

Statutes of Limitations: Massachusetts

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A Q&A guide to the statutes of limitation in Massachusetts for several commercial claims. Answers to questions can be compared across a number of jurisdictions (see [Statutes of Limitations: State Q&A Tool](#)).

ACCOUNT STATED

1. What is the statute of limitations for an account stated claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations for an account stated claim in Massachusetts is six years (M.G.L. c. 260, § 2; *Abele v. Dietz*, 45 N.E.2d 970, 971 (Mass. 1942); *Zelby Holdings, Inc. v. Videogenix, Inc.*, 82 N.E.3d 1067, 1073 (Mass. App. Ct. 2017)).

ACCRUAL DATE

The limitations period starts to run on the date of the statement of account (*King v. Davis*, 46 N.E. 418, 419 (Mass. 1897); *Zelby Holdings*, 82 N.E.3d at 1073).

ANTITRUST

2. What is the statute of limitations for an antitrust claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is four years under the Massachusetts Antitrust Act (M.G.L. c. 93, § 13).

ACCRUAL DATE

There is no accrual date that directly applies to state antitrust claims under statute and case law. Under federal law, the limitations period starts to run when the plaintiff suffers an injury that is traceable to

the defendant's conduct (*In re Nexium (Esomeprazole) Antitrust Litig.*, 968 F.Supp.2d 367, 399 (D. Mass. 2013)).

For actions under the Massachusetts Antitrust Act, any civil or criminal proceeding commenced by the state tolls the four-year statute of limitations. The suspension runs during the pendency of the state's action and for one year thereafter. The toll is restricted to four years. (M.G.L. c. 93, § 13.)

BREACH OF CONTRACT

3. What is the statute of limitations for a breach of contract claim in your jurisdiction?

LIMITATIONS PERIOD

The statutes of limitations in Massachusetts are:

- Six years for express or implied contracts, including letters of credit (M.G.L. c. 260, § 2; *Suffolk Constr. Co., Inc. v. Benchmark Mech. Sys., Inc.*, 56 N.E.3d 138, 144 (Mass. 2016); *Century Fire & Marine Ins. Corp. v. Bank of New England-Bristol Cty., N.A.*, 540 N.E.2d 1334, 1335 (Mass. 1989)).
- Four years for contracts for sales of goods governed by the Uniform Commercial Code (UCC) (M.G.L. c. 106, § 2-725(1)).
- 20 years for contracts made under seal (M.G.L. c. 260, § 1; *JB Mortg. Co., LLC v. Ring*, 56 N.E.3d 866, 869 (Mass. App. Ct. 2016)).
- Three years for contract actions to recover for personal injuries (M.G.L. c. 260, § 2A; *Pagliuca v. City of Boston*, 626 N.E.2d 625, 628 (Mass. App. Ct. 1994)).

ACCRUAL DATE

The limitations period starts to run typically at the time the contract is breached (*Berkshire Mut. Ins. Co. v. Burbank*, 664 N.E.2d 1188, 1189 (Mass. 1996)). Where a cause of action for breach of contract cannot be discovered because it is based on an "inherently unknowable" wrong, the limitations period does not start to run until the injured party knows or should know the facts giving rise to that cause of action (*Int'l Mobiles Corp. v. Corroon & Black/Fairfield & Ellis, Inc.*, 560 N.E.2d 122, 126 (Mass. App. Ct. 1990)). Under the UCC, the limitations period starts to run when the breach occurs, regardless

of the plaintiff's lack of knowledge of the breach (M.G.L. c. 106, § 2-725(2)).

For more information on the accrual date for breach of contract actions, see Question 24: Discovery Rule.

BREACH OF FIDUCIARY DUTY

4. What is the statute of limitations for a breach of fiduciary duty claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is:

- Three years for a breach of fiduciary duty claim (M.G.L. c. 260, § 2A; *O'Connor v. Redstone*, 896 N.E.2d 595, 607 (Mass. 2008)).
- One year for actions against an executor, administrator, or other legal representative of the estate of a deceased person (M.G.L. c. 260, § 11).
- Two years for actions against trustees, guardians, and conservators (M.G.L. c. 260, § 11; *Fox of Boylston St. Ltd. P'ship v. Mayor of Boston*, 641 N.E.2d 1311, 1312 (Mass. 1994)).

