

Paul B. Walsh Construction Defect List of Trial Settlements and Verdicts

KENSINGTON FAIR OAKS ASSOC. v. MASONITE CORP., INC.

INSURED: West Coast Rebar (rebar installer in PT slabs)
COURT: Santa Clara Superior
CASE #: CV 782238; filed November 14, 2000
TRIAL DATE: December 1, 2003

In the face of a low six figure demand at trial call, West Coast Rebar agreed to pay \$35,000 for the exposed rebar allegation at this large apartment complex garage.

BRAVO AT REFUGIO v. SHEA HOMES

INSURED: Integrated Flooring (membrane installer)
COURT: Contra Costa Superior
CASE #: MSC01-01998; filed May 21, 2001

During the first week of trial with presentation by plaintiffs' lead construction experts, we negotiated a favorable confidential settlement well below the pre-trial demand.

CONTRA COSTA VILLAS II V. THE VILLAS-WALNUT CREEK

INSURED: Coy Sanders Construction, Inc. (framer)
COURT: Contra Costa Superior
CASE #: C01-04569; Trial Date January 10, 2005

Following pre-trial issue conference with Judge Bruiniers and on the eve of trial, we negotiated a favorable settlement to avoid being excluded from a Mary Carter Agreement negotiated between the general contractor and developer. The final non-settling party proceeded to trial and had a large indemnity judgment awarded against their client.

BAYFRONT COURT HOA V. MSM DEVELOPMENT

CLIENT: Dolan Concrete (concrete)
COURT: San Mateo Superior Court
CASE #: CIV 41425; filed February 6, 2003

On the eve of trial call following resolution of in-limine motions, we negotiated a favorable resolution of the case for Dolan Concrete.

CUPERTINO CITY APTS. v. TRIDENT CONSTRUCTION

INSURED: Largo Concrete, Inc. (concrete)
COURT: Santa Clara Superior Court
CASE #: CV 914053; filed 1/15/03
TRIAL DATE: May 8, 2006

Prior to jury selection, we negotiated a settlement that came to roughly half of the pre-trial demand.

TRAVERS v. GREYSTONE HOMES, INC.

CLIENT: KENYON CONSTRUCTION, INC. (stucco)
COURT: Santa Clara Superior Court
CASE #: 1-03-CV-000672; filed 7/10/03
TRIAL DATE: November 13, 2006; D/17 Judge Komar

At trial call with Judge Komar, the court negotiated a global resolution of the nearly 50 homes at issue, with Kenyon's contribution at a figure below the Judge and Special Master's target.

AINSWORTH v MERITAGE HOMES

INSURED: KENYON CONSTRUCTION, INC. (stucco)
COURT: Contra Costa County Superior Court
CASE #: C05-00143 filed 8/1/05

Plaintiffs settled around Kenyon Construction and the concrete trade for trial and planned to pursue direct claims and the general contractor's assigned claims. Following significant pre-trial hearings with Judge Flinn and issue conference addressing motions in limine, we secured an order from the Judge finding plaintiffs' extrapolation evidence to be faulty, gutting their case. A week prior to trial, plaintiffs settled with Kenyon at a very favorable value. This case was Seminole in the Bay Area to contest the use of widespread extrapolation on multiple house single family homes in an effort to extrapolate findings from several tested houses to all homes.

KERRUISH v KIMBALL HILL HOMES

INSURED: KENYON CONSTRUCTION, INC. and KENYON PLASTERING, INC. (stucco)
COURT: Sacramento Superior Court
CASE#: 01AS03525
TRIAL: April 2, 2007; D/58 Raymond Cadei

Kenyon proceeded to trial following the general contractor's settlement of plaintiffs' claim for \$1.8 million and their pursuit of 100% from Kenyon and Jeld-Wen, plus \$1.6 million in attorneys' fees and costs. The first Bifurcated trial on April 2, 2007 addressed design defect liability and contractual exposure for insurance provisions missing from one of the trades's contract. Following the determination of the lack of any design implication to the claims, Kimball Hill proceeded to trial on May 29, 2007 to prove the reasonableness of their settlement and to seek 100% reimbursement under the previously deemed Type I indemnity clause in the contract. After a three week trial, the jury found no negligence by Kenyon, that only 1% of the plaintiff claims arose out of Kenyon's work and awarded \$18,000 against Kenyon Construction. Kenyon Plastering received a nonsuit. Kimball's motion for fees and costs was before a Discovery Referee when Kimball Hill declared bankruptcy, staying the action and the pending appeals.

