



News & Updates

HOW LONG IS LONG ENOUGH: A NATIONAL REVIEW OF STATUTES OF REPOSE PART II

In this series of articles, we will examine the jurisdictional differences among statutes of repose throughout the United States, their relationship to products liability litigation, and what manufacturers need to know to maximize risk avoidance

Statutes of repose provide an absolute bar to claims against manufacturers, usually after a statutorily determined period of time elapses from the point that a product is delivered or installed, regardless of when an accident occurs. The majority of states which have statutes of repose in place hold that period of time to be ten years or less. Currently, the states which have a ten year or less statute of repose are *Colorado, Connecticut, Georgia, Idaho, Indiana, Kansas, Kentucky, Nebraska, Ohio, Oregon, and Tennessee*.

Many states base their statute of repose upon the precept of a product's useful or anticipated life; that is the duration of time a product can reasonably be anticipated to perform in the manner for which it was designed and built. However, depending on the state, statutes of repose may differ as to when the statute begins to run. For example, some states such as Indiana and Kentucky use the date of delivery of the product to the initial purchaser as the date from which the statute begins to run, while other states such as Colorado use the date the product was first used for its intended purpose as its trigger date. Having a clear understanding of when a given state's statute begins to run is essential for successfully obtaining a quick and cost effective resolution of a claim against a manufacturer.

States' statutes of repose may also differ from one another based upon which state a product was actually manufactured in. For instance, Nebraska has a ten year statute of repose running from the date of first sale of the product. However, Nebraska's statute also holds products manufactured outside of Nebraska shall be governed by the statute of repose from the state in which the product was manufactured. By way of example, if suit was brought in Nebraska for injuries claiming to have been caused by a product manufactured in Maine, a state which does not have a statute of repose, then no statute of repose would apply in the Nebraska litigation.

Manufacturers need to be aware of the state specific statute of repose of any jurisdiction to which they avail themselves, in order to maximize risk avoidance. At the outset of any product liability litigation, counsel should be retained to review the particular state's legislation with respect to a potentially applicable statute of repose. Taking such steps can greatly reduce a manufacturer's risk and potentially eliminate the massive expense of litigation.

For more information, please contact any member of Goldberg Segalla's Global Insurance Services Practice Group.

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