ACCRUAL DATE

The limitations period starts to run when the plaintiff first becomes aware of facts giving rise to their injury by the defendant (*Doe v. Harbor Sch., Inc.*, 843 N.E.2d 1058, 1061 (Mass. 2006)). Actual knowledge of injury suffered at a fiduciary's hands, not knowledge of the consequences of that injury (that is, a legal claim against the fiduciary) causes the limitations period to start (*Doe*, 843 N.E.2d at 1067).

For actions against an administrator or other legal representative of the estate of a deceased person, the limitations period starts to run on either:

- The date the relevant contract with the defendant was executed.
- The date of the defendant's action that is the subject of the complaint.

(M.G.L. c. 260, § 11; *Graveline v. Baybank Valley Tr. Co.*, 473 N.E.2d 700, 701 (Mass. App. Ct. 1985).)

For actions against trustees, guardians, and conservators, the limitations period starts to run on the date of the breach (*Fox of Boylston St.*, 641 N.E.2d at 1313).

BREACH OF WARRANTY

5. What is the statute of limitations for a breach of warranty claim in your jurisdiction?

LIMITATIONS PERIOD

The statutes of limitation in Massachusetts are:

- Four years for claims based on a contract for the sale of goods governed by the UCC (M.G.L. c. 106, § 2-725(1); *Bay State-Spray & Provincetown S.S., Inc. v. Caterpillar Tractor Co.*, 533 N.E.2d 1350, 1353-55 (Mass. 1989)).
- Three years for tort-based claims against a manufacturer, seller, lessor, or supplier of goods for personal injury under the UCC (M.G.L. c. 106, § 2-318; *Bay State-Spray*, 533 N.E.2d at 1354-55).

ACCRUAL DATE

The limitations period starts to run:

- When tender of delivery is made for claims based on a contract for the sale of goods governed by the UCC (M.G.L. c. 106, § 2-725(2)).
- From the date of injury or damage, for tort-based claims under the UCC (M.G.L. c. 106, § 2-318).

Where a warranty for goods explicitly extends to future performance of the goods and discovery of the breach must await the time of that performance, the limitations period accrues when the breach is or should have been discovered (M.G.L. c. 106, § 2-725(2)).

CONSUMER PROTECTION STATUTES

6. What is the statute of limitations for a consumer protection claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is four years for any consumer protection action (M.G.L. c. 260, § 5A; *Lambert v. Fleet Nat. Bank*, 865 N.E.2d 1091, 1097 (Mass. 2007)).

ACCRUAL DATE

For consumer protection actions arising solely under Chapter 93A of the Massachusetts General Laws (the Massachusetts Consumer Protection Act), the limitations period starts to run when the plaintiff knew or should have known of the alleged (*Lambert*, 865 N.E.2d at 1097).

For those Chapter 93A actions arising from a separate underlying cause of action, the principles that govern the determination of the accrual of the underlying causes of action establish the accrual dates for the Chapter 93A action (*Hanson Hous. Auth. v. Dryvit Sys., Inc.*, 560 N.E.2d 1290, 1295 (Mass. App. Ct. 1990)).

CONVERSION

7. What is the statute of limitations for a conversion claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations for a conversion claim in Massachusetts is three years (M.G.L. c. 260, § 2A; *Patsos v. First Albany Corp.*, 741 N.E.2d 841, 846 n.6 (Mass. 2001)).

ACCRUAL DATE

The limitations period starts to run on the date the plaintiff suffers the injury or loss (*Nortek, Inc. v. Liberty Mut. Ins. Co.*, 843 N.E.2d 706, 712 (Mass. App. Ct. 2006)).

EMPLOYMENT MATTERS

8. What is the statute of limitations for employment matters in your jurisdiction?

LIMITATIONS PERIOD

The statutes of limitation for employment matters are:

- Two years under the Massachusetts whistleblower statute (M.G.L. c. 149, § 185(d)).
- 300 days, to file a discrimination claim with the Massachusetts Commission Against Discrimination and three years to file a civil action in Superior Court (M.G.L. c. 151B, §§ 5 and 9).
- Four years for workers' compensation claims, provided that notice is given to the insurer or insured as soon as practicable (M.G.L. c. 152, § 41).
- Three years for claims arising under the Massachusetts Wage Act (M.G.L. c. 149, § 150).

