

Certain exceptions may apply, and law is subject to change. This chart is not intended to cover express indemnity contracts. Contact White and Williams for additional information.

■ **ALABAMA**

Contribution: Alabama does not allow contribution between joint tortfeasors. Consolidated Pipe & Supply Co. v. Stockham Valves & Fittings, Inc., 365 So. 2d 968 (Ala. 1978).

Implied Indemnity: Implied indemnity is generally not allowed unless an exception applies. Crigler v. Salac, 438 So. 2d 1375 (Ala. 1983). Implied indemnity is permitted where a joint tortfeasor is only technically or constructively at fault, or where both parties are at fault but the fault of the party from whom indemnity is claimed is the efficient cause of the injury. J.C. Bradford & Co. v. Calhoun, 612 So.2d 396 (Ala. 1992); cf. Capital Assurance Co. v. Johnson, 578 So.2d 1263 (Ala. 1991) (master, whose liability is based on *respondeat superior*, can pursue servant for indemnification). A right to indemnity does not arise until payment. Ala. Kraft Co. v. Southeast Ala. Gas District, 569 So. 2d 697 (Ala. 1990). A non-contractual indemnity claim is a tort claim, and the two-year statute of limitations in tort actions applies. Precision Gear Co. v. Cont'l Motors, Inc., 135 So. 3d 953 (Ala. 2013) (applying Ala. Code § 6-2-38). An indemnification action against an architect or engineer related to an improvement to real property is subject to a 2-year statute of limitations and a 6-year statute of repose. Ala. Code § 6-5-221(c).

■ **ALASKA**

Contribution: Statutory contribution abolished by voter initiative in 1989 but common law contribution based on proportional fault is still available. See McLaughlin v. Lougee, 137 P.3d 267 (Alaska 2006). Fault must be apportioned among all persons – defendants, third-party defendants, persons released, and others identified as potentially responsible – in a single action. Alaska Stat. § 09.17.080; Alaska R.C.P. 14(c). See also Cabales v. Morgan, 2015 WL 999100 (D. Alaska 2015). Non-settling defendants are entitled to offset the plaintiff's damages in proportion to the settling party's proportionate share of fault. Petrolane Inc. v. Robles, 154 P.3d. 1014 (Alaska 2007).

Implied Indemnity: An indemnitee jointly liable in tort or in an implied contract with the indemnitor may recover indemnity only if the indemnitee is not in any degree also jointly at fault. Fairbanks North Star Borough v. Kandik Construction, Inc., 823 P.2d 632 (Alaska 1991). A strictly liable retailer or lessor may obtain indemnity from a product manufacturer. Koehring Mfg. Co. v. Earthmovers of Fairbanks, 763 P.2d 499 (Alaska 1988). In addition, a vicariously liable party who has no independent liability to the injured party can seek indemnification from the party for whom it is vicariously liable. AVCP Reg. Housing Auth. v. R.A. Vranckaert Co., 47 P.3d 650 (Alaska 2002). The party seeking indemnity must extinguish the liability of the indemnitor by release or otherwise. Id. The statute of limitations begins to run with judgment or settlement. Alaska Gen. Alarm v. Grinnell, 1 P.3d 98 (Alaska 2000).

■ **ARIZONA**

Contribution: Authorized by the Arizona Uniform Contribution Among Tortfeasors Act. Ariz. Rev. Stat. § 12-2501. If not decided in the underlying plaintiff's action, contribution may be enforced by separate action. Ariz. Rev. Stat. § 12-2503. Contribution is permitted for settling joint tortfeasors who pay more than their pro rata share of liability, based on their relative degrees of fault, as long as the settlement also extinguishes the liability of the other tortfeasors and is reasonable. Ariz. Rev. Stat. §§ 12-2501(D), 12-2502. A settling tortfeasor seeking contribution must discharge by payment the common liability and commence the contribution action within one year after payment or judgment. Ariz. Rev. Stat. § 12-2503.

Implied Indemnity: A plaintiff subject to derivative or imputed liability pursuing an implied indemnity action must show that: (1) it discharged a legal obligation owed to a third party; (2) for which the indemnity defendant was also liable; and (3) as between the two, the obligation should have been discharged by the indemnity defendant. KnightBrook Ins. Co., v. Payless Car Rental System, Inc., 409 P.3d 293 (Ariz. 2018). A party has a right to indemnity when there is an implied contract for indemnity or when justice demands there be the right. INA Ins. Co. v. Valley Forge Ins. Co., 722 P.2d 975 (Ariz. Ct. App. 1986). There is no duty of indemnity unless the payment discharges the primary obligor from an existing duty. Id. The tortfeasor seeking implied indemnity must be proven not negligent to make a claim. Herstam v. Deloitte & Touche, LLP, 919 P.2d 1381 (Ariz. Ct. App. 1996). The statute of limitations is 4 years. Ariz. Rev. Stat. § 12-550; Northstar Brokerage Advisory Servs., LLC v. Collingwood, 2015 Ariz. App. Unpub. LEXIS 720 (Ariz. Ct. App.). Although contractual indemnity claims related to improvements to real estate are subject to the construction-related statute of repose, common law indemnity claims are not. Evans Withycombe, Inc. v. Western Innovations, Inc., 159 P.3d 547 (Ariz. Ct. App. 2006).

■ **ARKANSAS**

Contribution: Authorized by the Arkansas Uniform Contribution Among Tortfeasors Act. Ark. Code Ann. § 16-61-201, *et seq.* A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share of the common liability. Ark. Code Ann. § 16-61-202(b). A settling joint tortfeasor is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement. Ark. Code Ann. § 16-61-202(d). A release of a joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasor unless the release states that the other joint tortfeasor is released. Ark.

Code Ann. § 16-61-204(a). A release given to one joint tortfeasor does not relieve that tortfeasor from liability for contribution claims unless (a) the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued and (b) it provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all other tortfeasors. Ark. Code Ann. § 16-61-204(b). The non-releasing defendants are entitled to a jury determination of the released joint tortfeasor's pro rata share of responsibility. Ark. Code Ann. § 16-61-204(d). Where the issue of contribution is not resolved in the plaintiff's action, a joint tortfeasor can sue for contribution in a separate action. Ark. Code Ann. § 16-61-207. The statute of limitations is three years from the date that the joint tortfeasor pays more than his pro-rata share of the common liability. Ark. Code Ann. § 16-56-105; Halford v. Southern Capital Corp., 650 S.W.2d 580 (Ark. 1983).

Implied Indemnity: Arkansas common law recognizes an implied indemnity claim. An implied indemnity claim is a derivative or conditional action that must be brought by the tortfeasor who is compelled to pay money that should be paid by another. Taylor v. City of Fort Smith, 441 S.W.3d 36 (Ark. Ct. App. 2014). Although implied indemnity may arise based on the relationship between the parties, the implied indemnification principal is based upon equitable principles of restitution, which permit one who is compelled to pay money which in justice ought to be paid by another, to recover the sums paid unless the payor, himself, is barred by the wrongful nature of his own conduct. Larson Machine, Inc. v. Wallace, 600 S.W.2d 1 (Ark. 1980). The 3-year statute of limitations begins to run when payment is made. J-McDaniel Constr. Co. v. Dale E. Peters Plumbing Ltd., 436 S.W.3d 458 (Ark. 2014); Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009); Ark. Code Ann. § 16-56-105.

■ **CALIFORNIA**

Contribution: Authorized by the Contribution Among Joint Judgment Debtors statute. Cal. Civ. Pro. Code § 875, *et seq.* Available where a money judgment is rendered jointly against two or more defendants. Cal. Civ. Pro. Code § 875(a). A contribution claim can be enforced after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share of the judgment. Cal. Civ. Pro. Code § 875(c). The pro rata share of each tortfeasor judgment debtor is determined by dividing the judgment equally among the tortfeasors. Cal. Civ. Pro. Code § 876(a). A contribution cause of action can be filed as a cross-complaint in the plaintiff's action or, if necessary, enforced in a separate lawsuit. See Caterpillar Tractor Co. v. Teledyne Indus., Inc., 126 Cal. Rptr. 455 (Cal. Ct. App. 1975). A judgment of contribution may be entered by one tortfeasor judgment debtor against another upon 10-days notice and a hearing. Cal. Civ. Pro. Code § 878. When the plaintiff releases, dismisses or gives a covenant not to sue or enforce judgment to a joint tortfeasor in good faith, before verdict or judgment, it shall have the following effect: a) it shall not discharge other joint tortfeasors unless its terms so provide, but it shall reduce the claims against others in the amount stipulated or in the amount of the consideration paid, whichever is greater; and b) it shall discharge the released party from all liability for any contribution to other parties. Cal. Civ. Pro. Code § 877. However, this rule shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability. Id. A court must determine whether the settlement was made in good faith. L.C. Rudd & Son, Inc. v. Super. Ct., 60 Cal. Rptr. 2d 703 (Cal. Ct. App. 1997); Cal. Code Civ. Pro. § 877.6. Sliding scale recovery agreements are subject to the procedural requirements of Cal. Civ. Pro. Code § 877.5. A contribution claim is subject to a 2-year statute of limitations. Cal. Civ. Proc. Code § 339. The claim accrues when the party seeking contribution has paid more than its fair share. Smith v. Parks Manor, 243 Cal. Rptr. 256 (Cal. Ct. App. 1987).

Implied Indemnity: There are only two basic types of indemnity: express indemnity and equitable indemnity. Implied contractual indemnity is now viewed simply as a form of equitable indemnity. Prince v. Pacific Gas & Electric Co., 202 P.3d 1115 (Cal. 2009). Although equitable indemnity once operated to shift the entire loss to the indemnitor, the doctrine is now subject to allocation-of-fault principles and comparative equitable apportionment of loss. Id. A named defendant can file a cross-complaint against any person, whether a party or not, from whom it seeks to obtain total or partial indemnity. American Motorcycle Ass'n v. Superior Court of Los Angeles County, 578 P2d 899 (Cal. 1978). The claim must be brought within 2 years of the date the party seeking indemnity paid all or a portion of the damages awarded. Cal. Civ. Pro. Code § 335.1; Preferred Risk Mut. Ins. Co. v. Reiswig, 980 P.2d 895 (Cal. 1999) (discussing former § 340(3)). California's 10-year statute of repose related to construction improvements applies to indemnification claims. FNB Mortgage Corp. v. Pac. General Corp., 90 Cal. Rptr. 2d 841 (Cal. Ct. App. 1999). A cross-complaint for indemnity may be filed in an action brought by the plaintiff within the statute of repose period. Cal. Civ. Proc. Code § 337.15(c).

■ **COLORADO**

Contribution: Authorized by the Uniform Contribution Among Tortfeasors Act. Colo. Rev. Stat. 13-50.5-101, *et seq.* Although joint and several liability has been abolished by statute, Colo. Rev. Stat. 13-21-111.5, contribution remains available because UCATA permits contribution from parties which were only severally liable. Graber v. Westaway, 809 P.2d 1126 (Colo. App. 1991). A settling tortfeasor must make a reasonable settlement and extinguish the liability of the tortfeasor from whom he or she seeks contribution. Colo. Rev. Stat. 13-50.5-102(4). Joint tortfeasors are responsible for contributing their pro rata shares as determined by their relative degrees of fault. Colo. Rev. Stat. 13-50.5-103; Brochner v. Western Ins. Co. 724 P.2d 1293 (Col. 1986). Contribution only exists for a tortfeasor who has paid more than his pro rata share of liability and his total recovery

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is limited to the amount paid by him in excess of such share. Colo. Rev. Stat. 13-50.5-102(2). A claim for contribution may be brought in the underlying action or as a separate action. Colo. Rev. Stat. 13-50.5-104. If a separate action is filed, the contribution suit must be commenced within one year after the judgment. Colo. Rev. Stat. 13-50.5-104(3). If there is no judgment, contribution is barred unless the tortfeasor seeking contribution discharges the common liability within the applicable limitations period and initiates a contribution action within one year of payment. Colo. Rev. Stat. 13-50.5-104(4). For construction cases involving architects, contractors, builders, engineers, inspectors, etc., claims are timely if they are brought during the underlying construction defect litigation or within 90 days after the date of settlement or judgment, whichever comes first. Colo. Rev. Stat. 13-80-104(l)(b)(II); Goodman v. Heritage Builders, Inc., 390 P.3d 398 (Colo. 2017).

