

PARTIES/ATTORNEYS

Plaintiff	Alejandro Sanchez	Robert Stoll, Jr.
Defendant	Tunnell Roofing Company Inc John R. Tunnell	Jason A. Kirkpatrick Jason A. Kirkpatrick
Claimant	Travelers Property Casualty Company of America	Jacqueline Bouche

PROPOSED TENTATIVE

On July 17, 2024, the court adopted its tentative ruling as to defendants Tunnell Roofing and Co., Inc.'s and John Tunnell's motion to bifurcate. The substance of the earlier order is incorporated into this order (and thus will not be recounted here). Suffice it to say that the court tentatively granted defendants' request to bifurcate issues of duty and application of the completed and accepted work doctrine (an affirmative defense) (at the first stage of trial) from issues of liability and damages (if necessary, at the second stage of trial), for reasons discussed in the earlier order. It made this determination on a preliminary basis *only*, however, for defendants had failed to provide specific details about critical issues that were necessary to resolve the motion. The court posed three general categories of questions, directing the parties to address specific questions subsumed thereunder, before the court would finalize any determination. In this regard the court expressly directed the parties to file supplemental briefing. On October 22, 2025, defendants filed their supplemental briefing; plaintiff Alejandro Sanchez filed his supplemental briefing on October 29, 2025. In the interim, the parties stipulated to extend the five-year deadline to bring the case to trial to December 31, 2026, an order the court signed on November 3, 2025. Jury trial is presently scheduled for April 6, 2026. The present matter was continued from February 11, 2026.

The court in part (A) of this order will list the specific questions it wanted the parties to address, summarize the responses from each party, and then explain the court's position based on the submissions. The court in part (B) of this order will conclude with a summary of its determinations.

A) Questions Asked, Parties' Responses via Supplemental Briefing, and Court's Observations

- 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?
 - i. Defendants' Response in Support: Defendants insist no jury will be required for the issue of duty.
 - ii. Plaintiff's Response in Opposition: Plaintiff did not expressly answer the question asked, renewing its argument that "the existence and scope of any duty, as well as the applicability of the Completed and

Accepted Doctrine, are fact-driven issues intertwined with core liability questions and dependent on the same witnesses and evidence . . .” Later in its supplemental briefing, however, plaintiff seems to indicate that a jury trial will be required because, contrary to defendants’ representation, the duty of care will not rest on contract but on a competing medley of facts.

- iii. Court’s Observations: For reasons discussed in more detail below, this factor ultimately seems to weigh in favor of denying the motion to bifurcate.
- 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?
- i. Defendants’ Response in Support: Defendants contend the issue of duty is a “very narrow one” and will require, on its part, only five (5) exhibits, and three (3) witnesses. They insist, for example, they had no duty because they did not own, possess, or control the property in question, and thus the only question will be whether duty would be established by contract. Defendants actually do ***not*** address in their briefing whether the evidence presented for the issue of duty will be duplicative of the evidence that would be presented at a presumed second bifurcated stage.
 - ii. Plaintiff’s Response in Opposition: Plaintiff contends that for his part, he will present evidence that contractors in general, and commercial roofers like defendants in particular, owe a duty of care outside of contract, and will call: 1) a licensed general contractor (Jeff Hughes); and 2) a licensed professional engineer (Brad Avrit). Plaintiff anticipates the offer of proof will be “duplicative” of evidence establishing other issues associated with liability” (at the second stage).
 - iii. Court’s Observations: The court is troubled by defendants’ failure to address the potential duplicative nature of evidence associated with the issue of duty. Plaintiff, on the other hand, expressly addressed the point. Because plaintiff will not limit himself to a contractual basis for establishing duty, this factor weighs in favor of denying the motion to bifurcate.
- 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.

