

Real Property Section of the Florida Bar

**CLE Presentation  
to the Construction  
Law Committee  
October 12, 2015**



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## CONSTRUCTION DEFECT CASE STUDY USING A JOINT DEFENSE

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**Hill International, Inc.**

# INPUT TO EXPERT



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# OUTPUT TO ATTORNEY



# LEARNING OBJECTIVES

1. Gain an understanding of the difference between a barrier wall system and drainable wall system.
2. Review the facts of a moisture intrusion case caused by faulty design.
3. Learn how a joint defense was beneficially used on behalf of the defendants.
4. Learn the actual outcome of the case.



# THE PROJECT

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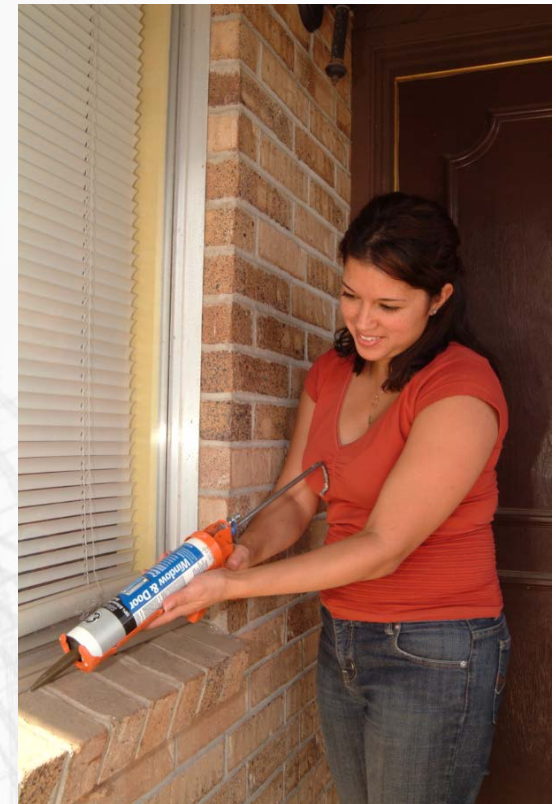
# OBJECTIVE



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Give a brief overview of a construction defect case and describe how utilizing a Joint Defense ultimately worked out for the Defendants.

Defendant is Caulking Contractor





# PROJECT DESCRIPTION



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## PROJECT DESCRIPTION

- 138 acre site
- Outdoor mall style
- Multi-use complex
- Over 15 million square feet of residential, office, hospitality, retail, and entertainment space.
- Residential luxury units located above retail (586,000 sf each bldg.)





# SUIT FILED BY OWNER

Client - Caulking Contractor - is named as a defendant in a \$100,000,000 suit.

Attorney interviews experts: Looking for someone who can consider parties involved and create a generalized responsibility matrix in order to get an idea of exposure for his client.

Joint Defense : Attorney for Caulking Contractor explores multiple defenses and considers joint defense.



# WHAT IS THE ISSUE?

## PRIMARY DAMAGE ISSUE - WATER INTRUSION

- Pre Con - VE - Changes the exterior façade from ACTUAL brick to faux brick
- Architect does not take advice from his own pre construction waterproofing expert.
- Architect ignores details and insists system be installed as barrier system (SYSTEM IS NOT A BARRIER SYSTEM)

