

5-25-2011

# 2014, Panama and the Future of Georgia'S Ports

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## Recommended Citation

[http://coba.georgiasouthern.edu/pdf%20files/2011\\_05\\_25\\_Rutner\\_Future\\_of\\_Georgia\\_Ports.pdf](http://coba.georgiasouthern.edu/pdf%20files/2011_05_25_Rutner_Future_of_Georgia_Ports.pdf)

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# Know your obligations for post-sale product safety

Savannah and the Coastal Empire are home to a number of major manufacturers who produce, market and ship high-quality products to customers around the world.



Dennis Keene

State laws typically provide remedies to consumers of products — from construction backhoes to everyday household goods — who

find the product they are using is defective. After all, consumers are entitled to enjoy products that are safe when used correctly and have not been designed, manufactured or marketed with defects.

That does not mean consumers are entitled to products that are completely free from danger.

Sometimes a manufacturer's obligations to consumers continue after the sale when, for example, a product defect is discovered years later or product advancements are developed that make the product safer and the manufacturer has not yet warned

of the danger protected by the new advancement.

The general rule in Georgia is if a manufacturer has actual or constructive knowledge of a danger, it has an obligation to warn consumers accordingly. However, this rule is not absolute and there are case-specific limits to a manufacturer's duty to warn about post-sale discovered dangers and safety advancements.

Take, for example, a 1970s-era automobile built without airbags. Should a manufacturer be responsible for injuries that may have been prevented had the car been built with an air bag? Certainly later model cars have air bags, so why shouldn't the manufacturer be required to recall all cars previously sold and retrofit them with the new technology?

First, such a burden would stifle manufacturing and bring some industries to a halt. Second, who would pay for such improvements, and what would happen if the value of the original product is below the cost of installing or retrofitting the new technology?

Should a manufacturer be responsible for injuries that may have been prevented had the car been built with an air bag? Certainly later model cars have air bags, so why shouldn't the manufacturer be required to recall all cars previously sold and retrofit them with the new technology?

Although manufacturers may have a duty to warn in these instances, absent special circumstances imposed under the law, manufacturers do not have a legal duty to recall and/or retrofit older equipment when new industry-developed safety advancements are implemented.

When a manufacturer discovers a defect in one of its products, it often initiates a recall campaign whereby consumers are notified to return the defective product to the point of sale — usually the store or dealership where the product was purchased — for a replacement of or repair to the product.

However, recalls are neither routine nor required when technology advances

and safety improvements are made to a product.

For many manufacturers of routine disposable household products like toasters, light bulbs and television sets, it becomes difficult, if not impossible, to track down every owner to notify them of product changes and new warnings.

Other manufacturers have a duty to keep track of their products and have mechanisms in place to conduct adequate safety recalls and retrofit campaigns.

So, is a manufacturer potentially responsible for damages caused because it does not have the latest or subsequently developed safety advancements and warnings on its products?

Possibly. Although manufacturers are not required by law to notify customers of safety advancements developed post-sale, they do have a duty to warn them of hazards known either at the time of the sale or learned after the sale.

Manufacturing companies should recognize their potential post-sale legal liability, realizing that their exposure may differ based on the nature of the dangers and the nature of any safety improvements developed for later product models.

Legal duties pertaining to post-sale obligations tend to be broad and less restrictive, but these duties are still subject to interpretation and enforcement in a court of law. Be sure to consult with a qualified legal expert in order to determine the limits of your company's liability.

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# 2014, Panama and the future of Georgia's ports

Did you know the economic impact of the Georgia Ports Authority is \$61.8 billion a year statewide?

Also, approximately 295,443 jobs or 8.6 percent of the state's total are created from the ports?

Finally, Ports Authority pays more than \$6 billion in taxes at all levels. Obviously, Savannah profits greatly from all the good work of Ports Authority and related industries.

So, why is 2014 so critical to Ports Authority and Savannah?

The answer: the Panama Canal.

## Size limitations

Most Americans do not realize the width and depth of the canal has limited the size of ships passing through to call upon East Coast and Gulf Coast ports. This limit

has also set the depth that ports need to handle the ships know as Panamax — the size limited to fit through the canal.

Recognizing the business limitations, the Panamanians began an expansion of the canal in 2009 that should be completed late in 2014. This \$5.25 billion project will have a direct impact on shipping to the United States for decades.

The Panamax limitation on ship sizes will become a thing of the past. The new limitation will be the depth of the ports along the East Coast and Gulf Coast.

Ocean carriers will start sending larger and larger ships through the canal carrying freight from Asia to the U.S. The bigger the ship, the cheaper the cost to transport per item and the lower the cost to the customer in the store.

Post-Panamax is the future in ocean shipping.

Post-Panamax is already the model on the West Coast. Ports such as Los Ange-

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les, Oakland and Seattle are naturally deep enough to handle the larger ship classes. However, geography on the East and Gulf Coasts are different.

The key will be which ports choose to invest to become the preferred stopping points for ocean carriers. As ships get bigger, they make fewer port calls. Therefore, the Post-Panamax will likely only make one port call in the Southeast and one in the Northeast.

The question will be do they go to Charleston, Savannah, Houston or another port in this region? All have advantages, and the level of competition between ports will increase dramatically.

The cost to deepen a port is high. There are monetary, environmental and human factors that have to be balanced.

Currently, the Savannah River channel is 42 feet. The proposal is to deepen to 48 feet to handle the larger ships.

If completed, this would position Savannah to gain competitive advantage on other ports and benefit from larger cargo volumes from bigger ships and the expected increase of 25 percent of cargo able to bypass the deeper West Coast ports.

At the end of the day, the question becomes: Is growing the \$61.8 billion and 295,443 jobs worth the cost of the project?

Recently, the U.S. Army Corps of Engineers stated the dollar figure would be approximately \$550 million in federal and state funding. Also, they highlighted that additional 6 feet would have minimal environmental impact.

Most people don't realize the Savannah River has been dredged, starting around 1820, from approximately 10 feet to the current 42. So, an additional 6 feet is unlikely to cause significant changes.

It is up to the people and government to decide the future of the port system. Specifically, does Savannah want to continue its unprecedented growth and success in the future.

The Panama Canal is the 2014 driver. Is Savannah going to 48 feet is the question.

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