ACCRUAL DATE

The limitations period starts to run:

- For claims under the Massachusetts whistleblower statute, on the date of retaliation (M.G.L. c. 149, § 185(d)).
- For employment discrimination claims:
 - on the date of the discriminatory action (M.G.L. c. 151B, § 9); or
 - on the date when a discriminatory evaluation first causes tangible harm to the employee, such as denial of particular benefits or positions (*Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.*, 50 N.E.3d 778, 789 (Mass. 2016)).
- For workers' compensation claims, on the date the employee first became aware of the causal relationship between the employee's disability and the employee's employment (M.G.L. c. 152, § 41).
- For claims under the Massachusetts Wage Act, on the date of the wage violation (M.G.L. c. 149, § 150).

For more information, see Question 24: Equitable Tolling.

ENFORCEMENT OF JUDGMENTS

9. What is the statute of limitations for enforcing a judgment in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is 20 years (M.G.L. c. 260, § 20; *Cavadi v. DeYeso*, 941 N.E.2d 23, 26 n.5 (Mass. 2011)).

ACCRUAL DATE

The limitations period starts to run when the judgment is rendered (M.G.L. c. 260, § 20; *Cavadi*, 941 N.E.2d at 26 n.5).

FRAUD

10. What is the statute of limitations for a fraud claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is three years (M.G.L. c. 260, § 2A; *McEaney v. Chestnut Hill Realty Corp.*, 650 N.E.2d 93, 96 (Mass. App. Ct. 1995)).

ACCRUAL DATE

The limitations period starts to run when the plaintiff learns, or reasonably should have learned, of the misrepresentation (*McEaney*, 650 N.E.2d at 97).

FRAUDULENT CONCEALMENT

11. What is the statute of limitations for a fraudulent concealment claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations for fraudulent concealment as a cause of action in Massachusetts is three years (M.G.L. c. 260, § 2A; *McEaney*, 650 N.E.2d at 96).

ACCRUAL DATE

The limitations period starts to run when the plaintiff learns, or reasonably should have learned, of the actionable non-disclosure (*McEaney*, 650 N.E.2d at 97).

For more information on tolling the statutes of limitation, see Question 24: Fraudulent Concealment of a Cause of Action.

INSURANCE BAD FAITH

12. What is the statute of limitations for an insurance bad faith claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is four years for insurance actions involving unfair or deceptive business practices brought under Chapter 93A or Chapter 176D of the Massachusetts General Laws (M.G.L. c. 260, § 5A; *Schwartz v. Travelers Indem. Co.*, 740 N.E.2d 1039, 1041 (Mass. App. Ct. 2001)).

ACCRUAL DATE

The limitations period starts to run:

- For Chapter 93A claims, at the time injury results from the claimed unfair or deceptive practice (*John Beaudette, Inc. v. Sentry Ins. A Mut. Co.*, 94 F. Supp. 2d 77, 110 (D. Mass. 1999)).
- For Chapter 176D claims, when the plaintiff knew or should have known of the Chapter 176D violation (*Schwartz*, 740 N.E.2d at 1044).

NEGLIGENCE

13. What is the statute of limitations for a negligence claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is three years (M.G.L. c. 260, § 2A; *Mass. Hous. Opportunities Corp. v. Whitman & Bingham Assoc., P.C.*, 983 N.E.2d 734, 737 (Mass. App. Ct. 2013)).

ACCRUAL DATE

The limitations period starts to run when a plaintiff knows or reasonably should know that it has sustained appreciable harm as a result of the defendant's negligence (*Mass. Hous. Opportunities Corp.*, 983 N.E.2d at 737).

For more information, see Question 24: Discovery Rule.