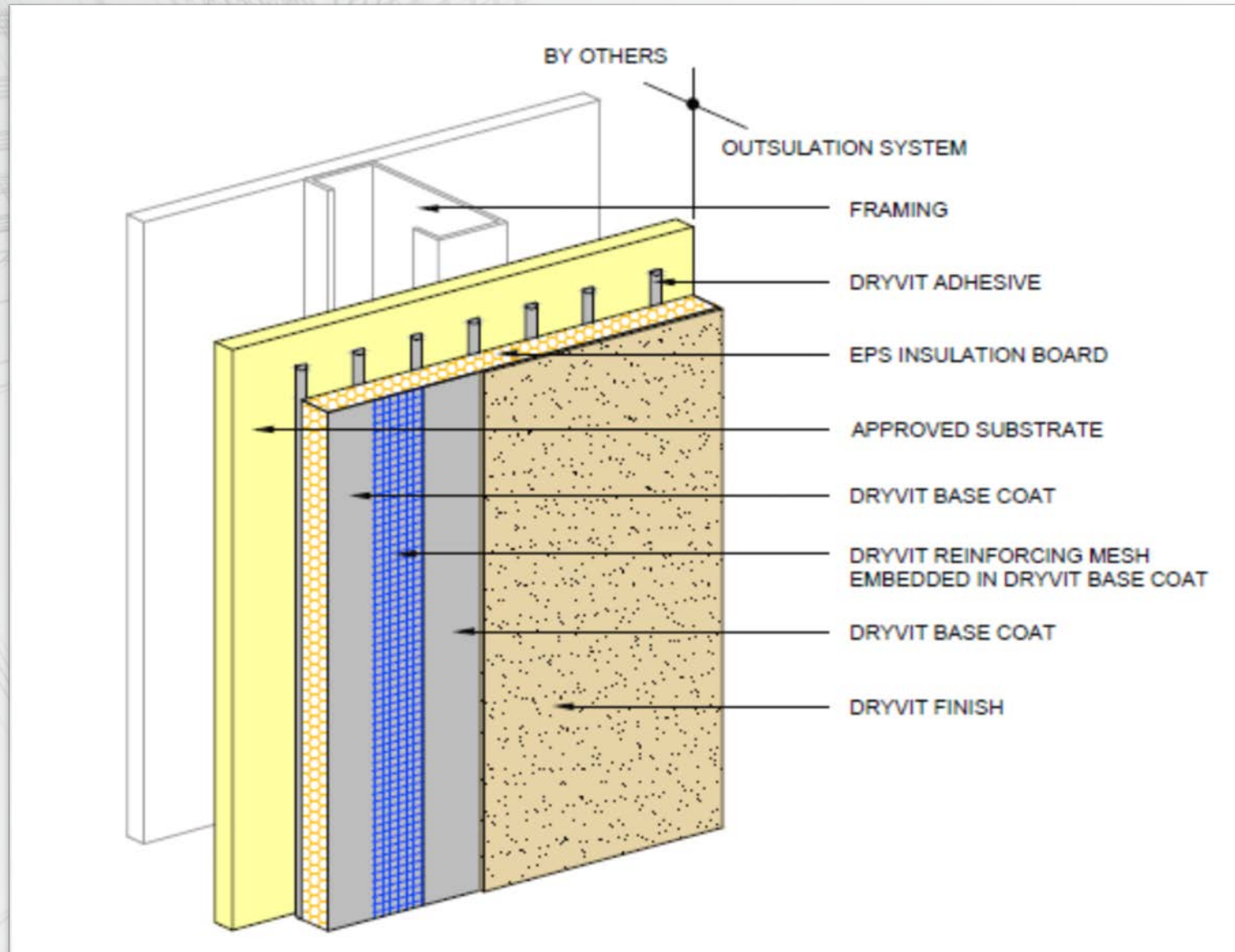




# BARRIER SYSTEM



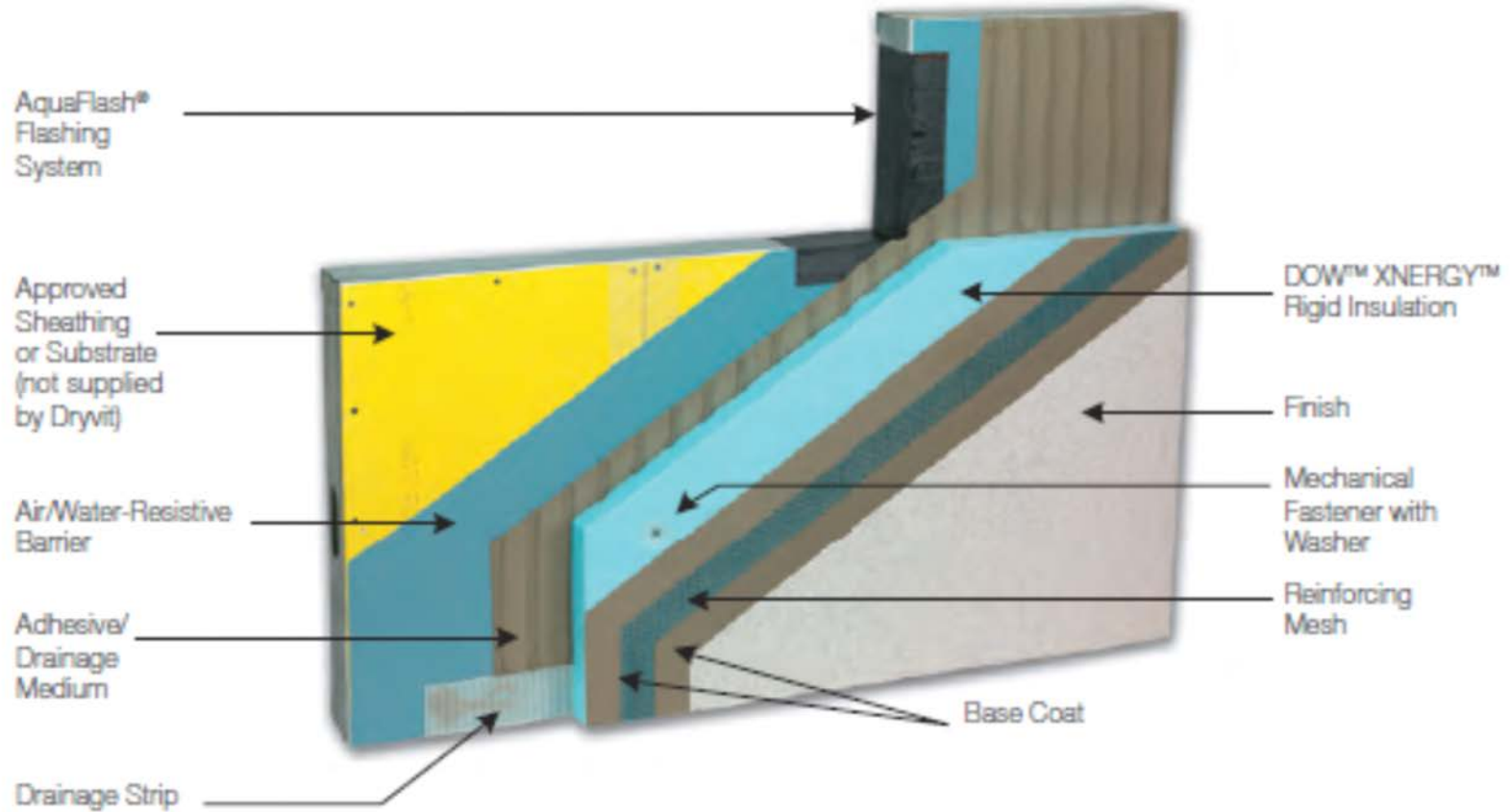
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# DRAINAGE SYSTEM



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# WHY IS THERE A PROBLEM?