Implied Indemnity: With the adoption of the Uniform Contribution Among Tortfeasors Act, recovery under common law indemnity was essentially abolished, but it should be available to a principal who, without fault, is vicariously liable for his agent's tort. Brochner; Serna v. Kingston Enters., 72 P.3d 376 (Colo. App. 2002). The statute of limitations is generally two years from accrual. Colo. Rev. Stat. 13-80-102. A cause of action for indemnity does not arise until the liability of the party seeking indemnification either pays a sum clearly owed or the injured party obtains an enforceable judgment. Serna. For construction cases involving architects, contractors, builders, engineers, inspectors, etc., claims are timely if they are brought during the underlying construction defect litigation or within 90 days after the date of settlement or judgment, whichever comes first. Colo. Rev. Stat. 13-80-104(l)(b)(II); Goodman.

■ CONNECTICUT

Contribution: For negligence claims, contribution is generally not applicable because Connecticut applies several liability, in which a defendant is only responsible for its respective share of liability. Conn. Gen. Stat. § 52-572h. However, where the original plaintiff is unable to collect a portion of his damages from a defendant, the uncollectable share of damage may be reapportioned among the other defendants in the same proportion as their share of liability and, in such cases, a separate action for contribution is permitted, if filed within two years of the payment in excess of a party's proportional share of judgment. Conn. Gen. Stat. § 52-572h(h). If one defendant enters into a settlement agreement with the original claimant, that defendant is discharged from all liability for contribution, but it does not discharge the other defendants (unless the release in fact releases all defendants). Conn. Gen. Stat. § 52-572h(n). However, the total damages awarded are reduced by the amount of the released person's percentage of negligence. Id. Contribution claims are subject to Connecticut's 7-year statute of repose related to the construction of improvements to real property. Conn. Gen. Stat. § 52-584a; but see Conn. Gen. Stat. § 52-584c (contribution actions by state or a political subdivision arising out of construction). Because joint-and-several liability applies to products liability claims, a defendant who pays more than its proportionate share of a judgment is entitled to contribution. Conn. Gen. Stat. § 52-572o. A party seeking contribution can file a separate lawsuit or implead the prospectively liable third party in the existing lawsuit. Malerba v. Cessna Aircraft Co., 554 A.2d 287 (Conn. 1989). If a product seller impleads a third party who is or may be liable for all or part of the claimant's claim, it must serve the third-party defendant within one year from the filing of the original cause of action. Malerba; Conn. Gen. Stat. § 52-577a(b). If the contribution claim is filed in a separate action, the statute of limitations is one year from judgment or settlement. Malerba; Conn. Gen. Stat. § 52-572o(e).

Implied Indemnity: A plaintiff in an action for indemnification not based on a statute or express contract, who had been a codefendant in a prior action with a joint tortfeasor, can recover indemnity from that codefendant only by establishing four separate elements: (1) that the other tortfeasor was negligent; (2) that his negligence, rather than the plaintiff's, was the direct, immediate cause of the accident and injuries; (3) that he was in control of the situation to the exclusion of the plaintiff; and (4) that the plaintiff did not know of such negligence, had no reason to anticipate it, and could reasonably rely on the other tortfeasor not to be negligent. Kyrtatas v. Stop & Shop, 535 A.2d 357 (Conn. 1988). When all potential parties are included in a product liability action, indemnification does not apply; instead, Conn. Gen. Stat. § 52-572o applies, and the court allocates liability. Id. If the plaintiff in a product liability action did not include all potential parties, the defendants may implead a third party that may be liable for all or part of the claim. Smith v. Dynamic Cooking Sys., 887 A.2d 966 (Conn. Super. Ct. 2005). A court may also imply an agreement to indemnify from the conduct of two parties in the absence of an express contract. Sandella v. Dick Corp., 729 A.2d 813 (Conn. App. Ct. 1999). An action for indemnification must be filed within 3 years from either judgment or settlement of the underlying claim. Conn. Gen. Stat. § 52-598a. Indemnification claims for improvements to real property are subject to Connecticut's 7-year statute of repose. Conn. Gen. Stat. § 52-584a; but see Conn. Gen. Stat. § 52-584c (contribution actions by state or a political subdivision arising out of construction).

■ DELAWARE

Contribution: Authorized by the Uniform Contribution Among Tortfeasors Act. Del. Code Ann. tit. 10, §§ 6301 - 6308. A joint tortfeasor is only entitled to contribution after either (i) he has discharged by payment common liability or (ii) paid more than his pro rata share of liability. Del. Code Ann. tit. 10, § 6302. A settling joint tortfeasor is not entitled to recover contribution from a joint tortfeasor whose liability to the injured person was not extinguished by the settlement. Id. A release given to one joint tortfeasor does not relieve that tortfeasor from liability for contribution claims unless (a) the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued and (b) it provides for a reduction, to the extent of the pro rata share of the released

tortfeasor, of the injured person's damages recoverable against all other tortfeasors. Del. Code Ann. tit. 10, § 6304. Separate lawsuits are generally not permitted so long as the contribution claim can be resolved in the original lawsuit through third-party practice. Del. Code Ann. tit. 10, § 6306. The statute of limitations for contribution claims is 3 years, accruing when the joint tortfeasor seeking contribution has by payment discharged the common liability or has paid more than his pro rata share. Del. Code Ann. tit. 10, § 8106(a); Reddy v. PMA Ins. Co., 20 A.3d 1281 (Del. 2011). Contribution claims in non-residential construction cases are subject to a 6-year statute of repose. Del. Code Ann. tit. 10, §§ 8127(a)(5), 8127(b).

Implied Indemnity: A person who, without fault, is compelled to pay damages is entitled to recover indemnity where, as between the parties to the indemnity action, the defendant is primarily liable and the plaintiff is only secondarily liable; i.e., technically or constructively liable to the injured party, or where his liability is based on a legal or contractual relationship with the defendant. Cook v. Delmarva Power & Light Co., 1985 Del. Super. LEXIS 1218; Cumberbatch v. Board of Trustees, 382 A.2d 1383 (Del. Super. Ct. 1978). Indemnification claims in non-residential construction cases are subject to a 6-year statute of repose. Del. Code Ann. tit. 10, §§ 8127(a)(5), 8127(b). A cause of action for indemnity does not arise until the indemnitee suffers loss or damage through payment of a claim after judgment or settlement. Chesapeake Utilities Corp. v. Chesapeake & Potomac Tel. Co., 401 A.2d 101 (Del. Super. Ct. 1979). The statute of limitations is 3 years. O'Brien v. IAC/Interactive Corp., 2009 Del. Ch. LEXIS 154 (2009).

■ DISTRICT OF COLUMBIA

Contribution: Contribution has been established by common law rather than by statute. D.C. v. Wash. Hosp. Center, 722 A.2d 332 (D.C. 1998). Joint liability must be discharged and either adjudicated or stipulated, George Washington University v. Bier, 946 A.2d 372 (2008), and must be apportioned by equal shares. D.C. v. Wash. Hosp. Center. A second action for contribution by a settling tortfeasor against a nonsettling tortfeasor is barred if such a claim could have been asserted in the original, underlying action filed by the injured party. Paul v. Bier, 758 A.2d 40 (D.C. 2000). When judgment is entered, a nonsettling defendant is entitled to a proportional credit for the liability of a settling defendant. Id. Because contribution is an equitable remedy, no statute of limitations applies, but an action may be time-barred even if filed within an analogous limitations period. George Washington University.

Implied Indemnity: A duty to indemnify may arise from an express contract provision or, in the absence of a contract, to prevent injustice. Where there is no express contract provision, an obligation to indemnify may be implied in fact on an implied contract theory or implied in law in order to achieve equitable results. Quadrangle Development Corp. v. Otis Elevator Co., 748 A.2d 432 (D.C. 2000). For indemnity claims arising under an implied contract rather than under equitable principles, the statute of limitations for an indemnity claim is three years. D.C. Code § 12-301(7).

■ FLORIDA

Contribution: Although Florida's Uniform Contribution Among Tortfeasors Act, Fla. Stat. § 768.31 remains on the books, because Florida has abolished joint and several liability in negligence actions, third-party complaints for contribution by a defendant in an underlying tort case are essentially obsolete. T&S Enterprises Handicap Accessibility, Inc. v. Wink Indus. Maintenance & Repair, Inc., 11 So.3d 411 (Fla. Dist. Ct. App. 2009); Mortgage Contr. Servs., LLC v. J & S Prop. Servs. LLC, 2018 U.S. Dist. LEXIS 109967 (M.D. Fla. 2018). Contribution remains actionable for parties who are jointly and severally liable for torts other than negligence. BIC Corp. v. Fla. Distributors, Inc., 2018 U.S. Dist. LEXIS 175314 (S.D. Fla. 2018); see Fla. Stat. § 768.31(2)(e) (liability insurers seeking subrogation). An action for contribution is still available after a tortfeasor pays more than its pro rata share of the liability outside of suit. Liberty Mut. Fire Ins. Co. v. Wal-Mart Stores E., LP, 269 F. Supp. 3d 1254 (M.D. Fla. 2017). A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury is not extinguished by the settlement or in respect to any amount paid in a settlement which is in excess of what was reasonable. Fla. Stat. § 768.31(2)(d). If there is no judgment against the tortfeasor seeking contribution, the tortfeasor's right of contribution is only permitted when he has either: (1) discharged by payment the common liability within the statute of limitations applicable to the claimant's underlying action and has commenced his contribution action within 1 year after payment; or (2) agreed to discharge the common liability while the underlying action is pending against him and, within 1 year after the agreement, paid the liability and commenced his action for contribution. Fla. Stat. § 768.31(4)(d). To allocate any fault to a nonparty, a defendant must affirmatively plead a non-party's fault and prove it at trial by a preponderance of the evidence. T&S Enterprises; Fla. Stat. § 768.81. In construction cases, counterclaims, crossclaims, and third-party claims that arise out of the conduct, etc. set forth in the original pleading may be commenced up to 1 year after the original pleading is served. Fla. Stat. § 95.11(3)(c).

Implied Indemnity: For a party to prevail on a claim of common law indemnity, it must satisfy a two-prong test. First, the party seeking indemnity must be without fault, and its liability must be vicarious and solely for the wrong of another. Second, indemnity can only come from a party who was at fault. Additionally, Florida courts have required a special relationship between the parties. Dade County Sch. Bd. v. Radio Station WQBA, 731 So.2d 638 (Fla. 1999). If a settling party pursues indemnity in a subsequent lawsuit, the settling party must establish that the settlement was related to claims for which it was vicariously liable and that the settlement was reasonable. Metro. Dade County v. Fla. Aviation Fueling Co., 578 So.2d 296 (Fla. Dist. Ct. App. 1991). The statute of limitations does not begin to run until the litigation against the third-party plaintiff has ended or the liability has been settled or discharged by payment. Castle Constr. Co. v. Huttig Sash & Door Co., 425 So.2d 573 (Fla. Dist. Ct. App.

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1982). In construction cases, counterclaims, crossclaims, and third-party claims that arise out of the conduct described in the original pleading may be commenced up to 1 year after the original pleading is served. Fla. Stat. § 95.11(3)(c).

GEORGIA

Contribution: Contribution is not permitted among co-defendants when fault is apportioned by the trier of fact because each party is only responsible for its respective proportionate share of liability. Ga. Code § 51-12-33(b); McReynolds v. Krebs, 725 S.E.2d 584 (Ga. 2012). A defendant who settles a claim with the claimant can still be pursued for contribution from co-defendants if their liabilities were not apportioned by the trier of fact. Zurich American Ins. Co. v. Heard, 740 S.E.2d 429 (Ga. Ct. App. 2013). The statute of limitation is 20 years (Ga. Code § 9-3-22) and does not begin to run until judgment is entered against the third-party plaintiff or a settlement of the underlying claim is made. Independent Mfg. Co., Inc. v. Automotive Products, Inc., 233 S.E.2d 874 (Ga. Ct. App. 1977). Contribution claims arising from defective improvements to real property are subject to Georgia's 8-year statute of repose for construction defect cases. R. Larry Phillips Constr. Co. v. Muscogee Glass, 691 S.E.2d 372 (Ga. Ct. App. 2010).

