THE 25 YEAR WATER CLAIM (A FUN-KEY STORY)

By Shamus O'Meara and Anton van der Merwe
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While drinking his favorite morning beverage at his lake home last summer, the President of Fun-Key Home Builders, Horton Fun-Key, opened his mail to find the following letter:

Attn: President
Fun-Key Home Builders
Any Bury, MN

RE: David and Jane Soggyhouse
1H20 Intrusion Way
Any Bury, MN
Our File No.: 1

Dear Sir/Madam:

This law firm represents the Soggyhouses for property damages they sustained due to defective construction performed by Fun-Key Home Builders at their residence, 1H20 Intrusion Way, Any Bury, Minnesota. Fun-Key completed construction 25 years ago, in July 1979, and a certificate of occupancy was issued the same month.

Specifically, water has infiltrated the ground level and basement areas above the floor slab. This intrusion has caused mold to grow on building materials, including but not limited to, wood materials, sheet rock, insulation and concrete block. Moisture measurements show excessive levels of moisture in several interior spaces. In addition, microbial sampling has revealed high levels of microorganisms present on exposed surfaces, and moderate to high levels in duct work and carpeted areas.

The moisture and mold must be remediated to protect the Soggyhouses' health as well as the structural integrity of their home. The following work has, or will need to be, completed before the home is again habitable:

> *Remove wall insulation and vapor barriers; Remove defective window systems, framing, flashing and OSB/building paper; Clean and apply disinfectant to exposed wood walls and ceiling joists; Remove affected carpeting in several rooms; Set up dehumidification and drying equipment to dry interior surfaces, including walls and floors; Reconstruct to code the defective window, wall and roof systems, and other areas of the home that have sustained damages; and Install new mechanical system with air to air heat exchanger to prevent moisture and mold growth.*

Additional remediation may be necessary depending on testing results or other pertinent information.

PLEASE TAKE NOTICE: *The ongoing removal and replacement of affected materials will be completed by January 1 of this next year. It is our understanding that the Soggyhouses have already provided your company with written notice of the problems and an opportunity to examine their residence. However, Fun-Key is once again invited to examine the site before the completed removal on January 1, and to be present during the removal process. Please inform us immediately if Fun-Key desires to examine the site prior to January 1 and/or attend any removal of the damaged areas.*

Until the mold and moisture is completely abated, the Soggyhouses will be living off site in a one-hotel room along with their eight children. As you can imagine, this is inconvenient, expensive and uncomfortable. If the remediation is unable to be completed in the next several weeks, our clients may need to rent a home.

We request a meeting with Fun-Key Home Builders and its insurance carrier to discuss a resolution of the Soggyhouses' claims against Fun-Key. If we do not hear from you within 10 days of the date of this letter, we will assume you have no interest in discussing settlement and will proceed with formal litigation against Fun-Key.

We look forward to working with you toward an amicable resolution of this matter. If you are not amicable, we will bring suit against Fun-Key at the earliest opportunity. Thank you.

Sincerely,

SHOW ME THE MONEY, P.A.

SHAMUS O'MEARA, a partner at Johnson & Condon, P.A., and ANTON VAN DER MERWE, with Arthur, Chapman, Kettering, Smetak & Pikala, P.A., are Chair and Vice Chair of MDLA's Construction Law Committee. Both practice in the construction area. The Committee mets bi-monthly at The Local in Minneapolis. Please join us.

Horton read the letter in disbelief. Was it possible for a homeowner to have a construction warranty claim in 2004 for a home built in 1979, when Fun-Key had provided a 10 year warranty from the date of substantial completion for major construction defects? After reading the letter, Horton directed the office manager to conduct a search of Fun-Key's computerized records for any work with the Soggyhouses (he would have long ago thrown out the job file for the project). The search revealed that Fun-Key had indeed built a home for the Soggyhouses 25 years before, completing construction on the home in July 1979. The computerized records indicated receipt of substantial completion and final completion certificates, both in 1979, as well as approval of all city building inspections for foundation, framing, mechanical and other code-required inspections.

Horton recalled another water intrusion claim against his company years ago for a different home that was settled after a visit by Fun-Key's insurance adjuster. He faxed the letter to his insurance agent, asking the agent to contact Fun-Key's insurance company. Later that day, the current liability insurer for Fun-Key informed Horton it was sending an adjuster out to speak with him, and that a letter from the company would also be sent reserving the carrier's rights during its investigation of the claim. Horton also was asked to provide a list of Fun-Key's insurers from the time of the construction of the Soggyhouse's residence to the present so these insurers could be made aware of the situation.

