

## He Builds Lawsuits On Bad Foundations

Thomas J. Morrow, Staff Writer, Blade-Citizen

**March 15, 1992** - Del Mar - Few, if any, of his cases would make a thrilling "L.A. Law" story line. Nevertheless, attorney Thomas E. Miller is one of the foremost experts at shaking the foundations of Southern California's sometimes-errant building industry.

Miller and his associates are among only a handful in Southern California dealing exclusively with condominium construction defects litigation. The typical Miller case is for a 100-plus units condo project needing at least \$1 million in repairs.

Dealing exclusively with homeowner associations, litigation typically is over discrepancies with roof leaks, drainage problems, cracks in patio walls, leaky windows, stucco problems and even noise between units. Nothing really juicy, but lucrative.

"We've never lost a case," Miller said of his Del Mar law firm. "The only way you lose a case in this area is if you (as a law firm) mis-evaluate the situation." Miller said things such as expiration of the statute of limitations can be one area that can trip up litigation.

Also, all of the construction documents have to be examined closely to see if some previous homeowner association boards haven't signed off potential problems with the builder.

Each case piles up anywhere from \$250,000 to \$500,000 in hours, but Miller doesn't bill in hours; rather his staff of 20 (5 attorneys, 5 paralegals and 10 support staff) works strictly on a contingency basis. Miller's thorough research and investigation results in victories or settlements for his clients.

"We spend 15 to 20 hours discussing and going over the details with a homeowners association before we decide to take their case," said Miller. "There's no charge for this evaluation period."

The sort of work Miller does is out of the league of most single homeowners. He said the minimum cost for investigating a project is \$50,000, because he uses geologists, waterproofing experts, architects and asphalt specialists, depending upon the case. This investigation money is usually paid upfront by the client and recovered later when the suit is settled.

"I even have a licensed general contractor on my support staff," said Miller, nothing that his law firm is the only one he knows of with this on-staff expertise. "He (contractor) has a good understanding of what the fundamental problems of construction can be. I rely on him quite heavily."

Miller said the larger and more successful builders are still sued from time to time, but most of them have done a lot to minimize problems that might result in litigation down the

road. Most lawsuits today come as a result of those builders and developers who have little or no experience or who have cut a few corners.

"It's the first-time or the marginal builders- the small guy- those who are in and out of the business who cause most of the problems today," said Miller. "Good builders today usually have their plans reviewed by an outside architectural firm and when it comes to materials, they don't necessarily take the low bidder."

Miller started handling construction litigation 15 years ago in San Diego where he represented both the builder and the insurance company in cases.

About seven years ago he began working both sides of the fence, and since 1986 his firm has represented only homeowner associations.

"It's all we do," said Miller, pointing out that he's got upcoming cases planned and mapped out for the next five years.

"It used to take four or five years just to get a case to court, but because we do our job better and the courts are moving a little faster, we can get a case in and out of court within two years."

Miller said nearly all of the award or settlement money is from insurance. When a homeowner association sues a developer or builder, the builder, in turn, sues all of the subcontractors. Just about anyone and any company involved with the property gets into the lawsuit.

"We usually end up in court with about 25 lawyers who represent various clients, all of whom are usually insured," said Miller.

Miller's law firm has represented a number of North County homeowner associations. He is currently representing the association for Hacienda de la Playa in Encinitas.

This 100-plus condo complex was built six years ago on a bluff overlooking old Highway 101 and the Pacific Ocean and has "all of the typical defects expected, including soil problems," said Miller. He said his firm has settled more than \$20 million in lawsuits just in the Rancho Bernardo area in the last three years, and a number of ongoing suits are under way in the Palm Springs area where he has a branch office.

What happens when the money is won?

"A homeowners association has to maintain and repair the property with the money," said Miller. "If an individual homeowner gains from litigation, then they can make the repairs or just keep the money. "

Miller said in cases involving landslide situations, he counsels individual homeowners to keep the money and sell the property with "full disclosure" of the problems.

"Unfortunately, we're not a 'buyer beware' state. It's the builder who's supposed to be the expert," said Miller. "It pays to ask a lot of questions, but sometimes the answers aren't known. If he's (developer) negligent and/or doesn't do a full disclosure when problems are known, that's when my team goes into action."