TENTATIVE RULING

The original pleading was submitted on May 25, 2016, superseded by the first amended pleading on August 25, 2016, which was filed by Alejandro Sanchez and Dora Sanchez (hereafter, plaintiffs) against defendants The Okonite Company, Inc.(Okonite), The Okonite Cable Company, Inc., and Tunnell Roofing Company (Tunnell Roofing) (collectively, defendants), claiming general negligence (including negligence per se), strict products liability, premises liability, breach of warranty, and loss of consortium. Plaintiffs allege that on December 11, 2014, while plaintiff Alejandro Sanchez was working at 2900 Skyway Drive, Santa Maria, he was crushed "by the roof and ceiling of defendants' building[,] thereby causing" substantial injuries. The building was in a dangerous and unsafe condition, it is alleged, and defendants failed to put up warning signs, negligently repaired, designed, built, manufactured, constructed and maintained the building, including the roof and drainage system, "so that it collapsed and injured plaintiff. . . ." Tunnell Roofing filed an answer to the original complaint (which presumably was deemed responsive to the first amended complaint after the latter was filed). Okonite filed an answer on October 17, 2016. On December 1, 2016, plaintiff substituted Factory Mutual Insurance Co. (Factory Mutual), for Doe 1, and Factory Mutual filed an answer on January 6, 2017. On January 9, 2017, plaintiff substituted John Tunnell (Tunnell) for Doe 2, and Tunnell filed an answer on March 16, 2017. On June 6, 2017, plaintiff dismissed Okonite, and on March 1, 2021, dismissed The Okonite Cable Co., as defendants. The court granted Factory Mutual's motion for good faith settlement on September 29, 2018, and it was dismissed as a party on February 7, 2020. It also granted Tunnell Roofing's and Tunnell's summary adjudication motion as to the first cause of action based on premises liability and the third cause of action based on strict liability, leaving the second (general negligence), fourth (negligence per se), and the fifth (loss of consortium) causes of action for trial. A notice of lien was filed by Travelers Property Casualty Company of America per Labor Code sections 3852 and 3856 on March 26, 2018, March 27, 2019, September 21, 2020, with an amended notice filed on June 23, 2023. There are only two defendants (Tunnell Roofing and Tunnell) and three causes of action (negligence, negligence per se, and loss of consortium) remaining.

As relevant for our purposes, Tunnell Roofing and Tunnell previously submitted a motion to bifurcate liability from damages, as evidenced by their filing on May 15, 2019. Plaintiff opposed the motion on October 15, 2019. The matter was continued to October 19, 2019, December 10, 2019, February 25, 2020, and then March 10, 2023. In the March 10, 2023 minute order, it appears no determination was made on the merits of the motion for bifurcation (or at least the minute order is silent on the topic), largely because the trial date of October 19, 2020, was vacated due to the COVID-19 pandemic. During this time, the parties stipulated to compliance with the five-year statute to bring the action to trial pursuant to Code of Civil Procedure section 583.310.

The parties have now stipulated to a trial date of October 14, 2024. The stipulation was signed by the court. In the meantime, Tunnell Roofing and John Tunnell have filed a second motion to bifurcate, pursuant to Code of Civil Procedure section 598, asking the court to bifurcate liability from damages, and more specifically (it appears) the issue of duty and the "completed and accepted work doctrine" affirmative defense from issues of liability and damages, both of which were disputed at summary adjudication. Defendants have submitted a

transcript from the August 29, 2018 hearing on the summary adjudication motion, as well as the declaration from attorney Carla Gagne. Plaintiff opposes the motion. A reply was filed on July 9, 2024. All briefing has been read.

A) Legal Standards

A trial court has broad discretion to order bifurcation in the interests of justice, and appellate courts will not disturb its discretion on appeal absent a manifest abuse of that discretion. (*Royal Surplus Lines Ins. Co. v. Ranger Ins. Co.* (2002) 100 Cal.App.4th 193, 205.) Code of Civil Procedure section 598[1] provides for the bifurcation of issues at trial in the interest of economy and efficiency. "Its objective is avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff." (*Horton v. Jones* (1972) 26 Cal.App.3d 952, 955.) Code of Civil Procedure section 1048, subdivision (b), similarly authorizes separate trials to avoid prejudice and to promote convenience or judicial economy. The major goal of bifurcating a trial is to expedite and simplify the presentation of evidence. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 888.) It is particularly apt to bifurcate trial into a liability phase and a damages phase when "the convenience of witnesses, ends of justice, or economy or efficiency of handling the litigation would be promoted thereby."