During the next month several phone calls and meetings were held between the adjuster and the Soggyhouses' lawyer, and Fun-Key was sued shortly thereafter. The Complaint the sheriff gave to Horton asserted, among other items, the following causes of action: Breach of Contract, Negligence, Breach of Express and Implied Warranties, Breach of Statutory Warranties under Minn. Stat. § 327A, and Violation of the Consumer Fraud and Deceptive Trade Practices Acts. With regard to the claim relating to § 327A, the Complaint alleged:

BREACH OF STATUTORY WARRANTIES UNDER MINN. STAT. § 327A

I.

The Soggyhouses reallege all preceding paragraphs.

II.

The Soggyhouses are "vendees" as defined in Minn. Stat. §327A.01, subd. 6 as purchasers of the Home.

III.

Defendant Fun-Key is a"vendor" as defined in Minn. Stat. § 327A.01, subd. 7 as Fun-Key constructed the Home for the purpose of sale.

IV.

Fun-Key, which constructed the Home for the Soggyhouses, provided certain statutory warranties to the Soggyhouses as required and mandated under Minn. Stat. § 327A.02, subd. 1 and other applicable sections of section 327A.

V.

By virtue of the faulty and defective workmanship and building code violations aforementioned, Fun-Key has caused construction defects, including, but not limited to, major structural defects in the Home, in violation of the statutory warranties under Minn. Stat. § 327A.02, resulting in damages to the Plaintiffs' Home in excess of $50,000.

Fun-Key's insurer provided a lawyer to represent Fun-Key in the lawsuit. In addition to asserting some of the more "typical" defenses used in water intrusion lawsuits (e.g., lack of causation, comparative fault, third-party fault, spoilation of evidence, failure to mitigate damages), Fun-Key's lawyer alleged the following relative to Fun-Key's statute of limitations defense:

STATUTE OF LIMITATIONS AND REPOSE

Plaintiffs' claim is barred or limited by all applicable Statutes of Limitations and Repose, including, without limitation, the limitations and repose periods under Minn. Stat. § 541.051 and Minn. Stat. § 327A, and Minnesota caselaw authority.

In addition to submitting its Answer, Fun-Key's lawyer also served interrogatories and requests for production of documents on plaintiff's counsel, and asked that counsel make available all documents relative to the construction and maintenance of the home at the earliest opportunity. In her cover letter to the Soggyhouses' counsel, Fun-Key's lawyer tried a little bluff-and-bluster in the hope of scaring the other side into dismissing the lawsuit:

"I have received your preposterous claim letter. You can't be serious. Have your heard about the statute of limitations and repose? Aside from the limitations period, common sense should tell you (as it does me) that you cannot bring a warranty claim 25 years after a home is built which, at most, had a 10 year warranty from date of substantial completion for major construction defects. In short, you are all wet on this one. Unless you promptly dismiss this pretended lawsuit, I will expect your responses to the enclosed interrogatories and document demands in 30 days."

Sincerely

SHOW ME THE BEEF, P.L.L.P.

The bluff did not work. Plaintiffs' counsel was up on the law and responded by stating:

> *Please be advised that our claim against Fun-Key is timely in all respects. Our expert will testify that the water intrusion damage to load bearing portions of the house has so impaired its structural integrity as to make the house uninhabitable, and that this constitutes a major structural defect caused by inadequate construction of windows and flashing during the original construction of the home. These are conditions for which Fun-Key, as the general contractor for the project, was responsible to the Soggyhouses. Thus, under the Supreme Court's decision in Vlahos v. R&I Construction of Bloomington, 676 N.W.2d 672 (Minn. 2004) my clients are well within their rights to bring suit against Fun-Key as they did not discover the defect until they had some basement remodeling done this past spring. Additionally, under Vlahos, and other Minnesota authority, the limitations period for such major structural defects does not began to run until the Soggyhouses' "discovered or should have discovered [Fun-Key's] refusal or inability to ensure the home was free from major structural defects . . ." Id. at 678. Fun-Key has not properly responded to our recent letter to Fun-Key asking that this situation be amicably resolved. Instead, Fun-Key and its insurer have further delayed the situation while my clients continue to live in a hotel room because their home is full of mold. To the extent Fun-Key's insufficient response to our letter constitutes a refusal to honor its warranties, Fun-Key is in breach and our lawsuit against Fun-Key should take care of any statute of limitations concerns as we have certainly sued Fun-Key within two years of such conduct.*