- i. Defendants' Response in Support: Defendants make it clear in their supplemental briefing that any alleged duty and scope of work will be based *exclusively* on contract, and contract interpretation is one that a court should make as "pure legal question." According to defendants, this will be "straightforward," meaning (for defendants) the issues involve "a pure issue of contractual interpretation[,] which is to define the scope of work for the project" and then determine whether a duty exists and if so what that duty entails. It is (again according to defendants) a "narrow issue" which can be addressed without the need for a jury. The evidence consists of Exhibits A (a copy of the contract), and testimony (Exhibits F and G (deposition testimony of Charles Hagmaier and Richard Flory, respectively).
 - ii. Plaintiff's Response in Opposition: Plaintiff emphasizes "this is not a contract case," but a "tort case," and provides that any duty calculation will require more than contractual interpretation. According to plaintiffs, the "scope of work" under the contract included "structural calculations, plumbing, or drain work[,]" contrary to defendants' representations. "Plaintiff alleges, and will present substantial evidence, that [defendants] either re-surfaced over some of the primary drains, or allowed construction debris to fall into the drains, or both. . . . [¶.] The scope of Defendant's duties, the extent of their control over the roof, and whether their work or omissions contributed to the collapse all depend on conflicting testimony from a witness and experts."
 - iii. Court's Observations: This factor weighs in favor of denying the motion to bifurcate. It is plaintiff's burden to establish any duty of care, and plaintiff intends to present evidence beyond the four corners of the contract; despite urgings by defendants, a jury determination may be required (notably if there are competing issues of material fact). It would therefore appear substantial duplication of evidence may occur.
- 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?
- i. Defendants' Response in Support: Defendants do not expressly address this issue in their briefing, requiring the court to infer answers based on responses given to other questions.

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.

- i. Defendant's Response in Support: Because the completed and accepted work doctrine is an affirmative defense, which involves a ***new*** matter that defendants are required to plead and prove (*Marich v. MGM.UYA Telecommunications, Inc.* (2003) 113 Cal.App.4th 415, 424), the jury will not be confused by the out-of-sequence presentations. All defendant says is that the jury "does not need to be instructed with respect to duty, breach or damages, since this is a very narrow defense which either applies and ends the case, or it doesn't . . ." According to defendants, the issue is "narrow . . ." Defendants point to their proposed special verdict form attached as Exhibit H, which contains four questions describing the components of the doctrine.
 - ii. Plaintiff's Response in Opposition: Plaintiff disagrees that evidence associated with this doctrine is irrelevant to issues of duty, breach, causation and harm, and emphasizes that a jury "would be confused if they are given CACI 4552 in the first stage of a bifurcated trial because it is not a standalone, duty-only instruction."
 - iii. Court's Observations: At the first bifurcated stage, according to defendants, if duty exists then the court would provide instructions, and the special verdict form contained in defendant's Exhibit H addressing the completed and accepted work doctrine affirmative defense. This is true, but the court is nevertheless left with the firm impression that evidence of liability (breach, causation, and damages) is part-and-parcel of the affirmative defense determination, meaning the efficacy of bifurcation is attenuated at best. Defendants contend the "patent/latent" defect distinction "is only pertinent" for this doctrine; again, this is true, but it begs the bigger question of whether the underlying evidence used to highlight that distinction will be duplicative of evidence that will establish liability, breach, and damages, and it seems (in the court's view) that it very well may be duplicative, as explored in greater depth below. The court finds this factor weighs in favor of denying bifurcation.
- 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.

- i. Defendant’ Response in Support: Defendants claim the only documentary evidence for this defense will consist of Exhibits A to E as attached to the supplemental briefing, which includes, respectively: 1) the contract; 2), photos of the workplace; 3) the permit issued by the City of Santa Maria; 4) the “GAF EverGuard Diamond NDL Roof Guarantee” and associated documentation; and 5) Defendants’ Invoice. Defendants contends only five (5) witnesses will testify (John Tunnel, Charlies Hagmaier, Rick Floury. Arnold Rodio, and David Marhelle).
 - ii. Plaintiff’s Response in Opposition: Plaintiff intends to present evidence that defendants “did not complete the work,” based on what they had agreed to do; that Okonite performed a “reasonable inspection of Defendants’ work, but the dangerous condition was hidden and could not have been discovered by reasonable inspection, including the property insurance investigator’s conclusions; expert testimony that the defects were latent; and eyewitness testimony about the sudden nature of the collapse. According to plaintiff, “the same witnesses, documents and expert testimony would necessarily be presented at the first and second stage, bifurcation would create duplication rather than efficiency . . .”
 - iii. Court’s Observations: Defendants do not expressly address whether the evidence it wishes to present will be duplicated at the second stage hearing for liability (breach, causation and damages), and if so, why bifurcation remains efficacious. Defendants do argue (under the heading below for Item No. 3), that “presentation of evidence will be different,” as they will present a “structural expert, construction expert, and hydrologist who will explain that the roof collapse was caused by defect in the building and the fact that the building experienced a 200–300-year rain event . . .” Defendants, however, fail to explain why this evidence would be irrelevant for the inevitable latent/patent divide associated with any affirmative defense, and does not address the impact of plaintiff’s evidence that may be duplicative. The court is not persuaded that efficiency can be established. This factor weights against granting the bifurcation motion.
- d. What jury instructions and special verdict forms will be proposed?
- i. Neither party addresses the reason why the court posed this question – namely, whether the instructions on duty and the completed and accepted work doctrine can reasonably be assimilated into a unitary trial, rendering bifurcation unnecessary? Defendant argues that the

instructions are simple and streamlined, and while in theory CACI 4552 could be tried separately, all instructions and verdicts can effectively be incorporated and presented in a unitary trial. Nothing presented by defendants suggest otherwise. This factor weighs in favor of denial of the motion to bifurcate.