PRODUCTS LIABILITY**14. What is the statute of limitations for a products liability claim in your jurisdiction?****LIMITATIONS PERIOD**

The statutes of limitations in Massachusetts are:

- Three years for products liability actions based on a negligence theory (M.G.L. c. 260, § 2A; *Cannon v. Sears, Roebuck & Co.*, 374 N.E.2d 582, 583 n.2 (Mass. 1978)).
- Three years for products liability actions based on a breach of warranty theory (M.G.L. c. 106, § 2-318; *Shea v. Keuffel & Esser of N.J., Inc.*, 668 F. Supp. 41, 45 (D. Mass. 1986)).

ACCRUAL DATE

The limitations period starts to run when the plaintiff knows or reasonably should know that they have been harmed by the defendant's conduct, for both negligence and breach of warranty claims (*Hanson*, 560 N.E.2d at 1294).

SHAREHOLDER DERIVATIVE SUITS**15. What is the statute of limitations for a shareholder derivative suit in your jurisdiction?****LIMITATIONS PERIOD**

The relevant statute of limitations depends on the alleged wrongs to the company (*Kirley v. Kirley*, 521 N.E.2d 1041, 1043 (Mass. App. Ct. 1988)). For example, for a shareholder derivative action for breach of fiduciary duty resulting from diversion of corporate opportunities and self-dealing, the three-year statute of limitations for tort claims under Chapter 260, Section 2A of the Massachusetts General Laws applies (*Demoulas v. Demoulas Super Mkts., Inc.*, 677 N.E.2d 159, 172-73 (Mass. 1997)). For breach of contract claims arising from a breach of the articles of incorporation, the six-year statute of limitations under Chapter 260, Section 2 of the Massachusetts General Laws applies (*Rubin v. Murray*, 943 N.E.2d 949, 964-65 (Mass. App. Ct. 2011)).

ACCRUAL DATE

The limitations period starts to run when either disinterested and independent directors or disinterested shareholders both:

- Know of the wrongful activity.
- Are willing and able to bring a derivative suit.

(*Demoulas*, 677 N.E.2d at 173; *Aiello v. Aiello*, 852 N.E.2d 68, 78-79, 82 (Mass. 2006).)

The statute of limitations is tolled for the period of time during which a plaintiff can show that the culpable directors (or officers)

completely and exclusively controlled the corporation (*Aiello*, 852 N.E.2d at 78-81).

THIRD-PARTY CONTRIBUTION**16. What is the statute of limitations for a third-party contribution claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations in Massachusetts is one year (M.G.L. c. 231B, § 3(c); *Med. Prof'l Mut. Ins. Co. v. Breon Labs., Inc.*, 705 N.E.2d 260, 262-63 (Mass. 1999)).

ACCRUAL DATE

The limitations period starts to run on the date the judgment becomes final by lapse of time for appeal or after appellate review (M.G.L. c. 231B, § 3(c); *Med. Prof'l*, 705 N.E.2d at 262-63).

TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS**17. What is the statute of limitations for a tortious interference with contract rights claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations in Massachusetts is three years (M.G.L. c. 260, § 2A; *Stark v. Advanced Magnetics, Inc.*, 736 N.E.2d 434, 441 (Mass. App. Ct. 2000)).

ACCRUAL DATE

The limitations period starts to run either:

- At the time of the injury to the plaintiff (*Stark*, 736 N.E.2d at 441).
- If the wrong is inherently unknowable, when the plaintiff knows or should know that they have been injured (*Pagliuca*, 626 N.E.2d at 628).

TRADE SECRET MISAPPROPRIATION**18. What is the statute of limitations for a trade secret misappropriation claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is three years (M.G.L. c. 260, § 2A; *Stark*, 736 N.E.2d at 441). Actions for trade secret misappropriation may also be brought under the Massachusetts Consumer Protection Act (*Specialized Tech. Res., Inc. v. JPS Elastomerics Corp.*, 957 N.E.2d 1116, 1121 (Mass. App. Ct. 2011)). The Massachusetts Consumer Protection Act provides a statute of limitations of four years (M.G.L. c. 93A, § 11 and c. 260, § 5A; *Prescott v. Morton Int'l., Inc.*, 769 F. Supp. 404, 407 (D. Mass. 1990)).

ACCRUAL DATE

The limitations period starts to run either:

- On the date of injury.
- When the plaintiff discovered or reasonably should have discovered the injury.