Cases that acknowledge the court's authority to bifurcate liability from damages nevertheless recognize limitations on such authority. "The court . . . , over objection of a party, cannot order the separate trial of an issue of liability when because of the nature of the case it is necessary to prove the plaintiff's damages in order to establish that liability. (*Cohn v. Bugas* (1974) 42 Cal.App.3d 381, 385 (hereafter *Cohn*).)) As noted by the *Cohn* court: "*In Cook v. Superior Court* (1971) 19 Cal.App.3d 832 [], the plaintiff sought to recover damages from his former attorney for negligent prosecution of a claim for damages for medical malpractice. The trial court, on motion of the attorney, ordered that the issues relating to the alleged medical malpractice be tried first. On application of the plaintiff a writ of prohibition was issued by the Court of Appeal. It ruled, 'In an action by a client against his attorney to establish liability for malpractice in the prosecution of a case, the client must show the attorney was negligent in prosecuting the case and, but for such negligence, the case would have resulted in the recovery and collection of a judgment favorable to the client. (*Campbell v. Magana,* 184 Cal.App.2d 751.) ***Thus the issue of liability includes not only a showing the attorney was negligent but also a***

[1] Code of Civil Procedure section 598 provides, in relevant part: "The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5. The court, on its own motion, may make such an order at any time."

showing his negligence caused damage. ***Factors of damage essential to proof of the issue of liability against the attorney would also be factors essential to proof on the issue of damages.*** Thus, where trial of the question of liability is bifurcated by requiring a trial of the issues respecting medical malpractice before a trial of the issues of legal malpractice the court, in substance, ***is directing a trial of some of the issues on the question of damage before a trial on some of the issues on the question of liability.*** [] The authority of the court to bifurcate a trial of the issues in a case is conferred and limited by the provisions of Code of Civil Procedure section 598. ***The statute does not authorize the court to order the trial of a part of the issue of liability and a part of the issue of damages before the trial of another part of the issue of liability. . . .*** [Citation].) An act which exceeds the defined statutory power of a court is in excess of its jurisdiction and may be restrained by a writ of prohibition.' [Citation.]" (*Cohn, supra,* 42 Cal.App.3d at p. 386, emphasis added.)

In *Cohn*, plaintiff sued to recover damages for personal injuries allegedly suffered in an automobile accident, together with punitive damages for alleged fraud in inducing plaintiff to release the damages' claim arising out of the accident. The trial court granted a bifurcation request, ordering a court trial on the issues of interpretation of the release, and whether defendants were guilty of fraud and misrepresentation in procuring the release, separate and apart from liability and damages. (*Cohn, supra*, at p. 383.) The *Cohn* court rejected plaintiffs contention that bifurcation was unwarranted per *Cook* and the highlighted language detailed above, because the issue concerning the release was not so interrelated to liability and damages (and thus could be tried separately) (*Cohn, supra*, at p. 386.) The release (and its viability) amount to an affirmative defense; if the release was viable, there would be no liability and thus damages. The *Cohn* court noted that special defenses which abate or bar the claim of the plaintiffs may be tried before other issues, for a decision in the defendant's favor may render unnecessary the effort and expense of a complete trial. (*Cohn, supra*, 42 Cal.App.3d at p. 389.) *Cook* was inapplicable. (*Ibid.*)

Bifurcation therefore is appropriate when issues of liability and damages are different. For example, in a wrongful death situation, liability and damages can be bifurcated, for damages will depend on the plaintiff's own pecuniary loss, which may include the loss of decedent's financial support, services, training and advice, and the pecuniary value of the decedent's society and companionship. (*Nelson v. County of Los Angeles* (2003) 113 Cal.App.4th 783, 793-792.) Such testimony would have no bearing on whether the officer (and thus the government entity) used reasonable deadly force in killing the decedent in a wrongful death scenario for purposes of liability. Put another way, there would no "trial within a trial" concerning his damages, as damages are not part of the liability calculation.

