

Tolling the Statutes of Limitation & Repose on NC Construction Projects

By [Melissa Dewey Brumback](#)

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A [blog](#) reader recently raised the question of how to handle construction defect claims while repair attempts are being made on a defective building. In part, the answer to this question will depend on how close you are to the statute of limitations or the statute of repose from running. The closer you are, the more you need to be concerned about this issue. Just because all parties are working together to solve construction issues does not mean that the statutes are not running. They can. [There are, as usual, exceptions for equitable reasons.] And once statutes run, there's no getting them back.

One prudent approach to dealing with the statutes is to have all parties involved enter into a "Tolling Agreement." What a properly drafted tolling agreement can do is to stop the running of the statute of limitations and/or repose while the parties attempt to fix the defects or otherwise settle their issues with one another. Note that the tolling agreement does not give a party any greater rights than they would have at the time it is signed-- that is, if the statute has *already* run, then it would be of no use. But the tolling agreement can act as a "time out" on the running of the clock.

A good example of a tolling agreement is found in the Court of Appeals opinion in [Charlotte Motor Speedway, Inc. v. Tindall Corporation](#), 195 N.C. App. 296, 672 S.E.2d 691 (2009). The *Speedway* case involved the infamous [collapse of a pedestrian walkway](#) during the NASCAR Winston Cup. The walkway which collapsed had been substantially completed by October 1995, and the collapse occurred in May 2000. Speedway (the project owner) and Tindall (which constructed the walkway) entered into a tolling agreement:

"to toll and suspend any applicable statute of limitations, repose or time, whether created by statute, contract, laches or otherwise, within which any cause, claim action, cause of action, or suit must be made, or commenced by the parties against any one of them

concerning the [pedestrian] claims, including any and all claims for indemnification and contribution." Id. at 298, 672 S.E.2d at 693.

Tindall attempted to argue that the statute of limitations barred Speedway's claim for indemnification of monies paid prior to three years before it filed its complaint, but the Court found that the Tolling Agreement, which remained effective "through and including January 1, 2006" tolled the action, and Speedway brought suit on July 17, 2007, less than two years after the Tolling Agreement expired. Likewise, the Court held that the statute of repose did not bar the action, because the Tolling Agreement was entered into less than six years after substantial completion, and the lawsuit was brought during the pendency of a second funding [tolling] agreement between the parties.

If you are considering a tolling agreement (or think you don't need one because you "have time"), it is always smart to get a professional opinion on the matter.

Comments? Let me know. I [welcome the opportunity](#) to discuss how the statute of limitations and repose may be tolled in your specific situation.

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