

The CONSTRUCTION Zone

Development Roundtable: Construction Liability In Las Vegas

By Lennie Smith
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Construction defect lawsuits continue to haunt local builders and contractors, even after recent efforts to reduce litigation in Nevada. Recently, the swanky Sterling Club played host to a Development Roundtable panel discussion on the often-contentious issue of construction defect litigation. The event featured Steve Hill, founder and President of Silver State Materials; Russ Swain, CEO of GLB Insurance Group of Nevada; and Jerry Snyder, an associate with the law firm of Hale Lane Peek Dennison and Howard.

When considering construction liability litigation, the issue of extrapolation continues to be the greatest problem facing local builders and contractors. Using extrapolation as a method of determining the scope of the problem – especially in class-action lawsuits – works against the home building industry. Using this method, if a development has 200 homes and a sample of six are used, and if a defect is found in three of the six, then under “extrapolation” 100 out of those 200 homes would be judged to be defective. This would apply despite the fact the 200 homes could have been built in different phases – with the work performed by different subcontractors.

Regarding extrapolation, Steve Hill noted that, “The issue that needs to be addressed is how we get a representative sample. Because – in court – there must be a specific defect for their to be an award,” but with a bad extrapolation sample, contractors could be hit up for millions of dollars in “repairs” that aren’t actually justified by actual defects.

Jerry Snyder agreed. “The more claimants, the more difficult it is for the builders to remedy the problems within the time-frame allowed for repairs under the current construction defect litigation. While the timelines for repair work well with individual properties, as the number of involved houses increases, the chance to repair each of them becomes less likely within those timeframes.”

Another, related issue is the builders right to repair. While this right appears on the books – passed into law in 2003 – this right still gives no relief for many contractors, due to the fact that even if the repairs are made, these contractors are still on the hook for litigation. This due to indemnification, a contractual process where the contractor requires all the subcontractors to share in the liability regardless of the work performed. This approach has implications for the contractors – and the subcontractors – insurance.



Steve Hill (center) flanked by Russ Swain and Jerry Snyder.

Another problem is the tendency for insurance carriers to settle, even when their clients aren't responsible for the construction problems. "For insurance companies," Snyder said, "a bad settlement is better than good litigation." The insurance companies tend to agree, frequently preferring to cut their losses and settle a suit quickly, rather than wait out the often long litigation cycle.

One way contractors are approaching new projects – to better protect themselves from long-term lingering liability risks – is through what are known as insurance wraps. These wraps allow contractors and subcontractors to purchase coverage as a single group, rather than as individual companies. "Wraps tend to eliminate the confusion in litigation," Swain pointed out. "Since the project insurance is purchased by the owner, this eliminates lawsuits against the individual subcontractors."

"The state legislature has made major improvements to the situation," Cindy Creighton, Executive Director of the Nevada Subcontractors Association, explained. "There are tweaks that need to be made and the laws in place need to be followed, but the situation is improving." Creighton was not on the panel discussion, but she is an expert in construction litigation and attended the presentation.

For builders and contractors, improvements to Nevada's construction liability statutes and regulations can't happen fast enough. They see a cottage industry of lawyers and lawsuits – individual and class-action suits that are settled by their insurance companies in an effort to keep costs down. "It cannot continue," Swain said. "These cases need to be litigated or else the situation will continue the way it is."

According to the panelists, the roundtable is one positive way to get the message out to the industry and the public at large that homeowners rarely pocket much in the way of monetary

gain from the litigation. And, that homebuilders truly want to fix any defect that might occur. They just don't want to make lawyers rich along the way.

This Development Roundtable on Construction Litigation was presented by Vanguard Media Group, the Las Vegas Business Press, the Clark County Credit Union and GLB Insurance Group.