Implied Indemnity: Common law indemnity is available when a party is vicariously liable for the tort committed by another and the other's negligence is imputed to him. District Owners Ass'n v. AMEC Envtl. & Infrastructure, Inc., 747 S.E.2d 10 (Ga. Ct. App. 2013). However, if an indemnitee who settles a tort action had a defense available which would have defeated the action but failed to assert it, he cannot recover common law indemnity. U.S. Lawns, Inc. v. Cutting Edge Landscaping, LLC, 716 S.E.2d 779 (Ga. Ct. App. 2011). The statute of limitations for non-contractual indemnity claims is 20 years (Ga. Code § 9-3-22) and begins to run when the claimant pays another to settle the claim of the other or satisfy the judgment of another. Saiaa Constr., LLC v. Terracon Consultants, Inc., 714 S.E.2d 3 (Ga. Ct. App. 2011). An indemnity claim based on a defective improvement to real property is subject to Georgia's 8-year statute of repose. Gwinnett Place Assocs. v. Pharr Eng'g, Inc., 449 S.E.2d 889 (Ga. Ct. App. 1994).

HAWAII

Contribution: The Uniform Contribution Among Tortfeasors Act, Haw. Rev. Stat. § 663-11, *et seq.*, grants joint tortfeasors a right of contribution. A joint tortfeasor is not entitled to contribution until it has discharged the common liability or has paid more than its pro rata share of liability. Haw. Rev. Stat. § 663-12(b). A joint tortfeasor who enters into a settlement with the injured person cannot recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement. Haw. Rev. Stat. § 663-12(c). A party seeking contribution may file a third-party claim against a person not a party to the action or maintain a separate action for contribution. Haw. Rev. Stat. § 663-17. However, if the party seeking contribution can assert a crossclaim against a co-party, the party seeking contribution cannot maintain a separate action. Haw. Rev. Stat. § 663-17(b). A party seeking contribution may recover contribution from responsible parties using fictitious names if the actual names can't be identified. Haw. Rev. Stat. § 663-17(d); Gump v. Wal-Martstores, Inc., 5 P.3d 407 (Haw. 2000). When there is a large disproportion of fault among joint tortfeasors that renders an equal distribution of the liability among them unfair, the tortfeasors' relative degrees of fault must be considered to determine their pro rata shares. Haw. Rev. Stat. §§ 663-12(d), 663-17(c). The 2-year statute of limitations begins to run at payment. Albert v. Dietz, 283 F.Supp. 854 (D.C. Haw. 1968). The limitations period is unclear but appears to be the 6-year "catch all" of Haw. Rev. Stat. § 657-1.

Implied Indemnity: A third-party claim for indemnity is based either upon contract or upon some other independent duty existing between indemnitor and indemnitee. Kamali v. Hawaiian Elec. Co., 504 P.2d 861 (Haw. 1972).

IDAHO

Contribution: Idaho Code § 6-803 establishes a right of contribution for joint tortfeasors. Contribution is allowed when a defendant has paid more than its share of a judgment. Burgess v. Salmon River Canal Co., Ltd., 805 P.2d 1223 (Idaho 1991). A joint tortfeasor who settles with the plaintiff may not recover contribution from another joint tortfeasor whose liability to the injured person was not extinguished by the settlement. Brockman Mobile Home Sales v. Lee, 567 P.2d 1281 (Idaho 1977); Idaho Code § 6-803(2). A release given to one joint tortfeasor does not relieve that tortfeasor from liability for contribution unless (a) the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued and (b) it provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all other tortfeasors. Idaho Code § 6-806; Saint Alphonsus Diversified Care, Inc. v. MRI Assocs. LLP, 334 P.3d 780 (Idaho 2014). Absent express language, a release cannot operate to discharge joint tortfeasors from liability. Brockman. When a plaintiff releases a defendant from liability, a remaining joint tortfeasor in the case may seek contribution from the released defendant. Id. However, the remaining party in the action may not recover from the released party without establishing common liability. Id.; Idaho Code § 6-805(2). Statute of limitations begins to run when the underlying claim, judgment or settlement is paid or discharged. Schiess v. Bates, 693 P.2d 440 (Idaho 1984). The statute of limitations is 3 years. Porter v. Farmers Ins. Co. of Idaho, 627 P.2d 311 (Idaho 1981); Idaho Code § 5-218(a).

Implied Indemnity: A person who without fault on his part is compelled to pay damages occasioned by the negligence of another is entitled to indemnity. Industrial Indemnity Co. v. Columbia Basin Steel & Iron Co., 471 P.2d 574 (Idaho 1970). Where the party seeking indemnity settles a claim, it must establish: (1) actual liability of the indemnitee to the third-party, (2)

an indemnity relationship, and (3) a reasonable settlement amount. Chenery v. Agri-Lines Corp., 766 P.2d 751 (Idaho 1988).

ILLINOIS

Contribution: Illinois' Contribution Among Joint Tortfeasors Act (740 Ill. Comp. Stat. 100/0.01, *et seq.*) establishes that joint tortfeasors have a right of contribution even though judgment has not been entered against all or any of them. 740 Ill. Comp. Stat. 100/2. The object of the claim may be liable for not more than its pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectible. 740 Ill. Comp. Stat. 100/3. Contribution is allowed when the contribution-seeking plaintiff settles, in good faith, and obtains a release that releases the liability of both tortfeasors and when a plaintiff collects damages inconsistent with jury's finding of percentage of responsibility. 740 Ill. Comp. Stat. 100/2. A defendant who enters a good-faith settlement is protected from any contribution liability to a non-settling defendant. BHI Corp. v. Litgen Concrete Cutting & Coring Co., 827 N.E.2d 435 (Ill. 2005); 740 Ill. Comp. Stat. 100/2(d). A joint tortfeasor must pursue contribution in a third-party complaint if the injured party has filed an action. Otherwise, it may pursue contribution by a separate action. Harshman v. DePhillips, 844 N.E.2d 941 (Ill. 2006); 740 Ill. Comp. Stat. 100/5. 2-year statute of limitations running from settlement if the claimant hasn't filed a suit. If the claimant has filed suit, 2-year statute of limitations running from the filing date, or from the time the party seeking contribution should have known of the act or omission giving rise to the action for contribution, whichever period expires later. 735 Ill. Comp. Stat. 5/13-204. Contribution claims related to improvements to real property are subject to Illinois' 4-year statute of limitations and 10-year statute of repose for actions related to such improvements. Guzman v. C.R. Epperson Construction, Inc., 752 N.E.2d 1069 (Ill. 2001); Carlson v. Moline Bd. of Educ., 596 N.E.2d 176 (Ill. 1992); 735 Ill. Comp. Stat. 5/13-214.

Implied Indemnity: To assert implied indemnity, the defendant must show: 1) a pre-tort relationship between the defendant and tortfeasor, 2) a distinction between the actions and omissions of the defendant and the tortfeasor, and 3) that the defendant was free from fault in the original action. Frazer v. A.F. Munsterman, Inc., 527 N.E.2d 1248 (Ill. 1988). Implied indemnity based upon the active/passive negligence doctrine has been abolished. Allison v. Shell Oil Co., 495 N.E.2d 496 (Ill. 1986). The statute of limitations periods are the same as stated above for contribution claims, 735 Ill. Comp. Stat. 5/13-204, but the statute does not govern breaches of express indemnity agreements. Travelers Cas. & Sur. Co. v. Bowman, 893 N.E.2d 583 (Ill. 2008). The party seeking indemnification can file a third-party complaint or a separate action. Madigan v. Yballe, 920 N.E.2d 1112 (Ill. App. Ct. 2009). Indemnity claims related to improvements to real property are subject to Illinois' 4-year statute of limitations and 10 year statute of repose for actions related on such improvements. Guzman; Board of Library Directors v. Skidmore, Owings & Merrill, 574 N.E.2d 869 (Ill. App. Ct. 1991); 735 Ill. Comp. Stat. 5/13-214.

INDIANA

Contribution: Indiana bars the right of contribution. Ind. Code §§ 34-51-2-12. A tortfeasor cannot be liable for more than its proportional percentage of fault. Ind. Code §§ 34-20-7-1 (products liability); Ind. Dep't of Ins. v. Everhart, 960 N.E.2d 129 (Ind. 2012). Liability is assessed between all parties and a defendant may attribute fault to a non-party. Ind. Code § 34-51-2-14.

Implied Indemnity: The right to indemnity may be implied at common law only in favor of one whose liability to a third person is derivative or constructive, and only as against one who has by his wrongful act caused such derivative or constructive liability to be imposed upon the indemnitee. Indianapolis Power & Light Co. v. Brad Snodgrass, Inc., 578 N.E.2d 669 (Ind. 1991). Examples include claims based on *respondere superior* and implied warranty/product claims between sellers and manufacturers of products. E.Z. Gas, Inc. v. Hydrocarbon Transportation, Inc., 471 N.E.2d 316 (Ind. Ct. App. 1984). A seller may pursue indemnity against a manufacturer after the seller settles a suit, but it must prove the manufacturer was liable, the seller did not breach its duty to inspect and that the seller did not alter the product. Four Winns, Inc. v. Cincinnati Ins. Co., 471 N.E.2d 1187 (Ind. Ct. App. 1984). An indemnity claim may be brought in the primary suit even though the cause of action does not accrue until payment of the underlying claim. Coca-Cola Bottling Co. v. Vendo Co., 455 N.E.2d 370 (Ind. Ct. App. 1983); Ind. R. Trial P. 14. Indemnification claims are subject to Indiana's general, 10-year statute of limitations. Balvich v. Spicer, 894 N.E.2d 235 (Ind. Ct. App. 2008); Ind. Code § 34-11-1-2. The statute of limitations for an indemnity claim does not begin to run until the indemnitee's liability is determined. Coca-Cola.

IOWA

Contribution: A right of contribution exists between joint tortfeasors, whether or not judgment has been entered against all or any of them. Iowa Code § 668.5. The basis of contribution is each person's equitable share. Id. If a court has established the parties' percentage of fault, a party paying more than its percentage may recover judgment for contribution upon motion in the original action or in a separate action. Iowa Code § 668.6. A separate action must be commenced within 1 year after payment or after the judgment becomes final. Id. A settling defendant may seek contribution either in the underlying suit or a separate suit from a joint tortfeasor whose liability was released by the settlement. Iowa Code § 668.5. A settling tortfeasor seeking contribution must discharge the liability of the person from whom contribution is sought. Iowa Code § 668.6. Contribution claims related to improvements to real property are subject to a 10-year statute of repose, running from the act or omission, for residential construction, and 8 years for most other kinds of improvements to real property. Iowa Code § 614.1(11).

Implied Indemnity: Iowa recognizes the doctrine of implied contractual indemnity that rises from a contractual relationship between the parties

■ IOWA (continued)

even if the contract does not include an express indemnity clause. Wells Dairy, Inc. v. American Indus. Refrigeration, Inc., 762 N.W.2d 463 (Iowa 2009). However, indemnity will not be implied in ordinary, routine contracts. Id. A party seeking implied contractual indemnification need not be blameless in connection with the incident. Id. Iowa also recognizes equitable indemnity claims, which arise from non-contractual obligations and the relationship of the parties. Id. Equitable indemnification arises in vicarious liability situations and in situations where there is a “independent duty” between the indemnitor and the indemnitee. Id. Iowa does not recognize implied indemnity arising from a great disparity in fault. Id. To bring an indemnity claim in a third-party action, a party must establish that it was liable to the injured party, because indemnity involves shifting responsibility for the underlying claim from one to another. McNally & Nimergood v. Neumann-Kiewit Constructors, Inc., 648 N.W.2d 564 (Iowa 2002). For a defendant who settled the original claim to recover indemnification, it must establish the existence of its liability in the underlying suit, that a reasonable settlement was made, and that the indemnitor had a duty to indemnify the indemnitee. Id. The statute of limitations for implied contracts is 5 years. Diggan v. Cycle Sat, Inc., 576 N.W.2d 99 (Iowa 1998); Iowa Code § 614.1(4). Indemnity claims related to improvements to real property are subject to a 10-year statute of repose, running from the act or omission, for residential construction, and 8 years for most other kinds of improvements to real property. Iowa Code § 614.1(11).

