Applicability of Statutes of Repose to Indemnity and Contribution Claims and 50 State Survey

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I. Introduction

It is many contractors' and design professionals' worst nightmare—being sued for an alleged mistake made on a project that was completed years or even decades ago. While these individuals' memory of the project may have faded, the same cannot be said for any latent construction or design defects that remained. When those defects finally manifest themselves, the result is often an unanticipated lawsuit. A natural reaction is to ask about the relevant statute of limitations. Yet many statutes of limitations provide tolling periods for latent injuries and, therefore, may not bar these delayed claims.

Enter construction statutes of repose. At present, all but two states have adopted statutes that specifically apply to construction or design, and provide a specific cutoff for liability. Many practitioners are familiar with these statutes and may consider them to be unremarkable. Yet these statutes can wreak unexpected havoc for the practitioner who does not fully appreciate their impact. This is especially true with regard to indemnity and contribution claims. Practitioners may not intuitively think that a statute of repose would bar a claim for contribution or indemnity, claims which do not traditionally accrue until the party asserting the claim has itself been found liable. Yet in many states construction statutes of repose do bar these claims.

This article will address the application of construction statutes of repose to indemnity and contribution claims. This article will first discuss the historical development and policy reasons for construction statutes of repose. Next, this article will discuss constitutional challenges to these statutes and the extent to which such challenges have been successful. This article will

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then discuss the current state of law regarding the application of construction statutes of repose to indemnity and contribution claims, while highlighting some unique approaches states have taken on this issue. This article will also argue that indemnity and contribution claims should be excepted from construction statutes of repose or, at the very least, be given a short time-extension. Finally, this article will provide a fifty-state survey illustrating the construction statutes of repose in each state and whether such statues apply to indemnity or contribution claims.

II. Construction Statutes of Repose: Historical Origins and Policy Reasons

A. Historical Development

Construction statutes of repose are now widely accepted and are a well-known feature of the construction law landscape. Indeed, nearly every state has adopted a statute of repose that applies specifically to construction defect claims. Yet this was not always the case. Under early American common law, for example, a design professional could only be held liable for defects when fraud or collusion was involved.[1] This scope of liability was slowly expanded to recognize claims for negligence.[2] Still, early American courts often required privity of contract in order to bring such claims.[3] Liability was further expanded in the early 1900s, as the privity requirement was eroded and, in some jurisdictions, completely abolished.[4] It was not until the late 1960s that states began to adopt construction statutes of repose.[5] This trend continued through the early 1980s.[6] Not surprisingly, these laws were enacted to appease various design and construction organizations seeking to limit their liability.[7]

B. Policy Reasons for Construction Statutes of Repose

Like any statute of repose, the purpose of a construction statute of repose is to prevent potentially limitless and perpetual liability. The nature of construction and construction claims

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[1] Michael J. Vardaro & Jennifer E. Waggoner, *Statutes of Repose—The Design Professional's Defense to Perpetual Liability*, 10 St. John's J. Legal Comment. 697, 701 (1994–1995).

[2] *Id.*

[3] *Id.*

[4] *Id.* at 701–02.

[5] 2 Bruner & O'Connor Construction Law § 7:174.50.

[6] *Id.*

[7] *Id.*

makes statutes of repose especially appropriate in the context of construction. Unlike defendants in other industries, for example, the product created by design professionals and contractors lasts a very long time—decades if not centuries.[8] The longer a building or other real estate improvement lasts, the greater the chance that a problem with the construction will occur, or that a defect will manifest itself.[9] Thus, construction industry defendants face greater liability than defendants in other industries simply because the product they create is designed to last indefinitely. Construction statutes of repose ensure that their liability for creating such a product is not equally indefinite.

Construction defects are also uniquely susceptible to intervening and potentially superseding causes. Indeed, a building or improvement to real property is turned over to the owner and remains under the owner's sole control and care. The owner may provide improper or insufficient maintenance for the improvement and actually create or exacerbate an alleged defect.[10]

Moreover, construction defect claims are often very fact-driven and highly complex. It is often difficult to pinpoint the causes of a defect on a project that occurred six months ago, let alone six years ago. The record keeping that would be required of a contractor or design professional that was subject to potentially unlimited liability would be unduly onerous.[11] In addition, even the most diligent record-keeper would likely have trouble defending a claim brought more than ten years after the project was completed, as witnesses become scarce and memories fade.[12]

Finally, some have argued that, at least with respect to design professionals, construction statutes of repose promote creativity and innovation.[13] The design profession is unique in that it requires design professionals to utilize novel and sometimes untested methods to achieve the desired goal. While "[b]oth the medical profession and the manufacturing industry involve the repetition of a technique or product that is proven to be effective . . . [b]y its very nature, the work of a design professional calls

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[8] *See id.*

[9] Vardaro & Waggoner, *supra* note 1, at 697–98.

[10] *Id.* at 713.

[11] Bruner & O'Connor, *supra* note 5 at § 7:174.50.

[12] *Id.*

[13] Vardaro & Waggoner, *supra* note 1.

for artistic creativity, and thus requires a different standard than other industries."[14]

Many of these policy issues were highlighted by recent high-profile construction litigation in Minnesota. On August 1, 2007, the I-35W bridge across the Mississippi River in Minneapolis collapsed resulting in numerous fatalities and injuries. The likely cause of the collapse as cited by the NTSB was a design flaw by Sverdrup & Parcel in the early 1960s. The bridge was substantially completed in 1967. To quickly address the claims of the victims, the State of Minnesota created a compensation fund that distributed nearly $37,000,000 to the victims. As a part of the compensation fund legislation, the law provided in part that, "*Notwithstanding any statutory or common law to the contrary*, the state is entitled to recover from any third party, including an agent, contractor, or vendor retained by the state, any payments made from the emergency relief fund or under section 3.7393 to the extent the third party caused or contributed to the catastrophe."[15]

Subsequently, the state filed claims against Jacobs Engineering Group (the successor company to Sverdrup) for contribution and indemnity with regard to the payments the state made to the victims.[16] Jacobs sought dismissal of the case on the basis of Minnesota's prior fifteen-year statute of repose, which the Minnesota Supreme Court found was applicable and extinguished the state's claims in 1982.[17] However, the court went on to find that the above-quoted language from the compensation legislation served to revive the state's claims and essentially eliminated the statute of repose as it applied to the state's claims against Jacobs.[18]

In coming to this conclusion, the court found that revival of the state's indemnity and contribution claims did not violate the Due Process Clauses of the Minnesota or United States Constitutions. The court noted that while Jacobs did have a protectable property right in its statute of repose defense, deprivation of that

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[14]*Id.* at 715.

[15]Minn. Stat. § 3.7394(5)(a) (emphasis added).

[16]In re Individual 35W Bridge Litigation, 806 N.W.2d 820 (Minn. 2011), cert. denied, 132 S. Ct. 2682, 183 L. Ed. 2d 45 (2012).

[17]*Id.* at 827.

[18]*Id.* at 829–36. The legislation only allowed *the state* to seek indemnity or contribution from responsible parties. Thus, in a companion case the Minnesota Supreme Court found that the bridge contractor's claim for contribution against the design firm was barred by the statute of repose. In re Individual 35W Bridge Litigation, 806 N.W.2d 811 (Minn. 2011).

right did not violate due process because the deprivation was rationally related to a legitimate government interest.[19] The court found that the government had a legitimate interest in "establishing[ing] a compensation process and provid[ing] a remedy for survivor-claimants of the Bridge collapse that avoids the uncertainty of litigation in resolving the issue of the State's liability."[20] Jacobs sought review of the constitutionality of the state's actions by the United States Supreme Court, but the high court denied review.[21]

C. Potential Alternatives to Statutes of Repose

There are at least two potential mechanisms by which construction industry participants could shield themselves from unlimited liability without a statute of repose. However, both of these mechanisms have practical problems that seriously limit their effectiveness. The first mechanism is insurance. In theory, contractors and design professionals could procure insurance to protect themselves against perpetual liability and pass the cost on to the customer. Yet the long-term liability exposure associated with construction is "difficult and costly to insure against."[22] Indeed, procuring adequate insurance may be cost-prohibitive, especially for small practitioners.[23]

Second, traditional statutes of limitations are poorly equipped to effectively protect construction industry participants from perpetual liability. As such, many jurisdictions have adopted the "discovery rule" with respect to most statutes of limitations.[24] Under the discovery rule, a plaintiff's cause of action does not accrue, and the statute of limitations does not begin to run, until the plaintiff discovers his or her injury or discovers facts that would put a reasonable person on notice that the injury exists.[25] Construction defects are often latent, and will not manifest

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[19] *35W Bridge Litigation*, 806 N.W.2d at 832–33.

[20] *Id.* at 833. It is not entirely clear from the court's opinion why allowing the state to seek contribution or indemnity from third parties furthers the interest of providing a remedy to *survivors* or providing certainty regarding the State's liability to those *survivors*.

[21] Jacobs Engineering Group, Inc. v. Minnesota, 132 S. Ct. 2682, 183 L. Ed. 2d 45 (2012).

