GEORGIA

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I. MECHANICS' LIEN BASICS

A mechanic's or materialmen's lien is a security interest on the owner's property which may be established in favor of an unpaid laborer or supplier of construction services and/or materials, on a private project. A mechanic's or materialmen's lien is an important remedy for an unpaid contractor or supplier, especially when the owner is in difficult financial condition and the improved property may be the only asset from which payment can be obtained. A mechanics' lien is a statutorily created remedy and considered a derogation of the common law.[1] The statute applies to both mechanics and materialmen's' liens and are strictly construed in favor of property owners.[2] Therefore, strict compliance is required under Georgia's lien statutes. For subcontractors and suppliers, who may not be in privity of contract with the owner, the security interest in the owner's property may be the only source of recovery, if the party with whom the lien claimant had its contract has absconded with the funds owed to the claimant, or has become insolvent.

A. Requirements

In Georgia, in order to "make good" on a lien, the lien claimant must comply with the following:

1. Substantial compliance by the party claiming the lien for the services contracted or material furnished;[3] [4]

2. Within 90 days after completion of the work, a claimant can file a claim of lien in the superior court of the county in which the property is located.[5] Georgia's lien statute also provides that the rules for calculating time found in O.C.G.A. § 1-3-1 apply to lien filings, so that the lien may be filed on the 90th day and, if that day falls on a weekend or legal holiday, the lien may be timely filed on the next business day.[6]

3. By statute the claim of lien shall be in substance as follows:

   > [Contractor] a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person

(as the case may be) claims a lien in the amount of (specify the amount claimed) on the house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of [property owner] (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services, or materials were supplied to the premises) for building, repairing, improving, or furnishing material (or whatever the claim may be);[7]

4. No later than two business days after the claim of lien is filed of record, send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; provided, however, if the property owner is an entity on file with the Secretary of State's Corporations Division, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement;[8]

5. The face of the lien must include the following statement regarding its expiration, in 12-point bold font:

   This claim of lien expires and is void 395 days from the date of filing of the claim of lien if no notice of commencement of lien action is filed in that time period;[9]

6. The lien must also include a notice to the owner of the property on which the claim of lien is filed that such owner has the right to contest the lien;[10]

7. In all cases in which a notice of commencement is filed with the clerk of the superior court, send a copy of the claim of lien by registered or certified mail or statutory overnight delivery to the contractor at the address shown on the notice of commencement;[11]

8. Commence a lien action[12] for recovery of the amount of the claim within 365 days from the date the lien was filed;[13]

9. Within 30 days after commencing the lien action for recovery of the amount of the lien, file a notice with the clerk of the superior court where the lien was filed, which notice must:

   a. contain a caption referring to the then owner of the property against which the lien was filed and referring to a deed or other recorded instrument in the chain of title of the affected property;

   b. be executed, under oath, by the party claiming the lien or by their attorney of record;

   c. identify the court or arbitration venue wherein the lien action is brought; the style and number, if any, of the lien action, including

the names of all parties thereto; the date of the filing of the lien action; and the book and page number of the records of the county wherein the subject lien is recorded;[14] and

10. Pay the required filing fee for the lien.[15]

11. There is no statutory cap on the lien amount, but it must not the contract price or services performed. [16]

B. Enforcement and Foreclosure

Liens are enforced by filing a lien action within 365 days after the date the lien was filed.[17] If a claimant's contract is with the owner, the lien action must be filed against the owner, but if not, the lien action must be filed against the contractor or subcontractor with which the claimant contracted[18] before a lien may be foreclosed against the owner,[19] except in the following circumstances: 1) the contractor or subcontractor has absconded, died, or left the state during the time required for filing a lien action such that personal jurisdiction cannot be obtained over such entity, or if the contractor or subcontractor has been adjudicated as bankrupt; or 2) after filing a lien action, no final judgment can be obtained against the contractor or subcontractor for the value of labor or materials provided, because the contractor or subcontractor dies, is adjudicated as bankrupt, or the contract between the claimant and the contractor or subcontractor includes a provision preventing payment to the claimant until after the contractor or subcontractor has received payment.[20] If the circumstances identified in the previous sentence exist, the claimant is relieved of filing a lien action or obtaining judgment against the contractor or subcontractor as a prerequisite to enforcing the lien against the property improved by the contractor or subcontractor, and the claimant may enforce the lien directly against the property improved in a lien action against the owner, as long as the lien action against the owner is filed within 365 days after the date the lien was filed. A judgment in an action against the owner is limited to a judgment in rem against the property improved.[21]

