APPELLATE ZEALOTS

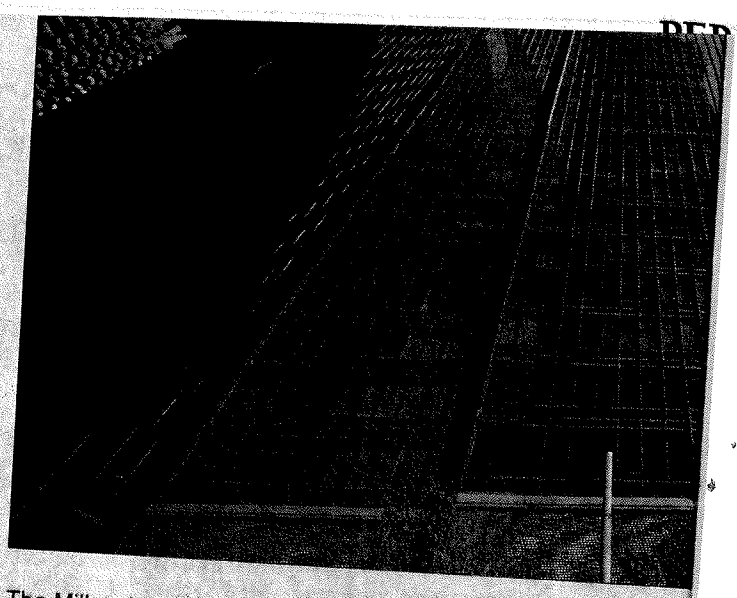
Big trouble from a little writ

By Ben Feuer

Petitions for writs of mandate are some of the trickiest devices in a California appellate litigator's bag. The briefing is often hurried, the record necessarily incomplete, and the Court of Appeal has almost plenary discretion whether to consider them at all. Nine times out of 10 the court denies the petition immediately and without explanation. The rest of the time, it chooses from an array of options ranging from denying the petition with instructions to stetting a formal hearing with oral argument. Any result is virtually always case-specific and unpublished.

See Page 7 — PREEMPTORY

DAILY



The Millennium Tower, a 58-story building said by its developers t
western United States, has sunk about 16 inches and is leaning si
proposed law the owner would likely have been unable to sue for

Bill would limit t construction defe

By Malcolm Maclachlan
Daily Journal Staff Writer

SACRAMENTO — A bill pending in the Assembly would cut the statute of limitations for construction defect cases from 10 years to five.

AB 2353 was authored earlier this month by Assemblyman Jim Frazier, D-Oakley, who has a background in

"Changing the statute of is going to substantially insurance premiums for t opers," Apodaca said. "In t these lawsuits against th happen in the ninth year."

That is precisely the Frank M. Pitre, a partner ott Pitre & McCuth

Peremptory writ brings big for class action litigation in

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Once in a rare while, however, the Court of Appeal will consider a writ petition that raises an issue of first impression, and publish a decisive order, called a peremptory writ, that creates new and binding precedent which significantly impacts California law. It is very uncommon, but it does happen — most recently in late-January, with *Apple Inc. v. Superior Court (Shamrell)*, 2018 DJDAR 1038 (Jan. 31, 2018).

In *Shamrell*, Division 1 of the 4th District Court of Appeal ruled for

between what the class-members paid for their phones at the time of purchase, and what they would have been willing to pay for their phones had they known of the risk that their power buttons would stop working down the road. That difference would be based on the cost of repairing the phones or their diminished trade-in values, as well as surveys into how much customers would pay for a phone without a working power button.

Apple opposed certification by contending that the methodologies

the Court of Appeal, arguing the t al court erred in failing to condu a *Sargon*-compliant analysis of t testimony proffered by plaintif experts. The appellate court quested an informal response fr the plaintiffs before staying the igation and issuing a formal ord to show cause why Apple's petiti should not be granted.

The Court of Appeal ultima ly granted a preliminary writ. opinion acknowledged that cla certification is a limited-scope d termination that affords trial