[22] Vardaro & Waggoner, *supra* note 1, at 715.

[23] *Id. See also id.* at 697 (noting that, as of 1995, American engineering firms turn down over one billion dollars of work each year due to fear of liability).

[24] *Id.* at 709.

[25] *Id.*

themselves for years or even decades. When the discovery rule applies to construction defect claims, construction industry participants' liability could continue to be perpetual. Accordingly, traditional statutes of limitations provide insufficient protections for such participants.

While it appears that construction statutes of repose are one of the few viable ways to protect construction industry participants from perpetual liability, these statutes have been somewhat controversial. Indeed, their validity has been challenged under federal and state constitutions in several jurisdictions. These challenges are discussed below.

III. Constitutional Challenges to Construction Statutes of Repose

The primary reason why construction statutes of repose generate controversy is that they deny recovery to a plaintiff with a completely valid claim. It is these frustrated plaintiffs that have led to a significant amount of litigation concerning the constitutionality of these statutes. Indeed, these statutes have been challenged on several different bases:

1. Statutes of repose that cut off the period of time within which redress for injuries can be sought, particularly for causes of action that have not yet come into existence, violate the U.S. Constitution's due process clause;

2. Statutes of repose setting a fixed period after substantial completion of the project within which to bring claims violate state constitutional open courts or right to remedy provisions;

3. Special statutes of limitation protecting design and construction professionals violate the U.S. Constitution's equal protection guarantees by improperly singling out some individuals for protection while excluding others;

4. Statutes of repose and statutes of limitation protecting certain classes of individuals violate state and federal constitutional guarantees of equal protection;

5. Special construction-related statutes of repose and statutes of limitation violate state constitutional provisions prohibiting the enactment of special or local legislation;

6. These statutes violate state constitutional guarantees that the right to recover damages for injury resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitation; and

7. Special construction-related statutes of limitation or statutes of repose should not be employed to impair the obligation of contract under federal and state constitutions.[26]

Despite their frequency, constitutional challenges to construction statutes of repose are rarely successful.[27] This is largely because such statutes "are mere economic regulation that do not touch upon a suspect class or a fundamental right and therefore are subject to the least invasive constitutional scrutiny."[28] Even when constitutional challenges are successful, it is often because the statute has been found to intrude upon traditionally non-construction causes of action.

Perkins v. Northeastern Log Homes[29] is illustrative in this regard. In *Perkins,* the plaintiffs purchased a log home kit from one of the defendants. The wood used in the kit contained a chemical that allegedly caused one of the plaintiffs to develop lymphoma. The plaintiff sued the supplier of the wood product, but the period of repose had already run. Kentucky's construction statute of repose provided as follows:

> No action to recover damages, whether based upon contract or sounding in tort, resulting from or arising out of any deficiency in the construction components, design, planning, supervision, inspection, or construction of any improvement to real property, or for any injury to property, either real or personal, arising out of such deficiency, or for injury to the person or for wrongful death arising out of any such deficiency, shall be brought against any person after the expiration of seven (7) years following the substantial completion of such improvement.[30]

The court noted that the statute protected suppliers, manufacturers, and materialmen, as well as builders, architects, and engineers.[31] The court further noted that protection for suppliers, manufacturers, and materialmen was only present to the extent their products were used as "construction components" in an "improvement to real property."[32] This, the court held, constituted "special legislation" in violation of the Kentucky

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[26]Bruner & O'Connor, *supra* note 5, at § 7:174.52 (citations omitted).

[27]*Id.*

[28]*Id.* (citing Salinero v. Pon, 124 Cal. App. 3d 120, 177 Cal. Rptr. 204 (1st Dist. 1981)).

[29]Perkins v. Northeastern Log Homes, 808 S.W.2d 809, Prod. Liab. Rep. (CCH) P 13000 (Ky. 1991).

[30]Ky. Rev. Stat. § 413.135; *see Perkins*, 808 S.W.2d. at 813.

[31]*Perkins*, 808 S.W.2d at 813.

[32]*Id.*

constitution.[33] Indeed, the court stated that whether a product is used "as a construction component in a real estate improvement rather than a component in personalty is a purely fortuitous circumstance."[34] Thus, the statute provided a period of "repose for products in some circumstances and not in others with no reasonable justification for the distinction."[35] Thus, the court found the statute to be unconstitutional.[36]

Perkins involved a statute that impinged upon a substantive area of law distinct from construction law—products liability. If the statute had not applied to claims against manufacturers and other suppliers of goods, the court may not have found it unconstitutional. Indeed, other jurisdictions have recognized the distinction between construction law and products liability/sale of goods law, and have applied different limitations periods in these two areas.[37]

IV. Application of Construction Statutes of Repose to Claims for Indemnity and Contribution

Construction statutes of repose are prevalent and, in most circumstances, constitutional. Thus, they have become a feature to which construction lawyers have become accustomed and, to a certain extent, comfortable. Yet even for the experienced construction lawyer these statutes pose a potential trap for the unwary when they act as a bar to indemnity and contribution claims. Practitioners whose clients are defendants in timely-filed actions may not consider the impact of statutes of repose, but

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[33] *Id.*

[34] *Id.* at 814.

[35] *Id.* (citation and internal quotation marks omitted).

[36] *Id.* The court went on to note that even if the statute was amended to apply to all products liability actions, it would violate other provisions of the Kentucky Constitution that prohibited the legislature from imposing certain limitations on personal injury and wrongful death claims. *Id.* at 814–18. The court did not expressly discuss whether the statute was unconstitutional and therefore invalid *in toto*, or whether the statute's application to the particular case at hand was unconstitutional. Thus, the propriety of § 413.135 as a statute of repose for non-personal injury, non-wrongful death claims is unclear. It is worth noting that the statute has not been amended or repealed since the *Perkins* decision.

[37] *See, e.g.*, Murphy v. Spelts-Schultz Lumber Co. of Grand Island, 240 Neb. 275, 481 N.W.2d 422, 17 U.C.C. Rep. Serv. 2d 467 (1992) (applying products-liability and sale-of-goods statutes of limitation to claim alleging defendant supplied defective construction components and noting that special construction statute of limitations did not apply); *see also* Bruner & O'Connor, *supra* note 5, at 7:174.56 (discussing the application of construction statutes of repose to asbestos litigation and citing cases).

they should. If the client later seeks indemnity or contribution from another participant in the construction project, the construction statute of repose may bar the client's claim. This is especially problematic in construction cases where damages are often caused by multiple factors and stem from multiple sources, making indemnity and contribution claims more common.

Even practitioners who consider future indemnity and contribution claims may assume that such claims will be within any applicable limitation or repose period so long as they are filed immediately after the primary defendant has a judgment rendered against it. This may be because indemnity and contribution claims are traditionally considered to accrue when the liability of the party seeking indemnity or contribution is liquidated. Moreover, a defendant may be reluctant to seek contribution or indemnity immediately for a variety of reasons. First, it is not clear whether such claim will be meritorious until the defendant's liability is established. Second, the defendant may not want to spoil valuable business relationships by immediately pointing the finger and suing for contribution or indemnity when such a lawsuit may not even be necessary if the defendant is not ultimately found liable. When these practical concerns are coupled with an assumption that a claim for indemnity or contribution will not accrue until primary liability is established, practitioners may refrain from filing such claims until a judgment against their client has been entered or appears imminent.

Such a decision can, however, be devastating. Indeed, in many states, construction statutes of repose bar claims for indemnity and contribution. This means that a defendant's claim for indemnity or contribution can be cut off before it even accrues. Thus, practitioners need to be wary and thoroughly understand the law in their state.

A. The Current State of the Law

Of all fifty states and the District of Columbia, twenty-six states have found that the construction statute of repose does apply to contribution or indemnity claims.[38] Four states have refused to

[38] Ala. Code § 6-5-221; Thermo Development, Inc. v. Central Masonry Corp., 195 P.3d 1166 (Colo. App. 2008) (citing Colo. Rev. Stat. § 13-80-104); Conn. Gen. Stat. § 52-584a; Del. Code Ann. Tit. 10 § 8127; D.C. Code Ann. § 12-310(B); State, Dept. of Transp. v. Echeverri, 736 So. 2d 791 (Fla. 3d DCA 1999) (applying Fla. Stat. Ann. § 95.11(3)(c)); Standard Fire Ins. Co. v. Kent & Associates, Inc., 232 Ga. App. 419, 501 S.E.2d 858 (1998) (applying Ga. Code Ann. § 9-3-51); Iowa Code § 614.1(11); La. Rev. Stat. § 9:2772; Md. Code Ann., Cts. & Jud. Proc. § 5-108(b); Mich. Comp. Laws § 600.5839(1); Mo. Rev. Stat. § 516.097(1); N.J.

apply the statute of repose to such claims.[39] The remaining states have either not addressed the issue, have conflicting precedent, or only apply the statute of repose to certain indemnity or contribution claims.[40] The statutes are generally similar in that they provide a definite cutoff for construction defect claims. The statutes vary, however, in several important respects. For example, some statutes expressly include claims for indemnity and contribution, while other statutes expressly exclude such claims. Some statutes apply solely to tort claims, while others apply solely to contract claims. These differences can affect the extent to which these statutes apply to contribution and indemnity claims, and are discussed in detail below.

i. Statutes that Expressly Mention Indemnity or Contribution

In the states that have applied a construction statute of repose to indemnity and contribution claims, many of the applicable statutes expressly include such claims. Indeed, of the twenty-six states that do apply the construction statute of repose to contribution or indemnity claims, twenty states have statutes that expressly include such claims.[41] In the remaining six states, courts have interpreted the statutes to apply to contribution or indemnity claims.

