

## Massachusetts Court Holds Statute of Repose Bars Certain Asbestos-Related Construction Claims

Claims Arising Out of a Deficiency or Negligence in the Design, Planning, Construction and General Administration of Improvements to Real Property Among Those Affected

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In *Stearns v. Metropolitan Life Insurance Company*, the Massachusetts Supreme Judicial Court (SJC) addressed whether the six-year statute of repose for improvements to real property applies to long-tail tort claims, such as those caused by exposure to asbestos. Reasoning that the language of § 2B is clear, unambiguous and unequivocal, the SJC held that Mass. Gen. Laws. c. 260 § 2B does in fact bar all tort claims arising out of a deficiency or neglect in the design, planning, construction or general administration of an improvement to real property filed after the expiration of the six-year repose period. Additionally, the court affirmed that the time limitations imposed by the statute of repose may not be tolled for any reason six years after either the opening of the improvement for use or the owner taking possession of the improvement for occupation upon substantial completion, whichever may occur first.

At first glance, *Stearns* might appear to be a watershed moment for asbestos litigation in Massachusetts. However, the court expressly stated that typical product suppliers and manufacturers are not within the class of persons protected by the statute of repose. Nevertheless, the effect of *Stearns* will be felt, not only amongst contractors and other entities involved in the design and construction of large capital investments to real property who are protected from suit following this decision, but also amongst the remaining viable product manufacturers and suppliers that will be precluded from seeking contribution from these now immune entities. Expressly recognizing the effect its decision has on potential plaintiffs, the court encouraged the Massachusetts legislature to examine whether asbestos-related claims should be exempt from the statute.

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