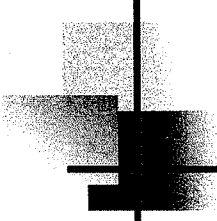


DEFECT LAW THEORY

November 5, 2007
Research Attorney Presentation



**CONSTRUCTION DEFECT
DEVELOPMENTS**

Areas of Recent Development

- **Residential Construction Liability**
- **Economic Loss Rule**
- **Wrap Policies**
- **Condominium Conversions**
- **Limits on Contractual Indemnity**
- **Concurrent Causation Claims**
- **Statutes of Repose / Limitations**



CONTRACT REMEDIES FOR PHYSICAL PROPERTY DAMAGE

Cal. Civil Code sec. 3300:

"The amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom."

CONTRACT REMEDIES FOR PHYSICAL PROPERTY DAMAGE

"Proof of breach of warranty does not require proof the product has malfunctioned but only that it contains an inherent defect which is substantially certain to result in malfunction during the useful life of the product."

Hicks v. Kaufman and Broad Home Corp. (2001) 89 C.A.4th 908, 918.

CONTRACT REMEDIES FOR PHYSICAL PROPERTY DAMAGE

"If plaintiffs prove their foundations contain an inherent defect which is substantially certain to result in malfunction during the useful life of the product they have established a breach of [defendant's] express and implied warranties."

Hicks v. Kaufman and Broad Home Corp. (2001) 89 C.A.4th 908, 918.