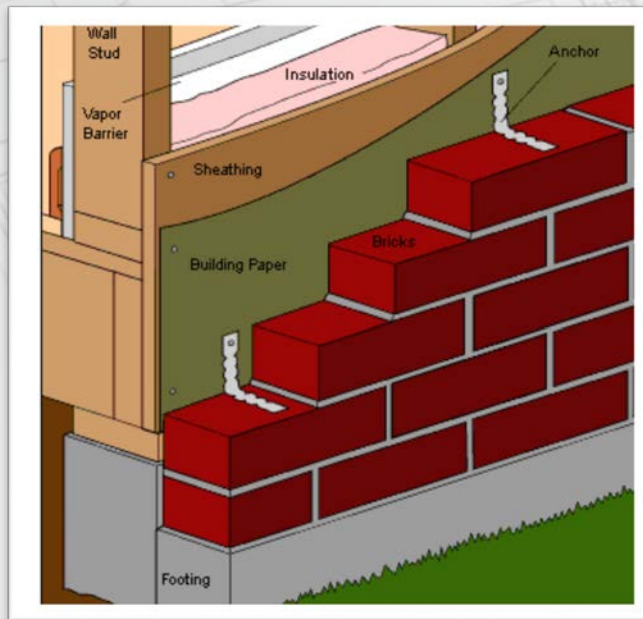


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## SYSTEM MUST BE SPECIFIC

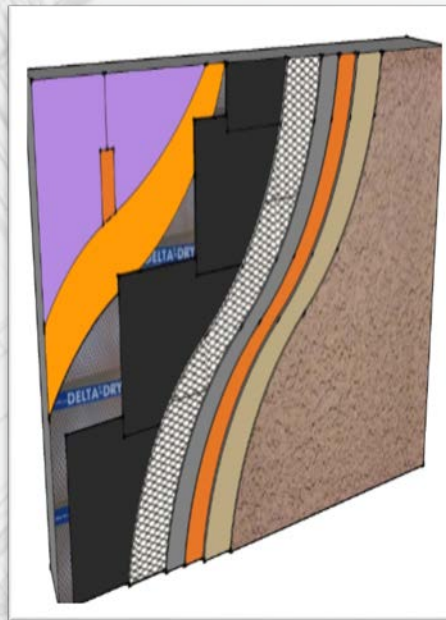
### Brick

(air space drainage)



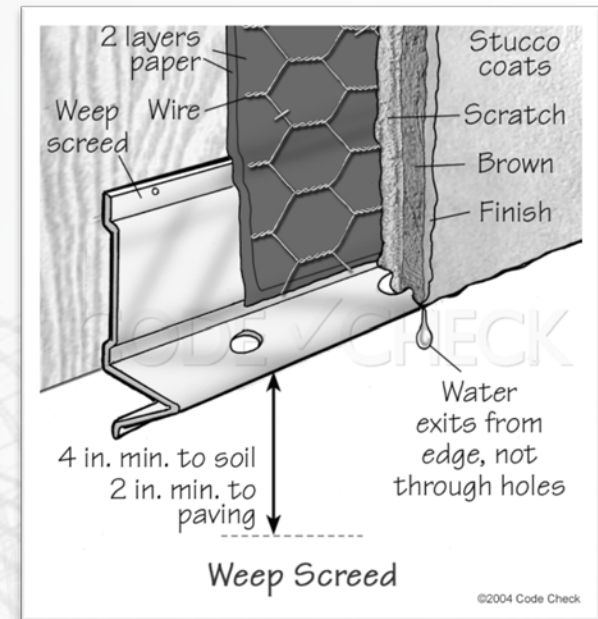
### Stucco Barrier

(Prevents Water from Entering System)