(*Stark*, 736 N.E.2d at 441-42; *Prescott*, 769 F. Supp. at 408).

For more information, see Question 24: Discovery Rule.

TRADEMARK INFRINGEMENT

19. What is the statute of limitations for a trademark infringement claim in your jurisdiction?

LIMITATIONS PERIOD

There is no specific statute of limitations period referenced in Chapter 110H of the Massachusetts General Laws, which applies to protection of trademarks. Courts apply either:

- The three-year limitation for torts (M.G.L. c. 260, § 2A).
- The four-year limitation under the Massachusetts Consumer Protection Act, if the claim also sounds in unfair competition (M.G.L. c. 93A, § 11; M.G.L. c. 260, § 5A).

(*Kusek v. Family Circle, Inc.*, 894 F. Supp. 522, 530 (D. Mass. 1995).)

ACCRUAL DATE

Massachusetts law does not specify the accrual date for trademark infringement claims.

UNFAIR COMPETITION

20. What is the statute of limitations for an unfair competition claim in your jurisdiction?

LIMITATIONS PERIOD

Unfair competition claims ordinarily are brought under the unfair and deceptive trade practices section of the Massachusetts Consumer Protection Act, which applies a four-year statute of limitations (M.G.L. c. 93A, § 11; M.G.L. c. 260, § 5A). The limitations period for a common law unfair competition claim, which sounds in tort, is three years (M.G.L. c. 260, § 2A).

ACCRUAL DATE

The same principles that govern the determination of the underlying actions establish the accrual dates of Chapter 93A claims (*Hanson*, 560 N.E.2d at 1295). For common law unfair competition claims, which sound in tort, the cause of action generally accrues at the time the plaintiff is injured (*Joseph A. Fortin Constr., Inc. v. Mass. Hous. Fin. Agency*, 466 N.E.2d 514, 516 (Mass. 1984)).

UNJUST ENRICHMENT

21. What is the statute of limitations for an unjust enrichment claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations in Massachusetts is:

- Three years for claims that sound in tort (M.G.L. c. 260, § 2A; *Cambridge Literary Props., Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. Kg.*, 448 F. Supp. 2d 244, 262-64 (D. Mass. 2006) (applying three-year limitation where plaintiff's unjust

enrichment claim was premised on alleged conversion, not breach of contract)).

- Six years for contract-based claims (M.G.L. c. 260, § 2; *Micromuse, Inc. v. Micromuse, PLC*, 304 F. Supp. 2d 202, 209 (D. Mass. 2004) (applying six-year limitation to plaintiff's unjust enrichment claim based on same underlying facts as claims for breach of contract and breach of implied covenant of good faith and fair dealing)).
- Four years for sales contract-based claims governed by the UCC (M.G.L. c.106, § 2-725; *Monteferrante v. Williams-Sonoma, Inc.*, 241 F.Supp.3d 264, 270 n1 (D. Mass. 2017).

ACCRUAL DATE

The limitations period starts to run:

- For tort-based claims:
 - at the time of the plaintiff's injury; or
 - where the factual basis for the cause of action is inherently unknowable at the time of the injury, when the plaintiff knew or in the exercise of reasonable diligence should have known the factual basis for the cause of action.
- (*Cambridge Literary Props., Ltd.*, 448 F. Supp. 2d at 263.)
- For contract-based claims:
 - at the time of the breach; or
 - where the wrong is inherently unknowable, when a reasonably prudent person would become aware that they have been harmed.
- (*Micromuse*, 304 F. Supp. 2d at 209-10.)
- For sales contract-based claims governed by the UCC, at the time of the breach, whether or not the plaintiff knows of the breach (M.G.L. c. 106, § 2-725(2)).

WRONGFUL DEATH AND SURVIVAL

22. What is the statute of limitations for a wrongful death and survival claim in your jurisdiction?

LIMITATIONS PERIOD

For wrongful death actions, the statute of limitations is either:

- Three years from the date of death.
- Three years from the date when the deceased's executor or administrator knew, or in the exercise of reasonable diligence, should have known of the factual basis for a cause of action.
- Designated by statute for specific issues, such as:
 - malpractice (M.G.L. c. 260, § 4);
 - hit and run accidents (M.G.L. c. 260, § 4B);
 - non-resident defendants (M.G.L. c. 260, § 9); or
 - survival actions (M.G.L. c. 260, § 10).