With these positions stated, discovery began in earnest, including the exchange of numerous documents between the parties, and numerous third party actions by Fun-Key against its framing, masonry, and finishing carpentry subcontractors, as well as the window manufacturer, among others. A mediation also was held, without success, but with the promise of having another mediation once additional discovery was accomplished and expert reports exchanged on causation and damages. Several months later the parties approached the dispositive motion deadline. By this time, Horton had been quite involved in the litigation process through his deposition as well as depositions of Fun-Key's key personnel, interviews with lawyers, and examining reports from experts in the fields of microbiology, building science and forensic engineering, industrial hygiene, construction techniques, building codes, appraisal and remediation, among others. He also had been contacted by many of the insurers that had provided coverage to his company over the years, and who had sent him more than a few letters over the past months asking for additional information and "reserving rights."

Horton wondered where all of this was leading. His overwhelming concern was the ability of his family business to continue functioning in a situation where he could be sued decades after he originally constructed the home. He could not help but feel that he was now embroiled in an incredibly expensive lawsuit driven by lawyers and their "experts" where new construction and design techniques, improved building materials and building codes, and even the knowledge and sophistication of owners, were being used to impugn the good work of his business 25 years ago. Horton soon grew tired of the "scientific" jargon about "fungi," "microbial growth," "volatile organic compounds," "tease tape," "settled dust," "dampness spectrums," and "moisture meters." When he started his construction business years ago he never thought it would someday lead to banal discussions with insurance agents and claims adjusters about "actual injury," "continuous trigger," "joint defense," "loan receipts" and liability "exclusions" too numerous to list that could affect the financial future of his company.

The next morning, Horton picked up the phone and asked his lawyer when his business would be free from the threat of lawsuits from dissatisfied homeowners such as the Soggyhouses. Fun-Key's counsel, as part of her written response to her client, detailed the statute of limitations and repose issues involved in the case, and for his business generally.

Statutes of Limitation in Residential Construction

The first step, wrote the lawyer, especially in construction cases that involve construction projects completed many years ago, is to find out whether or not a homeowner can still bring a claim. Statutes of limitation and statutes of repose provide that lawsuits must be commenced within a certain time and that they cannot be commenced after a certain time. A statute of limitations period will generally run from the time a breach or injury is discovered (or should have been discovered). A statute of repose will place an absolute time limit from a specified date during which a construction claim must be commenced, regardless of when the injury was first discovered. Minnesota has both a statute of limitations and statute of repose for residential construction claims, found in Minn. Stat. § 541.051. Horton thought, "So far so good."

The lawyer continued: The general statute of limitations in Minnesota for claims based upon services or construc-

tion to improve real property is set out in Minnesota Statute §541.051. According to the Minnesota Supreme Court, the legislative intent behind § 541.051, subd. 1 is:

> [T]o eliminate suits against architects, designers and contractors who have completed their work, turned the improvement to real property over to the owners, and no longer have any interest or control in it.

Sartori v. Harnischfeger Corp., 432 N.W.2d 448, 454 (Minn. 1988). Under the statute, the time within which to assert tort, warranty, or contract claims for property damage or bodily injury arising from construction to improve real property is governed by Minn. Stat. § 541.051 subd. 1 (a), which provides in relevant part:

> Except where fraud is involved, **no action by any person in contract, tort, or otherwise** to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property...**shall be brought** against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property**....more than two years after discovery of the injury**.... nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction. [Emphasis added.]

The two-year limitations period in § 541.051, subd. 1, begins to run when an injury sufficient to maintain a cause of action is discovered, "or in the exercise of reasonable diligence should have [been] discovered." *Greenbrier Village Condominium Two Association v. Keller Investment*, 409 N.W.2d 519, 524 (Minn. App. 1987). As of this writing, stated Fun-Key's lawyer (July 2004), an exemption for statutory home warranty actions from this generally applicable statute of limitations is found in § 541.051, subd. 4, which provides:

> This section shall not apply to actions based on breach of the statutory warranties set forth in section 327A.02, or to actions based on breach of an express written warranty, **provided such actions shall be brought within two years of the discovery of the breach**. [Emphasis added.]

According to the lawyer, it was clear under this regime that an action under any theory, aside from statutory home warranty actions, had to be brought within 10 years of substantial completion, provided that where the injury is discovered during the ninth or tenth year after substantial completion, the action could still be brought within two years after discovering the injury. Regarding statutory home warranties, however, the statute provided for a limitations period but appeared silent on the issue of a repose period.