Stat. Ann. § 2A:14-1.1; N.M. Stat. Ann. § 37-1-27; N.C. Gen. Stat. § 1-50(a)(5); Ohio Rev. Code § 2305.131; 42 Pa. Cons. Stat. § 5336; S.C. Code Ann. § 15-3-640; S.D. Codified Laws § 15-2A-3; Wells Fargo and Co. v. Paul Davidson Const. Co., 1992 WL 108703 (Tenn. Ct. App. 1992) (applying Tenn. Code Ann. § 28-3-202); Tex. Civ. Prac. & Rem. Code Ann. §§ 16.008 & 16.009; Utah Code Ann. § 78B-2-225; Parkridge Associates, Ltd v. Ledcor Industries, Inc., 113 Wash. App. 592, 54 P.3d 225 (Div. 1 2002) (applying Wash. Rev. Code § 4.16.310); W. Va. Code § 55-2-6a; Wis. Stat. § 893.89; Wyo. Stat. Ann. § 1-3-111.

[39] Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co., 353 Ark. 201, 114 S.W.3d 189 (2003) (applying Ark. Code Ann. § 16-56-112); South Dearborn School Bldg. Corp. v. Duerstock, 612 N.E.2d 203, 82 Ed. Law Rep. 621 (Ind. Ct. App. 1993) (applying." Ind. Code § 32-30-1-5); Frederickson v. Alton M. Johnson Co., 402 N.W.2d 794 (Minn. 1987) (applying Minn. Stat. § 541.051) Nev. Rev. Stat. §§ 11.204(3) & 11.205(3).

[40] *See* Fifty-State Survey: Application of Construction Statutes of Repose to Contribution and Indemnity Claims, *infra*.

[41] Ala. Code § 6-5-221; Conn. Gen. Stat. § 52-584a; Del. Code Ann. Tit. 10 § 8127; D.C. Code Ann. § 12-310(B); Iowa Code § 614.1(11); La. Rev. Stat. § 9:2772; Md. Code Ann., Cts. & Jud. Proc. § 5-108(b); Mich. Comp. Laws § 600.5839(1); Mo. Rev. Stat. § 516.097(1); N.J. Stat. Ann. § 2A:14-1.1; N.M. Stat. Ann. § 37-1-27; N.C. Gen. Stat. § 1-50(a)(5); Ohio Rev. Code § 2305.131; 42 Pa. Cons. Stat. § 5336; S.C. Code Ann. § 15-3-640; S.D. Codified Laws § 15-2A-3; Tex. Civ. Prac. & Rem. Code Ann. §§ 16.008 & 16.009; Utah Code Ann. § 78B-2-225; W. Va. Code § 55-2-6a; Wis. Stat. § 893.89; Wyo. Stat. Ann. § 1-3-111.

Some states have made express compromises in their statutes of repose. For example, Minnesota's statute provides a ten-year statute of repose for construction claims, which begins to run upon substantial completion. The statute provides a special exception, however, for indemnity and contribution, stating that an "action for contribution or indemnity arising out of the defective and unsafe condition of an improvement to real property may be brought no later than two years after the cause of action for contribution or indemnity has accrued, regardless of whether it accrued before or after the ten-year period."[42] By tying the limitations period for contribution and indemnity claims to accrual rather than a concrete event, the Minnesota statute recognizes the unique nature of contribution and indemnity claims, and why strict application of the statute of repose may not always be appropriate for such claims.

In the states that have statutes which expressly mention contribution or indemnity claims, courts merely apply the plain import of the statute to bar such claims. In states where statutes do not expressly mention such claims, courts are often forced to weigh policy concerns in order to determine the appropriate result. Several of these cases are discussed below.

ii. Statutes that Do Not Expressly Mention Indemnity or Contribution

For practitioners in states that remain undecided on whether the construction statute of repose applies to indemnity or contribution claims, analyzing the statute and related case law in jurisdictions where the statute expressly applies to indemnity or contribution claims is likely of little use. Instead, the real interest should lie in the states where courts have decided this issue when the statute did not expressly mention indemnity or contribution claims. This section will discuss some of these cases.

In *Thermo Development v. Central Masonry Corp.*,[43] for example, the Colorado Court of Appeals was asked to decide whether Colorado's six-year construction statute of repose applied to a claim for indemnity. The plaintiffs in *Thermo* were developers of a condominium complex in Denver who had been sued by a condominium owner and the condominium association as a result of water intrusion in one of the condominiums. The plaintiffs settled the action and then less than ninety days later brought an action for indemnity against some of the contractors

[42]Minn. Stat. § 541.051.

[43]Thermo Development, Inc. v. Central Masonry Corp., 195 P.3d 1166 (Colo. App. 2008).

on the project. By the time the plaintiffs sued the contractors, however, the statute of repose had already run.

The statute at issue provided both a limitations period and a period of repose. The limitations period provided that "all actions against any architect, contractor, builder or builder vendor, engineer, or inspector performing or furnishing the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property" had to be brought within two years after the claim arose. The statute also provided, however, an extension for indemnity and contribution claims made by a claimant for a claimant's liability to a third person. Indeed, the statute stated that such claims arose "at the time the third person's claim against the claimant is settled or at the time final judgment is entered on the third person's claim against the claimant, whichever comes first."[44] The statute also provided that such claims "shall be brought within ninety days after the claims arise, and not thereafter."[45] While the statute only expressly provided the ninety-day extension to the limitations period, the plaintiffs argued that the extension should also apply to the period of repose.

The court held that the ninety-day extension did not apply to contribution or indemnity claims brought after the period of repose had expired and, therefore, the plaintiffs' claims for indemnity were barred. In so holding, the court acknowledged that the ninety-day extension was intended to prevent "shotgun-style" litigation in which a defendant contractor, sued shortly before the limitations period ran, brought third-party claims against every subcontractor who could conceivably be responsible for the defect.[46] The court also noted, however, that the limitations period and the ninety-day extension referred to when claims "arise."[47] This language, the court found, was inconsistent with the nature of a statute of repose—which traditionally bars claims regardless of when they arise.[48] Finally, the court noted that the purpose of the statute of repose was to "encourage the timely resolution of construction disputes," and to allow indemnity and con-

[44] *Id.* at 1168.
[45] *Id.*
[46] *Id.*
[47] *Id.* at 1169.
[48] *Id.*

tribution claims to be brought after the expiration of the repose period would undermine this purpose.[49]

The opposite conclusion was reached by the court in *Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guaranty Co*.[50] In *Ray & Sons*, Wal-Mart hired a general contractor, Crane, to build a store. Construction of the store was completed in 1993. When Wal-Mart failed to pay Crane the amount due under the contract, Crane sued. Wal-Mart counterclaimed, alleging defective construction. In response to the counterclaim, Crane and its surety brought a separate lawsuit against several subcontractors that had participated in the construction of the store. Crane and its surety amended the complaint in 2001 to allege a contractual indemnity claim against one of the subcontractors, Ray, asserting that Ray performed defective work on the construction of the store. The subcontract contained a broad indemnity provision requiring Ray to indemnify Crane for any damages arising out of Ray's work under the subcontract.[51]

Ray claimed that Crane's claim was barred by Arkansas's construction statute of repose. The statute provided as follows:

> No action in contract, whether oral or written, sealed or unsealed, *to recover damages caused by any deficiency in the design*, planning, supervision, or observation of construction or the construction and repair of any improvement to real property or for injury to real or personal property caused by such deficiency, shall be brought against any person performing or furnishing the design, planning, supervision, or observation of construction or the construction or repair of the improvement more than five (5) years after substantial completion of the improvement.[52]

The court held that the statute of repose did not bar Crane's claim. In so holding, the court characterized Crane's claim as "an action alleging . . . breach of [a] contractual obligation to indemnify" rather than an action seeking damages from allegedly defective construction.[53] The court came to this conclusion despite Crane's allegation that Ray had performed defective construction, and that Ray's defective construction seemed to be the basis for Crane's indemnity claim against Ray. Nevertheless, the court stated that "[i]f the legislature wants to expand the protection af-

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[49]*Id.* at 1170.

[50]Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co., 353 Ark. 201, 114 S.W.3d 189 (2003).

[51]*Id.* at 195.

[52]*Id.* at 202.

[53]*Id.*

forded by the statute of repose to include indemnity actions arising from construction work, it may wish to amend the statute."[54] It is worth noting that the court based its conclusion on the narrow reading of the statutory language itself, and did not engage in an extensive evaluation of policy concerns.