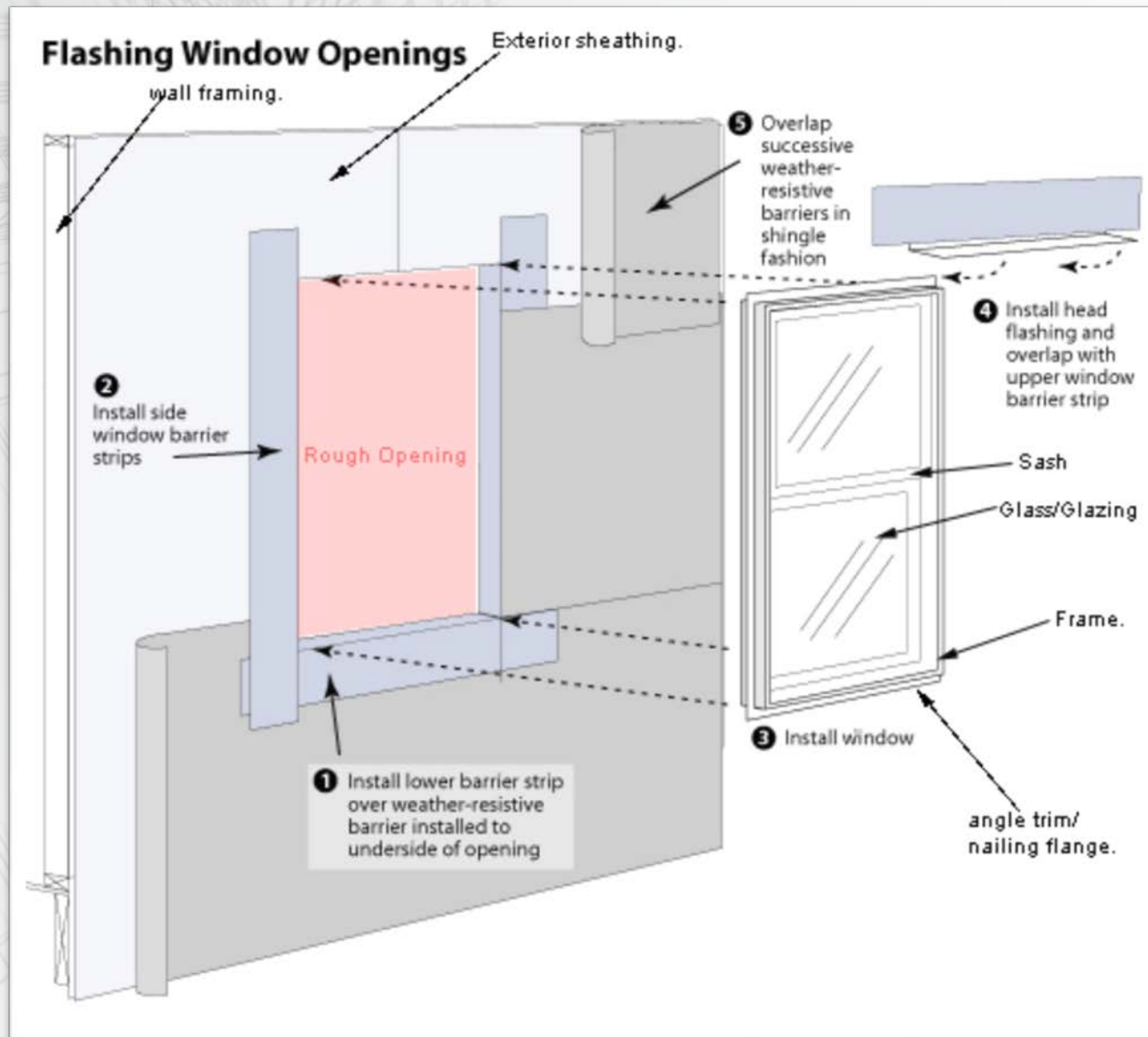


### Stucco Drainage

(Creates provision to remove water if it enters the system)



# SEALING FENESTRATIONS





# WHO CAN WE BLAME?



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- 10 Major Buildings affected including 1M sf residential/retail main buildings.
- \$100 Million Dollars of alleged damage