(M.G.L. c. 229, § 2; *In re Fresenius Granuflo/Naturalyte Dialysate Prod. Liab. Litig.*, 76 F. Supp. 3d 294, 308-309 (D. Mass. 2015)).

For survival actions, the statute of limitations is either:

- The time within which the deceased may have brought the action.
- Within two years after bond was given for the discharge of the deceased's trust.

- Within three years from the date when the executor or administrator knew, or in the exercise of reasonable diligence, should have known of the factual basis for a cause of action.

(M.G.L. c. 260, § 10.)

The statute of limitations for the decedent's cause of action that is running but unexpired at the time of the decedent's death cannot bar the cause of action until at least four months after the death. If the cause of action would have been time-barred less than four months after the death, the action is barred four months after the death unless otherwise tolled. (M.G.L. c. 190B, § 3-109.)

ACCRUAL DATE

The limitations period starts to run:

- For a wrongful death action:
 - on the date of death; or
 - when the deceased's executor or administrator knew or, in the exercise of reasonable diligence, should have known of the factual basis for a cause of action.
- (M.G.L. c. 229, § 2.)
- For a survival action:
 - when the deceased may have brought the action; or
 - when the executor or administrator knew, or in the exercise of reasonable diligence, should have known of the factual basis for a cause of action.
- (M.G.L. c. 260, § 10.)

OTHER COMMERCIAL CAUSES OF ACTION

23. Please describe any other statutes of limitation for commercial causes of action in your jurisdiction of which practitioners should be aware.

The statute of limitations for claims concerning negotiable instruments, such as promissory notes, is six years (M.G.L. c. 106, § 3-118). This includes those executed under seal in actions accruing since 1998 (*Premier Capital, LLC v. KMZ, Inc.*, 984 N.E.2d 286, 290-92 (Mass. 2013)). For claims involving negotiable instruments executed under seal accruing prior to 1998, however, the 20-year statute of limitations under Chapter 260, Section 1 of the Massachusetts General Laws applies (*Premier Capital*, 984 N.E.2d at 290-92).

SPECIAL RULES AND EXCEPTIONS

24. Please list any special rules and exceptions that may toll or otherwise affect any of the statutes of limitation in the previous questions.

Massachusetts has special rules and exceptions that may toll or otherwise affect any of the statutes of limitations described previously. Depending on the cause of action and facts of the case, one or more of the following rules may affect the running of the statute of limitations.

DISCOVERY RULE

Massachusetts has adopted the discovery rule in circumstances where the plaintiff did not know or could not reasonably have known

that the plaintiff may have been harmed by another's actions. Under the discovery rule, the statute of limitations does not begin to run until the plaintiff discovers or with reasonable diligence should have discovered that:

- The plaintiff has suffered harm.
- The plaintiff's harm was caused by the conduct of another.
- The defendant is the person who caused the harm.

(*Harrington v. Costello*, 7 N.E.3d 449, 455 (Mass. 2014).)

Courts have applied the discovery rule in various contexts, including claims for:

- Medical malpractice (*Bowen v. Eli Lilly & Co., Inc.*, 557 N.E.2d 739, 741 (Mass. 1990)).
- Professional negligence (*Anthony's Pier Four, Inc. v. Crandall's Dry Dock Eng'rs, Inc.*, 489 N.E.2d 172, 176-77 (Mass. 1986)).
- Breach of warranty of future performance (*Cambridge Plating Co., Inc. v. Napco, Inc.*, 991 F.2d 21, 26-27 (1st Cir. 1993)).
- Unfair and deceptive practices under Massachusetts consumer protection law (*Szymanski v. Boston Mut. Life Ins. Co.*, 778 N.E.2d 16, 20-21 (Mass. App. Ct. 2002)).

