



AXIOM Claims Analytics

Resources for Construction Defect Claims Handling
Consulting Services, Expert Witness, Training

Axiom CD Claims-Litigation Approach Overview

Since 1985 when I initially became involved in the handling and supervision of CD claims and litigation there have been three significant cases that have contributed to the Axiom CD Approach.

Case Number 1 involved the use of a general contractor expert pre-litigation. There were several significant issues. Probably the most important issue involved whether to involve the subcontractors during the investigation. Because of the circumstances existing at the time I decided not to involve the subcontractors. I had decided to settle with the various homeowners and then pursue a separate action against the subcontractors. The general contractor expert was the key to resolving the individual homeowner claims successfully.

Case Number 2 involved our insured the developer-general contractor and a homeowners association. Defense counsel had worked with plaintiff counsel on several previous cases and suggested we conduct a joint investigation of the construction issues with plaintiff. Plaintiff agreed and we developed an agreed cost of repair. We were then able to allocate to the appropriate subcontractors and resolve the litigation.

Case Number 3 involved complex multi-party CD litigation. My insurer had 19 of the 42 subcontractor involved in the litigation. Given our significant involvement in the litigation I took over the supervision of the entire case. Due to extraordinary circumstances I was forced to agree that there was a conflict of interest which allowed the developer-general contractor to retain independent counsel. I retained independent counsel (Civil Code 2860F) for several reasons but mainly to try and maintain some control over the litigation.



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Approximately twenty years after this litigation resolved I was doing some research and found an excerpt from a book which had been written by a UC Berkley law professor. There was a reference to utilizing independent counsel to associate into the defense of the developer or general contractor to specifically work with the plaintiff(s). Independent counsels sole purpose would be to achieve an agreed cost of repair which could then be allocated to the various parties involved in the CD litigation. The author suggested that this approach would result in significantly less litigation expense and should result in the CD litigation resolving in less time.

CONCLUSION

My decision to develop the Axiom CD approach was a direct result of the book excerpts mentioned above. My initial approach involved utilizing independent counsel because of reading the book excerpts. During our preparation for the presentation for the 2017 WCCS the other panel members suggested utilizing my approach during the Right to Repair pre-litigation investigation and resolution. After some thought and research I agreed that although the approach can be utilized effectively during litigation it would be more effective prior to litigation. Therefore our presentation is focused on using the approach during the Right to Repair handling statutory procedures.