■ KANSAS

Contribution: Except in product liability, contribution, known as “comparative implied indemnity,” is generally not recognized. Parties are liable only for their fault, determined in a single trial, even if one or more parties cannot be joined formally as litigants or be held responsible for their proportionate share. Teepak, Inc. v. Learned, 699 P.2d 35 (Kan. 1985). Because of its one-action rule, Kansas does not generally recognize post-settlement contribution claims. Dodge City Implement, Inc. v. Board of County Comm’rs, 205 P.3d 1265 (Kan. 2009). However, under the doctrines of strict liability and implied warranty, a party in the chain of a product’s distribution may seek contribution from other such parties. Id. The court will bar any lawsuit by a joint tortfeasor against another tortfeasor if (1) an injured party has previously sued one tortfeasor, but not others; (2) that tortfeasor has settled with the injured party; (3) the injured party has given a full release of all claims held by it, and (4) the settling tortfeasor claims the other tortfeasors caused all or part of the injured party’s damages. Id. Claims are subject to a 2-year statute of limitations, running from the date when the party seeking contribution knew of facts giving rise to a potential contribution claim. Med James, Inc. v. Barnes, 61 P.3d 86 (Kan. App. 2003) (applying Kan. Stat. Ann. § 60-513).

Implied Indemnity: An implied contract of indemnity may arise when one personally without fault is made to pay for the tortious acts of another. Med James. To prevail on a claim, a party must prove (1) that it was compelled to pay an obligation that the purported indemnitor ought to have paid but did not; (2) that it was without fault; and (3) the obligation arose from the tortious actions of the purported indemnitor. Westport Ins. Corp. v. GuideOne Mut. Ins. Co., 2017 U.S. Dist. LEXIS 140310 (Kan. 2017). The statute of limitations period is 3 years running from the date the indemnitee suffers an actual loss. Med James (applying Kan. Stat. Ann. § 60-512).

■ KENTUCKY

Contribution: Although Kentucky has a contribution statute, Ky. Rev. Stat. Ann. § 412.030, it has been partially abrogated. Contribution is unavailable when the party claiming recovery and the party from which recovery is sought are both parties to the same action. Dix & Assocs. Pipeline Contractors, Inc. v. Key, 799 S.W.2d 24 (Ky. 1990). The law is unsettled as to whether contribution is actionable when the object of the claim was not a party to the underlying action by the injured person. CSX Transp. v. GE, 2009 U.S. Dist. LEXIS 94304 (W.D. Ky. 2009); Degener v. Hall Contracting Corp., 27 S.W.3d 775 (Ky. 2000). The statute of limitations is 5 years from judgment and/or payment. Baker v. Richeson, 440 S.W.2d 272 (Ky. 1969) (applying Ky. Rev. Stat. Ann. § 413.120).

Implied Indemnity: Common law indemnity is permitted in two classes of cases: (1) Where the party claiming indemnity has not been guilty of any fault, except technically, or constructively, as where an innocent master was held to respond for the tort of his servant acting within the scope of his employment; or (2) where both parties have been in fault, but not in the same fault, towards the party injured, and the fault of the party from whom indemnity is claimed was the primary and efficient cause of the injury. Degener. A claim for indemnity need not await payment of the liability on which indemnity is sought but may be asserted in the original tort action. Id. The statute of limitations is 5 years from judgment and/or payment. Degener (citing the “catch all” provision of Ky. Rev. Stat. Ann. § 413.120).

■ LOUISIANA

Contribution: After the statutory abrogation of joint-and-several liability, contribution is not recognized, except in cases of intentional torts. Hamway v. Braud, 838 So.2d 803 (La. Ct. App. 2002). A tortfeasor who has paid more than his share of a solidary obligation may seek reimbursement from the other tortfeasors for their respective shares of the judgment which are proportionate to the fault of each. Id.

Implied Indemnity: Implied indemnity arises when the fault of the person seeking indemnification is solely constructive or derivative, from failure or omission to perform some legal duty, and may only be had against one who, because of his act, has caused such constructive liability to be imposed. A party who is actually negligent or at fault cannot recover tort indemnity. Hamway. There is a 1-year statute of limitations, which runs from the date of judgment and/or payment. Orlando v. E.T.I., 15 So.3d 951 (La. 2008) (applying La. Civ. Code Ann. art. 3492).

■ MAINE

Contribution: Contribution arises at common law rather than statute. Otis Elevator Co. F.W. Cunningham & Sons, 454 A.2d 335 (Me. 1983). While contribution is allowed for joint, negligent tortfeasors, it is not allowed for joint, intentional tortfeasors. Id.; Bedard v. Greene, 409 A.2d 676 (Me. 1979). A settling party seeking contribution should extinguish the claims of the party it seeks contribution from in the release it secures. S.R. Weiner & Assocs. v. Kohl’s Dep’t Stores, 2011 Me. Super. LEXIS 218 (Aug. 11, 2011). A party may pursue contribution in the plaintiff’s lawsuit or in a subsequent lawsuit. St. Paul Ins. Co. v. Hayes, 676 A.2d 510 (Me. 1996). The statute of limitations is 6 years from the date of payment or judgment. Cyr v. Michaud, 454 A.2d 1376 (Me. 1983) (applying Me. Rev. Stat. tit. 14, § 752); Johanson v. Dunnington, 785 A.2d 1244 (Me. 2001). Contribution claims against architects and engineers are subject to a 4-year statute of limitations and a 10-year statute of repose. McKeeman v. Cianbro Corp., 1999 Me. Super. LEXIS 308 (Nov. 9, 1999), overruled on other grounds, 804 A.2d 406 (Me. 2002).

Implied Indemnity: In non-contractual situations, Maine does not recognize a cause of action for indemnity arising from a disparity of negligence between two parties responsible for another’s injury. Roberts v. American Chain & Cable Co., Inc., 259 A.2d 43 (Me. 1969). Indemnity may be agreed to expressly, or a contractual right of indemnification may be implied from the nature of the relationship between the parties. Emery v. Hussey Seating Co., 697 A.2d 1284 (Me. 1997). In a products case, a manufacturer of a defective product must indemnify a seller when (1) the seller reasonably relied upon the manufacturer’s knowledge and skill in making the product free from defects; and (2) that any negligence on the seller’s part consists of, at most, a failure to discover the defect. Id. A party may pursue indemnification in the plaintiff’s lawsuit or in a subsequent lawsuit. St. Paul Ins. Co. The statute of limitations is 6 years from the date of payment. Me. Rev. Stat. tit. 14, § 752; Cyr; Johanson. Indemnification claims against architects and engineers are subject to a 4-year statute of limitations and a 10-year statute of repose. McKeeman.

■ MARYLAND

Contribution: Maryland’s Uniform Contribution Among Joint Tortfeasors Act creates a right of contribution among joint tortfeasors. Md. Code Ann. Cts. & Jud. Proc. § 3-1401, *et. seq.* There is no contribution where the injured person has no right of action against the third-party defendant. Montgomery County v. Valk Mfg. Co., 562 A.2d 1246 (Md. 1989). Recovery is by equal shares, not by allocated percentages. Mercy Med. Ctr. v. Julian, 56 A.3d 147 (Md. 2012). A joint tortfeasor is not entitled to a money judgment for contribution until he has, by payment, discharged the common liability or paid more than his pro rata share. Md. Code Ann. Cts. & Jud. Proc. § 3-1402; Hashmi v. Bennett, 7 A.3d 1059 (Md. 2010). A joint tortfeasor who enters into a settlement with the plaintiff is not entitled to recover contribution from a tortfeasor whose liability the plaintiff did not extinguish in the settlement. Md. Code Ann. Cts. & Jud. Proc. § 3-1402. The plaintiff’s release of one joint tortfeasor does not relieve the released party from liability to make contribution to another joint tortfeasor unless the release: a) is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued; and b) provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person’s damages against all tortfeasors. Md. Code Ann. Cts. & Jud. Proc. § 3-1405. The plaintiff’s release of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides. Md. Code Ann. Cts. & Jud. Proc. § 3-1404. Although a party pursuing contribution may pursue the claim in the original action, it is not required to do so. Mercy Med. Ctr. Rather, after discharging the judgment or paying more than its pro rata share of the judgment, a party pursuing contribution can file a post-trial motion for contribution against another defendant. Id. (applying Md. Rule 2-614). Alternatively, it can file a second action. Mercy Med. Ctr. The liability of the party seeking contribution must have been adjudicated in the injured party’s action, or the party must admit its joint tortfeasor status; such status cannot be adjudicated in a second contribution action. Mercy Med. Ctr.; Jones v. Hurst, 459 A.2d 219 (Md. App. 1983). The statute of limitations is 3 years from the date of payment. Baker, Watts & Co. v. Miles & Stockbridge, 620 A.2d 356 (Md. App. 1993) (applying Md. Code Ann., Ct. & Jud. Proc. § 5-101). Contribution actions related to an improvement to real property are subject to a 20-year statute of repose. Md. Code Ann. Cts. & Jud. Proc. § 5-108(a).

Implied Indemnity: Arises in two situations, involving (a) a special relationship between the indemnitee and indemnitor or (b) when one party is unjustly enriched at the expense of another when the other discharges liability that it is his responsibility to pay. Pulte Home Corp. v. Parex, Inc., 942 A.2d 722 (Md. 2008). To recover the latter type of indemnity, the party asserting the claim cannot be guilty of active negligence. Id. The statute of limitations is 3 years from the date of payment. Md. Code Ann. Cts. & Jud. Proc. § 5-101; Tadler v. Montgomery County, 487 A.2d 658 (Md. App. 1985). Indemnity actions related to an improvement to real property are subject to a 20-year statute of repose. Md. Code Ann. Cts. & Jud. Proc. § 5-108(a).

■ MASSACHUSETTS

Contribution: Authorized by Right of Contribution Among Joint Tortfeasors Statute, Mass. Gen. Laws ch. 231B § 1. The right to contribution exists irrespective of a judgment. Id. A right of contribution exists in favor of a joint tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. Id. A tortfeasor’s contribution share is apportioned on a pro rata basis, by equal shares, not on relative degree of fault. Mass. Gen. Laws ch. 231B § 2; Zeller v. Cantu, 478 N.E.2d 930 (Mass. 1985). Contribution claim may be asserted in the injured party’s action or in a separate action. Mass. Gen. Laws ch. 231B § 3. Where a judgment has been entered in an action against two or more tortfeasors,

MASSACHUSETTS (continued)

contribution should be enforced in that action by judgment in favor of one against other judgment defendants. Id. If there is a judgment, any separate contribution action against non-parties must be brought within one year after the judgment has become final. Id. If there is no judgment against the tortfeasor seeking contribution, to seek contribution he has to: 1) discharge, by payment, the common liability within the statute of limitations period applicable to the claimant's right of action against him and commence any separate action for contribution within one year after payment; or 2) agree while the action is pending against him to discharge the common liability and, within one year after the agreement, pay the common liability and commence his action for contribution. Id. Payment by a joint tortfeasor is a prerequisite to an action for contribution. Robertson v. McCarte, 433 N.E.2d 1262 (Mass. App. Ct. 1982). The 6-year statute of repose for tort actions related to improvements to real property applies to contribution actions. Dighton v. Federal Pacific Electric Co., 506 N.E.2d 509 (Mass. 1987); Mass. Gen. Laws ch. 260 §2B.

Implied Indemnity: A contractual right to indemnification will be implied only in two circumstances. First, when there are unique special factors demonstrating that the parties intended that the putative indemnitor bear the ultimate liability, or second, when there is a generally recognized special relationship between the parties. Indemnity is available where the party seeking indemnification did not join in the negligent act but is nonetheless exposed to derivative or vicarious liability by reason of the negligence of another. Fireside Motors, Inc. v. Nissan Motor Corp., 479 N.E.2d 1386 (Mass. 1985). A person seeking implied indemnity may pursue the indemnification claim even if the claim is settled. Id. An action for implied contractual indemnification is subject to a 6-year statute of limitations, accruing at the time the implied contract is breached. Fall River Housing Authority v. H. V. Collins Co., 604 N.E.2d 1310 (Mass. 1992); Mass. Gen. Laws ch. 260 § 2.

■ **MICHIGAN**

Contribution: Authorized by statute, Mich. Comp. Laws § 600.2925a, *et seq.* A right of contribution exists in favor of a tortfeasor who has paid more than his pro rata share and his total recovery is limited to the amount paid by him in excess of his pro rata share. Id. Pro rata share is determined by relative degrees of fault. Mich. Comp. Laws § 600.2925b. Contribution is barred if the object of the contribution claim is not notified of the action or settlement negotiations and given the opportunity to contribute to the settlement of the injured party's claim. Mich. Comp. Laws § 600.2925a. A settlement must extinguish the liability of the contributee. Id. Contribution may be enforced in a separate action. Mich. Comp. Laws § 600.2925c. Statute of limitations is 1 year from judgment or payment, id., subject to the 6-year statute of repose for claims arising from improvements to real property (10 years in case of gross negligence). Mich. Comp. Laws § 600.5839.