MIRANDA v. TIM LEWIS CONSTRUCTION, INC.

INSURED: KENYON CONSTRUCTION, INC. (stucco)
COURT: Sacramento Superior Court
CASE #: 04AS00330; filed 2004
TRIAL DATE: November 12, 2008; D/58 Raymond Cadei

Following significant pre-trial hearings and at the 402 Hearing scheduled to challenge the competency of several lead plaintiffs' experts, we negotiated a settlement for Kenyon Construction that amounted to less than 1/6 of plaintiffs demand (which sought full removal and replacement of all stucco).

ALTAMAR AT THE RIDGE v. BROOKFIELD HOMES

CLIENT: East Bay Construction Company (landscaping/retaining wall waterproofer)
COURT: San Mateo Superior Court
CASE #: CIV 453968; filed 4/5/06
TRIAL DATE: January 26, 2010; Judge Dylina

After trailing at trial for a week, we negotiated a highly favorable settlement for East Bay Construction Company, the landscaper and installer of waterproofing on garage walls. Use of motions in limine to contest extrapolation evidence proved highly effective to undercut the claims of leaks at walls. We also contested the builder's indemnity claim with client drafted modifications to what would otherwise have been Type I indemnity clauses and convinced the court that extra work orders for the problematic

waterproofing work were not performed under the contracts but rather as extra work at the direction and supervision of the general contractor, so they were not entitled to indemnity for claims tied to that work when our client merely supplied labor for installation at their direction.

OAK CREEK v. SCHUMACHER

CLIENT: Kenyon Plastering, Inc. (stucco)

COURT: Sonoma Superior Court

CASE #: SCV238750

TRIAL DATE: March 8, 2010; D/10 Judge Tansil

Prior to jury selection, Judge Tansil held holding extensive briefing on motions in limine spanning several weeks, which resulted in our receipt of favorable preliminary evidentiary rulings. We argued that the economic loss rule prevented the economic loss claim on a negligence theory against subcontractors with this remote conversion. We also challenged evidence on grounds of spoliation, an argument the court was buying into at the time plaintiffs' demand dropped sizably at trial. We negotiated a settlement on a claim with an opening demand at \$32,000,000 and individual demand to Kenyon for over \$6 million for a mere \$550,000. This case involved significant water intrusion issues at the breezeways, stair towers and decks at multiple apartment buildings converted to condominiums.

MID-PENINSULA v. DOW BUILDERS

CLIENT: F. Ferrando & Co. (topping slab, flatwork)

COURT: San Mateo Superior Court

CASE #: CIV 444376; filed January 20, 2005

TRIAL DATE: September 1, 2010; Hon. William E. Burby, Jr.

Upon trial assignment, we spent 8 days in court handling motions in limine, pre-trial 402 hearings on the competency of witnesses and through the court, negotiated a global settlement prior to selecting a jury. This case involved a sizeable loss of rent claim for a senior apartment building complex in south San Francisco that suffered severe water intrusion and envelope damage. Drainage claims at the podium level and perimeter tied our client into larger arguments of joint and several liability for the water damage repair claim. While the court did not rule on our motion regarding the lack of joint and several liability tied to the concrete flatwork issues and larger envelope claims, the strong indications from our judge assisted in reducing the settlement expectations from plaintiffs against our client. The settlement for F. Ferrando came in at roughly 50% of the pre-trial demand and was one of the lowest contributions in the \$7 million case.