

Fast Track Is Changing The Game For Defect Litigation

Joel Cone, Los Angeles Daily Journal

January 12, 1995 - Construction defects practitioners are finding Orange County Superior Court a particularly friendly venue in which to practice their trade, thanks in large part to a well-organized Fast Track system of civil case management, and a cooperative judiciary in the complex litigation section.

One good example of the expediency with which the system is working is the \$3.1 million settlement negotiated by Newport Beach attorney Thomas E. Miller for the 162 condominium owners of the Villa Balboa Homeowners Association in Newport Beach with the Summer Hills Development Co.

Miller, who has authored two books on construction defect litigation and has handled more than 100 of these cases, estimates that he successfully mediates 95 percent of his cases.

But the Villa Balboa case was particularly gratifying for him - due to cooperative defendants who helped formulate the case management order presented to Judge Francisco Firmat, the fact that not a single deposition was taken, and that the case was resolved within the two-year time frame required by Fast Track.

Miller also credited defense attorney Elaine K. Fresch for getting most of the subcontractors' insurance carriers to join under a common defense for the developer, and the defendants for being willing to agree that some serious problems existed at the complex.

"The way the Orange County courts worked on this case helped. It kept the case moving," said Fresch, of Selman Breitman & Burgess in Los Angeles. "I was attempting to find new ways to do these cases to find a better case management system and it worked better for the defense. I think it is unique and I think it worked really well. In certain cases you have to do depositions. It just happened we didn't need to do depositions because we came to an agreement easier that way. I think a lot of people don't focus enough on what are the main issues. It's important to find out first how far apart you are and then go to the next step."