Despite the requirement that a claimant without a contract with the owner file a lien action against the contractor or subcontractor before foreclosing a lien against the owner, such claimant may file a complaint concurrently against the contractor or subcontractor and the owner of the property (if venue and jurisdiction are proper), claiming breach of contract against the contractor or subcontractor and seeking to foreclose the lien against the property.[22]

A successful claim to foreclose a lien results in the court's judgment awarding a special lien to the claimant on the property.[23] Execution to satisfy the lien is by sale of the property in accordance with the requirements for a sheriff's sale.[24]

Notice of Contest of Lien

An owner (or its agent or attorney) or a contractor (or its agent or attorney) may shorten the time in which to commence a lien action by recording in the superior court clerk's office a Notice of Contest of Lien, which must be in the form set forth in the statute and in boldface capital letters in at least 12 point font, along with proof of delivery upon the lien claimant.[25] A copy of the Notice of Contest must be sent to the lien claimant at the address noted on the face of

the lien by registered or certified mail or statutory overnight delivery within seven (7) days of filing the Notice of Contest. [26] If the lien claimant fails to commence a lien action within 90 days after the filing of the Notice of Contest of Lien, the lien is extinguished.[27]

Lien Waivers

Forms for an Interim Waiver and Release Upon Payment and a Waiver and Release Upon Final Payment are included in the statutes.[28] The forms must be substantially followed and must be in at least 12-point font. [29] In Georgia, liens cannot be waived before labor, services, or materials are provided, and any such attempted waiver will be deemed null and void.[30]

II. PUBLIC PROJECT CLAIMS

A. State and Local Public Work

Georgia has two "Little Miller Acts." State projects fall under O.C.G.A. § 13-10-60 et seq., while county and municipal public projects fall under O.C.G.A. § 36-91-90 et seq. The two provisions are identical. The Little Miller Acts require persons contracting with the state, county or municipality to provide both a performance bond and a payment bond for contracts greater than $100,000, although a contracting entity can require bonds for contracts less than $$100,000.

These payment bonds are required to compensate for the fact that mechanic's liens cannot properly be filed against public projects.[31]

i. Requirements

Claimants on public works payment bonds have a right to submit a claim, within ninety days after their last work, when they have not been paid in full for their labor or materials furnished on the project. Persons in privity of contract with the bond principal are always covered by the payment bond. For lower-tier subs and suppliers, the right to make a claim on a payment bond depends upon whether the general contractor or principal has complied with the Notice of Commencement requirements. If the contractor has complied with the Notice of Commencement requirements, then the lower-tier subs and suppliers must comply with a Notice to Contractor requirement in order to preserve rights under the payment bond.

The Notice to Contractor called for in the public works payment bond statute requires second-tier subcontractors and suppliers to give their written notice within thirty days from the filing of the Notice of Commencement or thirty days following their first delivery of labor, material, or other items incorporated into the project.

The bond will likely have specific information which is required to make a claim against a bond; however, in the absence of a copy of the bond, it is generally suggested that the 90-day notice of the bond claim include the following:

1. The amount of money owed including a basic accounting of the original contract amount, additions or subtractions pursuant to change orders, and the amount of money received;

2. The specific labor, material, service or equipment that was provided but not paid;

3. The entity for whom the labor, material, service or equipment was provided;

4. The name and location of the project where the labor, service, materials or equipment was used; and

5. A specific statement that a claim against the payment bond is being made.

B. Claims to Public Funds

Georgia does not have a construction trust fund statute. Georgia does, however, recognize the constructive trust fund doctrine. That doctrine is an equitable remedy imposed by the courts to prevent any unjust enrichment by those who receive construction funds.

The leading case in Georgia on this doctrine is *Bethlehem Steel Corp. v. Tidwell.*[32] The court in that case held: "*Georgia law recognizes the constructive trust fund doctrine with respect to payments owed to materialmen by their contractors for improvements made to the third party's realty.*"[33]

A Georgia constructive trust fund does not operate like a traditional trust. There is no trustee nor any obligation to hold the funds in a separate account. The doctrine just imposes a fiduciary duty on the contractor to distribute payment funds to the subcontractors and suppliers who earned them. If the contractor fails to do so, that exposes the contractor to personal liability for the amount of money that was misappropriated.

