



## Newsletter

### LHR Newsletter Vol. 2, No. 2 – Special Edition

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During 2007, our firm represented a large number of clients in highly significant cases. Summaries of several of those cases are provided here on an informational basis for your review. Should you have any questions or wish to discuss similar matters, please contact us.

**Client Profile:** Homeowner Association for 120 unit condominium project in Ventura County

**Case Type:** Construction Defect (Converted units: Apartments to Condominiums)

**Outcome:** Settled for approximately \$5,000,000 / \$41,000 per unit.

**Lead Counsel:** David Loewenthal, Glenn Rosen and Kevin Carter.

**Summary:** The buildings were originally constructed in the 1970's as apartments and then converted into condominiums in or about 2000, being sold thereafter to individual members. The buildings suffered from significant construction defects, including, but not limited to, deficiencies with decks, sliding glass doors, retrofit windows, hardboard siding, interior water intrusion, etc.

The key issue in this case involved whether or not the developers, who converted the property from apartments to condominiums, could be held strictly liable for the defects and damages arising therefrom. LHR was successful in convincing the court that the developers were in fact liable as converters. This case is especially noteworthy due to the fact that it involved an approximately thirty-five year old apartment building converted into condominiums and held that developers and contractors involved in the reconstruction and conversion can be held liable for the deficiencies with the buildings.

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**Client Profile:** Homeowner Association for 10 unit town home project in Los Angeles County

**Case Type:** Construction Defect (New Construction in 2000)

**Outcome:** Settled for approximately \$550,000 / \$55,000 per unit

**Lead counsel:** David Loewenthal and Kevin Carter.

**Summary:** The property was constructed in 2000 and almost immediately began to show evidence of defects including, but not

limited to, window leaks, slider/French door leaks, water intrusion through decks, roof, stucco cracking and water intrusion into subterranean garage, water planter deficiencies, etc. The case is noteworthy in that the Board of Directors were in communication with the developer and general contractor discussing the various defects and deficiencies with the project almost immediately after sale in the hopes that the builder entities would remedy same. Notwithstanding the fact that the builder entities performed minor repair work no global resolution was reached prior to our involvement and, based upon the historic documentation of the deficiencies, a strong claim of a barr arising from the statute of limitations existed.

Notwithstanding these significant issues, our firm proceeded forward in filing an action against the developer, general contractor and several subcontractors and ultimately resolved the matter. The case demonstrates the dangers that an association's Board can face when they attempt to deal over an extended period of time with a builder entity without counsel, and without obtaining a Tolling Agreement to preclude the statute of limitations from potentially running

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**Client Profile:** Homeowners in San Diego County

**Case Type:** Insurance Dispute with Homeowners Association stemming from water damage

**Outcome:** Settled for \$240,000 w/ motion to recover fees and costs totaling \$365,000

**Lead Counsel:** Robert Hillshafer

**Summary:** Our clients owned a condominium unit within a 36 unit complex as a vacation home. While they were absent from the unit, a plumbing supply line failed causing water to run unabated for 18 hours, resulting in substantial property damage to the contents of the unit as well as to the walls, floors and cabinets. Although some emergency services were called out by the Association, the dry-out was inadequate and extensive mold abatement became necessary. The Association took the position that because the plumbing supply line that failed was the Clients' responsibility, the Clients were responsible for all the damages and costs of repair, including to the damaged common area walls of the unit that required mold abatement. The Clients attempted to submit the property damage claim to the Association's master insurance policy but the claim was denied. The Clients incurred out of pocket expenses to repair the condominium unit, exclusive of contents of approximately \$135,000.00 and lost the use of the unit for approximately one year.

After the insurance claim was denied by the Association's master carrier, the Clients learned that the reason it had been denied was

because the Board of Directors had unilaterally reduced the insurance coverage under the policy, without notice to the members and in contravention of the express requirements of the governing documents. After the change had been made, the Board proposed an amendment to the governing documents which would have allowed the Board to reduce the coverage but the amendment failed. The Board withheld the fact that the policy had already been changed from the membership for almost a year. Except for the change in the insurance coverage, the master policy would have paid the Clients' damage claim in full.

The Clients sued the Association and its individual directors for breach of the governing documents for unilaterally changing the insurance coverage and to recover their damages. Settlement negotiations failed, a jury was selected and opening statements were made. At that point, the damage portion of the case was settled for \$240,000.00 in conjunction with a stipulation that the Clients could apply for prevailing party attorney's fees and costs pursuant to the governing documents. A motion to recover attorney's fees and costs totaling \$365,000.00 was submitted to the court. Defendants vigorously opposed the motion for attorney's fees, arguing that the homeowners were not prevailing parties and were not entitled to attorney's fees and costs. After extensive briefing and oral argument, the court awarded 100% of the attorneys fees requested and all but a few hundred dollars of their costs.

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**Client Profile:** Homeowner Association in Los Angeles County

**Case Type:** Construction Defect

**Outcome:** Settled for a total of \$1,680,000 / approximately \$100,000 per unit

**Lead Counsel:** Robert Hillshafer and David Loewenthal

This construction defect case involved a seventeen unit condominium project in Los Angeles. The project was completed in 2003 and suffered from defects including building movement, stucco cracking, water intrusion at windows, roofs and decks. The developer and general contractor were insured under the same insurance policy and these entities were also defending other lawsuits involving the same policy of insurance. After several mediations, the developer/general contractor defendants had offered zero dollars to settle the case. A CCP Section 998 demand was made for the remaining \$800,000 in policy limits of these entities and the demand was allowed to expire. At a Mandatory Settlement Conference (MSC) before the trial judge on the case, the developer/contractor defendants agreed to pay \$790,000.00 out of the \$800,000.00 policy limits remaining. At a subsequent MSC, the subcontractors agreed to pay an additional \$890,000.00 for a total settlement of the case of \$1,680,000.00, representing a recovery of nearly \$100,000.00 per unit.

**Client Profile:** Commercial/Mixed Use Property Owner

**Case Type:** Construction Defect

**Outcome:** Settled in excess of \$1,000,000

**Lead Counsel:** David Loewenthal

This matter involved a mixed use project consisting of apartments and retail. In this matter, our client owned the land and then retained the services of an architect to design the mixed use building and contracted with a general contractor to perform the construction services. After completion of the project, it was determined that there were deficiencies with respect to myriad issues including waterproofing of the storefront windows, second story decks, mold, etc. The contractor also claimed that monies were owed back to them as part of the construction project. After claims were made against the general contractor, design professionals and subcontractors, a settlement was paid to our client in excess of one million dollars for the construction deficiencies.

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