



# Statute of Repose In Latent Disease Cases

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## Statute of Repose In Latent Disease Cases

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### Statute of Limitations:

- Specifies time period for commencing suit on given claim
- Triggered when cause of action accrues
- Accrual of time depends on jurisdiction, usually when injury is discovered



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### Statute of Repose:

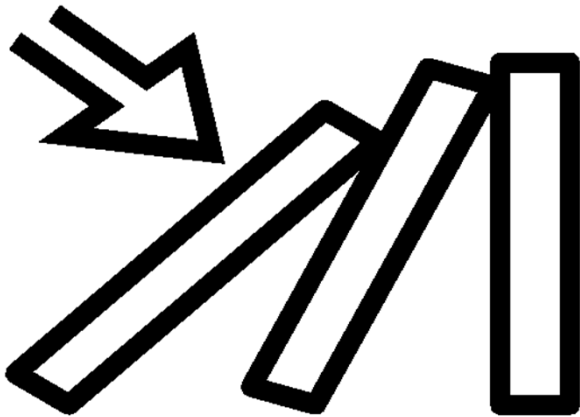
- Bars bringing suit after set period of time, regardless of whether an injury has occurred or claim has arisen



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### Statute of Repose Triggers:

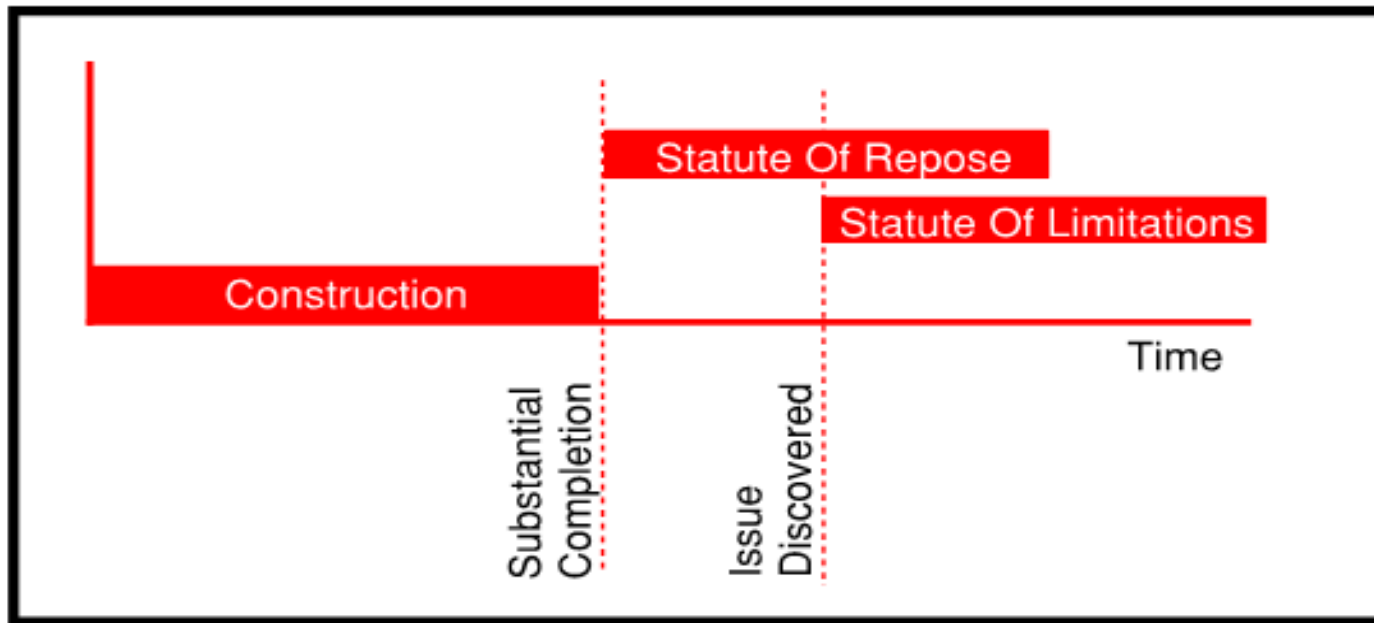


- Substantial completion
- Date product placed in operation
- Date product was sold
- Date final payment made

