

CONTRACTOR ALERT

Contractor Alert is a joint publication by this Contractor and the Law Offices of Richard M. Sissman, Esquire, located at 1485 Chain Bridge Road, Suite 105, McLean, VA 22101. This newsletter is designed to give general information on the matters covered. Space limitation prevents exhaustive treatment or analysis of this topic. This newsletter is not intended to substitute for advice on specific legal problems. If you are interested in receiving a complimentary issue or to be placed on our mailing list, contact Richard M. Sissman, Esquire. We welcome and appreciate your suggestions for future article topics.

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THE VIRGINIA STATUTE OF REPOSE AND NEGLIGENCE ON CONSTRUCTION SITES

There was a recent Federal Court ruling in Virginia whereby a WalMart store was sued by customers when a sink fell upon their son in a restroom. A child was inside the restroom when the sink fell on his arm. The parents sued WalMart, the contractor that installed the sink along with its manufacturer. The contractor and the manufacturer raised the defense called the "statute of repose" and the Court granted relief in favor of the Defendants against the parents.

WalMart's argument is that the parents had not shown sufficient evidence to support their claim of negligence by the store. WalMart argued that the parents couldn't prove that WalMart had actual or constructive notice of a hazardous condition on the store's grounds and in order to establish a case of negligence the parents had to demonstrate this to the Court.

In Virginia a person that seeks recovery for premises liability must prove that the owner of the site had actual or constructive knowledge of a defective condition. The parents did not produce evidence that WalMart had actual notice of a defect in a sink or in the manner it was attached to the wall. In order for the parents' case to go forward it must be shown that WalMart had constructive notice of the hazard. In Virginia, the parents had to demonstrate that the defect was noticeable and existed for a sufficient length of time to charge the owner with notice of its condition.

The Court continued that even if the parents could establish that there was a noticeable defect they must also establish evidence as to when the defect originated. If the evidence fails to show when a defect occurred on the premises, the parents are without a remedy against WalMart.

Statute of Repose: The doctrine of "statute of repose" in Virginia is that no action to recover for bodily injury arising out of a defective or unsafe condition of an improvement to real property shall be brought against any person performing or furnishing the design, planning supervision or construction of such property more than five (5) years after the performance of furnishing of such services and construction. This statute protects architects, engineers and building contractors from exposure to long term liability for injuries that occur in buildings long after their work is complete. The Court determined that the installation of the sink at WalMart that fell under "equipment and machinery" and as ordinary building materials covered by the statute of repose. A plumber, who installed the sink is like an architect, designer or contractor incorporating items into construction work. The Court determined that a sink and its installation constitutes an ordinary building material and was covered by the statute of repose.

If you should have any questions on this issue please contact Mr. Sissman at his website at www.contractoralert.com or by phone at (703) 903-9646 or (301) 762-0402.