B) Merits

Defendants argue that the ends of justice would be furthered if the court bifurcates liability from damages as to each of the three remaining causes of action. According to

defendants, their liability presents a "finite and factually narrow issue, which involves the presentation of much less evidence and expert testimony." Defendants insist their liability "will turn on the defined scope of work in the contract between the parties, the duty of care owed by [them] to the client, and if a defects exist, whether the defects are either latent or patent. According to defendants, without specifics, these issues can be decided based on the testimony of five (5) liability experts from a total of thirteen (13) experts and approximately five (5) other liability witnesses. (Memorandum of Points and Authorities, p. 3.) "Thus, medical expert testimony (or which there are 4), vocational and economic expert testimony (of which there are 4), and medical provider testimony (of whether there are dozens), is not necessary for the purpose of deciding liability and ultimately may not be necessary at all if liability is decided in Defendants' favor."

Defendants' arguments ***as advanced and framed at times seem too broadly made.*** The principle purpose of Code of Civil Procedure section 598 is to avoid the waste of time and money caused by the unnecessary trial of the issues associated with liability, which serves to promote settlement where plaintiff wins on the liability issue, and affords an opportunity for a logical presentation of evidence, therefore simplifying the issues for the jury. *(Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 888, fn. 8.) There are three causes in the operative pleading left to be tried, involving negligence, negligence per se (not really a separate cause of action but it is alleged as such), and loss of consortium. We need only focus on one cause of action– negligence – to highlight the points to be made here. Plaintiff will have to prove the elements of negligence, which includes a showing a duty of care, breach of the duty of care, proximate cause, and damages. (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680.) It seems evident, generally speaking, that liability and damages as presented are so intertwined as to run afoul of the rules articulated in *Cook, supra*. One cannot have liability without damages. The line defendants draw at times – between liability and damages – is a bridge too far.

This is not to say that bifurcation is inappropriate, for despite defendants' broad portrayal at times, they in reality base their request on two limited subset aspects of the liability determination, as follows: 1) defendants had no duty of care to plaintiff, based on the scope of the contractual work demanded by Okonite; and (perhaps more significantly) 2) even if the court assumes arguendo there was a duty of care under the contract, and further, defendants were negligent, the Tunnell defendants are not liable under the "completed and accepted rule doctrine," which is an affirmative defense to the negligence-based causes of action. This doctrine has been described as follows: " '[W]hen a contractor completes work that is accepted by the owner, the contractor is not liable to third parties injured as a result of the condition of the work, even if the contractor was negligent in performing the contract, unless the defect in the work was latent or concealed. [Citation.] The rationale for this doctrine is that an owner has a duty to inspect the work and ascertain its safety, and thus the owner's acceptance of the work shifts liability for its safety to the owner, provided that a reasonable inspection would disclose

the defect. [Citation.]' [Citations.] Stated another way, 'when the owner has accepted a structure from the contractor, the owner's failure to attempt to remedy an obviously dangerous defect is an intervening cause for which the contractor is not liable.' [Citation.] The doctrine applies to patent defects, but not latent defects. 'If an owner, fulfilling the duty of inspection, cannot discover the defect, then the owner cannot effectively represent to the world that the construction is sufficient; he lacks adequate information to do so.' [Citation.]" (*Neiman v. Leo A. Daly Co.* (2012) 210 Cal.App.4th 962, 969, fn. omitted, quoting from *Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 1466–1471; (*Sanchez*) & *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 712, disapproved on another ground in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7.) In that situation, the defect is deemed latent, and thus the affirmative defense is inapplicable. (*Neiman, supra*, at p. 969; see CACI No. 4552[2].) "[A] patent defect is one that can be discovered by the kind of inspection made in the exercise of ordinary care and prudence. In contrast, a latent defect is hidden, and would not be discovered by a reasonably careful inspection." (*The Luckman Partnership, Inc. v. Superior Court* (2010) 184 Cal.App.4th 30, 35.)

These two sub-issues or aspects of liability (i.e., far narrower than the broadly termed "liability" determination associated with negligence in general) can be appropriate topics or subjects for a first-stage bifurcation hearing. Liability for negligence may only be imposed where there is a duty of care owed by the defendant to the plaintiff or to a class of which plaintiff is member. A duty of care may arise through statute or by contract, or through the general character of the activity in which the defendant is engaged, or the relationship between the parties under the context of the case. The issue of duty generally is a legal question to be decided by the court. (*Sanchez v. Lindsey Morden Claims Services, Inc.* (1999) 72 Cal.App.4th 249, 251, citing *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 392; see also *Merrill v. Navegar* (2001) 26 Cal.4th 465, 477 [same]; see *QDOS, Inc. v. Signature Financial, LLC* (2017) 17 Cal.App.5th 990, 1004.) "'The threshold element of a cause of action for negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion. [Citations.] Whether this essential prerequisite to a negligence cause of action has been satisfied in a particular case is a question of law to be resolved by the court." (*Johnson v. The Raytheon Co., Inc.* (2019) 33 Cal.App.5th 617, 633.) There is no reason why the court itself cannot determine the existence of a duty at the first bifurcated stage. Of