Implied Indemnity: Michigan recognizes both common-law indemnity and implied contractual indemnity. Skinner v. D-M-E Corp., 335 N.W.2d 90 (Mich. App. 1983). Common law indemnity is based on the equitable principle that where the wrongful act of one results in another being held liable, the latter party is entitled to restitution from the wrongdoer; the right can only be enforced where liability arises vicariously or by operation of law from the acts of the party from whom indemnity is sought. Id. An implied contract to indemnify arises only if there is a special relationship between the parties or a course of conduct whereby one party undertakes to perform a certain service and impliedly assures indemnification. Id. Both types of indemnity require that the person seeking indemnification be free from active negligence, to be determined from the allegations of the injured party's complaint. Id. Statute of limitations for breach of an implied contract causing damage to financial expectations and economic benefit is 6 years, Fries v. Holland Hitch Co., 162 N.W.2d 672 (Mich. Ct. App. 1968) (applying Mich. Comp. Laws § 600.5837), subject to the 6-year statute of repose for claims arising from improvements to real property (10 years in case of gross negligence). Mich. Comp. Laws § 600.5839.

■ **MINNESOTA**

Contribution: At common law, when two parties share common liability for another's damages, one may be liable to the other for contribution even though the injured party sued only one. Spitzack v. Schumacher, 241 N.W.2d 641 (Minn. 1976). A joint tortfeasor may seek contribution so long as he is not guilty of intentional wrongdoing. Employers Mut. Cas. Co. v. Chicago, S.P., M. & O. R. Co., 50 N.W.2d 689 (Minn. 1951). Minnesota also allows for contribution among persons against whom judgments have been entered. Minn. Stat. § 548.19. When a judgment against multiple tortfeasors is enforced against or paid by one of them, or one of them pays more than a proper share, the paying debtor may continue the judgment in force for purposes of compelling contribution. Id. If, within 10 days after enforcement or payment, the paying debtor files a notice of the amount paid or collected from the debtor in excess of the debtor's proper share, and of the debtor's claim for contribution, the judgment shall remain in effect in favor of the party filing the notice. Id. A joint tortfeasor need not wait until it has made the actual payment to bring a contribution or indemnity claim but may institute a third-party action in conjunction with the original claim. Blomgren v. Marshall Management Services, Inc., 483 N.W.2d 504 (Minn. Ct. App. 1992). A party to the injured person's lawsuit may also pursue contribution in a second action. Anderson v. Gabrielson, 126 N.W.2d 239 (Minn. 1964). Contribution between joint tortfeasors is apportioned in accordance with the degree of negligence attributable to each rather than by equal shares. Spitzack. A cause of action does not arise until the party seeking contribution pays more than its share of the damage. Blomgren. Generally, contribution claims arising under the statute and at common law are subject to a six-year limitation. Minn. Stat. § 541.05. Contribution claims related to improvements to real property are subject to a 2-year statute of limitations, with claims accruing upon payment of a final judgment, arbitration award or settlement, subject to a 14-year statute of repose. Minn. Stat. § 541.051. A party whose share of an

obligation to an injured person is uncollectible and which is distributed among the other parties is subject to contribution. Minn. Stat. § 604.02(2).

Implied Indemnity: Indemnity arises out of a contractual relationship, either express or implied by law, which requires one party to reimburse the other entirely. Blomgren. A joint tortfeasor may generally recover indemnity only in the following situations: (1) where the one seeking indemnity has only a derivative or vicarious liability for damage caused by the one sought to be charged; (2) where the one seeking indemnity has incurred liability by action at the direction, in the interest of, and in reliance upon the one sought to be charged; (3) where the one seeking indemnity has incurred liability because of a breach of duty owed to him by the one sought to be charged; (4) where the one seeking indemnity has incurred liability merely because of failure, even though negligent, to discover or prevent the misconduct of the one sought to be charged; (5) where there is an express contract between the parties containing an explicit undertaking to reimburse for liability of the character involved. Hendrickson v. Minnesota Power & Light Co., 104 N.W.2d 843 (Minn. 1960). In situation (4), indemnity between joint tortfeasors is limited to contribution based upon relative fault. Tolbert v. Gerber Indus., Inc., 255 N.W.2d 362 (Minn. 1977). 6-year statute of limitations generally. Minn. Stat. § 541.05. Indemnity claims related to improvements to real property are subject to a 2-year statute of limitations, with claims accruing upon payment of a final judgment, arbitration award or settlement, subject to a 14-year statute of repose. Minn. Stat. § 541.051.

■ **MISSISSIPPI**

Contribution: Available only in the case of intentional torts. Miss. Code Ann. § 85-5-7. Contribution available only where a joint judgment is obtained among the parties. Estate of Hunter v. GMC, 729 So.2d 1264 (Miss. 1999).

Implied Indemnity: The obligation to indemnify may arise in three different instances: a contractual relation, from an implied contractual relation, or out of liability imposed by law. Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495 (Miss. 2007). The general rule governing implied indemnity for tort liability is that a joint tortfeasor, whose liability is secondary as opposed to primary, or is based upon imputed or passive negligence, as opposed to active negligence, or is negative negligence as opposed to positive negligence, may be entitled, upon an equitable consideration, to shift his responsibility to another joint tortfeasor. Home Ins. Co. v. Atlas Tank Mfg. Co., 230 So. 2d 549 (Miss. 1970). However, where the fault of each is equal in grade and similar in character, the doctrine of implied indemnity is not available since no one should be permitted to base a cause of action on his own wrong. Id. Two critical prerequisites are generally necessary for the invocation of noncontractual implied indemnity in Mississippi: (1) The damages which the claimant seeks to shift are imposed upon him as a result of some legal obligation to the injured person; and (2) it must appear that the claimant did not actively or affirmatively participate in the wrong. Id. To secure indemnity, the payment made by the party seeking indemnification cannot be voluntary. Minn. Life Ins. Co. v. Columbia Cas. Co., 164 So. 3d 954 (Miss. 2015); Southwest Mississippi Electric Power Assn. v. Haraquill, 182 So.2d 220 (Miss. 1966). The statute of limitations for an implied contract is 3 years after the cause of action accrues. Miss. Code Ann. § 15-1-29. With respect to improvements to real property, except where there is a prior written agreement providing for indemnification, indemnification claims are subject to the 6-year statute of repose. Miss. Code Ann. § 15-1-41.

■ **MISSOURI**

Contribution: The right of contribution exists pursuant to statute. Mo. Rev. Stat. § 537.060. Contribution is available after judgment or settlement. Id. When the plaintiff gives a release or a covenant not to sue or not to enforce a judgment in good faith, the agreement shall not discharge the other tortfeasors unless the terms of the agreement so provide. Id. The agreement discharges the tortfeasor to whom it is given from all liability for contribution or noncontractual indemnity to any other tortfeasor. Id. To enforce contribution, the liability of the non-settling party must be extinguished by the terms of the agreement with the injured person or by the passing of the statute of limitations governing the injured person's claim against the non-settling party. Clark's Resources, Inc. v. Ireland, 142 S.W.3d 769 (Mo. Ct. App. 2004). If contribution claims are not resolved in the plaintiff's original lawsuit, a defendant seeking contribution against nonparties may pursue a second action. Safeway Stores, Inc. v. Raytown, 633 S.W.2d 727 (Mo. 1982); Mo. Rev. Stat. § 537.060. The statute of limitation is 5 years from the time of settlement or payment of judgment, Greenstreet v. Rupert, 795 S.W.2d 539 (Mo. Ct. App. 1990) (applying Mo. Rev. Stat. § 516.120), subject to the 10-year statute of repose for claims arising from improvements to real property. Mo. Rev. Stat. § 516.097. An architect, engineer or builder faced with a claim of a defective or unsafe condition to an improvement to real property filed within the statute of repose may file a contribution claim arising from an improvement to real property within 1 year of the filing of the underlying case. Id.

Implied Indemnity: In addition to express contractual indemnity, there are two other general classes of indemnity: (1) implied contractual indemnity, also known as implied-in-fact indemnity; and (2) equitable indemnity, also known as implied-in-law indemnity. American Nat'l Prop & Cas. Co. v. Ensley & Jester, P.C., 358 S.W.3d 75 (Mo. Ct. App. 2011). Implied-in-fact contractual indemnity stems from the existence of a binding contract between two parties that necessarily implied the right of indemnification. Id. The party asserting such indemnity must show that the parties to the contract intended the indemnitor to be responsible for the loss. Id. Thus, a claim of implied-in-fact indemnity asserts a contractual right to indemnity, even though no express contract for indemnity exists. Id. In contrast, when equitable (implied-in-law) indemnity is involved, the intention of the parties is irrelevant. Id. The law imposes indemnity due to the relationship of the parties regardless of intention. Id. The question is whether there is some duty between the indemnitor and the indemnitee sufficient to impose

MISSOURI (continued)

indemnity on the indemnitor as a matter of law, regardless of their intentions. Id. Generally, to give rise to equitable indemnity, a relationship between the parties must be found. Id. To establish a claim for equitable indemnity, the plaintiff must show: (1) the discharge of an obligation by the plaintiff; (2) the obligation discharged by the plaintiff is identical to an obligation owed by the defendant; and (3) the discharge of the obligation by the plaintiff is under such circumstances that the obligation should have been discharged by the defendant, and defendant will be unjustly enriched if the defendant does not reimburse the plaintiff to the extent that the defendant's liability has been discharged. Beeler v. Martin, 306 S.W.3d 108 (Mo. Ct. App. 2010). 5-year statute of limitations for implied contracts, Mo. Rev. Stat. § 516.120, runs from the time that the party seeking indemnity paid or was compelled to pay a judgment recovered by the injured person, Simon v. Kansas City Rug Co., 460 S.W.2d 596 (Mo. 1970), subject to the 10-year statute of repose for claims arising from improvements to real property, Mo. Rev. Stat. § 516.097. An architect, engineer or builder faced with a claim of a defective or unsafe condition to an improvement to real property filed within the statute of repose may file an indemnity claim arising from an improvement to real property within 1 year of the filing of the underlying case. Id.

■ MONTANA

Contribution: Mont. Code Ann. § 27-1-703 creates a right of contribution among joint tortfeasors. The joint tortfeasor from which contribution is sought must have been a party in the underlying action. Id. Contribution may be sought in the underlying action or as a separate action. Consolidated Freightways v. Osier, 605 P.2d 1076 (Mont. 1979). Statute of limitations is 3 years from the date of settlement or payment of judgment. Mont. Code Ann. § 30-3-122(7).

Implied Indemnity: Where the parties are not both at fault and an injury results from the act of one party whose negligence is the primary, active and proximate cause of the injury, and another party, who is not negligent, is nevertheless exposed to liability by the acts of the first party, the first party may be liable to the second party for the full amount of damages incurred by such acts. Consolidated Freightways. Indemnity of a passively negligent party is no longer permitted; the party seeking indemnity must have clean hands. Metro Aviation, Inc. v. United States 305 P.3d 832 (Mont. 2013). A joint tortfeasor who settles with the claimant before judgment on the claim is entered is not subject to claims for contribution or indemnity from the non-settling joint tortfeasors. State ex re. Deere & Co. v. District Court 730 P.2d 396 (Mont. 1986). Statute of limitations is 3 years from the date of settlement or payment of judgment. Mont. Code Ann. § 30-3-122(7).

■ NEBRASKA

Contribution: The right to equitable contribution exists among joint tortfeasors. Royal Indem. Co. v. Aetna Casualty & Surety Co. 229 N.W. 2d 183 (Neb. 1975). A party seeking contribution must establish four elements, to wit: (1) there must be a common liability among the party seeking contribution and the parties from whom contribution is sought; (2) the party seeking contribution must have paid more than its pro rata share of the common liability; (3) the party seeking contribution must have extinguished the liability of the parties from whom contribution is sought; and (4) if such liability was extinguished by settlement, the amount paid in the settlement must be reasonable. Estate of Powell v. Montange, 765 N.W. 2d 496 (Neb. 2009). Statute of limitations is 4 years from the date the party seeking contribution "pays or has paid one-half of the debt as a whole." Neb. Rev. Stat. § 25-206; Cepel v. Smallcomb, 628 N.W. 2d 654 (Neb. 2001).

