

When is an Improvement not an Improvement on a Construction Project?



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Today I am back on the legal analysis/interesting case train after a few weeks of getting my [new solo practice](#) (thank you to all who have wished me well in this endeavor) up and running and discussing various [green building](#) trends and topics.

This week's case discusses the operation of the Virginia construction "[statute of repose](#)" that operates as a 5 year cut off on any claim relating to improvements to a property and runs from the completion of any improvement work. Unsurprisingly, this case comes out of the Fairfax County, Virginia Circuit Court. In [Travelers Indemnity Co. v Simpson Unlimited, Inc](#) the Court considered the question of what constitutes and "improvement" under this code section.

The facts are these: Simpson was contracted to replace soffits on the terraces of a building and provide maintenance work on a building in 2002. In late 2004 a leak, attributable to the soffit work, developed and caused property damage. The lawsuit was filed in March of 2009. Simpson Unlimited argued that while the suit was filed within the applicable statute of limitations, but outside of the cutoff found in the statute of repose and therefore the case must be dismissed. Traveler's argued that the work was not improvement work, but repair or replacement work so the statute of repose did not apply.

The Court agreed with Traveler's, stating the general rule that repairs did not constitute improvements and that Simpson Unlimited's work constituted repair work. The Court cited [Black's Law Dictionary](#) in making this determination. It then concluded that removal and replacement of the soffit was repair work, despite the clear addition to the value of the property because of the work.

The take away? Contractors and subcontractors will need to determine whether they are performing improvement work or repair work in order to determine if the statute of repose applies in the first instance. Additionally, this case shows that the Courts in Virginia will look to strictly construe both the contract and the applicable statutes when analyzing construction claims. The assistance of an [experienced Virginia construction lawyer](#) can help construction professionals navigate this statutory and contractual minefield.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.