

**CASE LAW UPDATES
SUBMITTED BY THE CONSTRUCTION LAW SUBSTANTIVE LAW
COMMITTEE**

- 1 CLIVE et al. v. GREGORY et al. AIM LAND, INC. v. CLIVE et al.**
2006 Ga. App. LEXIS 880; 2006 Fulton County D. Rep. 2394
(July 13, 2006, Decided)

This case is significant in that it holds that government building inspectors can no longer rely upon the public duty doctrine as a defense. That doctrine holds that where the duty owed by the government runs to the public in general and not to any particular member of the public there is no duty upon which liability may be attached. This defense was extended to building inspectors in City of Lawrenceville v. Macko, 211 Ga. App. 312, 315 (2) (439 SE2d 95) (1993).

The Court of Appeals in Clive, however, reasoned that the Georgia Supreme Court's rulings in City of Rome v. Jordan, 263 Ga. 26, 27 (1) (426 SE2d 861) (1993) and subsequent cases such as Hamilton v. Cannon, 267 Ga. 655, 656 (1) (482 SE2d 370) (1997) limited the application of the public duty doctrine to police protections not police powers and held that the extension of the public duty doctrine to building inspectors in the City of Lawrenceville was inconsistent with these Supreme Court decisions and therefore overruled.

- 2. PROGRESSIVE PLUMBING, INC. v. ABCO BUILDERS, INC.**
2006 Ga. App. LEXIS 1209; 2006 Fulton County D. Rep. 3041
(September 27, 2006, Decided)

Progressive Plumbing illustrates the narrow the scope of review for courts hearing motions to vacate an arbitration award. The case involved a dispute between a general contractor and a subcontractor over money due on a construction project. The general contractor and the subcontractor arbitrated their claims which resulted in a net arbitration award of \$ 60,249.67. to the subcontractor.

The subcontractor moved to confirm the award and the general contractor moved to vacate the award. The superior court held a hearing on both motions where the parties stipulated to the presentation of all of the documentary evidence presented at arbitration. The trial court also heard testimony from one the general contractor's expert witness. Ultimately the trial court vacated the arbitration award on the grounds that the arbitrator manifestly disregarded the law.

The Court of Appeals held that trial court exceeded the scope of its authority because it reviewed the sufficiency of the evidence before the arbitrator. The Court of Appeals held that since the arbitration hearing was not transcribed and the award was silent as to the law it applied, the court was without authority to vacate the arbitrators' award on the ground that they manifestly disregarded the law.

3. TAYLOR v. S & W DEVELOPMENT, INC.

279 Ga. App. 744; 632 S.E.2d 700; 2006 Ga. App. LEXIS 693;
(June 12, 2006, Decided)

This was a personal injury matter where the plaintiff attempted to overcome the eight-year statute of repose provided for by O.C.G.A. § 9-3-51 (a) by alleging claims for failure to warn claims and subsequent independent acts of negligence.

In Taylor, the plaintiff was injured in May 2004 when he fell through a pub's plate glass window. The window was originally installed during a 1990 renovation project performed by defendant S & W Development, Inc. ("S&W"). Plaintiff alleged that the window violated the applicable law because its size and proximity to the floor required it to be made of tempered or safety glass and not plate glass. S & W also performed renovation work at the pub in 1995 and 1996, which involved removing and reinstalling many of the windows installed in 1990, but not the window that plaintiff fell through.

Plaintiff tried to overcome the statute of repose by arguing that his claim was a failure to warn claim and therefore a continuous tort to which the statute of repose did not apply. Plaintiff also argued that S&W failure to replace the window during the 1995 and 1996 projects constituted independent torts which fell within the statute of repose. The trial court rejected both arguments and the Court of Appeals affirmed.