The primary advantage of classifying the money as trust funds is that it insulates the money from any third-party creditors or any declaration of bankruptcy by the contractor receiving the funds.

The court in *Bethlehem Steel Corp.* stressed that the doctrine applies only in narrow circumstances. Generally, the trust obligations will not apply where the subcontractor or supplier has not taken steps available to secure a mechanics lien right. The rights and duties under the constructive trust fund doctrine no longer exist once lien rights are lost.

III. STATUTES OF LIMITATIONS AND REPOSE

A. Statute of Limitations

The statute of limitations for breach of contract claims on "simple contracts in writing," such as construction contracts (including warranties), is six years.[34] Georgia courts also recognize a claim for negligent construction, independently from a claim for breach of contract. Claims for negligent construction arise "from breach of a duty implied by law to perform the work in accordance with industry standards."[35] The statute of limitations for a negligent construction claim is four years.[36] The statute of limitations on breach of contract, negligent construction, and implied warranties begins to run at substantial completion.[37] The statute of limitations for a breach of express warranty to repair or replace defective workmanship,

however, begins to run "from the date that the landowner notifie[s] the contractor of the alleged defects in construction."[38]

The discovery rule, i.e., that a claim does not arise until the injury is discovered, or through reasonable diligence should have been discovered, does not apply to contract cases,[39] and does not apply to negligent construction cases where the only injury is property damage.[40] A statute passed in the year 2000 specifically applies the discovery rule to the manufacture, negligent design, or negligent installation of synthetic exterior siding.[41]

Additionally, parties to a contract may agree to a shorter period of limitations, than what is otherwise provided by a statute of limitation, to bring any claim against one another. Contractual time limitations on bringing a claim are generally valid and enforceable so long as they are not so unreasonable as to raise a presumption of undue advantage. The Georgia Court of Appeals upheld a contractual limitation period that barred any claim between an owner and electrical contractor between the lesser of 120 days after receipt of final payment or six months of a written request by the owner that for a final voucher and release. The plaintiff electrical contractor sued the owner to recover payment after the owner penalized it allegedly for tardiness and using materials that did not conform to the contract. The Georgia Court of Appeals granted the defendant's/owner's motion for directed verdict pursuant to the contractual limitation period. The court said that although the statute of limitations for breach of contract claims is six years, "Georgia courts have permitted parties to contract as to a lesser time limit within which an action may be brought so long as the period fixed be not so unreasonable as to raise a presumption of imposition or undue advantage in some way."[42]

B. Statutes of Repose

A statute of repose provides an outside strict limit on any claim any person may otherwise have that is not barred by the statutes of limitations. In Georgia, there is an eight-year statute of repose for any deficiency in the construction of an improvement to real property, which begins at substantial completion of the improvement.[43] An exception for wrongful death claims may extend the statute of repose to ten years.[44] The Supreme Court of Georgia explained the difference between a statute of limitation and a statute of repose as follows:

> A statute of limitation is a procedural rule limiting the time in which a party may bring an action for a right which has already accrued. A statute of ultimate repose delineates a time period in which a right may accrue. If the injury occurs outside that period, it is not actionable. A statute of repose stands as an unyielding barrier to a plaintiff's right of action. The statute of repose is absolute; the bar of the statute of limitation is contingent. The statute of repose destroys the previously existing rights so that, on the expiration of the statutory period, the cause of action no longer exists. . . . [Thus, unlike] statutes of limitation, statutes of repose may not be "tolled" for any reason, as "tolling" would deprive the defendant of the certainty of the repose deadline and thereby defeat the purpose of a statute of repose.[45]

Therefore, Georgia's statute of repose does not create a new or longer statute of limitation.[46]

IV. PRE_SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

In 2004, the Georgia General Assembly enacted a statute requiring that, before litigation or arbitration is initiated, anyone who claims a construction defect in "a single-family house, duplex, or multifamily unit designed for residential use in which title to each individual residential unit is transferred to the owner under a condominium or cooperative system" must give the contractor notice and an opportunity to cure the defect through an alternative dispute resolution process.[47] Although the statute is mandatory, the statute does not provide a penalty for failure to engage in the alternative dispute resolution process. A contractor may, however, stay any litigation filed and require compliance with the alternative dispute resolution process.[48] A contractor must give explicit statutory notice to the owner upon entering a contract for sale, construction, or improvement of one of the aforementioned dwellings.[49] Neither the legislature nor the courts have given any guidance as to whether a contractor's failure to give the notice required by the statute prohibits the contractor from using the provision allowing it to stay litigation and require alternative dispute resolution.