- 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?
 - i. Defendants' Response in Support: Defendants emphasize the evidence it has for liability is "different" than the evidence it has for duty and the completed and accepted work doctrine. Defendants insist the evidence will be "different," as it will involve different experts, including a hydrological expert. Defendants, however, do not provide many specifics, emphasizing that the second phase will involve standard jury instructions for professional negligence.
 - ii. Plaintiff's Response in Support: Plaintiff is much more definitive in his response. "Plaintiff respectfully submits that there will be no meaningful difference in the presentation of evidence at a so-called 'second stage' from the evidence required to litigate duty and completed and accepted work doctrine in a 'first stage.' The same core body of evidence must be introduced for both." Plaintiff explains: "Whether Defendant owed a duty of care and whether it breached that duty of care both require testimony about the agreement to comply with the F.M. Global standards contained in the contract, testimony about how work was performed, testimony and evidence from industry standards, [t]estimony and evidence proving what caused the roof to collapse, and [defendants'] admitted failure to comply with the F.M. Global specifications. All of this evidence would necessarily be presented in both stages . . ."
 - iii. Court's Observations: Plaintiff's argument is more persuasive. The court is having a hard time envisioning how evidence would not be duplicative, even if the issues of duty and completed and accepted work doctrine are subsets. Indeed, defendants may be a victim of their own argument – as the issues they advance are narrow, they can (so it appears) be easily assimilated into and thus seamlessly litigated at a unitary trial. Again, this factor weights in favor of denying the motion for bifurcation.

- 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)?
- i. Defendant's Response in Support: Defendant does not specifically address this question; the court assumes the answer immediately above is offered in response.
 - ii. Plaintiff's Response in Support: Plaintiff continues the same theme articulated above. "Plaintiff's offer of proof of liability and damages is fundamentally the same as his offer of proof for duty and the completed and accepted work doctrine. Plaintiff intends to offer mostly the same witnesses, documents, and expert testimony . . . [T]he only meaningful difference in Plaintiff's offer of proof would be offering additional evidence in support of Plaintiff's damages, including testimony from treating physicians and agreed/qualified medical examinations . . ."
 - iii. Court's Observations: Again, the court is persuaded by plaintiff's representations. The risk of duplication is great, and this reality weighs in favor of denying the motion to bifurcate.
- c. What jury instructions will be required? How will the special verdict form read?
- i. Defendant's Response in Support: Defendant replies to this question by arguing as above.
 - ii. Plaintiff's Response in Support: Plaintiff replied to this question as did defendants, with a general reference to the above-detailed answers.
 - iii. Court's Observations: The court is left with the firm impression that while the jury instructions may be different between the proposed bifurcated issues, they can be argued and implemented effectively in a unitary trial. The unitary trial removes potential confusion and appears the most efficient way to present this case.

B) Summary of Court's Conclusions

Code of Civil Procedure section 598 authorizes a court to order the trial of any issue shall precede the trial of any other issue when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby. (See also Code Civ. Proc., § 1048, subd. (b) [in furtherance of convenience, expedition and economy, the court may order a separate trial of separate issues]; Evid. Code, § 320 [court has discretion to regulate order of proof].) A bifurcation ruling is a matter within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. (*Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1086.) While the court acknowledged in its

initial order, on a preliminary basis, the theoretical viability of bifurcation on the issues of duty and the affirmative defense of the completed and accepted work doctrine, upon closer inspection, in the full light of day, the court is not persuaded that bifurcation is viable or appropriate. In the end, in the court's view a unitary trial will be the best way to present and determine all relevant issues, meaning the parties should focus on effective evidentiary presentations and clear and straightforward special verdict forms. Bifurcation means a legitimate risk of duplication and a discernable patina of jury confusion. Accordingly, the court denies defendants' motion to bifurcate on the merits.

The parties should come prepared to discuss the continued viability of the April 6, 2026, jury trial date, following the stipulation and court order signed on November 3, 2025, continuing the five-year deadline to bring this matter to trial to December 31, 2026.