

# Daily Journal

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## 25<sup>TH</sup> ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

### *Lehman v. Transbay Joint Powers Authority, Lenehan v. Millennium Partners I Inc.*

#### INVERSE CONDEMNATION, FRAUD

Veteran litigators Casselman, McCarthy and Pitre were co-lead counsel for 250 individual condominium owners at the Millennium Tower building in San Francisco who sued after the 645-foot luxury residence was famously found to be tilting and sinking following its 2009 grand opening.

It was a dramatic, headline-grabbing setback for what had been billed as the tallest and most expensive residential building west of the Mississippi with a roster of A-list tenants who'd paid sky-high prices for their homes.

The case was litigated for three and a half years. It targeted 50 defendants, featured 88 witness depositions and more than 12 million documents. After a tentative agreement was reached in August 2019, another year of negotiations was required to finalize a behemoth settlement agreement that included large though undisclosed payouts to individual unit owners and repairs that are currently underway.

While the total sum is confidential, media reports are that the building repair—the significantly smaller part of the deal—will cost \$100 million. The first complaint, filed by Casselman, was joined with one by McCarthy and Pitre. *Lehman v. Transbay Joint Powers Authority*, CGC-16-553758 (S.F. Super. Ct., filed Aug. 17, 2016); *Lenehan v. Millennium Partners I Inc.*, CGC-17-557038 (S.F. Super. Ct., filed Feb. 10, 2017).

## Attorneys reach behemoth settlement for condo owners in inverse condemnation case

The trio of plaintiff lawyers developed a complex three-pronged offense against the defendants they asserted were responsible for the debacle. It focused on claims of fraud by the developers who allegedly concealed knowledge of the problem, construction defects by the builders who failed to anchor the building to bedrock and inverse condemnation—the theory that San Francisco and regional officials were also at fault for undermining the tower by erecting a massive new public transit hub next door.

Casselman, who specializes in public entity liability, spotlighted the inverse condemnation angle after hearing from some of the experts who were consulting with owners about the building's tilt and sinking issues. "I've worked in this area for more than 30 years," he said. "Some lawyers who lived in the building were advising other owners, but they didn't have expertise in the inverse condemnation area."

As he put it in his complaint, the damage from construction of the transit hub "took the form of enhanced vertical subsidence and differential settlement, including accelerated subsidence and tilting of the Millennium Tower."

Pitre, a prominent trial lawyer who held plaintiff leadership positions on the Volkswagen "Clean Diesel" and the Northern California wildfire cases, developed the Millennium Tower suit's damages model. "The place was marketed as a jewel of the San Francisco skyline, but it was quite the opposite," he said. "You had construction defects superimposed on the plight of people living there who were induced to buy at the peak of the real estate market and now were harmed and couldn't sell and face an uncertain future."



Gary Wagner / Special to the Daily Journal

FROM LEFT, FRANK PITRE AND NIALL MCCARTHY OF COTCHETT, PITRE & MCCARTHY

And McCarthy, an authority on false claims litigation, targeted allegations of fraud. "A real key was the cover-up by Millennium Partners," he said. "They were aware early on of the sinking and tilting and their strategy from the beginning, time after time, was to hide the evidence from everyone."

Pitre said the three next worked to combine their liability claims into a unified presentation. "We melded the theories to thread the needle on the distinct damages suffered by each unit holder. People could hear the building creak as it leaned. Floors were buckling and windows popped out. Lives were turned upside down. And each of us on the plaintiff team had our separate aspects to cover."

To achieve a settlement, Casselman said, "We made the defense see that a trial was not in their interest. Even after they agreed to terms, it took a year

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to hammer out the details. It was a nightmare of a negotiation."

Added Pitre, "You'd spend weeks where each defendant gave a presentation on why they did nothing wrong. I believe this was the most complex construction case in the history of litigation."

McCarthy concluded, "It was an exceptional result, and our clients are thrilled."

— John Roemer