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

A commercial general liability policy protects an insured contractor from tort liability for injury to persons or property but does not protect the insured from economic loss due to the insured's failure to properly complete a construction contract.[50] Thus, for example, where an insured negligently built a golf course on federally protected wetlands, the insured's policy did not cover economic damages incurred by the insured due to its breach of the contract for construction of the golf course, but it did cover tort damages incurred by the developer due to the insured's negligence in damaging the wetlands.[51]

B. Trigger of Coverage

In 2012, the United States Court of Appeals for the Eleventh Circuit certified the following to the Georgia Supreme Court:

> 1. Whether, for an "occurrence" to exist under a standard CGL policy, Georgia law requires there to be damage to "other property," that is, property other than the insured's completed work itself.
>
> 2. If the answer to Question One (1) is in the negative, whether, for an "occurrence" to exist under a standard CGL policy, Georgia law requires that the claims being defended not be for breach of contract, fraud, or breach of warranty from the failure to disclose material information. [52]

The policy at issue in the case was a standard CGL policy that provided insurance for "bodily injury" or "property damage" caused by an "occurrence."[53] The Plaintiffs in the case, a class of 400 homeowners, alleged that the concrete foundations of their homes were improperly constructed, resulting in "water intrusion, cracks in floors and driveways, and warped and buckled flooring."[54] The homebuilder's insurance company filed a declaratory judgment action

in federal court, asking the court to declare that there was no coverage under the insurer's standard CGL policy.[55] The district court granted summary judgment to the insurer, finding, among other things, that there was no "occurrence" because the only "property damage" was to the work of the insured, i.e. the homes constructed by the homebuilder.[56] The homebuilder appealed, resulting in the certification of the questions to the Georgia Supreme Court.

Recognizing its holding two years prior that "an occurrence can arise where faulty workmanship causes unforeseen or unexpected damage to other property,"[57] the court turned to whether that holding applied where the only damage alleged was to work of the insured.[58] The court found that the policy defined an "occurrence" as an "accident, including continuous or repeated exposure to substantially the same, general harmful conditions," but the policy did not define "accident."[59] Because the policy did not indicate that the term "accident" was used in an unusual and uncommon way, the court "attribute[d] to that term its usual and common meaning," holding that in its usual and common usage, the term "conveys information about the extent to which a happening is intended or expected," and not information "about the nature or extent of injuries worked by such a happening, much less the identity of the person whose interests are injured."[60] Therefore, the court answered the first certified question in the negative, holding that that an "occurrence" "does not require damage to the property or work of someone other than an insured."[61]

Finding that the litigation at issue did not involve a claim of breach of contract, the court limited its review of the second certified question to fraud and breach of warranty claims.[62] The court held that, under Georgia law, fraud requires intent, and it therefore cannot be an "accident" and it therefore cannot be an "occurrence," with the result that fraud claims are not covered by CGL policies under Georgia law.[63] The court held that a breach of warranty could be a result of faulty workmanship, which the court had already found to constitute an "occurrence," and therefore the court held that a breach of warranty claim could be covered by a CGL policy under Georgia law, depending on the circumstances.[64]

C. Allocation Among Insurers

On a certified question from the U.S. District Court for the Northern District of Georgia, the Supreme Court of Georgia has held that the traditional rule of pro rata allocation of coverage applied when two policies' "other insurance" provisions conflict, regardless of the fact that one of the coverages was from a state-regulated insurance program.[65]

VI. CONTRACTUAL INDEMNIFICATION

An agreement, made in connection with a contract for construction of a building, which seeks to indemnify the promisee against liability for damages to persons or property based on the promisee's own sole negligence is void as against public policy.[66] This rule does not hold true, however, "[w]here an insurance clause shifts the risk of loss to the insurance company, notwithstanding which party may be at fault."[67] Nor does the rule apply when the promisee does not seek indemnification for its own negligence.[68]

