

“AXIOM CD APPROACH”

Developed by

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Reasoning and Arguments for a New Approach for the Handling and Resolution of Construction Defect Litigation:

I have been involved in construction defect claims and litigation since 1985. I have seen many changes in the handling and resolution of construction defect litigation. Some of the changes were good and some were not that good, in my opinion. The main parties involved in the CD claims and litigation process include the courts, insurance companies and state legislatures. Each of these parties have attempted in various ways to gain an advantage or try to change the approach and outcomes to achieve their goals. Because of these efforts to gain an advantage or control outcomes the handling and resolution process has become less transparent and more abstract.

At the West Coast Casualty Seminar in 2016 Dave Stern and his staff requested anonymous comments from the attendees. The requests included among other things complaints or problems that the attendees saw regarding the current handling and resolution process of Construction Defect litigation. The attendees also commented about several good things regarding the process but their complaints confirmed my observations and experience regarding the process.

One of our handouts contains my notes and my interpretation from a PowerPoint presentation titled: **“THE NEVER-ENDING BATTLE OVER DEFENSE FEES AND COSTS”** hosted by the Association of Southern California Defense Counsel held in December of 2016. The issues and problems indicated in the handout are a good summary of the problems currently plaguing the handling and resolution of CD litigation.

Over the last eight years between consulting and expert assignments several of which involved construction defect litigation I attended several mandatory settlement conferences and mediations involving construction defect litigation. My personal experience indicated that the problems and issues included in the handout are significant and some changes need to be implemented. The “Axiom CD Approach” will solve a significant number of the issues.

“AXIOM CD APPROACH” - A NEW APPROACH TO INVESTIGATE AND RESOLVE CD CLAIMS AND LITIGATION

The approach I am proposing will solve the majority of the current issues and problems plaguing CD claims handling and litigation. It will bring more transparency to the handling and equity to the resolution process. It will reduce the overall costs and the time it takes to resolve construction defect claims and litigation.

In our company website at www.axiomclaimsanalytics.com you will find a section which allows free access to three separate claims and litigations cases I personally handled which have been the inspiration and basis for the development of the “Axiom CD Approach”. Because of the large number of parties usually involved in CD claims and litigation and the limited authority to act on our own I was extremely fortunate to be able to utilize several different approaches to handle and resolve three different CD claims - litigation. Now as an independent neutral consulting insurance expert I can effectively administer and handle this new approach by combining all three approaches to benefit all the parties involved in the CD claims – litigation industry.

General Outline For The “Axiom CD Approach”:

- The “CD Approach” is broken down into two phases. The first phase is the **“INVESTIGATION”** phase and the second phase is the **“RESOLUTION”** phase.
- Participate in the Construction Defect Claims handling and Litigation process in an investigation capacity.
- The approach could also be used for non-litigated residential and commercial construction claims.
- Will provide more transparency and will result in more equitable resolutions.
- Involves the developer or general contractor, subcontractors and the claimants/plaintiffs in the approach. Design professionals, material suppliers and other interested parties may also participate but would be required to participate in the cost of the investigation phase.
- Each participant would pay an equal share of the investigation costs. The developer or general contractor would contribute 20% of the investigation costs.
- The plaintiffs would not participate in the cost of the investigation phase. Part of the investigation phase would include an analysis of the plaintiff experts investigation costs for necessity and reasonableness.
- The parties would agree to use a Neutral Consulting Insurance Expert and a Neutral General Contractor Expert. See handouts for an analysis of their functions during the investigation phase.

- A mediator should be selected to oversee the investigation phase and mediate the settlement process and resolve any problems and issues.
- The two experts with input from the mediator will work with all of the parties to develop an agreed scope of repair, an agreed method of repair and an agreement on which construction materials would be utilized by the plaintiff(s) during the repair.
- Once all of the parties to the investigation phase have agreed on the three steps described above the plaintiff(s) would select a cost estimator to develop a cost of repair.
- The defendants would also select a cost estimator to develop a cost of repair.
- The construction experts would compare the two costs of repair to mediate any differences until the parties all reach an agreed cost of repair.
- The Neutral General Contractor Expert with the assistance of the Neutral Insurance Consulting Expert and the Mediator would allocate an equitable share of the agreed cost of repair to each of the parties.
- The Mediator would then communicate with each of the parties and resolve the case during the **“RESOLUTION PHASE”**.
- If necessary the mediator would seek the assistance of the Neutral Consulting Insurance Expert and the Neutral General Contractor Expert to assist.

OTHER CONSIDERATIONS:

- The “Axiom CD Approach” could be utilized during the Right to Repair claim process to avoid litigation.
- The “Axiom CD Approach” could also be utilized for claims involving Wrap policies.
- Only those parties who participate in the cost of the investigation (hereinafter called participants) would receive copies of the investigation.
- Non-participants would deal directly with the developer/general contractor.
- The Neutral Consulting Insurance Expert and the Neutral General Contractor Expert would be designated in the Case Management Order (CMO) or by stipulation.
- An exemplar copy of CMO language is included as one of the handouts. Parties interested in utilizing the approach would instruct their defense counsel or mediator to include the language in the CMO.
- The mediator will invite any party who is interested in utilizing the investigation phase to a meeting to determine if there are sufficient participants to proceed with the approach.

- The current CD litigation system takes too long to resolve cases. They can last two sometimes three years and longer. The “Axiom CD Approach” will take between 6 months and 18 months to resolve the claim or litigation.
- The current CD litigation system is too costly. The “Axiom CD Approach” can resolve cases for hundreds of thousands of dollars less in defense fees and indemnity payments.
- Other problems and solutions are indicated in a handout.
- An Accountant would be utilized to administer the contributions from the participants.