**Construction Law Practice**

**Homebuilder warranty exercise**

Note: This exercise is based on Arkansas implied warranty cases. It can easily be adapted to other jurisdictions by substituting the case citations or by instructing the students to conduct their own research.

This assignment is based on Arkansas law concerning implied warranties for new residential construction. The leading cases include: *Wawak v.* *Stewart*, 449 S.W.2d 922 (Ark. 1970); *Wingfield v. Page*, 644 S.W.2d 940 (Ark. 1983); ***Bullington v. Palangio*, 45 S.W.3d 834 (Ark. 2001)**; Morris v. Rush, 69 S.W.3d 876 (Ark. Ct. App. 2002); Crumpacker v. Gary Reed Construction, Inc., 2010 Ark. App. 179 (2010). To get you started, a chart summarizing several foundational cases is being provided along with this exercise assignment in the “Residential warranty exercise” folder on Blackboard. While you can rely on the chart for the basic principles, **you should read *Bullington v. Palangio* carefully in its entirety because that case bears most directly on the issues involved.**

Our client is an Arkansas homebuilder who is concerned about the warranties implied into residential building contracts under Arkansas law, which the client has heard about repeatedly through various industry groups and conferences. The client wants our advice on the extent to which those warranties may be excluded or limited by appropriate contract language. While the client worries about the risks that the implied warranties create, the client is also mindful that the home building business is competitive and that many homebuilders offer express warranties as a marketing device. How might we draft a provision for the client’s standard contract form that will be effective to disclaim or limit the implied warranties, but that will not frighten away prospective buyers by suggesting that the client does not build quality houses or does not stand behind its work? How effective do you believe a disclaimer provision could be to limit the client’s warranty liability? What concerns do you have about how a court might interpret or apply a disclaimer in light of the Arkansas cases? The ideal solution will be to provide to the client a carefully crafted and limited express warranty.

After a preliminary discussion of this exercise with the entire class, I will ask you to break into small groups to work on a draft of a limited, express warranty provision to recommend to the client. We will reassemble for a wrap-up discussion. You do not necessarily need to agree on complete, final language, but each group should at least have a solid working outline of a provision to discuss with the entire class. Each group may either designate one or more spokespersons or may have all group members participate in the presentation to the class.