

Summary Judgment – Construction Defect

SERVICES

Construction Litigation

RELATED ATTORNEYS

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Boyle | Shaughnessy Law attorneys Peter L. Bosse and Brian P. Doherty successfully obtained Summary Judgment on behalf of a concrete contractor alleged to have negligently constructed an outpatient medical facility which would cost over \$20,000,000.00 to remedy.

The client, a sub-contractor had completed concrete work on the building including installation of concrete slab floors which later developed moisture problems causing the floor coverings to delaminate and lift. The cost to remedy this situation after the owner had moved into the building had steadily increased, and, as of the time of Summary Judgment, were reasonably expected to exceed \$20,000,000.00. The owner of the building filed suit against the general contractor who later implead the concrete contractor alleging that their work had caused the moisture problem and that the sub-contract required the concrete contractor to indemnify the general contractor for damages caused by the concrete contractor's work. Throughout the course of discovery the defendants were able to develop evidence that the building owners had known the extent of the moisture issues shortly after taking possession of the buildings and had filed the lawsuit after the expiration of the statute of limitations for tort claims.

Defendants then brought a motion for summary judgment arguing that the tort claims were time-barred and that the contract claims should be treated as tort claims for purposes of the statute of limitation. The motion was allowed as to the concrete contractor but denied as to certain claims for breach of express warranties against the general contractor. The general contractor then moved for reconsideration of summary judgment as to the third party claims against the concrete contractor arguing that the contractual duty to indemnify the general contractor still existed where claims remained against the general contractor. Attorney Bosse and Doherty successfully opposed this motion and obtained summary judgment for their client by arguing that the undisputed facts developed throughout discovery clearly demonstrated that the breach of the express warranty was caused exclusively by the general contractor's actions and that the concrete contractor had no duty to indemnify the general contractor.