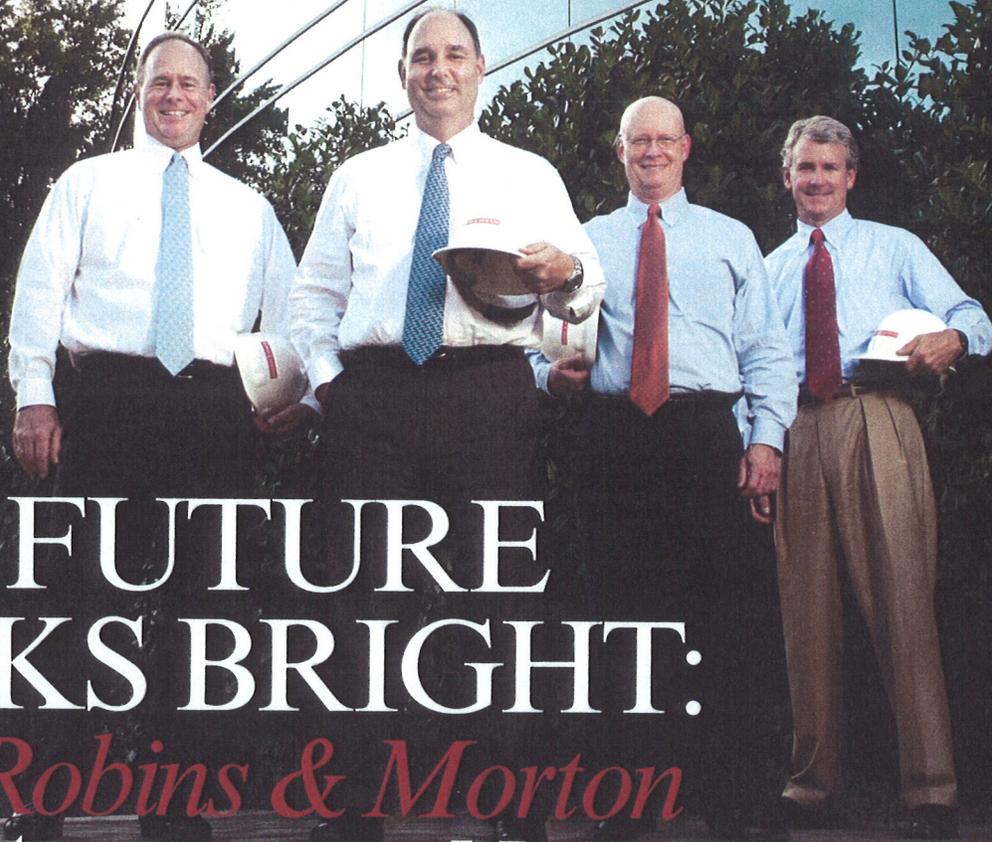


ALABAMA

CONSTRUCTION NEWS



THE FUTURE LOOKS BRIGHT:

Robins & Morton

Announces New Division

+ Industry
Welcomes
Auburn's
New Dean

August/September 2011

Alabama Legislature Modifies Rule of Repose for Contractors

ALONG WITH THE MORE GENERAL TORT REFORM, THE ALABAMA LEGISLATURE RECENTLY AMENDED THE STATUTE OF REPOSE APPLICABLE TO ARCHITECTS, ENGINEERS, AND CONTRACTORS.

A statute of repose is the legislative mechanism that determines how long a contractor can be liable for personal injuries that occur due to conditions at a completed project.

Under the prior version of § 6-5-221, a contractor could be liable for injuries attributable to issues or conditions on a completed project for any injury that occurred within 13 years of the project's completion. This time period has now been reduced to seven years. In other words, if a project is completed on June 30, 2010, then the contractor cannot be liable for any personal injury that occurs after June 30, 2017. Assuming an injury occurs within the seven-year window, a party then has two years to file a complaint for his or her injuries.

It is not hard to imagine any number of problems that could arise within 13 years of completion. A period of that length could allow a contractor to be liable for naturally occurring or anticipated wear-and-tear of a project that could occur over a decade after completion. The contractor could also be put into a position where it would have to defend personal-injury claims that arose or were solely attributed to the failure of an owner to maintain a project. In the context of some projects, including roads, the anticipated

effective life of the project may be shorter than 13 years, meaning a contractor could be liable for conditions of the road even after it should have already been repaved.

Prior to the passage of this amendment, Alabama was one of only four states that had a statute of repose for construction of longer than 10 years. The passage of the seven-year statute brings the state more in line with the national and regional average. The legislation was sponsored by the Alabama chapters of AGC, ABC, AIA, ACEC, and the ARBA.

In order to invoke the protections of the statute, the project in question must be overseen by an architect or engineer. If the project does not meet this statutory requirement, then it is governed by the rule of repose. Due to recent decisions by the Alabama Supreme Court in *Collins v. Scenic Homes, Inc.*, and *Owens-Illinois, Inc. v. Wells*, however, the rule of repose has been rendered largely powerless, meaning there is no cut-off for liability from a completed project if an architect or engineer was not involved.



Joe Duncan

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

HF&S

HUIE, FERNAMBUCQ & STEWART
THREE PROTECTIVE CENTER
2801 HIGHWAY 280 S., SUITE 200
BIRMINGHAM, AL 35223
T: 205-251-1193 F: 205-251-1256
HTTP://WWW.HFSLLP.COM
JRD@HFSLLP.COM