## Major Parties Identified:

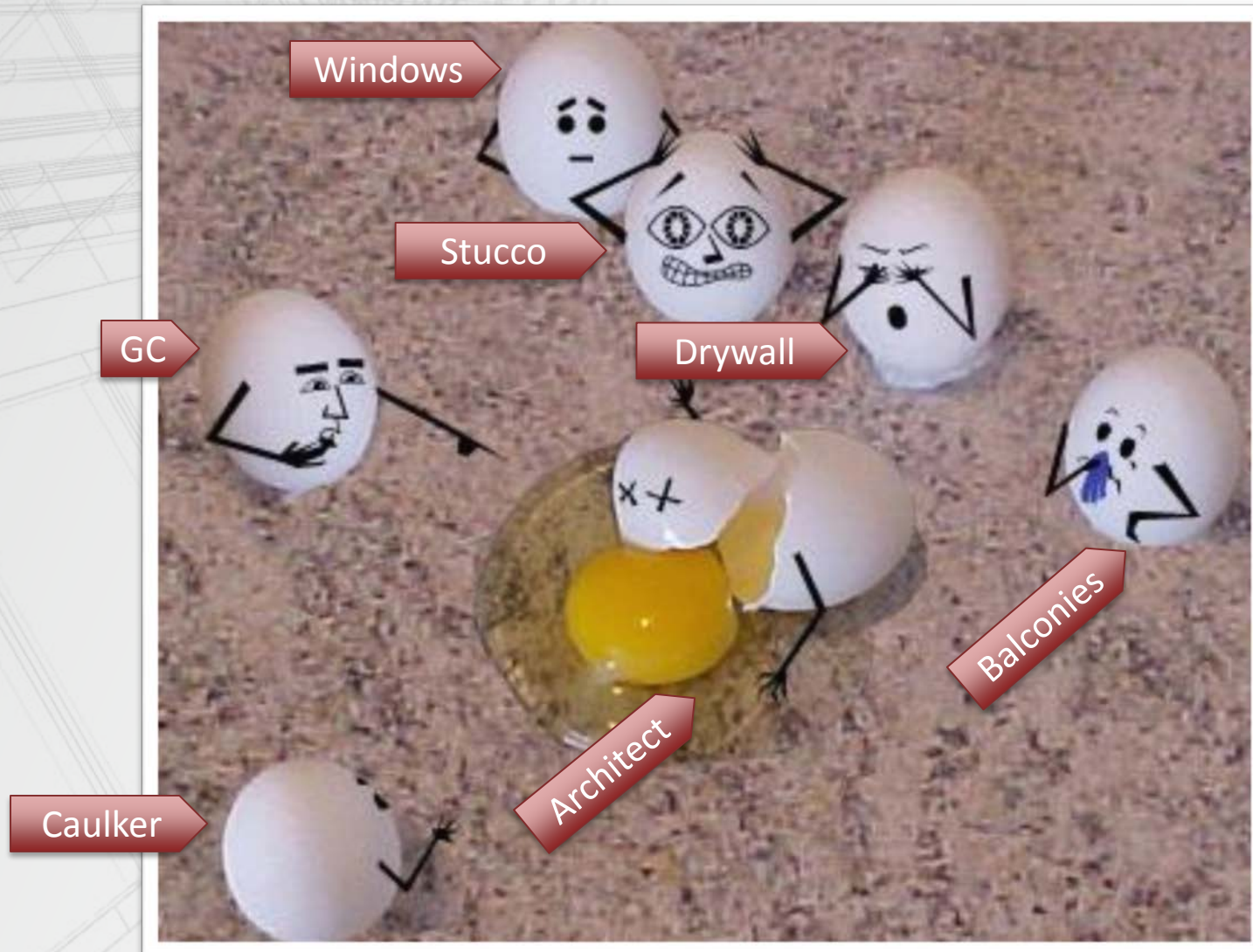
- ✓ Architect
- ✓ General Contractor
- ✓ Stucco Contractor (caulked)
- ✓ Window System (caulked)
- ✓ Balconies (caulked)
- ✓ Interior Gypsum (caulked)
- ✓ Caulking Contractor



# BLAME EVERYBODY!



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- Architect had vast majority of responsibility but settled (\$2M Insurance + \$2 M paid over time).
- Stucco contractor was next to blame but coverage was limited (\$2M and was willing to go bankrupt).
- GC had a hand in on oversight but ran a good project (deep pockets).
- Caulker (\$5M Insurance + \$5M in assets).
- Windows were installed correctly (\$2M Insurance).

# JOINT DEFENSE APPROACH

- Joint Defense was agreed upon – Caulker and GC led the way.
- It was becoming more evident to the legal teams through depositions and interpretations of other reports that construction was not extremely flawed, (but for following architects directives)
- As Hill developed facts and issues, the attorneys developed internal agreements for the joint defense.
- Parties agreed to accept whatever total damage amount is awarded, BUT then would use matrix to separate individual financial responsibility.
- Hill acted as primary expert for all defendants.



# RESULTS



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- After expert reports were issued and Hill's opinions were made part of the record though deposition, Plaintiff's case just did not hold water (but the building did!)
- Four days later Plaintiff settled for \$10M.
- Matrix was used to establish remaining parties culpability.
- Caulker paid less than \$200,000!



# SUCCESS WITH A JOINT DEFENSE

## Points of interest:

- Caulking attorney who had minor party took the lead and advantage over all other parties.
- Knowledge obtained led to a strong defense to minimize total award and created a position of strength among the codefendants.
- Architect only has \$2 Million of Coverage (\$600M project).
- Caulking contractor was probably a target because of over-coverage.