VII. CONTINGENT PAYMENT AGREEMENTS

Under Georgia law, "a provision in a contract may make payment by the owner a condition precedent to a subcontractor's right to payment if 'the contract between the general contractor and the subcontractor should contain an express condition clearly showing that to be the intention of the parties."[69]

VIII. SCOPE OF DAMAGE RECOVERY

A. Attorneys' Fees

"The general rule is that expenses of litigation, including attorney's fees, are not recoverable by a litigant against the opposite party except in those cases which are specifically provided for by contract or by statute."[70] The most common statutory provision for attorney's fees allows for recovery of attorney's fees where a defendant acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.[71] For an award of attorney's fees based on a defendant's bad faith, the bad faith "must relate to the acts in the transaction itself prior to the litigation."[72] Neither refusal to pay a just debt nor mere negligence rise to the level of moral obliquity required to justify an award of attorney's fees for bad faith.[73] Attorney's fees for stubborn litigiousness and unnecessary trouble and expense may only be awarded where there is no bona fide dispute as to defendant's liability.[74] In addition, Georgia has a Prompt Pay Act,[75] pursuant to which the prevailing party is entitled to an award of reasonable attorney's fees.[76]

B. Consequential Damages

"Damages recoverable for a breach of contract are such as arise naturally and according to the usual course of things from such breach and such as the parties contemplated, when the contract was made, as the probable result of its breach."[77] "[R]emote or consequential damages are not recoverable unless they can be traced solely to the breach of the contract or unless they are capable of exact computation, such as the profits which are the immediate fruit of the contract, and are independent of any collateral enterprise entered into in contemplation of the contract."[78] Contracting parties may agree to exclude consequential damages from an award for breach of contract.[79]

C. Economic Loss Doctrine

"The economic loss rule generally provides that a contracting party who suffers purely economic losses must seek his remedy in contract and not in tort."[80] The economic loss rule does not apply to claims for negligent construction,[81] as long as the breach of duty results in damage to or defects in property in which the plaintiff has an interest.[82]

Additionally, with regard to claims by third persons not in contractual privity with a provider of professional services such as architectural and professional engineering services, the economic loss doctrine has been relaxed in Georgia. Georgia, like most states, has relaxed the privity of contract requirement by adopting the rule enunciated in the Restatement (Second) of Torts § 552, which allows a limited class of persons, without privity of contract and for whom

the information from the professional was intended, to bring a negligent misrepresentation claim against a professional in certain circumstances.[83]

D. Interest

Prejudgment interest is 7% per annum, unless otherwise established by written contract.[84] Contractual interest rates are subject to usury laws. Post judgment interest is "equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent."[85] In a suit on a commercial account, the interest rate is 1-1/2 percent per month from the date upon which the amount owed became due and payable.[86] Georgia's Prompt Pay Act provides for interest at a rate of one percent per month.[87]

E. Punitive Damages

Punitive damages may not be awarded on claims for breach of contract.[88]

IX. CASE LAW AND LEGISLATIVE UPDATE

In *ALA Constr. Servs., LLC v. Controlled Access, Inc.,* [89] the Georgia Court of Appeals held a party's lien waivers waived not only its lien rights, but also any related claims for breach of contract. In that case, ALA contracted with Controlled Access, Inc. to provide equipment and other services for a project. Controlled Access signed two statutory lien waivers with the expectation that it would be paid for its work. Controlled Access was never paid, but it did not file either a statutory Affidavit of Nonpayment or a Claim of Lien within 60 days of its execution of the lien waivers, which nullified its rights to assert a claim of lien. Having waived its lien rights, Controlled Access instead brought a breach of contract action against ALA seeking payment for the work performed by Controlled Access. The trial court held that Controlled Access did not waive its right to assert a breach of contract claim against ALA by executing the lien waivers. On appeal, the Court of Appeals, relying on portions of Georgia's lien waiver statute, reversed, holding that Controlled Access' lien waivers waived not only its lien rights, but also any related claims for breach of contract.

Prior to this decision, most lien claimants believed that a statutory lien waiver waived a claimant's lien rights, but did not affect the claimants' right to bring a breach of contract action. As a result of this decision, lien claimants who execute lien waivers risk losing their rights to bring breach of contract actions unless they file an Affidavit of Nonpayment or a Claim of Lien within 60 days of execution of a particular lien waiver.

