

Homeowners' Pal

Jonathan Volzke, Orange County Register

December 5, 1994 - The last time Thomas E. Miller lost a case, he was defending a San Diego builder against claims of defective construction. That was nearly 15 years ago - one of the last times he represented a builder.

After an appellate court ruled developers are responsible for their projects' problems even if they don't make any mistakes in construction, Miller switched sides in 1981 and has since collected more than \$93 million on behalf of homeowners.

"He's not just a lawyer, he's a whole platoon. You're up against a formidable adversary there," said Century City attorney John Quisenberry, who has opposed Miller, 46, on several cases. "He's a tough and smart negotiator. He knows the value of these cases ... and doesn't sell them short."

Miller's biggest case was a \$16 million settlement in May for owners in the 960-unit Palm Desert Resorter - the largest judgment ever in Riverside County. This year alone, Miller - who has offices in Newport Beach, Claremont, Palm Desert, San Diego and Los Angeles - has settled 24 cases.

Another agreement is near, in a case filed by owners of 162 condominiums at Villa Balboa, a gated complex on a bluff overlooking the Pacific Ocean in Newport Beach. Residents there have atrium windows that won't keep water out, plumbing that doesn't keep water in, and several other construction problems.

As he did with his other cases, Miller studied Villa Balboa - and its builder, Summer Hill Development Co. - for three months before deciding to take the case. He studies the insurance policies of the builders to determine how much they can pay. He has general contractors on his staff who can find out exactly what went wrong. As at Villa Balboa, water is usually the problem.

"Homeowners can live with a crack in the stucco, but they're not going to live with water coming in," Miller said last week. "But it's usually just the tip of the iceberg when homeowners start complaining."

Residents at the 112-unit Rancho Mirage Country Club noticed their roof-repair bills piling up. A board member suggested that call Miller, association president Dick Thune said. "We didn't want to sue," Thune said. "Mr. Miller has a group of experts who went up on the roof to document the problems up there. ... Once the board saw the problems that existed, we thought we had to go forward." That case settled for \$5.25 million earlier this year.

About 95 percent of Miller's cases settle, but only after dozens - sometimes hundreds - of sworn statements, called depositions, are taken from builders, experts and others.

While a typical auto-accident lawsuit would fill an inch-thick file, Miller's cases can fill a room. Mix in more than 100 affected homeowners and a typical construction-defect case can swell beyond the capabilities of attorneys who aren't specialists.

Since the San Diego decision - which created the law by which construction-defect cases are judged - Miller has done nothing else. He's written two books on the subject and teaches a course on it.

That carries a lot of weight to the negotiation table, Quisenberry said. "He is very experienced. He is very well-known," Quisenberry said. "When you look at a Tom Miller complaint, you know that it is a legitimate complaint. You know that he will have a number of experts in all the trades and fields for him."

When an association collects a judgment, the money goes into a trust account to fund the repairs, Miller said. The association sets a priority list to complete the repairs. Miller works on contingency.

Homeowners have 10 years from the date a project is completed to file a lawsuit or three years from their discovery of the problem, Miller said. He estimated 50 percent to 60 percent of all condominium complexes are in or have been in litigation.

He blames the problems on two ailments. In times of tightening budgets, developers have cut architects' fees and end up with less-detailed plans. That gives builders too little direction to ensure perfection, Miller said.

He also faulted too little supervision on construction sites. "I've yet to find a developer who sets out to create a bad project," Miller said. "Not purposely."