

The Decision in *Phaneuf Funeral Home v. Little Giant Pump Co.*: Statute of Repose in New Hampshire Now Only Protects Manufacturers & Sellers of Products Who Were Involved In the Transformation of the Products into Improvements

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On June 29, 2012, for the first time, the New Hampshire Supreme Court addressed whether or not product manufacturers and sellers can claim protection under New Hampshire's Statute of Repose. *Phaneuf Funeral Home v. Little Giant Pump Co., et al.*, 2012 N.H. LEXIS 88, Case No. 2011-151 (June 29, 2012). The Statute of Repose in New Hampshire provides that all actions against defendants arising out of a deficiency "in the creation of an improvement" to real property must be brought within eight years. In this case of first impression, which was argued and briefed on behalf of the plaintiff by the author of this Alert of our Philadelphia Office, the Supreme Court of New Hampshire concluded that manufacturers and sellers of products that happen to be incorporated into an improvement are not afforded protection under the Statute of Repose unless those parties were involved in transforming the product into the improvement.

In *Phaneuf*, although the court recognized that some product manufacturers and sellers could gain protection under the Statute of Repose for construction materials, the critical test adopted by the court was whether or not those seeking protection — manufacturers and sellers of products — were involved in some way in the

transformation of their product into an improvement that enhanced the value of the real estate. For the first time, the court also defined improvement to real property to mean an alteration or development of real property that either enhances its value or is intended to enhance its value. With this definition in mind, the court commented that the legislature was only seeking to protect those involved in some way in the transformation of a product into an enhancement to the real property. As a result, the court explained that manufacturers and sellers of products that are "incidentally incorporated into an improvement" are not covered because the focus should be on the activity of transforming the product into an improvement.

The decision in *Phaneuf* shows that now, under New Hampshire law, only those manufacturers and sellers who participated in the transformation of the improvement as opposed to their products merely finding their way into the improvement can claim protection under the Statute of Repose.

To discuss any questions you may have regarding this recent decision from the New Hampshire Supreme Court or the applicability of a Statute of Repose to a product manufacturer or seller, please contact Joseph F. Rich at jrich@cozen.com or 215-665-7285.