

The Saiber Construction Law Column: June 2025

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A statute of repose is a law that sets a fixed time limit after which a lawsuit cannot be brought regardless of when an alleged injury occurred or was discovered. The Supreme Judicial Court of Massachusetts issued a decision on April 16, 2025, which applied the Massachusetts six year statute of repose to a claim brought by a University against an architect for the negligent design of a new athletic field, ruling that the six year statute of repose did not bar the University's action even though it was filed more than six years after the University began using the athletic field.

In *Trustees of Boston University v. Clough, Harbour & Associates LLP*, Boston University entered into a contract with an architect for the design of a new athletic field. The parties' contract contained an indemnification provision pursuant to which the architect agreed to indemnify the University for "any and all" expenses the University incurred as a result of the architect's negligent design. The athletic field experienced numerous problems because of defects in the design and the University spent more than \$25,000 to address the defects and render the field usable. When the University demanded indemnification of this amount from the architect, the architect declined and, more than six years after the field began being used, the University filed suit for breach of the indemnification provision.

The architect argued that the six-year tort statute of repose barred the University's claim, but the Court rejected that argument. The Court looked at the gist of the University's claim against the architect and concluded that a claim for contractual indemnification sounded in contract even though the underlying claim was for negligence. In *Clough*, the Court held that in the parties' contract, the architect expressly promised to indemnify the University if it suffered damages from the architect's negligence. The Court therefore found that the tort statute of repose did not bar the claim for contractual indemnification.

New Jersey's statute of repose differs significantly from the statute of repose in Massachusetts. First, by its express terms, the New Jersey statute of repose bars both actions in contract or tort to recover any damages caused by deficiencies in the design, planning, surveying, supervision or construction of an improvement to real property. The New Jersey statute of repose also had a lengthier repose period, barring such actions if filed more than 10 years after the performance or furnishing of such services and construction. The New Jersey statute also expressly barred claims for contribution or indemnity for damages.

Parties involved in the design, planning, surveying, supervision or construction of an improvement to real property in New Jersey should be mindful of the ten-year statute of repose because, with certain limited exceptions, the statute of repose may provide an absolute defense to a claim brought beyond its ten-year time period.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts (or courts from other states) or other legal topics which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to ensure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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