

## Attorney Goes From Defending Developers To Battling Them

Ken White, Las Vegas Review-Journal

**April 10, 1997** - For the first seven years of his law career, Thomas Miller defended developers and their insurance companies against allegations of shoddy workmanship.

But it was the loss of one of his cases that sent Miller's career in the opposite direction, representing homeowners in lawsuits against builders.

The precedent-setting Del Mar Beach Club case, which he lost in 1981, convinced him he was on the wrong side. In the case, he had represented San Diego condo developers who were being sued by the residents because of soil erosion on bluffs bear the condos. An appeals court ruled that the developers were liable in such cases.

Today, Miller is one of the most feared construction-defects attorneys in California - he has yet to lose a case. And after working for plaintiffs for 15 years, he has won nearly \$200 million in damages in settlements and awards.

In one case last year, Miller was awarded \$15.2 million on behalf of a condominium association, just \$2.5 million less than his initial settlement demand.

In September, Miller opened an office in Las Vegas.

"It's much more satisfying doing something positive for a client, than doing what I was doing, which I thought was pure damage control for builders and insurance companies," says Miller, 48. "I got tired of doing that."

Shortly after the ruling, Miller left the firm he was with - Higgs, Fletcher & Mack of San Diego - and opened The Miller Law Firm. He also has California offices in Newport Beach, Thousand Oaks, and Claremont. he and wife Christine, who live in Newport Beach, have been married 28 years. They have two children Matthew and Rachel, both following in their father's footsteps as attorneys.

Because of the change in law, which previously had required proof of negligence, Miller realized he was "going to forever be doing damage control, and we're to be forever losing those cases."

The decision to switch sides also was spurred by research for a book he was writing, "California Construction Defect Litigation," published in 1986. The book made him look at the plaintiff's side of the case.

"I talked to a group of homeowner groups and started learning about the industry more. Anything you do for a lot of years is redundant anyway, so it was nice to know one side and be able to do it better on the other side - and in the meantime help the consumer as

opposed the insurance industry," Miller says.

An intimate knowledge of the other side has helped Miller beat the opposition, he says.

"In negotiating settlements, you know exactly what these insurance companies are thinking, which gives you a considerable edge," Miller says.

His business boomed along with the Southern California construction industry in the 1980s, which had to speedily build houses and condos to keep up with demand caused by population growth. That speed and shoddy workmanship and materials caused lawsuits to soar in number, Miller says.

And Miller's fame also grew, thanks to publicity. He has been the subject of articles in the Southern California press and has made radio and television appearances.

The biggest construction problem has found is cracked stucco giving way so that water comes in through the roof or windows, and through sliding glass doors and balcony decks. There also can be problems with the foundation, electrical, plumbing, framing, and roofing.

"Anything that can go wrong often does," Miller says.

Las Vegas has experienced a housing boom of its own in recent years, which brought a host of California builders into the state. That prompted Miller to consider opening an office here.

"There's a huge gold rush up here to build affordable housing, and affordable housing tends to be lousy," he says. "As the hot areas continue, that's where the litigation will tend to be. I saw the same thing in California during its building boom. This is just the tip of the iceberg here."

Southern California builders are making the same mistakes here as they did there, but the profit margin is greater in Nevada because land is cheaper and the building codes aren't as restrictive here as they are in California, Miller claims. "So therefore, they don't have to spend as much money to build them and you have a lot of unskilled labor. And the plans are not as detailed. It has this huge domino effect, driven by the bottom line."

But the Southern Nevada Homebuilders Association, which represents Southern Nevada builders, doesn't see it that way.

"The real scenario is the market he came from in California dried up," says Joanne Jensen, public relations director for the group. "Lawyers are coming here to do class-action suits and we were considered a very lucrative market for them."

Because of the number of lawsuits against builders in Southern California - a recent ConAm Economic Research study showed that out of 46 condo and townhome projects in the San Diego area, 38 were being sued for defects - Jensen says those builders are shying away

from condo and townhome construction in Southern Nevada.

As of December, Jensen says 12 construction-defect cases were pending in Clark County District Court.

It's a given that there are bound to be construction defects, mistakes can't be entirely avoided and sometimes fixing the defects can only be pursued in the courts, Jensen said. But Nevada Revised Statute 40 provides for a means of getting those problems taken care of without going to court.

Under NRS 40, according to Jensen, a home buyer with a construction defect can file a claim with the contractor, who has 45 days to make an offer for taking care of the repairs. The buyer takes the offer, repairs have to be made within 45 days of sending written acceptance of the offer. If the buyer rejects the offer, the buyer and the builder go to mediation with an arbitrator at the builder's expense.

Miller's firm specializes in construction-defect and land-subsidence litigation, making it a small, "boutique" firm, says Miller who plans to take the Nevada bar exam in July. "We've got seven lawyers and a staff of 35 people total, that's still boutique. We like to be discerning where we're going to be and where that market is going to take us."

Eleven of the top 20 builders in Nevada are from California, according to a Los Angeles Times survey of residential builders.

"The more you build the more you're taking a risk out there," says Miller of the builders. "The highest-volume builders are the highest-volume defendants in these cases. I don't think any builder has escaped; if they have, it's been sheer luck. The bigger the builder gets the more remote they become and less responsive" to the public.

It should come as no surprise that Miller, who has law degree from Hastings College of Law (1973) and a bachelor's in speech communication from California State University, Long Beach (1970), will not buy a new home. Because of his reputation as the king of construction-defect litigators, Miller says he has problems getting contractors to work for him.

"They know what I do and they're afraid. But on the other hand they're very responsive and they do a very good job. It may cost me a little more money to get there because they want to do everything right. Which is the way it should be. I doubt there's a builder here who doesn't know of me. We're sort of a major subject of discussion for the building industry."

That kind of notoriety isn't the kind Miller looks for, he says. "It just comes with the territory."

Miller also authored "California Construction Defect Litigation, Residential and Commercial," published in 1994. The book is updated each year with new cases of

significance, and Miller is expanding it this year to include Nevada and Arizona.

Miller says he sees no end to litigation against builders.

"Having done it as long as I have, I'm often asked to predict where this is going. I don't have that crystal ball but I don't see the end in sight. Not as long as the status quo maintains itself, and not as long as the builders continue to make these mistakes and the insurance industry is there to mop it up."

Jensen, however, advises homeowners to work with any construction-defect problems to seek help through the guidelines set up by NRS 40.

"NRS 40 tries to dissuade owners from being taken down the rosy path of class-action lawsuits," she says. "It gives Nevadans a chance not to be taken advantage of."