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[2] CACI 4552 reads as follows: "[*Name of plaintiff*] claims that [his/her/*nonbinary pronoun*] harm was caused by a defect in the [design/specifications/surveying/planning/supervision/ [or] observation] of [a construction project/a survey of real property/[*specify project, e.g., the roof replacement*]]. [*Name of defendant*] contends that [he/she/*nonbinary pronoun*/it] is not responsible for the defect because the project was completed and the work was accepted by [*name of owner*]. To succeed on this defense, [*name of defendant*] must prove all of the following: [¶] 1. That [*name of defendant*] completed all of [his/her/*nonbinary pronoun*/its] work on the project; [¶] 2. That [*name of owner*] accepted [*name of defendant*]'s work; and [¶] 3. That an average person during the course of a reasonable inspection would have discovered the defect."

course, at such a trial, plaintiff would have the burden of proving disputed "facts" which give rise to a legal duty on the part of defendants. (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1162, fn. 4; Rest. 2d Torts [it is for the plaintiff to prove facts which establish a legal duty on the part of the defendant to conform to a legal standard of conduct for his protection].)

Further, and perhaps more significantly for defendants' purposes, the completed and accepted work doctrine is an affirmative defense under the precepts observed above (*Neiman, supra,* 210 Cal.App.4th at p. 964), and thus can also be part of the first-stage bifurcated trial, as it is separate and distinct from what plaintiff has to prove in its case-in-chief. Of particular relevance to this is Code of Civil Procedure section 597, which provides generally that when "an answer pleads that the action is barred by 'any other defense not involving the merits of the plaintiff's cause of action but constituting a bar or ground of abatement to the prosecution thereof,' the court may "proceed to trial of the special defense . . . before the trial of any other issue in the case . . . ." This provision allows a "special defense" to be bifurcated from a required element of plaintiff's case in chief. (See, e.g., *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 517 [provision does not allow bifurcation if "defense" is in reality a required element of the plaintiff's case-in-chief]; see also *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 911; *Finley v. Superior Court* (2000) 80 Cal.App.4th 1152, 1162; see *Kreling v. Walsh* (1947) 77 Cal.App.2d 821, 835 [an affirmative defense may be a "special defense" pursuant to Code Civ. Proc., § 597].) The "completed and accepted work" doctrine, although not expressly mentioned in defendants' answers, is clearly part and parcel of defendants' sixteenth affirmative defense (labelled "lack of latent defect"). This issue was raised at the summary adjudication hearing before Judge Staffel, and it was discussed in detail. (See, e.g., August 28, 2018 reporter's transcript of the hearing attached to defendants' motion). There seems little doubt that bifurcation would narrow the scope of the issues – and concomitantly narrow the definition of relevant evidence bearing on the issues of liability, for if the doctrine applied, there would no liability at all (and thus no need for evidence of damages).

Plaintiff opposes the bifurcation motion, advancing a number of arguments. First, plaintiff contends that the issues of liability and damages are not complicated, and all can be determined in a single trial. Significantly, according to plaintiff, if this case were split into two stages, "many witnesses will have to testify twice, increasing the burden on the court." Plaintiff explains (also without much specificity) what several percipient witnesses "would be called upon to testify multiple times . . . " Plaintiff explains that "some . . . are first responders, who can testify to how much water was covering the interior floor of the Okonite building"; some are "Okonite employees who were percipient witnesses to the roof-repair protect, the manner in which the repairs were made, the contractual terms and scope of are also witnesses to Plaintiff's claim for damages . . . ."; and still others will testify to the lead up to the roof collapse and the collapse itself, all of which would result in "significant inconvenience to the aforementioned witnesses . . . ." Plaintiff also argues that defendants' request is untimely, as it should have been

made earlier in the proceedings, relying on California Rules of Court, rule 3.727(10). Finally, plaintiff contends the bifurcation request is not "supported by law," as the case cited by defendants - *Bly-Magee v. Budget Rent-A-Car Corp*. (1994) 24 Cal.App.4th 319, is inapposite.

