

Daily Journal

Construction Litigation is Latest Drought Victim

By Deirdre Newman

August 4, 2015

The last decade has struck a one-two punch on construction defect litigation. First, the recession brought the construction industry to its knees, prolonging the lag time between actual construction and when defects start appearing. Now, experts say, the biggest inhibitor preventing construction defect claims is the drought.

David A. Ericksen, construction practice leader at Severson & Werson, said he's seen a decline in cases for the past three years, estimating that overall construction defect litigation is down 20 percent to 30 percent from historical highs.

Numbers from courts throughout the state show a zigzag in the number of construction defect lawsuits over the past five years, with a noticeable drop between 2013 and 2015. In Riverside County Superior Court, for example, there were 112 construction defect suits filed in Fiscal 2014-15, a drop from 169 the year before. In Los Angeles County, cases fell from 93 to 66 over the same period.

A drought prevents construction defect litigation because two things are not happening that usually do when it rains regularly: water intrusion and structural movement, experts say. Without rain, there's no water intrusion affecting roofs, windows, stucco and wood siding. There's also a lack of structural movement caused by soil displacement, which can lead to cracks in the drywall.

Construction defect attorney Thomas E. Miller of The Miller Law Firm is handling two lawsuits for condo projects based on water intrusion claims, one in Anaheim and one in San Francisco.

"These damages start within a few years of construction and completion and then all of a sudden they're hidden behind stucco and walls and exterior building elements," he said. "So it's difficult to discern the degree of damage until you actually open them up."

Miller is handling litigation over water intrusion in an Oakland high-rise built roughly a decade ago. He said that because of the lack of rainfall his firm had to wait for the optimal time to do additional testing. After a heavy rain in December last year, Miller's team opened up and examined several areas on the building's exterior and windows, uncovering a number of additional defects and increasing the claim from \$15 million to \$20 million.

Evidence of defects can usually be seen through stucco, such as cracking and efflorescence, Miller said. Once these become apparent, it would be symptomatic of an underlying condition of water intrusion that could cause dry rot and other types of structural damage to a building's framing.

Experts predict that construction defect litigation will pick back up once the state receives much-needed rain, and again in 2017, a decade after the recession started affecting the construction industry. Miller's firm is planning its future testing and investigation around the 90 percent chance of El Nino weather predicted for the fall, which is expected to bring significant moisture and will help identify building standard violations and construction defects with a greater degree of accuracy, he said.