

# BURDMAN & WARD

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**Law in Hand**

### THE STEARMAN DECISION

*By: D. Robert Ward, Esq.*

#### **DECISION ALLOWS PLAINTIFFS TO RECOVER EXPERT COSTS AND HOLDS BUILDER STRICTLY LIABLE FOR PROPERTY DAMAGE**

In the January 31, 2000 decision of *Stearman v. Centex Homes*, the Fourth Appellate District Court held that a builder is strictly liable for damage to physical property, including damage to the defective product itself. Additionally, the Court plainly states that expert fees and costs are recoverable in a construction defect claim. The decision is a victory to homeowners and has since been incorporated into the Builder's Right to Repair law (California Civil Code § 944).

The Court clarifies preceding case law that muddled the application of the economic loss rule and the recoverability of expert fees and costs. While the *Stearman* decision was originally not set for publication, the Court granted publication upon successful petition by consumer attorneys, including our law firm. Publication of a case allows for it to be cited as case precedent and relied on by future litigants.

In *Stearman*, the plaintiffs were a husband and wife who purchased a Centex tract house in San Clemente in 1990. Problems with the property appeared shortly after plaintiffs moved in. In 1993, the plaintiffs filed a lawsuit against the builder, alleging that the builder was strictly liable for the deficiencies experienced in the home. Inadequately compacted soil caused slab movement and deformation, which in turn damaged the house and yard. The defendant builder contended that plaintiffs were barred from recovering for the deficiencies because of a lack of physical damage to "other property" which violates the "economic loss rule."

The *Stearman* decision explains the development of the economic loss rule and holds that the rule does not always apply in a construction defect action where the damages occur to the defective product itself. An example of the application of the economic loss rule is where the builder fails to include adequate fire walls between adjoining residences. The lack of fire walls is a defect because building codes require them. However, under the economic loss rule the homeowner would be prevented from suing a builder unless the inadequate fire walls resulted in damage to another housing component, as in the instance where a fire burns down the residence. The plaintiff would be left to recover for the missing fire walls under the warranty, provided that the term of the warranty had not expired.

The *Stearman* court held that the plaintiff was not confined to relying upon his warranty. The economic loss rule did not apply because the defective soils caused damage to the home and yard, and physical damage to property is not considered to be economic loss. The court ruled in favor of the plaintiff, holding the builder strictly liable for damage to the home and yard.

The *Stearman* decision is also helpful to homeowners because it allows a plaintiff to recover expert fees and costs that were generated in preparing their construction defect claim against the builder. In *Stearman*, the plaintiffs were billed \$37,500 by professionals who were hired to investigate the problems in order to formulate an appropriate cost and method of repair. The Court held that the plaintiffs were entitled to reimbursement because the testimony showed that the plaintiffs incurred expert costs as a result of the defects, which were being sued upon. These are now among the damages recoverable in an action brought under California Civil Code §§ 895-945.5.

**If you think you have potential construction defects, contact Burdman & Ward for a free, no obligation inspection with a licensed contractor.**

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