The court is not entirely persuaded by plaintiff's arguments (at least as presented and on a preliminarily basis). First, the bifurcation motion is ***not*** untimely. California Rule of Court, rule 3.727(10) provides that "in ***any*** case management conference or review," the parties or the court can discuss bifurcation. There is a case management conference scheduled today, and the issue is not precluded from being raised at or before that hearing. Additionally, as noted above, this is not the first time the issue of bifurcation has been before the court. On May 15, 2019, defendants filed a request to bifurcate on the exact same grounds as advanced here, when the trial date was October 25, 2021, a date ultimately vacated because of the impacts of the COVID-19 pandemic. While it is true that a party seeking separate trials should request such relief as soon as the need becomes apparent, and delay may be factor affecting the court's exercise of discretion (Weil & Brown, Civ. Procedure Before Trial (The Rutter Guide 2024), ¶ 12.420), under the circumstances presented, plaintiff cannot claim surprise or prejudice.

Second, defendant seems clear (although vague on specifics) about the type and scope of evidence that will be necessary to determine the applicability of the completed and accepted work doctrine affirmative defense. In both its original submissions on May 15, 2019, and in the current submission before the court, defendants contend that the narrowed evidentiary basis will consist of "5 liability experts of a total of 13 experts and approximately 5 other witnesses." (See, e.g., Attorney Carla Gagne, Dec., ¶ 8.) The court observed at the time of defendants' summary adjudication motion that even if the roof project at issue had been completed, and it further assumed there were defects in defendants' workmanship, there were disputed issues of material fact about whether the defect was latent, meaning the doctrine would not apply. This disputed issue of material fact was created ***exclusively*** by plaintiff's expert declaration from Jeff Hughes. The evidence at least in theory can be specifically tailored and thus amenable to a first-stage bifurcated trial.

Nothing in plaintiff's opposition (generally) casts doubt on this. Plaintiff claims several percipient witnesses will have to testify multiple times, but the court is not convinced this is true on the evidence presented. Nothing about plaintiff's injuries would be relevant to the two issues identified above at the first stage of a bifurcated trial. The first responders following the roof collapse will have little to say about whether a construction defect is patent or latent. Further, the testimony from Okonite employees Patrick Flory and Charles Hagmaier about plaintiff's injuries (along with testimony from Abel Barbolla, Jamie Lopez, and A.J. Lopez about plaintiff's injuries and damages) would be relevant at the second stage only. That leaves the testimony of Patrick Flory and Charles Hagmaier concerning the nature of the construction project, and the reason why defendants were hired in the first place, as potentially relevant to the duty and completed and accepted work doctrine affirmative defense. While there may be some duplication or overlap, it arguably does not appear significant, *at least as presented in the*

briefing. In contrast to the minimal burden caused by this possible duplication, there is a significant benefit of a streamlined second-stage trial, for if the trier of fact rejects the completed and accepted work doctrine affirmative defense, for example, the jury will be left to decide breach, causation, and harm in a more focused environment (assuming, for the sake of argument, that any defect is found to be patent and not latent).

The court agrees with plaintiff that *Bly-Magee, supra,* 24 Cal.App.4th 318 is inapposite. In *Bly-Magee*, plaintiff sued Budget Rent-A-Car Corporation for negligence for failing to register a vehicle rented by Bly-Magee, resulting in her arrest and incarceration. The trial court limited Budget's voir dire to the issue of agency and refused to submit its special verdict form specifically describing any nonparties for the allocation of comparative fault. The appellate court affirmed, noting as relevant for our immediate purposes that while the trial court apparently ordered bifurcation of the issue of responsibility for failure to register the rental car from the issues of liability and damages, *the issue of bifurcation was not relevant to its determination*. "Here, the trial court's rejection of Budget's proposal to resume voir dire of the jury was tantamount to ordering the case to continue on the remaining issues before the same jury. Indeed, Budget has not contented either here or in the trial court that, pursuant to [Code of Civil Procedure] section 1048, the issue of Budget's responsibility has been severed, to be determined in separate trials by separate juries." (*Id.* at p. 323.) Accordingly, the propriety of bifurcation was not at issue, and it is well settled that a case does not stand for a legal proposition not considered. That being said, the cases discussed above (including *Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d 875, which was cited by defendants) ***do*** support the trial court's statutory and inherent authority to bifurcate issues, including any issue of duty, which is a legal determination, and the nature of an affirmative defense pursuant to Code of Civil Procedure section 597.

