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# Lawyer: Appeals Court Ruling Ends Construction Warranties at Eight Years

The winning parties' attorneys dismiss these fears, while two construction litigators not involved in the case suggest specific contracts can get around any warranty problem in the decision.

By **Jonathan Ringel** (<https://www.law.com/dailyreportonline/author/profile/Jonathan-Ringel/>) | November 22, 2019 at 04:08 PM

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Judge Christian Coomer, Georgia Court of Appeals. (Photo: John Disney/ALM)

A case over a sulphuric acid leak has burned a hole into Georgia law around a wide range of warranties for property owners, a lawyer for the losing side of a recent state Court of Appeals decision claims.

The winning parties' attorneys dismiss these fears, while two construction litigators not involved in the case suggested specific contracts can get around any warranty problem in the decision.

The Oct. 31 [opinion \(https://efast.gaappeals.us/download?filingId=ee6bb586-83ec-48a8-b3cd-9fada88bdbdb\)](https://efast.gaappeals.us/download?filingId=ee6bb586-83ec-48a8-b3cd-9fada88bdbdb) favored Tampa Tank Inc. and Corrosion Control Inc., which argued that they could not be held liable for a 2011 leak in a 2 million

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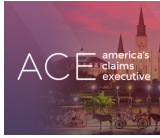
gallon tank owned by Southern States Chemical Inc. Tampa had renovated the unit in 2002, and Corrosion Control designed an anti-corrosion system for the tank.

The ruling written by Judge Christian Coomer, joined by Judges Todd Markle and Ken Hodges, "is a serious threat to all property owners in Georgia, because it obliterates the distinction between contract and tort vis-à-vis the statute of repose," said Jeffrey Lewis, a partner at Arnall Golden Gregory. He represents Southern States Chemical.

**Jeff Lewis, Arnall Golden & Gregory.**  
(Photo: John Disney/ALM)

The statute of repose law, OCGA § 9-3-51, prohibits suits for damages for "any deficiency" in the construction process "of an improvement to real property" more than eight years after the construction.

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Lewis, whose client was backed with an amicus brief by the Building Owners and Managers Association of Georgia, focused on Coomer's writing that "the unambiguous language" of the law "makes no distinction among claims sounding in negligence and those sounding in contract."

"Whether in tort or in contract, the statute broadly precludes any action to recover damages brought outside the eight year period of repose," Coomer wrote.

Lewis told the Daily Report, under Coomer's ruling, "all warranty rights of all property owners in Georgia (private or public), on a courthouse, Decatur bungalow, small business building, tunnel, office building, stadium, warehouse, factory, barn, or highway bridge, cannot exceed eight years."

Lewis said his client will ask the Supreme Court of Georgia to hear the case, which would extend a matter that has bounced among Fulton County Superior Court, the appeals court and the high court since 2012.

Swift, Currie, McGhee & Hiers partner Brad Wolff, who along with Cecily McLeod of Gordon Rees Scully Mansukhani represents the defendants, dismissed Lewis' arguments. "The Court of Appeals' decision in this case does not affect construction warranties longer than eight years."

He noted that Southern held only a 12-month warranty on the work done by Tampa Tank, so the decision "does not address the effect the statute of repose might have on a different warranty in a different case."

Southern had argued that the tank was covered by a warranty extended by Corrosion Control to Tampa Tank that was to last at least 43 years. Southern's claim was based on a report Corrosion Control provided to Tampa Tank saying the tank system should last 43 to 45 years.

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The appeals court rejected that argument, saying “Southern cites no Georgia case law to support its position that payments made by a contractor to a subcontractor for services can be co-opted by a third-party beneficiary as consideration.”

Ned Blumenthal, a litigation partner at Weissman who has represented builders and developers, said Georgia law is clear that the same facts can give rise to tort claims or breach of contract claims.

“Just to be safe,” Blumenthal said in light of the decision, he’d want a separate contract to deal with warranties on construction.

Gina Vitiello, a shareholder at Chamberlain, Hrdlicka, White, Williams & Aughtry who also represents clients in construction litigation, said she wasn’t surprised by the ruling, despite Southern’s “very creative lawyering.”

She said the court appeared to base its ruling on Southern not being able to rely on its claim of a 43- to 45-year warranty, so the decision is factually different from one dealing with the eight-year limit.

She also said parties wanting to get around the eight-year statute of repose could “contractually agree to a different period of time.”

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