A similar approach was taken by an Illinois appellate court in *South Dearborn School Bldg. Corp. v. Duerstock*.[55] In *Duerstock,* the plaintiff was injured when he dove from a starting block into the shallow end of a school swimming pool. The plaintiff sued the developer, alleging defective construction. The developer then sought indemnity from the project contractor. The contract between the developer and the contractor provided that the contractor was obligated to indemnify the developer for any loss resulting from the acts or omissions of the contractor.[56] The trial court granted summary judgment for the contractor, finding that the developer's claim for indemnity was barred by the statute of repose. The statute provided as follows:

> No action in tort, contract or otherwise shall be commenced against any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than six years after the substantial completion of such an improvement, for the recovery of damages for:
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> (a) Any deficiency in the design, planning, supervision or observation of construction or construction of such an improvement; or
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> (b) Injury to real or personal property caused by any such deficiency; or
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> (c) Injury to or wrongful death of a person caused by any such deficiency.[57]

The trial court's decision was reversed on appeal. In reversing the trial court, the appellate court held (much like the court in *Ray & Sons*) that the plain language of the statute of repose prevented its application to contribution and indemnity claims. Indeed, the court found that the statute only applied to actions for construction defects, injuries to property, and injuries to persons.[58] The court further found that the developer's claim for

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[54] *Id.*

[55] South Dearborn School Bldg. Corp. v. Duerstock, 612 N.E.2d 203, 82 Ed. Law Rep. 621 (Ind. Ct. App. 1993).

[56] *Id.* at 205.

[57] *Id.* at 207.

[58] *Id.* at 208.

contractual indemnity did not fall within any of these three categories.[59]

The court explained the difference between claims covered under the statute and the developer's claim as follows:

> If [the developer] has a right to recover damages against [the contractor], the damages recovered would not be "for" a deficiency or any injury to property or person arising out of a deficiency. Instead, any damages [the developer] would be entitled to recover would be grounded solely in rights granted pursuant to the contract. These damages could include items, such as [the developer]'s expenditures in defending the [plaintiff's] lawsuit, which do not compensate for any injury to [the plaintiff]'s person. Thus, the indemnity action falls outside the coverage of the statute of repose.[60]

The *Thermo*, *Ray & Sons*, and *Duerstock* cases illustrate that small differences in statutory language can alter the analysis and the ultimate result in determining whether a construction statute of repose applies to an indemnity or contribution claim. In *Thermo*, for example, the statute applied to "all actions" brought against one of several construction project participants. This broad language facially applied to actions for indemnity and contribution. Thus, the court used a policy-based approach in deciding whether the statute applied to such actions. By contrast, the statutes in *Ray & Sons* and *Duerstock* applied to actions to recover damages for construction defects, property damage, or personal injury. Thus, these courts were able to interpret the statutes narrowly so that they did not apply to actions to recover contractual indemnity. The courts did not need to consider policy issues because the claims at issue did not even fall within the narrowly-construed statutory language. It is important to remember these differences when evaluating whether a construction statute of repose will apply to indemnity or contribution claims in a jurisdiction that has not yet decided this issue. Indeed, the analysis and the ultimate result will turn on small differences in the statutory language.

iii. Statutes that Only Apply to Specific Types of Claims

Some construction statutes of repose only apply to certain types of actions and, therefore, only apply to certain indemnity or contribution claims. For example, in Massachusetts the construction

[59] *Id.* at 208–09.

[60] *Id.* at 209.

statute of repose only applies to tort claims.[61] Thus, claims for contractual indemnity will not be barred by the statute of repose even if they arise out of construction defects.[62] A similar approach has been taken by the legislature in Oklahoma, where the construction statute of repose also applies only to tort actions.[63] Conversely, under Arizona's construction statute of repose, only contractual claims are barred.[64] Thus, claims for contractual indemnity will fall within the statute of repose while claims for implied or common law indemnity will not.[65] Finally, Mississippi's construction statute of repose covers all actions, but it expressly excepts indemnity or contribution claims based on written agreement.[66]

Of particular interest is California's construction statute of repose. California's statute provides that "[n]o action may be brought to recover damages from any person . . . who . . . performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement."[67] The statute defines "action" to include "an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, *except that a cross-complaint for indemnity may be filed* . . . in an action which has been brought within the time period set forth in . . . this section."[68] Thus, third-party actions for indemnity are expressly excepted from the statute of repose when the initial action brought against the party seeking indemnity was filed within the period of repose. This seems to assuage the concern that a defendant will be sued for a construction defect for which it was not completely at fault, only to have its indemnity claim barred by the statute of repose once it is found liable. Third-party claims brought under this

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[61]Mass. Gen. Laws. ch. 260, § 2B

[62]Gomes v. Pan American Associates, 406 Mass. 647, 549 N.E.2d 1134 (1990).

[63]Okla. Stat. tit. 12, § 109.

[64]Ariz. Rev. Stat. § 12-552.

[65]Evans Withycombe, Inc. v. Western Innovations, Inc., 215 Ariz. 237, 159 P.3d 547 (Ct. App. Div. 1 2006).

[66]Miss. Code Ann. § 15-1-41.

[67]Cal. Civ. Proc. Code § 337.15.

[68]*Id*. at § 337.15(c).

exception, however, must be "transactionally related" to the initial action.[69]

Sandy v. Superior Court[70] is illustrative in this regard. In *Sandy*, an architect rendered design services in the construction of a condominium complex. Several years after the condominium complex was completed, a developer purchased the complex and performed extensive renovations. After the developer was sued for alleged defects in the construction, it brought a third-party claim for indemnity against the architect. While the statute of repose had already run, the developer argued that its claim fell within the statute's exception for third-party indemnity claims.

The court, however, rejected this argument. The court noted that third-party claims must be "transactionally related" to the underlying claim in order to be excepted from the statute's purview.[71] The court found that the developer's claim for indemnity arose out of the original construction project because that was the only project for which the architect provided design services.[72] Furthermore, the court found that the developer never had any relationship whatsoever with the architect.[73] Thus, the court found that the third-party claim for indemnity was not transactionally related to the initial claim against the developer.

The developer further argued that the claim against it may have arisen partially from defects that were present before it performed the renovations and, therefore, its claim against the architect was transactionally related. The court again rejected this argument. The court held that to the extent the initial action involved claims for pre-renovation defects, then such claims would not be timely under the statute of repose.[74] In order for a third-party indemnity claim to be excepted from the statute of repose, the underlying action had to be timely.[75] Thus, the court found that any claims against the developer that were transactionally related to the third-party claim against the architect (because they arose out of the initial construction) were barred

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[69] *Id.*

[70] Sandy v. Superior Court, 201 Cal. App. 3d 1277, 247 Cal. Rptr. 677 (6th Dist. 1988), reh'g denied and opinion modified, (June 27, 1988).

[71] *Id.* at 688.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 681.

[75] *Id.*

by the statute of repose.[76] Accordingly, the third-party claim itself was also barred.[77]

It is clear that there is some divergence among states regarding whether a construction statute of repose bars claims for indemnity and contribution. There are also a significant number of states that have not expressly addressed this problem. These two facts raise the issue of whether construction statutes of repose *should* bar indemnity and contribution claims. This issue is discussed below.

V. Should Construction Statutes of Repose be Applied to Claims for Indemnity and Contribution?

There are a significant number of states whose courts and legislature have not yet decided whether the construction statute of repose applies to claims for indemnity and contribution. As such, the question of whether construction statutes of repose *should* apply to claims for indemnity and contribution is more than merely academic. This article argues that by excepting claims for indemnity and contribution from the statute of repose, courts and legislatures can continue to serve the policy goals behind such statutes while ensuring that construction industry participants are not unfairly prejudiced.

First, as a legal and practical matter it seems unlikely that excepting contribution and indemnity claims from construction statutes of repose will significantly increase the duration for which construction industry participants are liable. As a legal matter, a party is normally not entitled to seek contribution or indemnity when the party itself has not been found liable. Thus, once the statute of repose has run with respect to any primary claims, the party against whom such claims would have been asserted can no longer bring claims for indemnity or contribution. In other words, even if indemnity and contribution claims are not directly subject to the statute of repose, they will be extinguished indirectly once the period of repose period has run on the related primary claims.

For example, a prime contractor may have overseen the construction of a building that, upon completion, had several hidden defects. If the contractor is sued before the period of repose has run, it may want to seek indemnity and contribution from its subcontractors. If the period of repose has run and the contractor has not been sued, however, its liability is extinguished. The

[76] *Id.*

[77] *Id.*

subcontractor's liability would also be extinguished, since the contractor cannot seek indemnity or contribution for liability it has not incurred and will not incur.

Furthermore, a party that is sued for construction defects has an incentive to promptly bring a third-party claim for indemnity or contribution. If such claims are not brought in the original lawsuit they will likely be brought immediately upon the original lawsuit's conclusion. While this may slightly increase the window of time in which a third party may be held liable, it is far from the "limitless" and "perpetual" liability that the statutes of repose are designed to prevent.

