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CONSTRUCTION UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

We publish various newsletters regarding other areas of law as well. Please call us for more information.

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Free Seminars Available

If you and your employees are interested in learning more about a particular legal topic, we would be happy to provide a seminar on such topic at no charge. The seminar can be at your business location or at our firm's location in Albany. Let us know your choice.

Examples of seminars:

- General Banking Law
- Legal Issues in Agriculture
- Workers' Comp Overview
- Return to Work in Workers' Comp
- Sexual Harassment
- Americans with Disabilities Act
- Family and Medical Leave Act
- Negligent Hiring
- Estate Planning

Changes in Mechanic's and Materialman's Lien Statute to Take Effect March 31, 2009

The recent amendments to the mechanic's and materialman's lien statutes in Georgia are scheduled to become effective on March 31, 2009. The changes are relatively minor in nature, but are noteworthy due to the extremely strict reading given to those statutes by Georgia courts. Even minor changes are certainly worthy of attention.

Some of the changes have to do with the deadlines for the filing and perfection of liens. Specifically, the three-month window for the filing of a lien after completion of work is now more specifically defined as ninety days. Similarly, the deadline for filing suit after the completion of work has changed from twelve months to three hundred sixty-five days. In addition, the time for providing notice of the lien to the owner of the property has changed from generally "at the time of filing for record" the claim of lien to "no later than two business days after the date the claim of lien is filed of record."

In addition, the substance of the lien itself has been changed and is now required to include a statement regarding the expiration of the lien pursuant to O.C.G.A. § 44-14-367 and also must include a notice to the owner of the property that the owner has the right to contest the lien. The failure to include those two new notice provisions will serve to invalidate the lien.

With respect to the mailing of a notice of the lien to the owner of the property, the statute now specifies that if the owner's address cannot be found, then notice of the lien may be submitted to the contractor as an agent for the owner. Or, if the property owner is a corporate entity on file with the Secretary of State of Georgia, then a copy of a claim may be sent to the entity's primary business address on file with the Secretary of State or to the registered agent of record with the Secretary of State. In addition, however, if there is a Notice of Commencement on file with the Clerk of the Superior Court pursuant to O.C.G.A. § 44-14-361.5, then a copy of the lien must be sent to the contractor at the contractor's address indicated on the Notice of Commencement.

After the filing of the lien and in the event that suit is required, the new statute extends the time for the filing of a notice of such suit in the Clerk of the Superior Court of the county in which the property is located from fourteen days to thirty days.

Finally, the new statute now specifies that the filing fees for mechanic's and materialman's liens and for any other document created pursuant to the code section shall be in the amount set forth in O.C.G.A. §15-6-77 concerning liens on real estate and personal property.

Overall, the major changes include: 1) a better definition of the times and deadlines for filings under the statute, 2) an additional requirement for language of the lien regarding notice of cancellation and notice to the owner of the right to contest the lien, and 3) general clarification of other generalities contained in the previous statute.

General Contractor Relieved of Liability for Fatal Collision Caused by Subcontractor's Employee Driving Subcontractor's Poorly Maintained Vehicle

The Georgia Court of Appeals recently affirmed a trial court decision granting summary judgment to a general contractor accused of liability for a fatal collision. The general contractor was performing construction services on a municipal airport runway paving project. The general contractor entered into a subcontract with a paving company to move dirt at the project site in order to create a drainage and wetland area. The subcontract specifically provided that "no outside fill dirt or material would be required."

While performing work on the site, a dump truck owned and operated by the subcontractor sustained damage to the bed of the truck and was required to be transported to a local repair shop. While traveling between the repair shop and the job site, an employee of the subcontractor ran a stop sign, causing a fatal accident. The decedent's family brought a lawsuit against the general contractor. The lawsuit contended that the general contractor had a duty, in operating and managing its job site, to monitor the equipment of the subcontractor and to identify unsafe brakes on the dump truck. The lawsuit cited specific language in the general contractor's contract with the city for which it was performing work. The primary provision was entitled, "Public Convenience and Safety." Those provisions provided that the general contractor was obligated, pursuant to the contract with the city, to "control its operations and those of its subcontractors and

all suppliers to assure the least inconvenience with the traveling public." The provision further provided that, "Under all circumstances, safety shall be the most important consideration" and that the general contractor was to provide continuing instructions to all subcontractors "to enable them to conduct their work in a manner that will provide the maximum safety with the least hindrance to air and ground traffic." The plaintiff contended that those contractual provisions created a duty on the part of the general contractor which extended to the traveling public and the general public and included an obligation to inspect the subcontractor's dump truck. The Court of Appeals rejected that contention and reasoned that, while a general contractor can be responsible for accidents that occur on public highways where the construction project is taking place on a public highway, this construction, at an airport, was not on the public roadway. In addition, the fatal accident occurred outside the boundaries of the job site. There was nothing that occurred on the job site which caused the fatal collision.

The Court of Appeals' opinion placed no responsibility whatsoever on the general contractor to inspect the vehicles or equipment used by its subcontractors. That responsibility fell exclusively to the subcontractor and to its driver.

It is important to note, however, that if the fatality had occurred on the job site, or if the job site had included a public roadway, then the result of this case may have been quite different.

Representing clients in the construction and trucking industries, Mark embraces a hands-on approach that includes offering immediate, on site investigation of catastrophic accidents. Mark has a thorough understanding of trucking and construction trade practices, which has contributed to his success in jury trials. He and his wife, Liza, have four children. Mark serves on the Board of Directors for the Boys and Girls Club of Albany and is the Chairman of the Board of Directors for the Chehaw Park Authority. mark.pickett@gwsh-law.com