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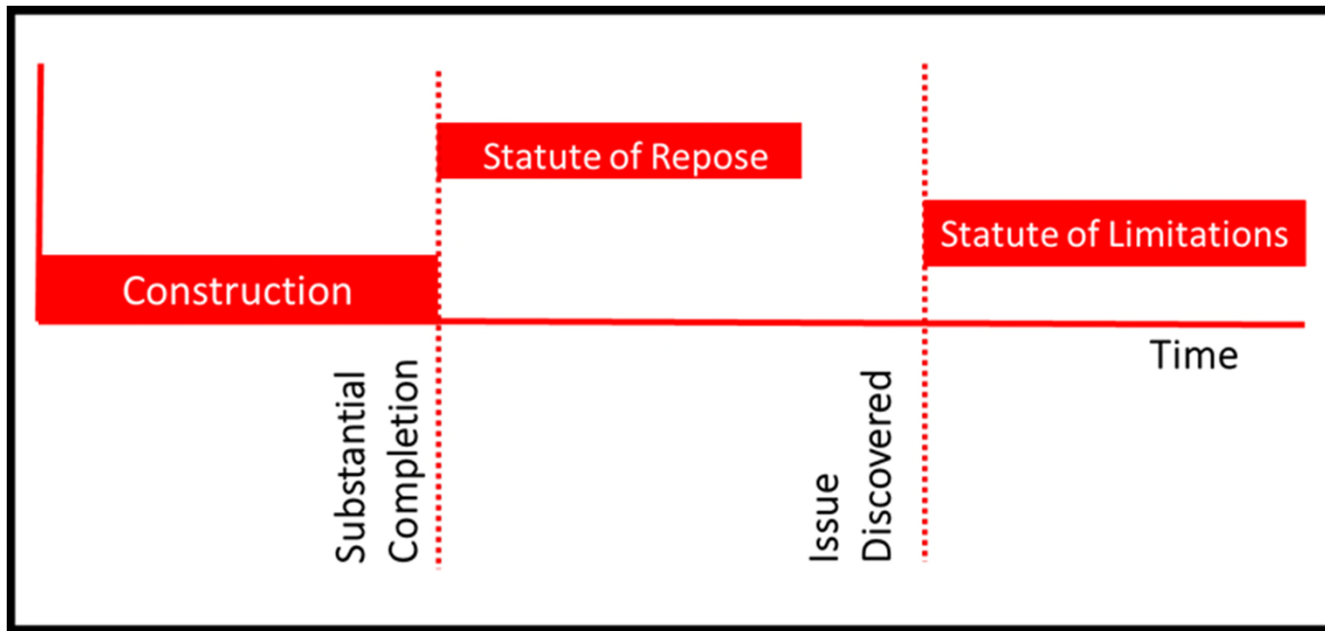
### Statute of Repose v. Statute of Limitations:



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# Statute of Repose v. Statute of Limitations in Latent Disease Cases



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### Statute of Repose - Purpose:

- Eliminate suits against those involved in construction of improvement to real property
- Avoid litigation of stale claims
- Mounting a defense is impractical / impossible

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### Statute of Repose – Jurisdictional Applications

- Product v. Construction
- Complete Bar to Plaintiff's Claims
- Plain Language & Legislative Intent Matters





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### Statute of Repose – Jurisdictional Applications, continued

- Unconstitutional in Some Jurisdictions
- Exceptions, i.e. Latent Disease
- Application Depends on Analysis of Facts



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### *Products v. Construction* Statute of Repose:

- In New Hampshire, the statute of repose is broken up into construction (§ 508:4-b) and products (§ 507-D:2).
  - Products (12 years): unconstitutional (see *Heath v. Sears, Roebuck & Co.*, 123 N.H. 512 (1983))
  - Construction (8 years): constitutional, provides complete bar to claims when applicable

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### Products v. Construction Statute of Repose:

- Defective water fountain (see *Phaneuf Funeral Home v. Little Giant Pump Co.*, 163 N.H. 727 (2012))
- Parties sued:
  - Manufacturer of water fountain
  - Manufacturer of pump
  - Manufacturer of power cord
  - ✓ **Contractor who customized and installed**



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### Complete Bar to Plaintiff's Latent Disease Claims – Massachusetts

- Claims brought against manufacturer of steam turbine generator manufacturer. *Stearns v. Metro Life Ins. Co.* 481 Mass. 529 (2019)
- Injury arose out of exposure to asbestos while Plaintiff worked at two nuclear power plants that went into operation in 1972 and 1975.
- Case was originally filed in 2015.