Even if claims for indemnity and contribution are not completely excepted from the statute of repose, they should be given a short extension. The approach taken by the Minnesota legislature is enlightening in this regard. As previously noted, the Minnesota construction statute of repose provides a two-year extension for indemnity and contribution claims. This statute prevents parties who are directly sued from losing their contribution or indemnity claims. In doing so, it does not undermine the purpose of the statute of repose. All construction industry participants have a ten-year window in which they can be sued under the Minnesota statute. If, during those ten years, none of the project participants are sued, the liability of all participants is extinguished. If one of the participants is sued, then the remaining parties have an additional two years during which they may be liable. This is a minor trade off to ensure that the party who is directly sued does not pay more than its fair share.

California's statute provides an even narrower exception to the statute of repose by only allowing transactionally related third-party claims for indemnity to escape the statute's reach. This goes even further than the Minnesota statute in ensuring that construction industry participants have a definite cutoff for liability. By requiring that the claim be a third-party claim, the California legislature has prevented a plaintiff who wants to bring a direct breach of contract or negligence claim after the repose period has expired and disguising the claim as one for indemnity. For example, an owner that notices water intrusion eleven years after substantial completion cannot bring an "indemnity" claim against the contractor and hope to avoid the statute of repose.

Some may argue that a more absolute rule, in which construction statutes of repose bar all indemnity and contribution claims, will create more certainty and discourage litigation. Indeed, there would be no need to litigate over whether a claim was truly one

for indemnity or contribution if such claims were barred by the statute of repose. There would also be no need to litigate fact specific issues such as whether a third-party claim is sufficiently related to the underlying action to fall within an exception to the statute of repose. These may be valid advantages to adopting a more absolute rule.

Yet excepting claims for indemnity and contribution may also discourage unnecessary litigation and allow parties to conserve resources. A newly sued defendant who knows that the statute of repose is about to run on its indemnity or contribution claims may take the "shotgun" approach discussed in the *Thermo* case above, naming every other participant on the project as a third-party defendant. This is especially likely if the defendant is sued immediately before the period of repose runs and the defendant is unable to assess which third-party defendants may be truly culpable and which are likely not. By contrast, if indemnity and contribution claims were excepted from the statute of repose there would be less incentive to assert a barrage of cross-claims. Instead, a defendant could take advantage of the fact finding of the initial action to determine which third parties would be most likely liable for indemnity or contribution. When the defendant ultimately brought its indemnity or contribution claims, those claims would be more likely to be meritorious. Thus, the potential costs of excepting indemnity and contribution claims from the statute of repose would likely be tempered by significant cost savings.

VI. Conclusion

Construction statutes of repose are here to stay. Furthermore, the goal sought to be achieved by these statutes—preventing unlimited and perpetual liability for construction industry participants—is clearly legitimate. It is equally clear that construction statutes of repose are an effective tool in implementing this goal. Yet these statutes are regrettably a blunt tool. In barring third-party claims for indemnity and contribution, these statutes may inadvertently and unfairly shift liability away from those who are truly responsible. Some may view this as an acceptable sacrifice. Several states, however, have shown that compromise is possible. These states provide a construction statute of repose but provide limited exceptions for indemnity and contribution claims. Thus, these states have prevented unlimited and perpetual liability while ensuring that the parties' rights are not unfairly prejudiced. As more and more states address this issue, they should be mindful of this compromise and strive to achieve it.

SURVEY: Does the Construction Claims Statute of Repose Bar Claims for Indemnity and/or Contribution?