In response to the decision in *ALA Constr. Servs., LLC,* on February 21, 2020 the Georgia State Senate passed a bill to revise Georgia's lien statute to state that waivers and releases under Georgia's lien statute are limited to waivers and releases for lien and bond rights only and are not intended to affect any other rights or remedies of a lien claimant, including its rights to assert a breach of contract claim. The bill has been assigned to the Georgia House of Representatives' Regulation Industries Committee.

In *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*,[90] the Georgia Court of Appeals clarified the reach and application of the Georgia's statute of repose, holding that since Georgia's statute of repose makes "no distinction" among claims sounding in negligence and those sounding in contract, "the statute broadly precludes ***any action*** to recover damages brought outside the eight-year period of repose." The court held: "It is well settled that 'a statute of ultimate repose frames the time period in which a right may accrue, if at all. Therefore, if an injury occurs outside this time period, the injury is not actionable[.]'" While this decision addressed claims for breach of an express promise to renovate a storage tank, the court's reasoning appears to apply to bar all untimely contractual claims alleging deficiency in construction—including indemnity, contribution, and breach of warranty.

The decision provides clarity as to which claims are subject to the statutory window of liability for completed projects. Even with these changes, however, owners and contractors should still review their construction contracts for specific provisions regarding completion, statutes of limitations and indemnity. Additionally, this decision does not extend the statute of repose to claims for contractual indemnification where the indemnitor does not allege deficient construction and the indemnification provision does not require a showing of negligence. Those claims would still be governed by the applicable statute of limitations.

[1] *Roofing Supply of Atlanta, Inc. v. Forrest Homes, Inc.*, 632 S.E.2d 161, 163 (Ga. App. 2006).
[2] *Id.*
[3] Ga. Code Ann. § 44-14-361.1(a)(1).
[4] Abandonment of work by the contractor upon a mere apprehension of non-payment is unauthorized and not substantial compliance. A contractor being prevented from completing the project is the equivalent of completion. *Summit-Top Dev. v. Williamson Constr.*, 203 Ga. App. 460, 462 (Ga. App. 1992)
[5] Ga. Code Ann. § 44-14-361.1(a)(2).
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] Ga. Code Ann. § 44-14-361.1(a)(2); Ga. Code Ann. § 44-14-367 (as amended effective March 31, 2009).
[10] Ga. Code Ann. § 44-14-361.1(a)(2).
[11] *Id*.
[12] A lien action is defined as "a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration." Ga. Code Ann. § 44-14-360(2.1).
[13] Ga. Code Ann. § 44-14-361.1(a)(3).
[14] Ga. Code Ann. § 44-14-361.1(a)(3).
[15] Ga. Code Ann. § 44-14-361.1(f).
[16] Ga. Code Ann. § 44-14-361.1(e).
[17] See notes 9 and 10 and accompanying text.
[18] *Cent. Atlanta Tractor Sales, Inc. v. Athena Development, LLC*, 657 S.E.2d 290, 293 n.5 (Ga. App. 2008).
[19] *McDonough Const. Co. v. McLendon Elec. Co.*, 250 S.E.2d 424, 427 (Ga. 1978).
[20] Ga. Code Ann. § 44-14-361.1(a)(4).
21 Id.
[22] *West Lumber Co. v. Aderhold*, 82 S.E.2d 670, 671 (Ga. App.1954).
[23] Ga. Code Ann. § 44-14-530(a).
[24] See Trust Co. of New Jersey v. Atlanta Aluminum Co., 255 S.E.2d 82, 83 (Ga. App. 1979); Ga. Code Ann. § 9-13-161.
[25] Ga. Code Ann. § 44-14-368(a).
[26] Ga. Code Ann. § 44-14-368(b).
[27] Ga. Code Ann. § 44-14-368(c).
[28] Ga. Code Ann. § 44-14-366.
[29] *Id*
[30] *Id.*
[31] Compare *Hoffman Electric Co. v. Chiyoda International Corp.*, 203 Ga. App.731, 417 S.E.2d 371 (1992) (holding that a contract term which required a public works contractor to indemnify the owner and remove liens filed on the project required the contractor, not the owner, to satisfy claimants even though liens filed were illegal).
[32] *Bethlehem Steel Corp. v. Tidwell*, 66 B.R. 932, 1986 U.S. Dist. LEXIS 18107 (M.D. GA. 1986).
[33] *Id*, at 939-940.
[34] Ga. Code Ann. § 9-3-24; *see also Feinour v. Ricker Co.*, 566 S.E.2d 396, 397 (Ga. App. 2002) ("We have repeatedly held that the six-year statute of limitation set out in OCGA § 9-3-24 applies to contract claims (whether breach of implied warranty, breach of express warranty, or breach of sale/construction contract) ....").
[35] *Young v. Oak Leaf Builders, Inc.*, 626 S.E.2d 240, 244 (Ga. App. 2006).
[36] Ga. Code Ann. § 9-3-30(a). Note, however, that "[g]enerally, once a property developer or home builder has sold property to another, it is not liable for damages resulting from negligent construction that could have been discovered through reasonable inspection, even if the negligent construction violated building codes, unless the developer or builder fraudulently concealed the negligence." *Brazier v. Phoenix Group Management*, 633 S.E.2d 354, 359 (Ga. App. 2006).
[37] "With regard to tort claims and claims for breach of implied warranty and breach of the sale/construction contract, we have held that the applicable statutes of limitation begin to run on the date of substantial completion ...." *Feinour*, 566 S.E.2d at 397.
[38] *Feinour*, 566 S.E.2d at 398.