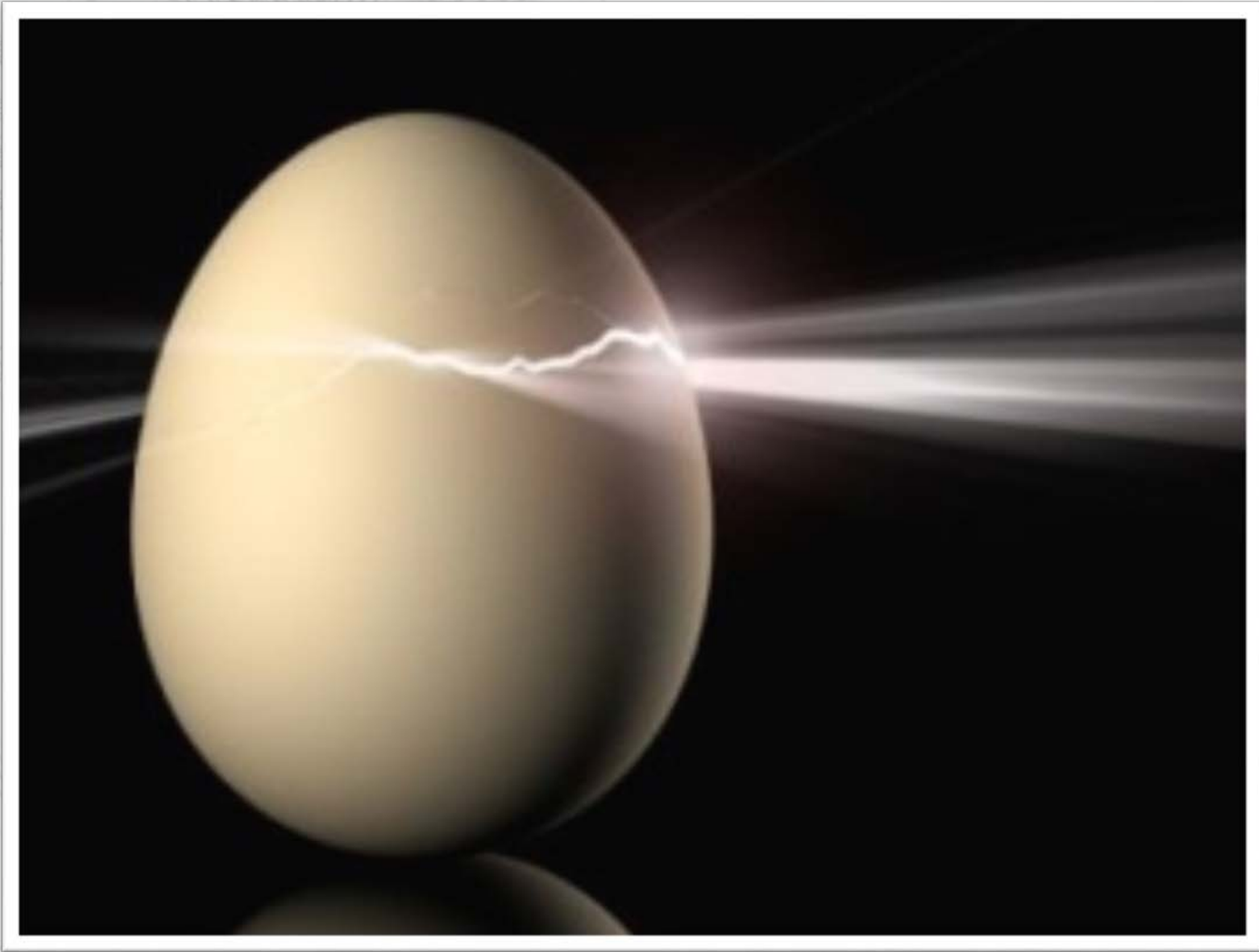




# POWER OF THE RECONSTRUCTED EGG!



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## Questions



**THANK YOU FOR  
YOUR TIME!**

PRESENTED BY:

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