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Alabama	"All civil actions [related to construction claims] . . . any right of action which accrues or would have accrued more than thirteen years thereafter is barred . . . [this statute] shall apply to . . . every action or demand . . . [including] action[s] for contribution or indemnity." Ala. Code § 6-5-221.	X			No Alabama cases have directly addressed the issue, but it appears that the statute by its terms applies to indemnity and contribution claims. *See generally* Baugher v. Beaver Constr. Co., 791 So. 2d 932, 5 A.L.R.6th 767 (Ala. 2000) (upholding the constitutionality of the Alabama construction-claim statute of repose).
Alaska	"No action [related to construction] may be brought . . . more than six years after substantial completion of an improvement." Alaska Stat. § 09.10.055.			X	*See* Turner Const. Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988) (finding that the construction claim statute's elimination of the right to contribution shifted liability from design professionals to owners and was one factor counseling in favor of holding that statute to violate the Alaska constitution).
Arizona	"[N]o action . . . [related to construction may be brought] more than eight years after substantial completion of the improvement to real property." Ariz. Rev. Stat. § 12-552.			X	Evans Withycombe, Inc. v. Western Innovations, Inc., 215 Ariz. 237, 159 P.3d 547 (Ct. App. Div. 1 2006) (holding that statute of repose barred contractual indemnity claim, but did not bar common-law indemnity claim).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Arkansas	"No action in contract, whether oral or written, sealed or unsealed, to recover damages caused by any deficiency in the design, planning, supervision, or observation of construction or the construction and repair of any improvement to real property or for injury to real or personal property caused by such deficiency, shall be brought against any person performing or furnishing the design, planning, supervision, or observation of construction or the construction or repair of the improvement more than five (5) years after substantial completion of the improvement." Ark. Code Ann. § 16-56-112.		X		Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co., 353 Ark. 201, 114 S.W.3d 189 (2003) (finding that construction statute of repose did not apply to contractual indemnity claim arising out of contract between general contractor and subcontractor).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
California	"No action may be brought to recover damages from any person . . . who . . . performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement . . . 'action' includes an action for indemnity . . ." Cal. Civ. Proc. Code § 337.15. "Action" includes "an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, except that a cross-complaint for indemnity may be filed . . . in an action which has been brought within the time period set forth in . . . this section." *Id.* at § 337.15(c).			X	Claims for indemnity are barred unless they are made by way of a transactionally related cross complaint, and the initial action was timely filed. Valley Circle Estates v. VTN Consolidated, Inc., 33 Cal. 3d 604, 189 Cal. Rptr. 871, 659 P.2d 1160 (1983) (recognizing the cross-complaint-for-indemnity exception to the statute of repose). Sandy v. Superior Court, 201 Cal. App. 3d 1277, 247 Cal. Rptr. 677 (6th Dist. 1988), reh'g denied and opinion modified, (June 27, 1988) (holding statute of repose barred cross-claim for indemnity when cross-claim was not transactionally related to the initial action).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Colorado	"Notwithstanding any statutory provision to the contrary, all actions against any architect, contractor, builder or builder vendor, engineer, or inspector performing or furnishing the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property . . . [must be brought within] six years after the substantial completion . . ." Colo. Rev. Stat. § 13-80-104.	X			Thermo Development, Inc. v. Central Masonry Corp., 195 P.3d 1166 (Colo. App. 2008) (holding that construction statute of repose barred indemnity and contribution claims).
Connecticut	"No action . . . for contribution or indemnity which is brought as a result of [a construction claim shall be brought] more than seven years after substantial completion." Conn. Gen. Stat. § 52-584a. (Note: this statute only applies to architects, and engineers.)	X			Zapata v. Burns, 207 Conn. 496, 542 A.2d 700 (1988) (holding that statute of repose is constitutional, and barred claim for indemnification against architects/engineers).
Delaware	"No action . . . to recover damages or for indemnification or contribution for damages, resulting [from a construction defect] . . . shall be brought . . . after the expiration of 6 years from whichever of the following dates shall be earliest . . ." (The statute goes on to list eight events which trigger the statute of repose, one of which is substantial completion.) Del. Code Ann. tit. 10 § 8127.	X			While Delaware courts have not directly addressed the issue, the statute by its terms applies to indemnity and contribution claims. The statute has been held constitutional: *See, e.g.,* City of Dover v. International Tel. and Tel. Corp., 514 A.2d 1086 (Del. 1986); Cheswold Volunteer Fire Co. v. Lambertson Const. Co., 489 A.2d 413 (Del. 1984), on reargument, (Feb. 15, 1985).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
District of Columbia	"[A]ny action (A) to recover damages for (i)personal injury, (ii) injury to real or personal property, or (iii) wrongful death, resulting from the defective or unsafe condition of an improvement to real property, and (B) for contribution or indemnity which is brought as a result of such injury or death [must be brought within 10 years of substantial completion]." D.C. Code Ann. § 12-310.	X			The statute seems to apply to contribution and indemnity claims by its plain terms. *See also* Sandoe v. Lefta Associates, 559 A.2d 732 (D.C. 1988). *Sandoe* held that the statute of repose, as applied to a specific class of defendants (i.e. contractors, builders, etc.) was constitutional. While the court did not directly address the issue, the underlying claim against the contractor in the case was for indemnity. This case therefore seems to imply that the statute of repose does apply to indemnity claims.
Florida	"An action founded on the design, planning, or construction of an improvement to real property . . . must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest." Fla Stat. Ann. § 95.11(3)(c).	X			State, Dept. of Transp. v. Echeverri, 736 So. 2d 791 (Fla. 3d DCA 1999) (holding that the construction claim statute of repose did apply to claims for indemnity and contribution).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Georgia	"No action to recover damages (1) For any deficiency in the survey or plat, planning, design, specifications, supervision or observation of construction, or construction of an improvement to real property; (2) For injury to property, real or personal, arising out of any such deficiency; or (3) For injury to the person or for wrongful death arising out of any such deficiency shall be brought . . . more than eight years after substantial completion . . ." Ga. Code Ann. § 9-3-51.	X			Standard Fire Ins. Co. v. Kent & Associates, Inc., 232 Ga. App. 419, 501 S.E.2d 858 (1998) (holding that statute of repose did apply to claims for contribution and indemnity). Gwinnett Place Associates, L.P. v. Pharr Engineering, Inc., 215 Ga. App. 53, 449 S.E.2d 889 (1994) (holding that the statute of repose applies to claims for indemnity) *But see* National Service Industries, Inc. v. Georgia Power Co., 294 Ga. App. 810, 670 S.E.2d 444 (2008) (holding that statute of repose did not bar power company's claim for contractual indemnification against contractor, when power company did not allege contractor's work was defective, and contract did not require defective work for right to indemnity to be triggered).
Hawaii	"No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any deficiency or neglect in the planning, design, construction, supervision and administering of construction, and observation of construction relating to an improvement to real property . . . [shall be commenced] more than ten years after the date of completion of the improvement." Haw. Rev. Stat. § 657-8(a).			X	It does not appear that Hawaii courts have addressed whether the construction claim statute of repose bars claims for indemnity and/or contribution. It appears that Hawaii's statute of repose expressly applied to claims for contribution or indemnity, though the present statute does not so provide. *See* Shibuya v. Architects Hawaii Ltd., 65 Haw. 26, 647 P.2d 276, 281 n.7 (1982). *See generally* Fujioka v. Kam, 55 Haw. 7, 514 P.2d 568 (1973) (holding that an older version of the construction claim statute of repose violated equal protection clause).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Idaho	Idaho does not have a statute establishing special limitations periods for construction claims. However, it does have a statute establishing when claims related to construction accrue. Idaho Code § 5-241. Once the claim has accrued, it seems the applicable period of limitations and/or repose will be governed by the statute of limitations dealing with the particular claim (i.e. breach of contract, negligence, etc.).			X	It appears that Idaho courts have not addressed whether the special statute governing the accrual of claims applies to actions for indemnity and/or contribution. *See generally* Twin Falls Clinic & Hospital Bldg. Corp. v. Hamill, 103 Idaho 19, 644 P.2d 341 (1982) (discussing the application of § 5-241); Mountain View Hosp., L.L.C. v. Sahara, Inc., 2011 WL 4962183 (D. Idaho 2011) (discussing the accrual of indemnity claims).
Illinois	"No action based upon tort, contract or otherwise may be brought against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission. However, any person who discovers such act or omission prior to expiration of 10 years from the time of such act or omission shall in no event have less than 4 years to bring an action as provided in subsection (a) of this Section." 735 Ill. Comp. Stat. 5/13-214(b).			X	It does not appear that there are any Illinois reported appellate decisions in which the court applied the statute of repose to a claim for indemnity or contribution. *See generally* Guzman v. C.R. Epperson Const., Inc., 196 Ill. 2d 391, 256 Ill. Dec. 827, 752 N.E.2d 1069 (2001) (holding that § 13-214's 4-year limitations period applied to plaintiff's indemnity claim); Oakes v. Miller, 228 Ill. App. 3d 843, 171 Ill. Dec. 83, 593 N.E.2d 903 (1st Dist. 1992) (holding that § 2-314's 4-year limitations period applied to Plaintiff's claim for contribution).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Indiana	"An action to recover damages, whether based upon contract, tort, nuisance, or another legal remedy, for [a construction defect claim] . . . may not be brought . . . unless the action is commenced within the earlier of ten (10) years after the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for a deficiency in the design of the improvement." Ind. Code § 32-30-1-5.		X		South Dearborn School Bldg. Corp. v. Duerstock, 612 N.E.2d 203, 82 Ed. Law Rep. 621 (Ind. Ct. App. 1993) (holding that construction claim statute of repose did not apply to claim for contractual indemnity). Note: since the *Dearborn* decision, the construction claim statute of repose has been repealed and reimplemented as Ind. Code. § 32-30-1-5 (the relevant text of which is shown in left column). It appears that the new statute is predominantly a structural reorganization, rather than a change in substantive scope. Thus, the holding of *Dearborn* likely remains good law.
Iowa	"[A]n action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death." Iowa Code § 614.1(11).	X			It does not appear that Iowa courts have addressed whether the special construction claims statute of repose applies to claims for contribution and/or indemnity. However, the statute explicitly names claims for contribution and indemnity as being subject to the period of repose. *See generally* Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc., 507 N.W.2d 405 (Iowa 1993) (holding that § 614.1(11) was constitutional; and effectively barred plaintiff's claims of negligence, implied warranty, and strict liability).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Kansas	Kansas does not have a special construction-claims statute of limitations. The following statutes cover indemnity and contribution claims: Kan. Stat. Ann. § 60-511 (written contracts). Kan. Stat. Ann. § 60-512 (non-written and implied contracts). See far right column for further explanation.			X	Since Kansas does not have a special construction-claim statute of limitations, Kansas courts have not addressed whether construction related claims for indemnity and contribution are barred by the statute of repose. *See generally* Litwin v. Barrier, 6 Kan. App. 2d 128, 626 P.2d 1232, 31 U.C.C. Rep. Serv. 632 (1981) (holding that contribution is an implied contract not in writing, and is governed by a § 60-512); Med James, Inc. v. Barnes, 31 Kan. App. 2d 89, 61 P.3d 86 (2003) (holding that claim for implied contractual indemnity was governed by § 60-512). It appears that express indemnity contracts would be governed by Kansas's statute of limitations for written contracts: Kan. Stat. Ann. § 60-511 *See* Oakview Treatment Centers of Kansas, Inc. v. Garrett, 53 F. Supp. 2d 1184 (D. Kan. 1999) (applying § 60-511 to contractual indemnity claim).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Kentucky	"No action to recover damages, whether based upon contract or sounding in tort, resulting from or arising out of any deficiency in the construction components, design, planning, supervision, inspection, or construction of any improvement to real property, or for any injury to property, either real or personal, arising out of such deficiency, or for injury to the person or for wrongful death arising out of any such deficiency, shall be brought against any person after the expiration of seven (7) years following the substantial completion of such improvement." Ky. Rev. Stat. § 413.135			X	It does not appear that Kentucky courts have addressed whether the special statute governing the accrual of claims applies to actions for indemnity and/or contribution. *See generally* Perkins v. Northeastern Log Homes, 808 S.W.2d 809, Prod. Liab. Rep. (CCH) P 13000 (Ky. 1991) (holding § 413.135 unconstitutional since it protected manufacturers, suppliers, and materialmen whose products were used as construction components but not manufacturers, suppliers, and materialmen whose products were not used as construction components).
Louisiana	"No action . . . [related to construction] shall be brought . . . [m]ore than five years after the date of registry in the mortgage office of acceptance of the work by owner . . . [or if no such recording is made within 6 months of the owner taking possession] more than five years after the improvement has been thus occupied by the owner . . . This preemptive period shall extend to every demand, whether brought by direct action or for contribution or indemnity or by third-party practice." La. Rev. Stat. § 9:2772.	X			Orleans Parish School Bd. v. Pittman Const. Co., Inc., 384 So. 2d 573 (La. Ct. App. 4th Cir. 1980) (holding that the statute of repose in § 2772 barred plaintiff's claim for indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Maine	Maine does not have a special statute of repose for all construction claims. Construction claims are governed by Maine's general 6-year statute of limitations for all civil claims. Me. Rev. Stat. tit. 14, § 752.				Since Maine does not have a special construction claim statute of repose, no courts have addressed if such a statute would bar claims for indemnity and/or contribution.
	Maine has a 10-year statute of repose for professional negligence and malpractice claims against architects and engineers. Me. Rev. Stat. tit. 14, § 752-A.			**X**	It does not appear that Maine courts have addressed whether § 752-A, the design professional statute of repose, applies to claims for indemnity and/or contribution. *See generally* Bangor Water Dist. v. Malcolm Pirnie Engineers, 534 A.2d 1326 (Me. 1988) (applying § 752 to construction defect claims).
Maryland	"Except as provided by this section, a cause of action for damages does not accrue and a person may not seek contribution or indemnity from any architect, professional engineer, or contractor for damages incurred when wrongful death, personal injury, or injury to real or personal property, resulting from the defective and unsafe condition of an improvement to real property, occurs more than 10 years after the date the entire improvement first be-came available for its intended use." Md. Code Ann., Cts. & Jud. Proc. § 5-108(b).	**X**			Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340, 499 A.2d 178 (1985) (statute of repose barred plaintiffs claim for indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Massachusetts	Action of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property . . . [shall not be commenced] more than six years after the earlier of the dates of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner." Mass. Gen. Laws. ch. 260, § 2B.			X	Since Massachusetts's statute of repose applies only to claims sounding in tort, it will not bar claims for contractual indemnification. Gomes v. Pan American Associates, 406 Mass. 647, 549 N.E.2d 1134 (1990) (finding that statute of repose for tort based construction claims did not apply to claim for contractual indemnification). It does not appear that Massachusetts courts have addressed whether § 2B applies to non-contractual indemnity. At least one court, however, has found that § 2B applied to a defendant's claim for contribution when the plaintiff's direct claim against the party from whom the defendant sought contribution would have been barred. Montaup Elec. Co. v. Ohio Brass Corp., 561 F. Supp. 740, 748 (D.R.I. 1983) (rejected by, Pinkham v. Collyer Insulated Wire Co., Inc., 23 U.C.C. Rep. Serv. 2d 453 (D.R.I. 1994)).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Michigan	*Rule regarding licensed architects, engineers, and contractors*: "No person may maintain any action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury . . . unless the action is commenced within either of the following periods: (a) Six years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.	**X**			Cliffs Forest Products Co. v. Al Disdero Lumber Co., 144 Mich. App. 215, 375 N.W.2d 397 (1985) (applying § 600.5839 to plaintiff's claim for indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
	(b) If the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence on the part of the contractor or licensed architect or professional engineer, 1 year after the defect is discovered or should have been discovered. However, an action to which this subdivision applies shall not be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement." Mich. Comp. Laws § 600.5839(1). *Rule regarding licensed professional surveyors*: "A person shall not maintain an action to recover damages based on error or negligence . . . more than 6 years after the survey or report is recorded or is delivered to the person for whom it was made or the person's agent." Mich. Comp. Laws § 600.5839(2).				