Horton had become more confused, and called his lawyer for an explanation. "There is good news and bad news," said the lawyer. The bad news astounded him. In fact, she said, the Minnesota Court of Appeals, in *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352 (Minn. Ct. App. 2001), determined that the statute of repose in § 541.051 subdivision 1 did not apply to home warranty claims. Accordingly, an action for violation of a statutory homeowners warranty did not have to be brought before the warranty period expired provided that suit was commenced within two years of discovery of the breach as required by § 541.051, subd. 4. "Nuts," thought Horton, not for the first time. Apparently, in the *Koes* case, the court had allowed a homeowner's claim alleging a defect existing during the warranty period to proceed even though the homeowner did not discover the defective condition during the warranty period. According to *Koes*, as long as the homeowner commences suit within two years of discovery of the breach, the homeowner has an unlimited time in which to discover the breach.

Horton took the news badly – he did not feel at all well. He could not imagine a warranty that was completely open-ended. "How can this be," he asked his counsel, "and what can be done about it?" "Now for the good news," said the lawyer. This open-ended indefinite repose period was recently addressed by the Minnesota legislature: Effective August 1, 2004, subdivision 4 of § 541.051 is amended to provide as follows:

> For the purposes of actions based on breach of the statutory warranties set forth in section 327A.02, or to actions based on breach of an express written warranty, **such actions shall be brought within two years of the discovery of the breach**. . . . but in no event may an action under section 327A.05 [remedies] be brought more than 12 years after the effective warranty date. [Emphasis added]

In other words, she continued, effective August 1, 2004, the statute will provide both a limitations period as well as a repose period. Warranty actions must be brought within two years of discovery of the breach and cannot be brought more than twelve years after first occupancy or first transfer of title. Horton was ecstatic, "Finally an end in sight to warranty claims," he said. "But," continued the lawyer, "There is a catch!"

Warranties of Future Performance

In a related development, the Minnesota Supreme Court, in *Vlahos v. R & I Constr. Of Bloomington, Inc.*, 676 N.W.2d 672 (Minn. 2004), considered exactly what is meant by the phrase "such [warranty] actions shall be brought within two years of the discovery of the breach." The decision turned upon the determination that the statutory home warranties were, in effect, warranties of future performance. The warranties are set out in Minnesota's New Home Warranty statute, Minn. St. § 327A.01 *et. seq.*, which provides that a seller of a newly constructed home warrants that the home is:

- free from defects caused by faulty workmanship and defective materials due to non-compliance with building standards for a period of one year from the warranty date;
- free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to non-compliance with building standards for a period of two years from the warranty date; and
- free from major construction defects in the load-bearing portion of the dwelling due to non-compliance with building standards for a period of ten years from the warranty date.

Prior to the *Vlahos* decision, defendants had been able to argue that "discovery of the breach" ... was essentially the same thing as "discovery of the injury"

Prior to the *Vlahos* decision, defendants had been able to argue that "discovery of the breach" under subdivision 4 of § 541.051 was essentially the same thing as "discovery of the injury" under subdivision 1 of § 541.051. For example, in *Oreck v. Harvey Homes, Inc.*, 602 N.W.2d 424, 430 (Minn. App. 1999), *review denied* (Minn. Jan. 25, 2000) the plaintiffs argued their discovery of the "breach of warranty" was later than the date they discovered the "injury," but the court held "the events causing the injury and those constituting the breach of warranty are the same: the leakage of water, and air through the windows, roof, and sockets."

The *Vlahos* Court decided, in part, that the triggering event for the running of the statute is not discovery of the damage or loss (the injury), but rather the discovery of the breach, and that a breach of warranty occurs "when the homeowner discovers, or should have discovered, the builder's refusal or inability to ensure the home is free from major construction defects." *See also Church of Nativity v. Watpro*, 491 N.W.2d 1, 6 (Minn. 1992) ("where there is a explicit warranty, the cause of action accrues and the statute of limitations begins to run 'when the plaintiff discovers or should have discovered the defendant's refusal or inability to maintain goods as warranted in the contract.'") (citation omitted), *overruled on other grounds*, 615 N.W.2d 302, 313 n. 25 (Minn. 2000). Under *Vlahos*, the lawyer told Horton, the limitations period for home warranty claims does not begin to run until the builder is notified of the problem, given an opportunity to perform repairs, and then either refuses to fix the alleged defects or is unable to fix the alleged defects. This event triggers the statute of limitations regardless of when the homeowner actually discovers the problem.