FRAUDULENT CONCEALMENT OF A CAUSE OF ACTION

When a defendant fraudulently conceals a cause of action from a plaintiff, the statute of limitations is tolled until the plaintiff has actual knowledge of the claim (M.G.L. c. 260, § 12; *Magliacane v. City of Gardner*, 138 N.E.3d 347, 357-58 (Mass. 2020)). Fraudulent concealment in this context occurs when the defendant either:

- Takes affirmative steps, with intent to deceive, to conceal the existence of the operative facts underlying the cause of action.
- Breaches a fiduciary duty of full disclosure.

(*Puritan Med. Ctr., Inc. v. Cashman*, 596 N.E.2d 1004, 1010 (Mass. 1992).)

Absent a fiduciary or other special duty, fraudulent concealment ordinarily requires proof of active fraud (*Salvas v. Wal-Mart Stores, Inc.*, 893 N.E.2d 1187, 1217 (Mass. 2008)). The following do not constitute fraudulent concealment:

- Mere negligent failure to disclose material facts.
- Good faith failure to disclose, where the defendant does not believe that a cause of action exists.

(*Compagnie de Reassurance d'Ile de France v. New Eng. Reins. Corp.*, 944 F. Supp. 986, 995 (D. Mass. 1996).)

Courts attribute the requisite knowledge to a plaintiff "who had actual knowledge of the facts, or had the means to acquire such facts, in circumstances where the probability of wrongdoing was so evident that possession of the means was equivalent of actual knowledge" (*Magliacane*, 138 N.E.3d at 357-58 (quoting *Demoulas*, 677 N.E.2d at 174); see *Harry v. Countrywide Home Loans, Inc.*, 902 F.3d 16, 18 (1st Cir. 2018) (tolling on the basis of fraudulent concealment also requires the plaintiff "to make a threshold showing of due diligence" to obtain the information required to bring a lawsuit.)).

EQUITABLE TOLLING

Massachusetts courts use equitable tolling “sparingly” and generally limit its use to specified exceptions, including:

- Excusable ignorance of the statutory limitations period.
- Where the defendant has affirmatively misled the plaintiff.
- Where the plaintiff has actively pursued judicial remedies by filing a defective pleading during the statutory period.

(*Shafnacker v. Raymond James & Assocs., Inc.*, 683 N.E.2d 662, 665-66 (Mass. 1997).)

CLASS ACTION TOLLING

Massachusetts courts have acknowledged the federal principle that the filing of a putative class action tolls the statute of limitations on all asserted members of the class (see *DiCerbo v. Comm’r of the Dep’t of Emp’t & Training*, 763 N.E.2d 566, 572 n.13 (Mass. App. Ct. 2002); *Mullally v. Waste Mgmt. of Mass., Inc.*, 2009 WL 1453529, at *2-*3 (Mass. Super. Ct. May 18, 2009)).

DEFENDANT’S ABSENCE FROM THE STATE

The applicable statute of limitations is tolled for the period of time that a defendant resides outside Massachusetts and is beyond the jurisdiction and process of the court (M.G.L. c. 260, § 9; *Clark v. Edison*, 885 F.Supp.2d 450, 453-54 (D. Mass. 2012)).

MINORS AND INCAPACITATED PERSONS

If a plaintiff is a minor or incapacitated by reason of mental illness, the relevant statute of limitations is tolled until the plaintiff reaches the age of majority or the disability is removed (M.G.L. c. 260, § 7).

Despite this provision, a minor generally must bring any medical malpractice action within three years from the date the cause of action accrues. Minors under six years of age have until their ninth birthday to bring such an action. In no event may a minor commence an action more than seven years after occurrence of the act or omission that is the alleged cause of the injury, except where the action is based on the leaving of a foreign object in the body (M.G.L. c. 231, § 60D.)

SAVINGS STATUTE

The Massachusetts savings statute may relieve a plaintiff who has duly commenced an action within the statute of limitations, but whose case was dismissed due to:

- An unavoidable accident.
- Neglect of the officer serving process.
- The death of a party.
- Any matter of form.

(M.G.L. c. 260 § 32; *Cannonball Fund, Ltd. v. Duchess Capital Mgmt., LLC*, 993 N.E.2d 350, 360 (Mass. App. Ct. 2013).)