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Minnesota	Minnesota statute provides a ten year statute of repose for construction claims, which begins to run at substantial completion. However, the statute provides a special exception for indemnity and contribution, stating: "an action for contribution or indemnity arising out of the defective and unsafe condition of an improvement to real property may be brought no later than two years after the cause of action for contribution or indemnity has accrued, regardless of whether it accrued before or after the ten-year period referenced in paragraph (a)." Minn. Stat. § 541.051.		X		Frederickson v. Alton M. Johnson Co., 402 N.W.2d 794 (Minn. 1987) (applying the 2 year exception to claim for indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Mississippi	"No action may be brought to recover damages for injury to property, real or personal, or for an injury to the person, arising out of any deficiency in the design, planning, supervision or observation of construction, or construction of an improvement to real property, and no action may be brought for contribution or indemnity for damages sustained on account of such injury except by prior written agreement providing for such contribution or indemnity, against any person, firm or corporation performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property more than six (6) years after the written acceptance or actual occupancy or use, whichever occurs first, of such improvement by the owner thereof." Miss. Code Ann. § 15-1-41.			X	It appears that when there is a written agreement for contribution or indemnity, the 6-year statute of repose does not apply. However, when there is no written agreement for contribution or indemnity, it seems that the statute of repose does apply. *See* Ferrell v. River City Roofing, Inc., 912 So. 2d 448 (Miss. 2005).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Missouri	"Any action to recover damages for economic loss, personal injury, property damage or wrongful death arising out of a defective or unsafe condition of any improvement to real property, including any action for contribution or indemnity for damages sustained on account of the defect or unsafe condition, shall be commenced within ten years of the date on which such improvement is completed." Mo. Rev. Stat. § 516.097(1).	X			While there do not appear to be any cases which specifically bar an indemnity or contribution claim under § 516.097(a), the statute by its terms applies to indemnity and contribution claims. *See generally* Magee v. Blue Ridge Professional Bldg. Co., Inc., 821 S.W.2d 839 (Mo. 1991) (upholding the constitutionality of § 516.097).
Montana	"[A]n action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property or resulting from or arising out of land surveying of real property may not be commenced more than 10 years after completion of the improvement or land surveying." Mont. Code Ann. § 27-2-208.			X	It appears Montana courts have not addressed whether the special statute governing the accrual of claims applies to actions for indemnity and/or contribution. *See generally* Association of Unit Owners of Deer Lodge Condominium v. Big Sky of Montana, Inc., 245 Mont. 64, 798 P.2d 1018 (1990) (discussing the construction and application of § 27-2-208); Zapel v. PArker, 2004 MT 123N, 322 Mont. 530, 94 P.3d 766 (2004) (briefly discussing third-party defendant's motion to dismiss on statute of repose grounds, but declining to decide the issue).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Nebraska	"In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than ten years beyond the time of the act giving rise to the cause of action." Neb. Rev. Stat. 25-223			X	It appears that Nebraska courts have not addressed whether the construction claim statute of repose applies to claims for indemnity and/or contribution. *See generally* Witherspoon v. Sides Const. Co., Inc., 219 Neb. 117, 362 N.W.2d 35 (1985) (discussing when the statute of repose begins to run); Williams v. Kingery Const. Co., 225 Neb. 235, 404 N.W.2d 32 (1987) (holding that the statute of repose did apply to personal injury claims).
Nevada	Nevada has two construction claim statutes of repose: Nev. Rev. Stat. § 11.204, which applies to *latent* deficiencies; and Nev. Rev. Stat. § 11.205, which applies to *patent* deficiencies. Both provide an 8 year statute of repose for construction claims. Both statutes contain the following exception: "The provisions of this section do not apply to a claim for indemnity or contribution." Nev. Rev. Stat. §§ 11.204(3), 11.205(3).		X		*See generally* State ex rel. Dept. of Transp. v. Central Telephone Co. of Nevada, 107 Nev. 898, 822 P.2d 1108 (1991) (holding that construction claim statutes of repose did not bar indemnity claims).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
New Hampshire	"[A]ll actions to recover damages for injury to property, injury to the person, wrongful death or economic loss arising out of any deficiency in the creation of an improvement to real property, including without limitation the design, labor, materials, engineering, planning, surveying, construction, observation, supervision or inspection of that improvement, shall be brought within 8 years from the date of substantial completion of the improvement, and not thereafter." N.H. Rev. Stat. § 508:4-b.			X	*See* Henderson Clay Products, Inc. v. Edgar Wood & Associates, Inc., 122 N.H. 800, 451 A.2d 174 (1982). In *Henderson*, the court reversed the trial court's dismissal of an indemnity claim pursuant to § 508:4-b. However the court reversed the decision on equal protection grounds, and did not address whether the trial court properly applied § 508:4-b to the indemnity claim in the first place.
New Jersey	"No action, whether in contract, in tort, or otherwise, to recover damages for [a construction defect] . . . nor any action for contribution or indemnity for damages sustained on account of such injury, shall be brought . . . more than 10 years after the performance or furnishing of such services and construction." N.J. Stat. Ann. § 2A:14-1.1	X			Cyktor v. Aspen Manor Condominium Ass'n, 359 N.J. Super. 459, 820 A.2d 129 (App. Div. 2003) (recognizing that the ten year statute of repose applied to indemnity claims).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
New Mexico	"No action to recover damages for any injury to property, real or personal, or for injury to the person, or for bodily injury or wrongful death, arising out of the defective or unsafe condition of a physical improvement to real property, nor any action for contribution or indemnity for damages so sustained . . . shall be brought after ten years from the date of substantial completion . . . this limitation shall not apply to any action based on a contract, warranty or guarantee which contains express terms inconsistent herewith." N.M. Stat. Ann. § 37-1-27.	X			Mora-San Miguel Elec. Co-op., Inc. v. Hicks & Ragland Consulting & Engineering Co., 93 N.M. 175, 598 P.2d 218 (Ct. App. 1979) (defendant's third-party claim for indemnity barred by the statute of repose).
New York	New York does not have a special statute of repose for construction claims. New York does have special notice requirements for claims against architects and engineers which are brought more than 10-years after the act giving rise to the claim. N.Y.C.P.L.R. 214-d.			X	*See generally*, McDermott v. City of New York, 50 N.Y.2d 211, 428 N.Y.S.2d 643, 406 N.E.2d 460 (1980) (indemnity claim governed by statute of limitations contained in N.Y.C.P.L.R. 213(2).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
North Carolina	"No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement . . . [this statute includes] [a]ctions for contribution indemnification for damages sustained on account of an action described in this subdivision." N.C. Gen. Stat. § 1-50(a)(5).	X			Charlotte Motor Speedway, Inc. v. Tindall Corp., 195 N.C. App. 296, 672 S.E.2d 691 (2009) (statute of repose applied to indemnification claim, though claim was not barred due to tolling agreements signed by the parties).
North Dakota	"No action, whether in contract, oral or written, in tort or otherwise, to recover damages . . . (for a construction defect) may be brought . . . more than ten years after substantial completion." N.D. Cent. Code § 28-01-44.			X	North Dakota courts have not addressed whether a construction based indemnity or contribution claim would be subject to the construction claim statute of repose. *See generally* Bellemare v. Gateway Builders, Inc., 420 N.W.2d 733 (N.D. 1988) (statute of repose did not violate state constitution).
Ohio	"[N]o cause of action . . . that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity . . . shall accrue . . . later than ten years from the date of substantial completion of such improvement." Ohio Rev. Code § 2305.131	X			While no Ohio cases have directly addressed the issue, the statute by its terms seems to apply to claims for indemnity and contribution. *See generally* McClure v. Alexander, 2008-Ohio-1313, 2008 WL 754800 (Ohio Ct. App. 2d Dist. Greene County 2008) (upholding constitutionality of statute).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Oklahoma	"No action in tort to recover damages . . . [for a construction defect] shall be brought . . . more than ten years after substantial completion." Okla. Stat. tit. 12, § 109.			**X**	No Oklahoma cases have directly addressed whether the construction claim statute of repose applies to action for indemnity or contribution. It is worth noting that the statute, by its terms, is limited to actions sounding in tort. *See generally* Jaworsky v. Frolich, 1992 OK 157, 850 P.2d 1052, Prod. Liab. Rep. (CCH) P 13378 (Okla. 1992) (statute of repose does not apply to breach of implied warranty claim, which sounds in contract).
