

# SIGNATURE

## RESOLUTION

### HON. TRICIA BIGELOW CASE LIST

#### Construction Defect

Cohen v. Pacific Specialty Insurance Company  
Cal. Ct. App., Nov. 14, 2017, No. B276060  
2017 WL 5405645

Insureds sued insurer alleging the insurer had wrongly denied a portion of their first-party claim for rainwater damage to their home. The trial court granted insurer's motion for summary judgment. Court of Appeal affirmed, holding under the insurance policy in this case, a homeowner who is aware, long before a rainstorm occurs and causes damage, of possible leakage caused by construction defects cannot reasonably expect his or her insurer to pay for repairs on the theory that rainwater, and not the construction defects, caused the damage.

Oak Springs Villas Homeowners Assn. v. Advanced Truss Systems, Inc.  
(2012) 206 Cal.App.4th 1304

Homeowners' Association (HOA) brought action against developers, roof subcontractor, roof material supplier, and structural engineering firm for construction defects. Developers cross-complained against roof subcontractor and roof material supplier for indemnity. HOA settled with roof subcontractor, structural engineering firm, and developers. The trial court found that the developers' settlement was in good faith, and the supplier appealed. The court of appeal dismissed the appeal, holding a good faith settlement determination is a non-appealable interlocutory ruling and immediate review of the merits of that determination is obtainable only by a timely writ petition.

L.E.C.H., Inc. v. Klein  
Cal. Ct. App., June 15, 2009, No. B207872  
2009 WL 1652969

Condominium owners prevailed in a construction defect action brought by the condominium homeowners' association (HOA) and moved for contractual attorney fees. The owners argued the fees were awardable under the sales agreements between them and the 10 individual owners of the condo units. The Court of Appeal affirmed the trial court's order denying the fee motion because the owners were not parties to the agreement by which they claimed the attorney fees.

# SIGNATURE

## RESOLUTION

Tomjanovich v. Coldwell Banker Residential Brokerage Company

Cal. Ct. App., Aug. 29, 2014, No. B247887

2014 WL 4257310

Homeowners sold a home for \$6.5 million to buyer but failed to disclose the home's history of water leaks. After purchasing the home, the buyer experienced several leaks and sued the homeowners for breach of contract, negligence per se, intentional misrepresentation, negligent misrepresentation, concealment, rescission, and negligence. In turn, the homeowners sued the brokerage company for indemnification. The buyer prevailed against the homeowners, the brokerage company prevailed on the cross-complaint, and the trial court awarded the brokerage company its attorney fees based on the parties' agreement. The Court of Appeal affirmed the trial court's award of attorney fees, holding the indemnity provision in a standard California Association of Realtors Listing Agreement encompassed both direct and third party claims.