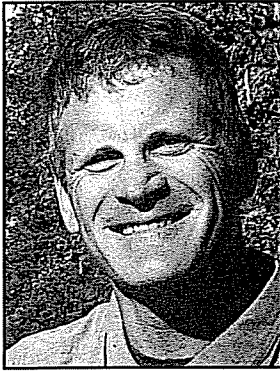
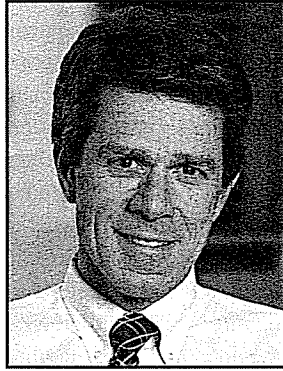


Useful Life Evidence in Construction Defect Cases

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This article discusses issues concerning evidence of “useful life” that feature prominently in construction defect lawsuits. “Useful life” refers to the anticipated time during which a newly built construction element can reasonably be expected to perform its intended function subject only to routine maintenance and repairs due to ordinary wear and tear. Construction professionals often seek to rely on useful life evidence to reduce a property owner’s claimed damages by arguing that any damages award should be reduced by an amount equal to the value of the property owner’s previous use of and benefit from the defective construction. This article describes typical situations where useful life evidence arises; a proposed, analytic approach to determining the admissibility of such evidence; and practical problems courts and practitioners likely will face applying this analytic framework.

Useful Life

Disputes regarding application of the useful life concept often arise in construction defect cases. The useful life defense argues that a property owner’s repair or replacement cost damage claim should be prorated for the already-expired useful lives of the allegedly defective building components, because fairness requires only that the plaintiff be placed in the position he or she would have been in without the defect, so as to avoid a windfall.¹

Typical Fact Pattern

A typical useful life defense might involve a structure with a leaking roof, failing septic system, and severely cracked foundation wall. The defendant might argue, and present evidence from expert witnesses, that a “typical” asphalt shingle roof has a useful life equal to the length of the roof shingle manufacturer’s warranty (usually 25 years), that

a septic system has a useful life of 15 years because that is the “usual” time frame within which such a system needs to be replaced, and that the useful life of the foundation wall equals 27.5 years, the depreciable life of residential property held for business purposes.

“Useful Life” Defined

The phrase “useful life” has no single, accepted meaning across disciplines. It is often used by scientists to describe material failure rates, by accountants to calculate asset valuation, and by courts to define recoverable damages.

Failure Science Analysis

For a complete reprint, see:

The American Bar Association website:

<http://www.abanet.org/forums/construction/>

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