Implied Indemnity: For indemnity to be implied a "special relationship" must exist. Harsh Int'l v. Monfort Indus. 662 N.W.2d 574 (Neb. 2003). Examples of a special relationship include principle and agent, bailor and bailee, lessor, and lessee, or a situation giving rise to vicarious liability. Id. The party seeking indemnity must have been free of any wrongdoing, and its liability is vicariously imposed. Wood River v. Geer-Melkus Constr. Co., 444 N.W. 2d 305 (Neb. 1989). Statute of limitations is 4 years and accrues at the time the indemnity claimant suffers loss or damage. Id.; Neb. Rev. Stat. § 25-206.

■ NEVADA

Contribution: Nev. Rev. Stat. § 17.225 creates a right of contribution among joint tortfeasors. Contribution is only available if a judgment or settlement agreement expressly extinguishes liability on the party from whom contribution is sought. Discount Tire Co. of Nev. v. Fisher Sand & Gravel Co., 400 P.3d 244 (Nev. 2017). Judgment against one tortfeasor does not discharge the other tortfeasors from liability, nor does satisfaction of the judgment impair the right of contribution. Nev. Rev. Stat. § 17.225; Van Cleave v. Gamboni Constr. Co., 706 P.2d 845 (Nev. 1985). No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability and a settling party will not be entitled to recover any amount paid in settlement which is in excess of what was reasonable. Nev. Rev. Stat. § 17.225. A settlement made in good faith releases the settling parties from further contribution to the non-settling parties. Nev. Rev. Stat. § 17.245(1)(b). Factors a court considers in assessing whether a settlement is in good faith are "the amount paid in settlement, the allocation of the settlement proceeds among plaintiffs, the insurance policy limits of settling defendants, the financial condition of settling defendants, and the existence of collusion, fraud, or tortious conduct aimed to injure the interests of the non-settling defendants." In re MGM Grand Hotel Fire Litig., 570 F.Supp. 913 (D. Nev. 1983). A contribution claim must be filed within 1 year after the judgment has become final by lapse of time for appeal or after appellate review. Nev. Rev. Stat. § 17.285(3). Saylor v. Arcotta, 225 P.3d 1276 (Nev. 2010).

Implied Indemnity: The right of indemnity rests upon a difference between the primary (active) and the secondary (passive) liability of two parties, each of whom is made responsible by the law to an injured third-

party. Black & Decker v. Essex Group, 775 P.2d 698 (Nev. 1989). For one tortfeasor to be in a position of secondary responsibility and thus be entitled to indemnification, there must be a preexisting legal relation between them, or some duty on the part of the primary tortfeasor to protect the secondary tortfeasor. Id. A settling party may seek protection against claims of implied indemnity by obtaining a formal ruling that its settlement is made in good faith under Nev. Rev. Stat. § 17.245. Doctors Co. v. Vincent, 98 P.3d 681, 690 (Nev. 2004). 4-year statute of limitations. Nev. Rev. Stat. 11.190(2)(c); Saylor v. Arcotta, 225 P.3d 1276 (Nev. 2010).

■ NEW HAMPSHIRE

Contribution: Joint tortfeasors may assert contribution claims against each other. N.H. Rev. Stat. Ann. § 507:7-f. Contribution action may be pursued by a party even if no judgment was rendered against said party. Id. Contribution is not available to a person who enters into a settlement with a claimant unless the settlement extinguishes the liability of the person from whom contribution is sought, and then only to the extent that the amount paid in settlement was reasonable. Id.; Pike Indus. v. Hiltz Constr., 718 A.2d 236 (N.H. 1998). Contribution actions must be commenced within 1 year after the underlying judgment becomes final or the underlying settlement is made. N.H. Rev. Stat. Ann. § 507:7-g(III); Connors v. Suburban Propane Co., 916 F. Supp. 73 (D.N.H. 1996). Contribution actions involving improvements to real property are subject to New Hampshire's 8-year statute of repose. Rankin v. South St. Downtown Holdings, Inc., 215 A.3d 882 (N.H. 2019).

Implied Indemnity: A duty to indemnify may be implied if the indemnitor had agreed to perform a service for the indemnitee and the service was performed negligently, causing harm to a third person in breach of a non-delegable duty of the indemnitee. Hamilton v. Volkswagen of Am., 484 A.2d 1116 (N.H. 1984). Indemnity is limited to when the indemnitee's liability is derivative or imputed by law or where an express or implied duty to indemnify exists. Collectramatic v. Kentucky Fried Chicken Corp., 499 A.2d 999 (N.H. 1985). The courts will rarely imply indemnity. Dunn v. CLD Paving, 663 A.2d 104 (N.H. 1995). Indemnity actions involving improvements to real property are subject to New Hampshire's 8-year statute of repose. Rankin.

■ NEW JERSEY

Contribution: Contribution is available when an injured party recovers a judgment against one or more tortfeasors and any one of the joint tortfeasors pays such judgment in whole or in part in excess of its proportionate share. N.J. Stat. Ann. § 2A:53A-3. Settling parties are entitled to contribution, regardless of whether the non-settling joint tortfeasor was a party to the original action, if the settlement extinguishes the non-settling party's liability. Sattelberger v. Telep, 102 A.2d 577 (N.J. 1954). To satisfy the judgment requirement, a settling party should move for a consent judgment from the court rather than file a stipulation of dismissal. Lawler v. Isaac, 592 A.2d 1 (N.J. Super. App. Div. 1991). Contribution for ordinary settlements may be permitted if the non-settling tortfeasor was a non-party to the lawsuit, there was a dismissal, and the statute of limitations time-bars the original plaintiff from making a claim against the contribution defendant. Gangemi v. Nat'l Health Labs., Inc., 701 A.2d 965 (N.J. Super. App. Div. 1997). Claims for contribution are governed by contract law and are subject to a 6-year statute of limitations. Ideal Mut. Ins. Co. v. Royal Globe Ins. Co., 511 A.2d 1205 (N.J. Super. App. Div. 1986); N.J. Stat. Ann. § 2A:14-1.

Implied Indemnity: The right of indemnity rests upon a difference between the primary and secondary liability of two persons each of whom is made responsible by the law to an injured party. Adler's Quality Bakery, Inc. v. Gaseteria, Inc., 159 A.2d 97 (N.J. 1960). It is a right which enures to a person who, without active fault on his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another, and for which he himself is only secondarily liable. Id. Implied indemnity is available only when a special legal relationship exists between the indemnitee and indemnitor and the liability of the indemnitee is vicarious. Ramos v. Browning Ferris Industries, Inc., 510 A.2d 1152 (N.J. 1986). Examples of the special relationship include that of principal and agent, bailor and bailee, lessor and lessee, and manufacturer and retailer. Id. A party may be indemnified for settlement payments it makes provided that: (a) the indemnitee's claims are based on a valid, pre-existing indemnitor/ indemnitee relationship; (b) the indemnitee faced potential liability for the claims underlying the settlement; and (c) the settlement amount was reasonable. Serpa v. N.J. Transit, 951 A.2d 208 (N.J. Super. App. Div. 2008). The statute of limitations does not begin to run until a judgment for damages has been entered. Adler's.

■ NEW MEXICO

Contribution: Authorized by Uniform Contribution Among Tortfeasors Act, N.M. Stat. § 41-3-1, *et seq.* Available for payments made by a joint tortfeasor, irrespective of a judgment. N.M. Stat. §§ 41-3-1, 41-3-2. However, except in cases of intentional tort, vicarious liability, strict product liability and for other public policy reasons, defendants are severally liable and said defendants are not entitled to contribution. N.M. Stat. § 41A-3A-1. A joint tortfeasor is not entitled to contribution from another unless the other tortfeasor's liability is extinguished by the settlement. N.M. Stat. 41-3-2. Recovery is equal to the ratio of each joint tortfeasor's percentage of fault to the total percentage of fault attributed to all tortfeasors. N.M. Stat. § 41-3-2. 4-year statute of limitations under N.M. Stat. § 37-1-4, accruing at time of payment of settlement, though claim may be barred by statute of limitations or repose applicable to particular type of underlying case (i.e. medical malpractice) irrespective of the date of settlement. Mora-San Michel Elec. Coop., Inc. v. Hicks & Ragland Consulting & Eng'g Co. 598 P.2d 218 (N.M. Ct. App. 1979); Christus St. Vincent Reg'l Med. Ctr. v. Duarte-Afara, 267 P.3d 70 (N.M. Ct. App. 2011).

NEW MEXICO (continued)

Implied Indemnity: Traditional indemnification is a common-law right to seek all-or-nothing recovery against the primary wrongdoer where there is an independent, pre-existing relationship between the parties. Amrep Southwest v. Shollenbarger Wood Treating, 893 P.2d 438 (N.M. 1995). Traditional indemnification allows a party who has been held liable without active fault to seek recovery from one who was actively at fault. Id. The

right to indemnification may be established through an express or implied contract, or may arise without agreement, and by operation of law to prevent an unjust result. Id. Traditional indemnification applies in negligence, breach of warranty, and strict liability cases where the indemnitee is in the chain of supply of a product. Id. Proportional indemnification is allowed only where a defendant is otherwise denied an apportionment of fault and can then seek partial recovery from another at fault. Id. The statute of limitations for indemnification claims begins running at the time of payment of settlement of the underlying claim. Budget Rent-A-Car Sys. v. Bridgestone Firestone N. Am. Tire, LLC, 203 P.3d 154 (N.M. Ct. App. 2008). Applicable statute of limitations is likely the 4-year "catch all" of N.M. Stat. § 37-1-4.

■ NEW YORK

Contribution: Authorized by N.Y. C.P.L.R. § 1401, *et seq.* In absence of release, waiver of contribution, or bar by workers' compensation laws, two or more parties liable for the same damages may claim contribution from the others whether or not action has been brought or judgment rendered against party from whom contribution is sought. N.Y. C.P.L.R. § 1401. A party is entitled to an amount in contribution paid by him over and above his equitable share. N.Y. C.P.L.R. § 1402. A claim for contribution may be asserted in the underlying action or a separate action. N.Y. C.P.L.R. § 1403. 6-year statute of limitations, beginning with the payment of the underlying claim. Blum v. Good Humor Corp., 394 N.Y.S.2d 894 (App. Div. 1977) (applying N.Y. C.P.L.R. § 213). However, claims against the state are still subject to a limited 2-year statute of limitations. Berlin & Jones, Inc. v. State, 381 N.Y.S.2d 778 (Ct. Cl. 1976).

Implied Indemnity: Common law indemnity is available where the proposed indemnitor's negligence contributed to injury when the party seeking indemnity was free from negligence. Martins v. Little, 899 N.Y.S.2d 30 (App. Div. 2010). New York recognizes both implied-in-fact (contract-based) and implied-in-law (tort-based) indemnification, depending on whether the relationship between the parties is contractual in nature or if the proposed indemnitor owes some other independent duty to the proposed indemnitee. Landtek Grp., Inc. v. Am. Specialty Flooring, Inc., 2016 U.S. Dist. LEXIS 107945 (E.D.N.Y. 2016). Six-year statute of limitations, accruing from the payment of settlement on the underlying claim. McDermott v. New York, 406 N.E.2d 460 (N.Y. 1980) (applying N.Y. C.P.L.R. § 213).

■ NORTH CAROLINA

Contribution: Authorized by Uniform Contribution among Tort-Feasors Act, N.C. Gen. Stat. § 1B-1, *et seq.* Contribution exists in favor of a tortfeasor who has paid more than his *pro rata* share of common liability. N.C. Gen. Stat. §§ 1B-1, 1B-2. Contribution can be enforced in the underlying action or in separate action. N.C. Gen. Stat. § 1B-3. If judgment has been entered in an action, and it is satisfied by fewer than all of the liable joint tortfeasors, the payor(s) shall set a notation on the docket of the preservation of the right of contribution, and then may enforce contribution by motion. N.C. Gen. Stat. § 1B-7. Where there is no judgment, contribution is barred unless the tortfeasor: (1) discharged the common liability within statute of limitations for the underlying right of action and commenced contribution action within 1 year after payment; (2) agreed to discharge common liability while underlying action was pending and commenced contribution action within 1 year; or (3) joined other tortfeasors as third-party defendants for purposes of contribution and re-filed the contribution action within 3 years following a voluntary dismissal. N.C. Gen. Stat. § 1B-3; Safety Mut. Casualty Corp. v. Spears, Barnes, Baker, Wainio, Brown & Whaley, 409 S.E.2d 736 (N.C. Ct. App. 1991).

