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The Alabama Supreme Court's Modification of The Rule of Repose

THE TIME LIMIT FOR A PLAINTIFF TO FILE A COMPLAINT IS GOVERNED BY STATUTES OF LIMITATION AND RULES OF REPOSE.

Traditionally, Alabama statutes of limitation allow a plaintiff two years after the date of a personal injury to file a complaint. A rule of repose bars claims that may arise after a fixed number of years following a project's completion, even if that period ends prior to the injury.

If a project is completed in 2009, and a stairway fails and injures a tenant in 2012, the tenant would have until 2014 to file a complaint under a statute of limitation. If the condition lays dormant until 2022, any claims against the builders would be barred under the 13-year statute of repose established for architects, contractors, and engineers by the Alabama Legislature. Ala. Code. § 6-5-221 (2005).

Over the last year, however, the Alabama Supreme Court modified the treatment of rules of repose through *Collins v. Scenic Homes Inc.*, and *Owens-Illinois Inc. v. Wells*. Under this modification, the date that begins the time frame for a rule of repose is not the date the condition was created, but rather the date the injury occurs. In other words, a condition may exist for 50 years prior to the injury; however, the claim will not be barred.

Neither of these cases was decided under Ala. Code § 6-5-221, which still appears to be intact under the Court's 2001 analysis in *Baughner v. Beaver*

Construction Company; however, the statute is likely open to challenges under the recent logic used by the Court. For the time being, contractors are protected by the 1994 legislation so long as the project included oversight or approval of an architect or engineer.

In scenarios where an architect or engineer was not involved in the project, however, Collins made it clear that contractors cannot use the statute of repose as a defense. The practical result is that the rule of repose has been nullified, and, regardless of when the project was completed, a plaintiff now has two years from the date of injury to file a complaint.



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Joe Duncan is a partner with Huie, Fernambucq & Stewart, in Birmingham. His litigation practice includes liability issues associated with all phases of construction at both the trial and appellate court levels. Joe is regularly called on by contractors, insurers, and trade groups to help clients to control potential areas for exposure and liability before claims arise. He holds a B.A. degree from Auburn University and a J.D. degree from the University of Alabama School of Law.

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