For these reasons, the court ***tentatively*** grants defendants' request to bifurcate the issue of duty and the application of the completed and accepted work doctrine affirmative defense. This determination is made ***preliminarily***, however, and defendants in particular have more work to do before the court will finalize the order. Indeed, nothing in defendants' reply disabuses the court from approaching the issue of bifurcation with caution;[3] the final decision will ultimately rest on specific details, which have not been provided or explored in the briefing to date; the court (despite the tentative) has lingering questions about the efficacy of bifurcation, and those questions must be addressed. Trial is scheduled for October 14, 2024, a date that likely will be continued based on the court's schedule. The court therefore conditions its tentative grant of defendant's bifurcation motion (as to the issue of legal duty and application of the completed and

[3] Defendants in reply claim, for example, that "few if any witnesses who need to testify on both liability and damages issues," noting that first responders have never been deposed, and there are only a "few Okonite witnesses" who would be called on the liability issues in this case (the plant manager and chief engineer) . . . ." (Reply, p. 4). Defendants then argue generally that there are "far fewer liability witnesses" than the damages aspects. (Reply, p. 8.) These generalities require more specificity before the court will finalize the tentative order.

accepted work doctrine affirmative defense) based on answers to be provided to the following issues:

1) As to the issue involving duty, which generally is a legal question to be determined by the court:
    a. How do the parties envision the issue being tried at the first stage of a bifurcated trial?
    b. What is the offer of proof? Will it be duplicative of evidence establishing other issues associated with liability (including harm, causation, or damages) in the second bifurcated stage?
    c. Is the issue one of contractual interpretation to be determined exclusively by the trial court, or will there be disputed facts as a predicate that will require a jury determination? If a jury determination is contemplated, the court wants the parties to discuss the contents of a proposed special verdict and the type of jury instructions contemplated.
    d. If a jury is required to determine any issue of disputed fact associated with the issue of duty, how effectively can the court try the issue as a separate and distinct issue from a determination of the complete and accepted work doctrine? Will there be too much confusion, meaning a unitary trial would be best?
2) As to the issue involving the completed and accepted work doctrine affirmative defense:
    a. It should be observed that bifurcation does not abrogate a party's right to jury where it would otherwise exist. (*Jefferson v. Kern* (2002) 98 Cal.App.4th 606, 617.) The court anticipates a jury trial on the issues associated with the doctrine. Do the parties agree or disagree, and why?
    b. Is the latent/or patent defect/danger issue irrelevant to the issue of negligence, meaning the issues can effectively be tried separately, and thus out of order? The court directs the parties to review CACI 4552, which details the elements of the completed and accepted work doctrine, as detailed in footnote 2 of this order. Will the jury be confused if they are given CACI 4552 in a first-stage bifurcated trial without evidence of breach, causation, and/or harm? Explain in detail.
    c. What is the offer of proof on this affirmative defense from both sides? The court would like to see specific items of evidence that will be offered in order to allow a determination of whether there will be ***significant*** evidentiary duplication between the first and second stages. Specificity, not generality, is required.
    d. What jury instructions and special verdict forms will be proposed?
3) If a second stage is required because a duty is found and the jury finds a latent defect:

a. How do the parties foresee the issue of breach, causation, and harm being tried to the jury at the second stage, and how will it differ from the presentation of evidence involving duty and the completed and accepted work doctrine?
b. What is the offer of proof of liability and damages (and how does it differ from the offer of proof for both duty and the completed and accepted work doctrine)?
c. What jury instructions will be required? How will the special verdict form read?

The court continues the hearing and directs the parties to provide additional briefing on these points, in order to allow the court to either refine or reject this tentative decision. The parties should treat this order not as a briefing schedule *per se* but as a detailed Case Management Order, with briefing overtones, and the parties should be as specific and comprehensive as possible in responding, for final resolution of the bifurcation question rests on the quality and detail of the answers provided. The court directs defendants to file an initial supplement brief by August 16, 2024; plaintiff has two weeks to respond, which should be filed with the court by August 30, 2024. Defendants can file a reply, which will be due on Monday, September 9, 2024. The hearing will be continued to September 18, 2024. If the parties need more time, they should come prepared to provide *a detailed briefing schedule, leaving time between the last submission and the hearing date to allow the court to review effectively all briefing submitted*.

The parties are directed to appear at the hearing either by Zoom or in person. There is a CMC also scheduled for hearing today.