Implied Indemnity: Common law allows indemnity claim where there are tortfeasors that are not both at fault. Edwards v. Hamill, 138 S.E.2d 151 (N.C. 1964). Primary and secondary liability exists only when parties are jointly and severally liable; and either one has been passively negligent but exposed to liability for activity by the other, or one has done the injury-causing act but the other is derivatively liable. Id. Action can be pursued in underlying claim, or in a separate claim commenced after payment and satisfaction of the debt. Ingram v. Garner, 191 S.E.2d 390 (N.C. Ct. App. 1972). 3-year statute of limitations, beginning to run upon payment of the debt. Id.

■ NORTH DAKOTA

Contribution: Authorized by N.D. Cent. Code § 32-38-01, *et seq.* If two or more persons become jointly or severally liable for the same injury there is a right of contribution among them, even if judgment has not been recovered against all or either of them, where one has paid more than his own *pro rata* share of the entire liability. N.D. Cent. Code § 32-38-01. There is no contribution for intentional torts, and a tortfeasor is not subject to contribution if its liability was not extinguished by a settlement, or if an amount paid in settlement was not reasonable. Id. Contribution can be sought in underlying action or separate action. N.D. Cent. Code § 32-38-03. Action for contribution must be commenced 1 year after payment, final judgment or appellate review of judgment. Id.

Implied Indemnity: A right of indemnity may arise by agreement or implication. Mann v. Zabolotny, 615 N.W.2d 526 (N.D. 2000). Where there is no express agreement, indemnification can be found based on the contractual nature of a relationship between parties, or in a tort-based right to indemnity when there is a great disparity in the fault of two tortfeasors, and one of the tortfeasors has paid for a loss that was primarily the

responsibility of the other. Id. 6-year statute of limitations. N.D. Cent. Code § 28-01-16(1); Johnson v. Haugland, 303 N.W.2d 533 (N.D. 1981).

■ OHIO

Contribution: Authorized by Ohio Rev. Code Ann. § 2307.25, *et seq.* Right of contribution arises if one or more persons are jointly and severally liable and a tortfeasor pays more than its proportionate share of the liability. Ohio Rev. Code Ann. § 2307.25. There is no contribution for intentional torts, and a tortfeasor is not subject to contribution if its liability was not extinguished by a settlement, or if an amount paid in settlement was not reasonable. Id. Proportionate share of liability is based on comparative fault, but principles of equity may apply as well. Id. Contribution can be sought in underlying action or separate action. Ohio Rev. Code Ann. § 2307.26. Action for contribution must be commenced 1 year after settlement, final judgment or appellate review of judgment. Id. Contribution arising out of actions related to improvements to real property are subject to Ohio's 10-year statute of repose. New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng'g, Inc. 2019-Ohio-2851, 2019 Ohio LEXIS 1446 (2019).

Implied Indemnity: A person is entitled to indemnity when he is secondarily liable for the wrongs of another, who is primarily liable. Convention Center Inn, Ltd. v. Dow Chemical Co., 590 N.E.2d 898 (Ohio Ct. App. 1990). To collect indemnity for sums paid in settlement of a claim, the party seeking indemnity must prove that the party from whom indemnity is claimed received timely notice of the settlement, that legal liability required the settlement, and that the settlement was fair and reasonable. Id. Cause of action does not arise until person seeking indemnification suffers a loss (*i.e.*, pays the claim). Firemen's Ins. Co. v. Antol, 471 N.E.2d 831 (Ohio Ct. App. 1984). 6-year statute of limitations. Id. (citing Ohio Rev. Code Ann. § 2305.07). Indemnity arising out of actions related to improvements to real property are subject to Ohio's 10-year statute of repose. New Riegel.

■ OKLAHOMA

Contribution: 12 Okla. Stat. § 832(A) provides that when two or more persons become jointly liable in tort for the same injury to a person, there is a right of contribution among them. Barringer v. Baptist Healthcare of Okla., 22 P.3d 695 (Okla. 2001). For a settling tortfeasor to bring a contribution claim against another non-settling tortfeasor, the release must extinguish the full amount of plaintiff's claims against the non-settling tortfeasor. Id. 12 Okla. Stat. § 95(2) prescribes a 3-year statute of limitations for an action upon liability created by statute. The statute of limitations does not run on a contribution claim until plaintiff has discharged the common debt or paid more than his share of it. Wilson v. Crutcher, 56 P.2d 416 (Okla. 1936).

Implied Indemnity: One who is only constructively or vicariously obligated to pay damages because of another's tortious conduct may recover the sum paid from the tortfeasor; however, concurrent or joint tortfeasors with no legal relationship have no right of indemnity against each other. GuideOne America Ins. Co., Inc. v. Shore Ins. Agency, Inc., 259 P.3d 864 (Okla. Civ. App. 2011). A cause of action for indemnity does not arise until the former judgement is paid. Central National Bank v. McDaniel, 734 P.2d 1314 (Okla. Civ. App. 1986). 12 Okla. Stat. § 95(A) applies a 3-year statute of limitations for implied contracts and a 2-year statute of limitations for an action for injury to the rights of another not arising in contract. See McDaniel.

■ OREGON

Contribution: Right of contribution is established by statute with five elements: (1) joint liability for the same injury; (2) payment by the contribution plaintiff of more than a proportional share of the common liability; (3) settlement extinguishing the contribution defendant's liability for the injury; (4) settlement that was not in excess of what was reasonable for the injury; (5) liability insurer is subrogated to the right of recovery to the extent of payment. Or. Rev. Stat. § 31.800; see Jensen v. Alley, 877 P.2d 108 (Or. Ct. App. 1994) (construing a predecessor statute). 2-year statute of limitations on the right of contribution, running from payment or judgment. Or. Rev. Stat. § 31.810.

Implied Indemnity: In an action for indemnity, the claimant must plead and prove that (1) he has discharged a legal obligation owed to a third party; (2) the defendant was also liable to the third party; and (3) as between the claimant and the defendant, the obligation ought to be discharged by the latter. Eclectic Inv., LLC v. Patterson, 346 P.3d 468 (Or. 2015). The duty to indemnify will be recognized in cases where community opinion would consider that in justice the responsibility should rest upon one rather than the other. General Ins. Co. v. P.S. Lord Mechanical Contractors, 482 P.2d 709 (Or. 1971). An indemnity action, under contract theory, may be brought within 6 years after the payment of a tort claim. Owings v. Rose, 497 P.2d 1183 (Or. 1972) (citing Or. Rev. Stat. § 12.080).

■ PENNSYLVANIA

Contribution: Authorized by Uniform Contribution Among Tort-feasors Act, 42 Pa. Cons. Stat. § 8321, *et seq.* Available for payments made by a joint tortfeasor, irrespective of a judgment. 42 Pa. Cons. Stat. § 8324. Target must first be discharged by release in underlying claim. Id.; Oviatt v. Automated Entrance System Co., 583 A.2d 1223 (Pa. Super. Ct. 1990). Contribution action must adjudicate both parties to be joint tortfeasors if initial case did not. MIIX Ins. Co. v. Epstein, 937 A.2d 469 (Pa. Super. Ct. 2007). Non-settling party's share is to be determined in accordance with the Comparative Negligence Act, 42 Pa. Cons. Stat. § 7102. Charles v. Giant Eagle Markets, 522 A.2d 1 (Pa. 1987). Target can be joined as a defendant in the initial case or sued in a second action. McMeekin v. Harry M. Stevens, Inc., 530 A.2d 462 (Pa. Super. Ct. 1987). 6-year statute of limitations. Penna. Nat'l v. Nicholson, 542 A.2d 123 (Pa. Super. Ct. 1988) (applying 42 Pa. Cons. Stat. § 5527). Statute of limitations runs from time of judgment or settlement. Oviatt.

PENNSYLVANIA (continued)

Implied Indemnity: Available when a party who is secondarily liable pays the injured party and then seeks recovery from the party who is primarily liable, when liability arises from some legal relation between the parties or arises from some rule of common or statutory law, or because of a failure to discover or correct a defect or dangerous condition caused by the party primarily responsible. Builders Supply Co. v. McCabe, 77 A.2d 368 (Pa. 1951). 4-year statute of limitations, 42 Pa. Cons. Stat. § 5525, which runs from the time of payment of the underlying claim, payment of a judgment thereon, or payment of a settlement thereof by the party seeking indemnity. West View v. North Hills School District, 418 A.2d 527 (Pa. Super. Ct. 1980).

RHODE ISLAND

Contribution: A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement. R.I. Gen. Laws § 10-6-5. Damages are allocated, pro rata, proportionate to fault. R.I. Gen. Laws § 10-6-3; Hawkins v. Gadoury, 713 A.2d 799 (R.I. 1998). Contribution liability can be established by either judgment or settlement. Id. Actions for contribution have a 1-year statute of limitation following the first payment made by the joint tortfeasor. R.I. Gen. Laws § 10-6-4.

Implied Indemnity: R.I. Gen. Laws § 10-6-9 preserves the right of indemnity. Right to indemnity may arise from contract, express or implied, as well as on the basis of equity – if the paying party was only passively negligent. Helgerson v. Mammoth Mart, 335 A.2d 339 (R.I. 1975). The general 10-year statute of limitations codified in R.I. Gen. Laws § 9-1-13 is applied to common law indemnity claims, running from the time of discharge of the common liability. Hawkins.

SOUTH CAROLINA

Contribution: Authorized by S.C. Code Ann. § 15-38-20. A right to contribution exists only in favor of a tortfeasor who has paid more than its pro rata share of common liability and recovery is limited to the amount paid in excess of pro rata share. Id. A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury not extinguished by the settlement. S.C. Code Ann. § 15-38-20(D), Progressive Max Ins. Co. v. Floating Caps, Inc., 747 S.E.2d 178 (S.C. 2013). An action for contribution must be commenced within one year after payment or judgment. S.C. Code Ann. § 15-38-40.

Implied Indemnity: Courts have traditionally allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. Toomer v. Norfolk S. Ry. Co., 544 S.E.2d 634 (S.C. Ct. App. 2001). Attorney fees may also be recoverable. Winnsboro v. Wiedeman-Singleton, Inc., 414 S.E.2d 118 (S.C. 1992). A party seeking indemnity must show that the other party was liable for its damages, that it was not at fault, and that the settlement with the injured party was reasonable. Columbia/CSA-HS Greater Columbia Healthcare Sys. v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 713 S.E.2d 639 (S.C. Ct. App. 2011). 3-year statute of limitations, S.C. Code Ann. § 15-3-530(1), running from the time judgment is entered against the defendant. First Gen. Servs. of Charleston, Inc. v. Miller, 445 S.E.2d 446 (S.C. 1994). A claim may be barred by a relevant statute of repose. Columbia.

SOUTH DAKOTA

Contribution: Authorized by S.D. Codified Laws § 15-8-12, *et seq.* Authorized only among joint tortfeasors, which right may be exercised by the defending party in the initial action. Id. and S.D. Codified Laws § 15-6-14(a). There must be joint or several liability rather than the presence of joint or concurring negligence. Burmeister v. Youngstrom, 139 N.W.2d 226 (S.D. 1965). The right of contribution is a derivative right and not a new cause of action. Id. A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or paid more than his pro rata share. S.D. Codified Laws § 15-8-13. Liability among joint tortfeasors is determined by pro rata share if there is a disproportion of fault among them. S.D. Codified Laws § 15-8-15. A joint tortfeasor who enters into a settlement with the injured party is not entitled to pursue contribution from another joint tortfeasor whose liability to the injured party is not extinguished by settlement. S.D. Codified Laws § 15-8-14. Recovery by the injured party against one joint tortfeasor does not extinguish liability of the other joint tortfeasors. S.D. Codified Laws § 15-8-16. A joint tortfeasor is not discharged by the release of another and claim is reduced by amount stated in release. S.D. Codified Laws § 15-8-17. A release by the injured party of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured party's damages recoverable against all the other tortfeasors. S.D. Codified Laws § 15-8-18. 6-year statute of limitations. Avera St. Luke's Hosp. v. Karamali, 848 F.Supp.2d 1017 (D.S.D. 2012) (applying S.D. Codified Laws § 15-2-13). Statute of limitations runs from date money is paid. Avera St. Luke's Hosp.

Implied Indemnity: Indemnity is an "all or nothing" proposition. Ebert v. Fort Pierre Moose Lodge No. 1813, 312 N.W.2d 119 (S.D. 1981). The party seeking indemnity has to show a proportionate absence of contributing negligence on his part. S.D. Codified Laws § 15-8-15 and Degan v. Bayman 200 N.W.2d 134 (S.D. 1972). 6-year statute of limitations. Avera St. Luke's Hosp. (applying S.D. Codified Laws § 15-2-13). Statute of limitations runs from date money is paid. Avera St. Luke's Hosp.

