

## Squaring Off

Loretta Kalb, Bee Real Estate Writer, Sacramento Bee

**October 20, 1996** - In California, where 95,000 homes will be built this year, one builder and one lawyer have become lightning rods for the growing conflict over construction defect lawsuits.

The lawyer is Thomas E. Miller, who has won \$150 million for plaintiffs in settlements and awards from construction defects cases over the past 15 years.

Other attorneys have been big players in this battle, too. But Miller, 48, is the man the builders watch-the classic representation of the attorneys that builders blame for their litigious plight.

In 15 years, he has not lost a construction defect case.

On the opposing side is Mick Pattinson, president of Barratt American Inc. the U.S. subsidiary of a British development company. He heads the litigation task force for the California Building Industry association, which is pushing for new laws to protect builders from unwarranted lawsuits.

"Our industry has suffered a 90 percent decline in the construction of multi-family housing," Pattinson, 48, said recently, citing the difficulty builders now have in getting liability insurance to build such projects. "From a level of 168,000 multi-family units built in 1986, we declined to a pathetic level of just 17,000 units built throughout the state last year."

The result, according to one study conducted for the builders by the Lusk Center at the University of Southern California, is a \$460 million annual loss in economic activity for the state.

Skeptics say there are no signs of a shortage in multi-family housing in California. Rather, the buyers' market and relatively low interest rates have turned the state's real estate market upside-down, making single-family homes a first choice for consumers.

With Pattinson the most visible leader, the building industry this year made a major push for legislative reforms such as limiting how much consumers can claim in damages in lawsuits, reducing the standard of liability applied to developers and shortening the 10-year time period in which owners can sue for latent defects.

All but one bill in the builders' legislative package died this year.

But the builders are vowing to bring even more lobbying pressure to Sacramento for next year's session.

"For the past 10 years, the building industry has taken these lawsuits on the chin, has laid down and basically not responded to the situation," Pattinson said in an interview.

But "the building industry has finally woken up and...has taken its message out to the people of California," Pattinson said. "We tried our legislative reform program. We didn't get very much, and we will be coming back next year.

Pattinson blames Senate President Pro Tem Bill Lockyer, D-Hayward, in particular for the building industry's legislative disappointments."

"Senator Lockyer was able to kill off the majority of our bills," he said. "The day will come when Sen. Lockyer will have to explain the California people why there's no multifamily housing for them to live in."

Lockyer acknowledged he was instrumental in defeating the builders' agenda. While sympathetic to many of their concerns, he said their legislative agenda was "too sweeping and too anti-consumer."

"It would have resulted, if adopted, in radical changes in the law that would have seriously affected the way in which aggrieved homeowners would protect their largest investment in life, their home," Lockyer said.

He also said the builders' claim that the defeat of the builders' package of bills is responsible for the inadequate supply of multifamily housing is "absurd."

Lockyer this year formed a blue-ribbon task force to gather data on the builders' complaints and larger issues affecting consumers, such as quality of construction, rising insurance costs and construction defect law.

But Pattinson has been dismissive of the panel's efforts.

While directing plenty of blame at Lockyer, Pattinson saves many of his verbal spikes for Miller.

In a slide show before Orange County builders, he flashed a newspaper headline describing Miller as the homeowners' pal.

"This is attorney Tom Miller, who began much of the defect litigation in San Diego," Pattinson told the audience. He "recently moved his office to Orange County so he could attack all of you."

Miller, who has offices on Orange, Los Angeles, Thousand Oaks and Newport Beach, shrugs off the attacks.

"I've been singled out in courtrooms up and down the state for the past 16 years," he said.

"That's just the way it is. It's you representing the plaintiff. You have everybody representing the defense. It's comfortable on the other side. I used to be there. I recognize how that was."

In his view, the defeat of the builders' legislative agenda this year was a huge victory for the state's consumers.

And he too is gearing up for another battle next year.

"We're basically going to fight fire with fire," Miller said. "We're tired of having the builders take shots at us."

This year, Miller said the Sacramento based Consumer Attorneys of California is considering its own legislative agenda-a package of bills aimed at protecting consumer rights.

Miller, who has written two textbooks on defective construction law, views the need as urgent.

More than half the common-interest developments built today-such as condominiums-"have significant defects that will manifest themselves in the future," said Miller. "That's pretty foreboding for the consumer."

"I think there's an underlying, deep-seated problem here," said Miller. "The building industry is not policing itself well enough. There are not enough inspectors to go around, and builders can basically get away with murder."