[39] "The discovery rule ha[s] no application to a case in which a breach of contract is alleged ...." *Owen v. Mobley Const. Co., Inc.*, 320 S.E.2d 255, 256 (Ga. App. 1984).
[40] "The discovery rule is confined to cases of bodily injury and does not apply to actions seeking recovery for property damage only." *Stamschror v. Allstate Ins. Co.*, 600 S.E.2d 751, 752 (Ga. App. 2004).
[41] Ga. Code Ann. § 9-3-30(b).
[42] *Rabey Elec. Co. v. Hous. Auth. of Savannah*, 190 Ga. App. 89, 90 (1989). *See also Holt & Holt, Inc. v. Choate Const. Co,* 271 Ga. App. 292, 295 (2004) (upholding dismissal of claim as untimely after plaintiff failed to act within 30-day period established by contract).
[43] Ga. Code Ann. § 9-3-51.
[44] *Id.*
[45] *Simmons v. Sonyika*, 279 Ga. 378, 380 (2005).
[46] *Howard v. McFarland*, 237 Ga. App. 483 (1999).
[47] Ga. Code Ann. § 8-2-36. The statute contains a convoluted process of notice of claim, possible inspection, offers to settle, acceptance or rejection, and possible counteroffers.
[48] Ga. Code Ann. § 8-2-37.
[49] Ga. Code Ann. § 8-2-41.
[50] While it may be true that the same neglectful craftsmanship can be the cause of both a business expense of repair and a loss represented by damage to persons and property, the two consequences are vastly different in relation to sharing the cost of such risks as a matter of insurance underwriting.... The coverage applicable under the CGL policy is for tort liability for injury to persons and damage to other property and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained.
McDonald Const. Co., Inc. v. Bituminous Cas. Corp., 632 S.E.2d 420, 423 (Ga. App. 2006).
[51] *Glens Falls Ins. Co. v. Donmac Golf Shaping Co., Inc.*, 417 S.E.2d 197, 198 (Ga. App. 1992).
[52] *Taylor Morrison Servs., Inc. v. HDI-Gerling America Ins. Co.*, 746 S.E.2d 587, 588 (Ga. 2013). As used in the case, the court considered a standard CGL policy to be one "on standard ISO form CG 00 01 10 93" or "another standard form that is identical in all material respects." *Id.*
[53] *Id.* at 589.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Am. Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co.*, 707 S.E.2d 369, 372 (Ga. 2011).
[58] *Taylor Morrison Servs., Inc.*, 746 S.E.2d at 590.
[59] *Id.* at 590-91.
[60] *Id.* at 591.
[61] *Id.* at 590-91.
[62] *Id.* at 588 n. 2 and 594 n. 14.
[63] *Id.* at 594-95.
[64] *Id.* at 595.
[65] *Nat'l Cas. Co. v. Ga. Sch. Bds. Ass'n-Risk Mgmt. Fund*, 304 Ga. 224, 818 S.E.2d 250 (2018).
[66] Ga. Code Ann. § 13-8-2.
[67] *Great Atlantic & Pacific Tea Co., Inc. v. F.S. Associates, L.P.*, 571 S.E.2d 527, 528 (Ga. App. 2002).
[68] *Buffington v. Sasser*, 363 S.E.2d 2, 6 (Ga. App. 1988). In *Buffington*, the indemnitor contended "that the indemnity clause contained in the termination agreement contravenes public policy and is unenforceable," relying on Ga. Code Ann. § 3-8-2(b). The court found that "the indemnity clause at issue" only purported to "indemnify and save harmless [indemnitee] from any and all liabilities and responsibility arising out of the subcontracts....," and did "not expressly apply to damage caused by [indemnitee's] own negligence . . . ."
[69] *Sasser & Co. v. Griffin*, 210 S.E.2d 34, 39 (Ga. App. 1974); *St. Paul Fire & Marine Ins. Co. v. Georgia Interstate Elec. Co.*, 370 S.E.2d 829, 831 (Ga. App. 1988).
[70] *Arbor Station Homeowners Servs., Inc. v. Dorman*, 567 S.E.2d 102, 104 (Ga. App. 2002).
[71] Ga. Code Ann. § 13-6-11.
[72] *Lay Bros., Inc. v. Golden Pantry Food Stores, Inc.*, 616 S.E.2d 160, 166 (Ga. App. 2005).
[73] *Beacon Indus., Inc. v. Vanderbunt Concrete, Ltd.*, 323 S.E.2d 871, 874 (Ga. App. 1984) ("The mere failure of a defendant to pay a claim does not constitute bad faith."); *Rapid Group, Inc. v. Yellow Cab of Columbus, Inc.*, 557 S.E.2d 420, 426 (Ga. App. 2001) ("Bad faith is not simply bad judgment or negligence, but it imports a dishonest