Contribution and Indemnity Claims Against Third-Parties

Horton had a bad feeling about all of this discussion about church cases, warranties and construction defects. He tried to focus on how to limit the impact if he was forced into an expensive settlement or had a lousy day in court. Twenty-five years after building that house, could he at least get something back from the subcontractors who stood shoulder to shoulder with him during the construction? Or was there some "statute of limitations" or "repose" period that barred a claim against the subcontractors? "Well," said his lawyer, "I wish I had a clear answer for you, but the best answer I have for you is 'maybe.'" The lawyer explained: Minn. Stat. § 541.051 subd. 1 (a) provides in relevant part:

> Subd. 1(a) Except where fraud is involved, **no action** by any person in contract, tort, or otherwise to recover damages ...**shall be brought** ...more than two years after discovery of the injury **or, in the case of an action for contribution or indemnity, accrual of the cause of action, nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction**. . . . .
>
> Subd. 1(b) **For purposes of paragraph (a), a cause of action accrues** upon discovery of the injury or, **in the case of an action for contribution or indemnity, upon payment of a final judgment, arbitration award, or settlement arising out of the defective and unsafe condition.** [Emphasis added.]

Unfortunately, the Minnesota courts are undecided on how to interpret the statutory repose period for third-party contribution or indemnity actions. Some courts have decided that subdivision 1 (a) controls, holding that regardless of whether the action has accrued, unless the third party action is brought within ten years from the date of substantial completion of construction, it is time-barred. *See, e.g., McWilliams & Associates, Inc. v. Tappe Construction, et. al.*, Apellate Case No. A04-1251. Other courts have decided that subdivision 1 (b) controls, resulting in contribution and indemnity claims accruing only upon payment of a judgment or settlement between the plaintiff and the direct defendant. Consequently, provided the third-party action is brought within two years of such a payment, it is viable. *See, e.g., Reiter v. W. F. Bauer Construction*, File No. C1-03-2385 (Washington County, April 26, 2004) (labeling it "ridiculous" to contend that a general contractor must file a contribution claim against a subcontractor within the repose period where the general contractor had not been sued). This question is now before the Minnesota Court of Appeals.

"All I can tell you for sure," said the lawyer, "is that nobody can be sure. We won't know if you can make any claims against the subcontractors until the appellate court decides the question." It is definitely too late if the court decides that claims have to be brought within ten years from the 1979 date of substantial completion, but it is not too late if the court decides the claims have to be brought within two years of payment of a final judgment or settlement between the Soggyhouses and Fun-Key.

Horton's lawyer was now having *deja vu*. She recalled the same issues arising years before concerning § 541.051 and constitutional challenges involving contribution and indemnity rights. *See generally, Minnesota Landmarks v. M.A. Mortenson Co.*, 466 N.W.2d 413 (Minn. App. 1997) *(and cases cited therein)*. Certainly, she thought, the appellate courts today will have to recognize that the statute was changed because of this problem. The fact that residential construction is involved should not sway the courts to rule it is now constitutional to bar third party claims even before homeowners (or their lawyers) ever contemplate suing the general contractor. She now joined in Horton's frustration with the state of affairs in Minnesota's residential construction law.

Legislative Response

Horton's lawyer pondered the legislative response to the *Koes* case, wondering if the new law with respect to the repose period for warranty claims had solved problems or created new problems. In *Koes v. Advanced Design, Inc.*, the court held that provided suit is commenced within two years of discovery of the breach, an action for breach of the home warranties can be brought many years after the warranty period has expired. Effective August 1, 2004, there is a 10-year statute of repose for home warranty claims. An action for breach of the statutory home warranties still must be brought within two years of discovery of breach, but such a claim cannot be brought under any circumstances "more than 12 years after the effective warranty date." This amendment effectively penalizes homeowners who fail to take affirmative steps to engage the builder in addressing construction problems (which homeowners still must bring to the builders attention in writing within six months of discovering the problems). Homeowners must now press the builder to resolve identified problems and, when they discover the builder will not or cannot remedy the problems, they must commence suit within the two-year limitations period. If the breach is not discovered within 10 years of the effective warranty date, no warranty action can be brought. The legislature has acted to clarify and close the repose period loop-hole.

In *Koes v. Advanced Design, Inc.*, the court held that... an action for breach of the home warranties can be brought many years after the warranty period has expired.

