

# DIMENSIONS

## NEW JERSEY SUPREME COURT ADDRESSES APPLICATION OF STATUTE OF REPOSE TO MULTI-PHASE CONSTRUCTION PROJECT

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Unlike New Jersey's statute of limitations applicable to recovery upon a contractual claim, which seeks to avoid the assertion of stale construction claims by compelling them to be commenced within 6 years after the claim accrues, the New Jersey Statute of Repose imposes a "hard" 10-year cap on construction claims involving defective and unsafe work. The Statute of Repose does not bar a cause of action because it is stale; rather, it prevents a cause of action from accruing by imparting immunity from suit 10 years after the completion of construction.

In *State v. Perini Corporation*, the New Jersey Supreme Court was asked to determine when the Statute of Repose begins to run with respect to claims arising out of the installation of an allegedly defective high temperature hot water (HTHW) system of a multiphase correctional facility project. The question before the Court was whether the 10-year period of repose began to run when the inmates first occupied the facility upon substantial completion of the first building/phase (May 16, 1997), or when the last building connected to the HTHW system upon substantial completion of the final phase (May 1, 1998). No separate certificate of substantial completion was issued for the HTHW system.

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The State filed suit on April 28, 2008 alleging that the HTHW system failed in March 2000 and had to be replaced. The complaint asserted claims against Perini Corporation, the design builder of the project, as well as all other parties involved in the design, engineering and installation of the HTHW system and/or the manufacture of system components. All defendants moved for summary judgment alleging that substantial completion occurred when the HTHW system first began to be used, which was more than 10 years from the filing of the complaint. The State countered that its claims were not barred because the entire project was not substantially completed until May 1, 1998. The trial court agreed with the defendants and dismissed the State's complaint. The Appellate Division reversed, holding that regardless of the multiphase nature of the project, the Statute of Repose is triggered by "improvements to real property" and not individual components of a project. According to the Appellate Division,

the HTHW system was merely a project component.

While the Legislature intended the Statute of Repose to be construed in favor of construction claim defendants, it is important to remember that the matter came before the Supreme Court as the result of a summary judgment requiring the Court to review the record favorably to the State as the non-moving party. While recognizing that the 10-year period of repose is generally triggered by "substantial completion", the Court reasoned that when a contractor has a "continuing responsibility" throughout the project, substantial completion does not occur until the entire project can be occupied and used for its intended purposes. Since each defendant was contractually bound until the entire correctional facility was substantially completed, the Court concluded that the period of repose was not triggered until substantial completion of the entire project, and that the State's claims were not barred. Notably, the Court rejected the Appellate Division's reasoning that the HTHW system was not an "improvement to real property", but did not rest its decision on that ground. Rather, the Court opined that the HTHW system was intended to serve all phases of the project, and the project was not substantially complete until the system was connected to the final phase.

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*About the Author:*

Vince Paluzzi, a Member of Eckert Seamans' Princeton, NJ office, brings a dynamic "problem solving/problem avoidance" perspective to bear on behalf of his clients. His construction-related practice includes the representation of design/builders, general contractors, construction managers, engineers, and mechanical, electrical and plumbing (MEP) contractors. He can be reached at 609.989.5033 or [vpaluzzi@eckertseamans.com](mailto:vpaluzzi@eckertseamans.com).