Plaintiffs in this situation have one year from the dismissal of the initial action to commence a new action for the same cause (M.G.L. c. 260 § 32). This savings rule does not apply if the limitations period for the initial cause of action both:

- Stems from a statute outside of Chapter 260 of the Massachusetts General Laws.
- Is shorter in time than the limitations period otherwise would have been under Chapter 260 of the Massachusetts General Laws.

(M.G.L. c. 260 § 19; see *Abrahamson v. Estate of LeBold*, 47 N.E.3d 686, 689 (Mass. App. Ct. 2016).)

STATUTES OF REPOSE

Massachusetts has not adopted a products liability statute of repose.

However, Massachusetts has adopted a six-year statute of repose for tort actions for damages arising out of any deficiency or neglect in the design, planning, construction, or general administration of any improvement to real property (M.G.L. c. 260, § 2B; see *Trustees of Cambridge Point Condo. Tr. v. Cambridge Point, LLC*, 88 N.E.3d 1142, 1149 (Mass. 2018)). The period runs from the earlier of:

- The opening of the improvement to use.
- Substantial completion of the improvement and the taking of possession for occupancy by the owner.

(M.G.L. c. 260, § 2B.)

Plaintiffs also may not commence malpractice claims against physicians, surgeons, dentists, optometrists, hospitals, and sanatoria more than seven years from the occurrence of the act or omission that allegedly caused the injury, unless the action is based on the leaving of a foreign object in the body (M.G.L. c. 260, § 4).

Under Massachusetts law, statutes of repose may not be tolled for any reason unless specifically provided by law (*Stearns v. Metro. Life Ins. Co.*, 117 N.E.3d 694, 697-98 (Mass. 2019)). The discovery rule does not apply, and a statute of repose eliminates a plaintiff’s cause of action even in cases of fraudulent concealment (*Bridgewood v. A.J. Wood Constr., Inc.*, 105 N.E.3d 224, 228-29 (Mass. 2018)). The effect of a statute of repose is “to abolish the remedy... not merely to bar the action.” (*Stearns*, 117 N.E.3d at 698).

CLAIMS AGAINST ESTATES

The statute of limitations for creditors’ claims against estates is one year after the decedent’s death (M.G.L. c. 190B, § 3-803(a)-(b)). By that date:

- A complaint must be filed.
- Process must be served (or otherwise accepted).
- The creditor must file with the relevant register of probate a notice stating:
 - the name of the estate;
 - the name and address of the creditor;
 - the amount of the claim; and
 - the court in which the action has been brought.

(M.G.L. c. 190B, § 3-803(a).)

If a creditor does not bring a claim within the one-year statute of limitations, the creditor may bring a complaint in equity in either the Massachusetts Superior Court or the Supreme Judicial Court for relief from the statute of limitations (M.G.L. c. 190B, § 3-803(e)). The court may grant the creditor judgment for the claimed amount against the

decedent's estate, provided that the creditor filed the statutory notice with the relevant register of probate, after finding that:

- Justice and equity require such relief.
- The creditor was not culpably negligent in the failure to bring the claim within the statute of limitations.

(M.G.L. c. 190B, § 3-803(e).)

Actions for personal injury or death against a deceased defendant, if commenced more than one year after the defendant's death, may be brought against the administrator or executor of the estate within three years after the cause of action accrues (M.G.L. c. 190B, § 3-803(d)(2)).

The savings statute does not apply to claims against estates (M.G.L. c. 260, § 32; *Abrahamson*, 47 N.E.3d at 690-91).

Under the Massachusetts Uniform Trust Code, a claim contesting the validity of a trust that was revocable at the time of the settlor's

death must be brought within a year after the settlor's death (M.G.L. c. 203E, § 604).

CONTRACTUAL REDUCTIONS IN LIMITATIONS PERIODS

Massachusetts law allows contracting parties to reduce the limitations period for actions to enforce their contract if:

- No controlling statute to the contrary exists.
- The shorter term is reasonable under the circumstances, and not contrary to public policy.

(*Creative Playthings Franchising, Corp. v. Reiser*, 978 N.E.2d 765, 769-70 (Mass. 2012).)

Any contractually-shortened limitations period that does not permit operation of the discovery rule is unreasonable, invalid and unenforceable (*Creative Playthings*, 978 N.E.2d at 770).

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