TENNESSEE

Contribution: Authorized by Tenn. Code Ann. § 29-11-102, *et seq.* Joint tortfeasors are entitled to contribution where they pay more than their

proportionate share. Tenn. Code Ann. § 29-11-102(b). There is no right of contribution in favor of a tortfeasor who has intentionally caused or contributed to injury. Tenn. Code Ann. § 29-11-102(c). An action for contribution may be brought in the original action or in a separate action. Tenn. Code Ann. § 29-11-104(a). A settling tortfeasor may not recover from a non-settling tortfeasor whose liability is not extinguished by the settlement or if the amount paid wasn't reasonable. Tenn. Code Ann. § 29-11-102(d). A right to contribution must be based on comparative negligence principles. Berovets v. Harde Rails Pontiac-Olds, Inc., 891 S.W.2d 905 (Tenn. 1994). 1-year statute of limitations from judgment or payment. Tenn. Code Ann. § 29-11-104.

Implied Indemnity: Indemnity may apply where one party is held liable solely by imputation of law because of a relation to a wrongdoer. An obligation to indemnify may arise by implication from the relationship of the parties. Indemnity claims which are based on the parties' active and passive negligence are barred. Owens v. Truckstops of America, 915 S.W.2d 420 (Tenn. 1996). 6-year statute of limitations. Ind. Lumbermens Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 511 S.W.2d 713 (Tenn. Ct. App. 1972); Travelers Ins. Co. v. Fidelity & Casualty Co., 409 S.W.2d 175 (Tenn. 1966); Tenn. Code Ann. § 28-3-109.

TEXAS

Contribution: Authorized by Tex. Civ. Prac. & Rem. Code § 32.001, *et seq.* Available if there is a judgment finding (1) the party seeking contribution to be a joint tortfeasor and (2) the payment by such party of a disproportionate share of the common liability. Beech Aircraft Corp. v. Jinkins, 739 S.W.2d 19 (Tex. 1987). No right of contribution against a settling party, Tex. Civ. Prac. & Rem. Code § 33.015(d), and a settling party has no right to pursue contribution against any other party. Duncan v. Cessna Aircraft Co., 665 S.W.2d 414 (Tex. 1984). A defendant can settle only his proportionate share of common liability. Id. Non-settling defendant's share is to be reduced by share of causation assigned to the settling tortfeasor. Id. The release must specifically discharge the liability of the target. Id. A defendant may recover from each codefendant against whom judgment is rendered an amount determined by dividing the total amount of the judgment by the number of all liable defendants. Tex. Civ. Prac. & Rem. Code Ann. § 32.003(a). Texas courts are split as to whether an action for contribution may be brought in the original action or in a separate action. See Casa Ford, Inc. v. Ford Motor Co., 951 S.W.2d 865 (Tex. App. 1997); In re Martin, 147 S.W.3d 453 (Tex. App. 2004). Statute of limitations is two years, Miller v. Miles, 400 S.W.2d 4 (Tex. App. 1966) (citing predecessor of Tex. Civ. Prac. & Rem. Code § 16.003), and runs from time of judgment or settlement. Goose Creek Consol. Independent School Dist. v. Jarrar's Plumbing, Inc., 74 S.W.3d 486 (Tex. App. 2002).

Implied Indemnity: Implied indemnity is limited to cases involving vicarious liability or products liability claims against an innocent product retailer. Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816 (Tex. 1984).

UTAH

Contribution: A defendant is not entitled to contribution. Utah Code Ann. § 78B-5-820. There is no joint and several liability and amount of liability is limited to proportion of fault. Id.

Implied Indemnity: The statutory bar of contribution claims also bars implied indemnity claims. Nat'l Service Industries, Inc. v. B.W. Norton Mfg. Co., Inc., 937 P.2d 551 (Utah Ct. App. 1997).

VERMONT

Contribution: There is no right of contribution among joint tortfeasors because each joint tortfeasor is responsible for its proportionate share of liability, so long as the liability of the defendants is greater than the plaintiff's negligence. Howard v. Spafford, 321 A.2d 74 (Vt. 1974).

Implied Indemnity: Available when party-seeking indemnity is vicariously or secondarily liable to the third person because of a legal relationship with the third person or because of the party's failure to discover a dangerous condition caused by the indemnitor. White v. Quechee Lakes Landowners' Ass'n, Inc., 742 A.2d 734 (Vt. 1999). Limited to circumstances where the violation of the duty was the primary fault of the indemnitor. Bardwell Motor Inn, Inc. v. Accavallo, 381 A.2d 1061 (Vt. 1977). 6-year statute of limitations, which runs from the accrual of the underlying action. Investment Properties Inc. v. Lyttle, 739 A.2d 1222 (Vt. 1999) (applying 12 Vt. Stat. Ann. § 511).

VIRGINIA

Contribution: Authorized by Va. Code Ann. §§ 8.01-34 and 8.01-35. The right to contribution arises only when one of the joint tortfeasors has paid a claim for which the other wrongdoer is also liable. North River Ins. Co. v. Davis, 274 F. Supp. 146 (W.D. Va. 1967). The payment need not be the result of a judgment which determines negligence. Each wrongdoer is responsible for an equal share of the amount paid in damages for a single injury. Sullivan v. Robertson Drug Co., 639 S.E. 2d 250 (Va. 2007). Only when there are multiple, divisible injuries covered by a compromise settlement is the finder of fact required to attempt an allocation of the amount in contribution a wrongdoer must pay for his negligent act or acts causing one or more of those divisible injuries. Id. Release must extinguish liability to non-settling party in order to recover contribution from non-settling party. Va. Code §§ 8.01-35.1. 3-year statute of limitations, as cause of action arises out of implied promise to pay. Nationwide Mut. Ins. Co. v. Jewel Tea Co., 118 S.E.2d 646 (Va. 1961) (applying Va. Code § 8.01-246). Statute of limitations runs from time of payment or discharge or the obligation. Id.

Implied Indemnity: Indemnity can grow out of a contractual relationship. Virginia Electric & Power Co. v. Wilson, 277 S.E. 2d 149 (Va. 1981). 3-year statute of limitations, which starts to run when the indemnitee has paid or discharged the obligation. Va. Code §§ 8.01-246(4) and 8.01-249. Equitable indemnification is also available and arises when a party without

VIRGINIA (continued)

personal fault, is nevertheless legally liable for damages caused by the negligence of another. Carr v. Home Ins. Co., 463 S.E.2d 457 (Va. 1995). See also International Surplus Lines Ins. Co. v. Marsh & McLennan, Inc., 838 F.2d 124 (4th Cir. 1988) (discussing both types of indemnity). The innocent party may recover from the negligent actor for the amounts paid to discharge the liability. A prerequisite to recovery is the initial determination that the negligence of another person caused the damage. Carr.

■ WASHINGTON

Contribution: Authorized by Tort Reform Act, Wash. Rev. Code § 4.22.040. A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. Wash. Rev. Code § 4.22.040(1). It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution among liable persons is the comparative fault of each such person. Id. Contribution is available to a person who enters into a settlement with a claimant only (a) if the liability of the person against whom contribution is sought has been extinguished by the settlement and (b) to the extent that the amount paid in settlement was reasonable at the time of the settlement. Wash. Rev. Code § 4.22.040(2). Statute does not apply to intentional torts but does apply to strict liability torts. Porter v. Kirkendoll, 449 P.3d 627 (Wash. 2019). However, a release entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. Wash. Rev. Code § 4.22.060(2). 1-year statute of limitations starts the date a judgment becomes final. Wash. Rev. Code § 4.22.050.

Implied Indemnity: The common law right of indemnity between active and passive tortfeasors has been abolished. Wash. Rev. Code § 4.22.040(3). Common law indemnity remains available between non-joint tortfeasors. Sabey v. Howard Johnson & Co., 5 P.3d 730 (Wash. 2000). The party seeking indemnity must establish (1) a breach of a duty causing the plaintiff's injuries by the person against whom indemnity is sought and (2) the person seeking indemnity must not have been an active participant in the acts which caused injury. Weston v. New Bethel Missionary Baptist Church, 598 P.2d 411 (Wash. Ct. App. 1978). 3-year statute of limitations running from payment. Universal Underwriters Ins. Co. v. Security Industries, Inc., 391 F.Supp. 326 (W.D. Wash. 1974) (applying Wash. Rev. Code § 4.16.080(3)).

■ WEST VIRGINIA

Contribution: Abolished as of May 25, 2015, because joint and several liability is no longer recognized by West Virginia. Defendants are only responsible for their proportion of fault. W. Va. Code § 55-7-13(a)-(d).

Implied Indemnity: Available as an equitable remedy to address unfairness when a person, without personal fault, has become subject to tort liability for the conduct of another. Hill v. Joseph T. Ryerson & Son, Inc., 268 S.E.2d 296 (W.Va. 1980). The party seeking indemnification must be without fault. Sydenstricker v. Unipunch Products, Inc., 288 S.E.2d 511 (W.Va. 1982). Three elements must be established for an implied indemnity claim: (1) an injury was sustained by a third party; (2) for which a putative indemnitee has become subject to liability because of a positive duty created by statute or common law, but whose independent actions did not contribute to the injury; and (3) for which a putative indemnitor should bear fault for causing because of the relationship the indemnitor and indemnitee share. Harvest Capital v. W.Va. Dept. of Energy, 560 S.E.2d 509 (W.Va. 2002).

■ WISCONSIN

Contribution: Cause of action arises at common law. The basic elements are that both parties must be joint negligent wrongdoers, they must have common liability because of such negligence to the same person, and one such party must have borne an unequal proportion of the common burden. Farmers Mut. Auto. Ins. Co. v. Milwaukee Auto. Ins. Co., 99 N.W.2d 746 (Wis. 1959). Available for payments made by a joint tortfeasor, irrespective of a judgment. State Farm Mut. Auto. Ins. Co. v. Schara, 201 N.W.2d 758 (Wis. 1972). A settlement by one tortfeasor does not alter the right to contribution. Id. Non-settling party's share is to be allocated by a jury. Pachowitz v. Milwaukee Suburban Transport Corp., 202 N.W.2d 268 (Wis. 1972). Target can be joined as a defendant in the initial case or sued in a second action. Johnson v. Heintz, 243 N.W.2d 815 (Wis. 1974). 1-year statute of limitations from the date of payment for an action for contribution based on tort, if the right of contribution does not arise out of a prior judgment allocating the comparative negligence between the parties. Wis. Stat. § 893.92.

Implied Indemnity: The doctrine of equitable indemnification shifts the entire loss from one person who has been compelled to pay it to another who, on the basis of equitable principles, should bear the loss. Estate of Krieffall v. Sizzler United States Franchise, Inc., 816 N.W.2d 853 (Wis. 2012). An indemnification claim involves shifting the entire loss, not just part of it, from one party to another. Id. The two basic elements of equitable indemnification are the payment of damages and lack of liability. Brown v. LaChance, 477 N.W.2d 296 (Wis. Ct. App. 1991). 6-year statute of limitations for an implied contract, Wis. Stat. § 893.43, which runs from the time of payment of the underlying claim, payment of a judgment thereon, or payment of a settlement thereof by the party seeking indemnity.

■ WYOMING

Contribution: Wyoming abolished joint and several liability and repealed its contribution statute in 1986. Schneider Nat'l v. Holland Hitch Co., 843 P.2d 561 (Wyo. 1992).

Implied Indemnity: Available as implied contractual indemnity, also known as implied-in-fact indemnity, and as equitable implied indemnity,

also known as implied-in-law indemnity or common-law indemnity. Schneider. A cause of action for equitable indemnity arises when two persons are liable for the same harm and one of them would be unjustly enriched by the other's discharge of the liability of both. Id. Liability is to be allocated in proportion to their comparative degrees of fault. Id. The claim may be asserted as a crossclaim or in a separate third-party proceeding. Id. A cause of action for implied contractual indemnity may arise if there is an independent legal relationship between the party seeking indemnity and the party from whom indemnity is sought, under which the indemnitor owes a duty either in contract or tort to the indemnitee apart from the joint duty they owe to the injured party. Id. An implied contract of indemnity is subject to an 8-year statute of limitations. Wyo. Stat. § 1-3-105.

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