purpose or some moral obliquity, and implies conscious doing of wrong, and means breach of known duty through some motive of interest or ill will.") (citations and quotations omitted).

[74] *Steel Magnolias Realty, LLC v. Bleakley*, 622 S.E.2d 481, 483 (Ga. App. 2005) ("A recovery of attorney fees under OCGA § 13-6-11 for stubborn litigiousness or for causing the plaintiff unnecessary trouble and expense is authorized where the evidence reveals no bona fide controversy or dispute with regard to the defendant's liability.")

[75] Ga. Code Ann. §§ 13-11-1 through 13-11-11.

[76] Ga. Code Ann. § 13-11-8.

[77] Ga. Code Ann. § 13-6-2.

[78] *Esprit Log and Timber Frame Homes, Inc. v. Wilcox*, 691 S.E.2d 344, 347 (Ga. App. 2010) (quoting Ga. Code Ann. § 13-6-8).

[79] *Am. Car Rentals, Inc. v. Walden Leasing, Inc.*, 469 S.E.2d 431, 433 (Ga. App. 1996) ("A clause excluding the recovery for consequential damages is valid and enforceable, unless prohibited by statute or public policy.")

[80] *General Elec. Co. v. Lowe's Home Centers, Inc.*, 608 S.E.2d 636, 637 (Ga. 2005).

[81] *Rowe v. Akin & Flanders, Inc.*, 525 S.E.2d 123, 126 (Ga. App. 1999).

[82] *City of Atlanta v. Benator*, 714 S.E.2d 109, 116-17 (Ga. App. 2011).

[83] *See e.g. Robert & Co. v. Rhodes-Haverty Partnership*, 250 Ga. 680 (1983).

[84] Ga. Code Ann. § 7-4-2.

[85] Ga. Code Ann. § 7-4-12.

[86] Ga. Code Ann. § 7-4-16.

[87] Ga. Code Ann. § 13-11-7.

[88] *Trust Co. Bank v. Citizens & Southern Trust Co.*, 390 S.E.2d 589, 592 (Ga. 1990) (citing O.C.G.A. §§ 13-6-10 & 51-12-5.1).

[89] *ALA Constr. Servs., LLC v. Controlled Access, Inc.,* 351 Ga. App. 841, 833 S.E.2d 570 (2019).

[90] *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 353 Ga. App. 286, 836 S.E.2d 617 (Oct. 31, 2019).