The application of this statute has not yet been tested in the courts. Clearly, thought the lawyer, we can expect differences of opinion on how and when to apply the new repose period. One approach will likely treat the statute as applicable to all houses newer than 12 years old as of August 1, 2004. On the other hand, a house that is 12 years old as of July 31, 2004 might be outside the repose period for purposes of a statutory warranty claim. No doubt, she thought, we will see creative ways of navigating the home warranty landscape to avoid application of an absolute time limit from a specified date during which a construction claim must be commenced. Given the amount of money now at issue, driven in large part by disproportionate "remediation" estimates and expert costs, more appellate decisions will likely be seen.

A "Major" Construction Defect

Horton's head was spinning at this point. It seemed there was some good news but that there would still be serious and expensive disagreements over how to interpret the *Vlahos* case and the new statute. "At least we know what a "major" construction defect is, don't we," he asked the lawyer? "Well, funny you should ask," replied the lawyer. In *Vlahos*, the supreme court had to decide whether a major construction defect can arise after completion of construction or whether it must be created during construction and be present upon completion of construction. The court decided that a "major construction defect" in the home warranty statute includes "actual damage to load-bearing portions of the dwelling occurring *after* the completion of construction." The record showed the Vlahos home had experienced water intrusion over the course of nearly 10 years since completion of construction. Based upon the statutory definition of a major construction defect, the supreme court decided that damage to load bearing portions that occurs after completion of construction qualifies as a major construction defect.

The general contractor had argued that the only reasonable interpretation of the statutory home warranty scheme is that the 10-year warranty against "major construction defects" cannot include damage to a home caused by incremental moisture intrusion over nearly 10 years that is not resolved and eventually causes moisture rot and decay to load-bearing portions of the house. The supreme court rejected this argument. The basis for the decision is the language in the warranty statute that defines a major construction defect as "damage." The court applied what it took to be the plain meaning of the statute to hold that the warranty is not limited to defects that exist at the time of construction but that it extends to actual damage to load-bearing portions of the home that occurs after completion of construction.

As a practical matter, thought the lawyer, the *Vlahos* decision will make it extremely difficult to obtain an early dismissal of water intrusion claims. She told Horton, "I now fully expect that plaintiff's counsel, in an effort to create a factual issue and force the case to settlement or trial, will use their expert to provide the necessary evidentiary opinions under *Vlahos* that the water intrusion affected load-bearing portions of the home. This expert opinion, even if contested by Fun-Key's experts, will likely avoid an early dismissal of the suit."

She sympathized with her client and agreed that the law was being stacked against builders and contrary to the normal risks involved with construction. Insurers, apparently feeling the same way, have been excluding more in their policies while charging builders higher premiums. Several of her builder clients, she explained, have found it impossible to continue under the current state of affairs and have left the residential construction business altogether.

Finale

Horton was exasperated. Like many of his builder friends, he too was on the verge of laying his last brick, flashing his last window, and plumbing his last line. He contacted his personal lawyer and asked for advice on how best to protect himself from claims should he decide to get out of the construction business. His lawyer told him he could dissolve the corporation and be protected under the corporate-survival statutes. He must file a notice of intent to dissolve the corporation with the Minnesota Secretary of State, provide a general notice to any creditors and claimants of his filing of intent to dissolve, pay all known debts, obligations, and liabilities and certify in his articles of dissolution that he has done so. "What does that mean?" asked Horton. "It means," said the lawyer, "that under Minn. Stat. § 302A and the recent appellate decision in *Camacho v. Todd & Leiser Homes*, 2004 WL 2940812 (Minn. App. 2004), if you have paid or provided for all known claimants when your articles of dissolution are filed, a claimant who fails to file a claim or pursue a remedy within two years after the filing of your notice of intent to dissolve the corporation is barred from suing on that claim." "So after two years my dissolved corporation cannot be subjected to construction claims?" asked Horton. "That's right," the lawyer replied, explaining that in *Camacho* the homeowner's moisture intrusion related claims of negligence and breach of the home construction warranties were barred for lack of personal jurisdiction because they had failed to file their claim within two years of the general contractor's corporate dissolution. "But what about claims against officers, directors, or shareholders of the corporation?" asked Horton, pleased with himself for thinking like a lawyer. "Great question," answered the lawyer. "We will have to wait for the next appellate decision."

Horton was tired of waiting. He had been through quite enough. He instructed his lawyer to set the dissolution ball rolling. It was time to sell the business and retire to Florida. Horton and his wife Maisey left the next day for the Keys where there is plenty of . . . water! ▲