Oregon	"An action against a person by a plaintiff who is not a public body, whether in contract, tort or otherwise, arising from [a construction defect]. . . must be commenced. . . [t]en years after substantial completion or abandonment of the construction." Or. Rev. Stat. § 12.135			X	No Oregon cases have directly addressed whether the construction claim statute of repose applies to an action for indemnity or contribution. *See generally* Union County School Dist. No. 1 v. Valley Inland Pacific Constructors, Inc., 59 Or. App. 602, 652 P.2d 349, 7 Ed. Law Rep. 221 (1982) (since contractor's indemnity claim was not time barred, unnecessary to decide which specific limitations period would apply).
Pennsylvania	"[A] civil action or proceeding . . . must be commenced within 12 years after completion of construction of such improvement to recover damages for . . . [c]ontribution or indemnity for damages sustained on account of any injury [arising from a construction defect]." 42 Pa. Cons. Stat. § 5536.	**X**			15th & Locust Company and 1500 Locust Street Joint Venture v. Charles Shaid of Pennsylvania, Inc., 31 Phila. Co. Rptr. 97, 1996 WL 1358441 (Pa. C.P. 1996), aff'd, 455 Pa. Super. 700, 688 A.2d 1232 (1996) (plaintiff's claim for indemnification barred by statute of repose).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Rhode Island	"No action . . . in tort to recover damages shall be brought . . . [f]or contribution or indemnity for damages sustained on account of [a construction defect] . . . more than ten years after substantial completion." R.I. Gen. Laws § 9-1-29.			X	The statute by its terms applies to contribution or indemnity claims. It is also limited, however, to claims sounding in tort. No Rhode Island cases have directly addressed whether the statute of repose applies to an action for contractual indemnity. *See generally* Boghossian v. Ferland Corp., 600 A.2d 288 (R.I. 1991) (statute of repose does not apply to claims sounding in contract).
South Carolina	"No actions to recover damages based upon or arising out [a construction defect] . . . may be brought more than eight years after substantial completion of the improvement. For purposes of this section, an action based upon or arising out of [a construction defect] . . . includes . . . an action for contribution or indemnification for damages sustained on account of an action described in this section." S.C. Code Ann. § 15-3-640.	X			Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 628 S.E.2d 38 (2006) (plaintiff's claim for contribution barred by the construction claim statute of repose, despite fact that plaintiff brought claim within 1-year statute of limitations for contribution).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
South Dakota	"No action to recover damages for any injury to real or personal property, for personal injury or death arising out of [a construction defect] . . . nor any action for contribution or indemnity for damages sustained on account of such injury . . . may be brought . . . more than ten years after substantial completion of such construction." S.D. Codified Laws § 15-2A-3.	X			While no South Dakota cases have directly addressed the issue, the statute by its terms seems to apply to claims for indemnity and contribution. *See generally* Clark County v. Sioux Equip. Corp., 2008 SD 60, 753 N.W.2d 406, 67 Env't. Rep. Cas. (BNA) 1114 (S.D. 2008) (plaintiff's claims for negligence and breach of warranty barred by statute of repose).
Tennessee	"All actions to recover damages for any [construction defect] . . . shall be brought . . . within four years after substantial completion." Tenn. Code Ann. § 28-3-202.	X			Wells Fargo and Co. v. Paul Davidson Const. Co., 1992 WL 108703 (Tenn. Ct. App. 1992) (statute of repose applies to indemnity claims). Clinton Seafood, Inc. v. Harrington, 1991 WL 50218 (Tenn. Ct. App. 1991) (statute of repose applies to indemnity claims).
Texas	Texas has two virtually identical construction statutes of repose: one which applies to architects, engineers, interior designers, and landscape architects; and one which applies to contractors. "A person must bring suit for damages [for a construction defect] . . . not later than 10 years after the substantial completion of the improvement . . . This section applies to suit for . . . contribution or indemnity." Tex. Civ. Prac. & Rem. Code Ann. §§ 16.008 & 16.009.	X			Barnes v. J.W. Bateson Co., Inc., 755 S.W.2d 518 (Tex. App. Fort Worth 1988) (statutes of repose are constitutional, and therefore bar plaintiff's claims for contribution and indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Utah	"[A]n action may not be commenced against a provider more than nine years after completion of the improvement or abandonment of construction." The word " 'action' means any claim for judicial, arbitral or administrative relief . . . whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law." Utah Code Ann. § 78B-2-225.	X			While no Utah cases have addressed the issue, the statute by its terms applies to claims for contribution and indemnity. *See generally* Craftsman Builder's Supply, Inc. v. Butler Mfg. Co., 1999 UT 18, 974 P.2d 1194, Prod. Liab. Rep. (CCH) P 15464 (Utah 1999) (discussing application of construction claim statute of repose).
Vermont	Vermont does not have a statute of repose for construction claims. The relevant statute of limitations follows: "A civil action, except one brought upon the judgment or decree of a court of record of the United States or of this or some other state, and except as otherwise provided, shall be commenced within six years after the cause of action accrues and not thereafter." Vt. Stat. Ann. tit. 12, § 511.			X	The limitations period provided by § 511 has been applied to construction related indemnity claims. *See, e.g.,* Investment Properties, Inc. v. Lyttle, 169 Vt. 487, 739 A.2d 1222 (1999).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Virginia	"No action to recover for any injury [arising out of a construction defect] . . . nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought . . . more than five years after the performance or furnishing of such services and construction." Va. Code Ann. § 8.01-250.			X	Virginia State courts have not addressed this issue. Federal courts have, however, interpreted the statute of repose to apply to indemnity claims sounding in tort, but not contractual indemnity claims. *See* Jordan v. Sandwell, Inc., 189 F. Supp. 2d 406 (W.D. Va. 2002).
Washington	"All claims or causes of action [for construction defects] . . . shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after termination of the services . . . whichever is later . . . Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years after such termination of services, whichever is later, shall be barred." Wash. Rev. Code § 4.16.310.	X			Parkridge Associates, Ltd v. Ledcor Industries, Inc., 113 Wash. App. 592, 54 P.3d 225 (Div. 1 2002) (statute of repose applies to claims for indemnity).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
West Virginia	"No action, whether in contract or in tort, for indemnity or otherwise, nor any action for contribution or indemnity to recover damages for any [construction defect] . . . may be brought more than ten years after the performance or furnishing of such services of construction." W. Va. Code § 55-2-6a. The limitations period for any counterclaims and cross claims is tolled during the pendency of the initial claim. W. Va. Code § 55-2-21.	X			While no West Virginia courts have directly addressed the issue, the statute by its terms applies to claims for indemnity and contribution. *See generally* Gibson v. West Virginia Dept. of Highways, 185 W. Va. 214, 406 S.E.2d 440 (1991) (holding modified by, Neal v. Marion, 222 W. Va. 380, 664 S.E.2d 721 (2008)) (constitutionality of statute of repose upheld).
Wisconsin	"[N]o cause of action may accrue and no action may be commenced, including an action for contribution or indemnity" to recover damages for a construction defect more than "10 years immediately following the date of substantial completion of the improvement to real property." Wis. Stat. § 893.89. Note: § 893.89(3) provides an extension period.	X			While no Wisconsin courts have directly addressed the issue, the statute by its terms applies to claims for indemnity and contribution. *See generally* Kohn v. Darlington Community Schools, 2005 WI 99, 283 Wis. 2d 1, 698 N.W.2d 794 (2005) (constitutionality of statute of repose upheld).

State	Operative Statutory Language	Yes	No	Undecided/ Split of Authority	Relevant Cases
Wyoming	"Unless the parties to the contract agree otherwise, no action to recover damages [for a construction defect], whether in tort, contract, indemnity or otherwise, shall be brought more than ten years after substantial completion of an improvement to real property." Wyo. Stat. Ann. § 1-3-111.	**X**			While no Wyoming courts have directly addressed the issue, the statute by its terms applies to claims for indemnity. *See generally* Worden v. Village Homes, 821 P.2d 1291 (Wyo. 1991).
Total		**26**	**4**	**21**	