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### Complete Bar to Plaintiff's Latent Disease Claims – Massachusetts

- *Stearns v. Metro Life Ins. Co.* 481 Mass. 529 (2019)
  - Mass. Gen. Laws ch. 260, § 2B (“SOR”)
  - SOR bars claims even in cases with an extended latency period
  - SOR bars claims even when Defendant had control of the product at time of injury

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### Complete Bar to Plaintiff's Latent Disease Claims – Massachusetts

- Role as **supplier** merely “incidental” to the **design, planning** and **construction** of the particularized product. *Stearns v. Metro Life Ins. Co.* 481 Mass. 529 (2019)
- **Supplier** of bleacher units for skating rink protected by SOR because they also **assembled** and **installed** the bleachers. *McDonough v. Marr Scaffolding Co.*, 412 Mass. 636, (1992)

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### Complete Bar to Plaintiff's Claims - Massachusetts

- *Stearns v. Metro Life Ins. Co.* 481 Mass. 529 (2019)
  - Legislative intent is critical
  - Plain language of statute matters
  - Comparison of Construction SOR to Medical SOR

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### Complete Bar to Plaintiff's Claims - Massachusetts

- *Stearns v. Metro Life Ins. Co.* 481 Mass. 529 (2019)



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### Limited Applicability Jurisdictions - Indiana

- Ten (10) year repose statute in Indiana Product Liability Act for latent disease cases found unconstitutional
- Disparate treatment of Plaintiffs and violated Indiana's Equal Privileges and Immunities Clause. *Myers*, 53 N.E.3d 1160 (Ind. 2016)
- Indiana Contractor Statute of Repose remains untouched by *Myers* but unlikely to be successfully applied.

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### Limited Applicability Jurisdictions

#### - Minnesota

- Is a motor installed in a home ventilator system considered “building materials” or “machinery”?
- *Great Northern Ins. Co.*, 911 N.W.2d 510 (Minn. 2018)



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### Limited Applicability Jurisdictions - Minnesota

- Manufacturer: Motor → Ventilator → Home HVAC → Building Material
- Plaintiff: Motor → Ventilator → Machinery

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### Limited Applicability Jurisdictions - Minnesota

- Machinery carry Warranties which extend Relationship with users beyond construction
- Statute of Limitations more appropriate

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### Limited Applicability Jurisdictions - Minnesota

- *Great Northern Ins. Co.*, 911 N.W.2d 510 (Minn. 2018)

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### Limited Applicability Jurisdictions – Tennessee

- Products v. Improvements to Real Property/Construction
- “Asbestos” exception to Products SOR - statute inapplicable to any action resulting from asbestos exposure, effective July 1, 1979. (T. C. A. § 29-28-103(b))

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### Limited Applicability Jurisdictions – Tennessee

- Show that your client ceased to manufacture and distribute asbestos-containing products more than ten years prior to July 1, 1979.
- *Wyatt v. A-Best Prod. Co.*, 924 S.W.2d 98, 108 (Tenn. Ct. App. 1995), *as modified on reh'g* (Dec. 28, 1995).



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### Limited Applicability Jurisdictions – Tennessee

- In non-latent disease cases, construction SOR may be applicable.
- *Cartwright v. Presley*, 2007 WL 161042 (Tenn. Ct. App. Jan. 23, 2007) (walk-in cooler whose parts weighed nearly 3000 pounds was an “improvement”).





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### Applicability Depends on Analysis of Facts – Iowa

- Iowa Code §614.1(11) (2007) – bars suits arising from unsafe or defective condition of an improvement to real property after 15 years of substantial completion

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### Applicability Depends on Analysis of Facts – Iowa



- *Family plumbing business and alleged exposure to Defendant's product when: 1) **Installing**; 2) **Repairing**, and; 3) **Ripping out** product. *Kinseth*, 913 N.W.2d 55 (Iowa 2018)*



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### Applicability Depends on Analysis of Facts – Iowa

- SOR applies when: 1) Repairing; 2) Ripping Out 
- SOR does NOT apply when: 1) Installing 

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### Applicability Depends on Analysis of Facts – Timing

- **Substantial completion** of an improvement to real property; see Ala. Code. §6-5-218 (2018) (seven years);
- Date product was used (i.e. **placed in operation**); see Tex. Civ. Prac. Rem. §§16.008 (West 2019)



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### Applicability Depends on Analysis of Facts – Timing, continued

- Date the **product was sold**; see Conn. Gen. Stat. §52-577 (2019) (ten years from date of sale, but time can be extended by express written warranty)
- Date the **final payment was made**; see *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So.3d 706, 708 (Fla. D. Ct. App. 2015)



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### Conclusion

- The SOR is constantly in flux, and jurisdiction-dependent;
- When available, the statute is an effective defense which could result in outright dismissal for your client, or a favorable settlement resolution.

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