

Eleventh Circuit Affirms Summary Judgment for Surety under Georgia's Little Miller Act

By David Harris January 23, 2018

Jack Burch and **David Harris** recently persuaded both the trial court and the Eleventh Circuit that a surety client was entitled to summary judgment on Georgia's Little Miller Act one-year statute of limitations. *Strickland v. Arch Ins. Co.*, No. 17-10610, 2018 WL 327443 (11th Cir. Jan. 9, 2018). The statute requires any action to be filed within one year from the date of completion and acceptance of a construction project. See O.C.G.A. § 13-10-65; O.C.G.A. § 36-91-95.

The claimant provided material on a GDOT project that was substantially complete in August 2010, and the punch list was completed by September 2011. The claimant argued his 2014 lawsuit nevertheless was timely because: 1) work was not completed until warranty and maintenance obligations expired, and 2) the clock did not start until there was a formal letter from GDOT accepting the project.

The Court rejected both arguments and held that "completion" and "acceptance" as used in the statute relate to the actual work on the project and do not depend on the expiration of future contractual obligations or on the public owner's internal policies and procedures.

The takeaway from this decision: under Georgia law, the date a public owner declares a project "completed" and/or "accepted" does not control the running of the statute of limitations. Instead, Georgia's one-year statute on Little Miller Act bonds commences when the actual work is substantially completed. Punch list items do not have to be complete, and the warranty period most likely will not have run.

This statute of limitations applies to both payment and performance bonds for public works in Georgia.