a court is powerless to extend them once the date has passed.

As a result, companies whose contracts contain choice-of-law provisions, and those that may be performing in several different states under contracts that do not contain such provisions, need to be mindful of the particular state statute that will control how long they will have to file suit in the event of a breach or other cause of action, such as slander, libel, or fraud. Sometimes ascertaining the applicable statute of limitations is not as simple as referring to the underlying contract, as the document may be silent on that term, thus requiring an examination of the facts related to place of performance, or place of execution of the contract, in order to make that determination. In such instances it is especially important to confer with counsel promptly, in order to ensure that the drop-dead date for filing an action is calculated and noted for future reference.

Some examples of commonly-encountered limitations periods are as follows (all stated in years):

Breach of written contract: VA: 5; DC: 3; MD: 3 (all run from the date of the breach).

Breach of oral contract: VA: 3; DC: 3; MD: 3 (all run from the date of the breach).

Fraud: VA: 2; DC: 3; MD: 3 (from the date when discovered, or should have been discovered).

Libel/slander: VA: 2; DC: 1; MD: 1 (from the date of the libelous/slanderous act).

Continued on page 2

Published by

PM | **PILIERO
MAZZA** PLLC
ATTORNEYS AT LAW

Continued from page 1

The foregoing briefly illustrates the variance in statutes of limitation from state-to-state, and reiterates the importance of being mindful on the provisions in your contracts and the execution and performance factors that can determine when your right to bring an action will be extinguished. And remember that statutes of limitation are “deadlines” in the truest sense: once the date to file has come and gone, if you have not preserved your right by filing suit, your claim is dead. So make note of the applicable provisions, act diligently in the event of a breach or other wrong you have suffered, and contact counsel early on if you have any question about the date by which you must act, or be forever barred from doing so. ☐

About the Author: Paul W. Mengel III, counsel with PilieroMazza, leads the Litigation Group. He is a seasoned trial attorney with a broad range of experience in all aspects of civil litigation as well as complex commercial disputes. He can be reached at pmengel@pilieromazza.com.

The *Legal Advisor* is a periodic newsletter designed to inform clients and other interested persons about recent developments and issues relevant to federal contractors and commercial businesses. Nothing in the *Legal Advisor* constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication but is subject to change and does not purport to be a complete statement of all relevant issues.