Effective October 1, 2009, North Carolina's statute of repose for product defect claims increased from six years to twelve years for actions that accrue on or after October 1, 2009. The change is not retroactive, so for actions that accrued prior to October 1, 2009, the former six year statute of repose will continue to apply. This change will immediately have a positive impact on subrogation potential for product defect claims in North Carolina.

Although North Carolina's statute of repose for product defects has changed to twelve years, it is important to remember that North Carolina's statute of repose for defective improvements to real property remains six years from the later of the specific last act/omission giving rise to the cause of action or the date of substantial completion.

For each claim, it is important to consider the statute of limitation and the statute of repose. A statute of limitation is a maximum period of time in which to file a claim after an incident occurs and will vary by jurisdiction and the cause of action. In North Carolina, the statute of limitation for negligence claims is three years. A statute of repose bars all claims after a statutory time period, regardless of whether an incident has occurred within that period. Every state has a statute of repose for improvements to real property, and about half have a statute of repose for product liability claims. Statutes of repose for improvements to real property, which can apply to original construction, repairs, and fixtures that run with the structure, run from a variety of dates to include date of completion, date of habitability, or the date a certificate of occupancy was issued. Statutes of repose for product liability claims, which apply to design and manufacturing defects, run from a variety of dates to include the date of manufacture, the date of initial sale, or the date of first use. Statute of repose commencement dates vary widely across jurisdictions, so it is important to examine the statutory language to determine the relevant date.

Because the statute of repose begins to run whether or not an incident occurs, the statute of repose can bar a claim before an incident occurs and a statute of limitation begins. Consider a building damaged by a fire originating from a gas water heater which was installed five years and 363 days ago. Assume the building is in a jurisdiction with a three-year statute of limitation for negligence claims, a six-year statute of repose for improvements to real property, and a ten-year statute of repose for product defects. Any claims of negligence must be filed within three years before the statute of limitation expires. However, all claims may already be barred by the statute of repose. If the fire resulted from negligence during original installation, the claim may or may not be barred by the six-year statute of repose for improvements to real property depending on how the jurisdiction's statute defines the commencement date. If the fire resulted from a design or manufacturing defect, the claim may or may not be barred despite the ten-year statute of repose for product defects depending on whether the jurisdiction considers a water heater to be a fixture that runs with the structure. If the fire resulted from negligence during recent repairs or maintenance, the claim may or may not be barred depending on whether the jurisdiction's statute allows such negligence to restart the commencement date. The fact sensitive nature of these issues requires immediate investigation and complex analysis to identify potential time bars which have no relationship to the date of loss. Cozen O'Connor specializes in such investigations and analysis, but the potential time bars make it imperative that the investigation and analysis be performed as soon as possible after the loss is reported to allow us to maximize your recovery potential.

1. N.C.G.S. § 1-46.1(a)(1)
2. N.C.G.S. § 1-50(a)(5)
3. Cozen O'Connor has 50-state quick reference charts which are available to clients upon request.