

Kolter Homes, subcontractors settle construction defects lawsuit for \$22.5M

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In the middle of jury selection for what could have been a massive trial, KolterSignature Homes and more than a dozen subcontractors agreed to pay a \$22.5 million settlement to resolve a construction defects lawsuit.

Kolter and the subcontractors did not admit to any wrongdoing as part of the settlement.

The San Matera Condominium Association in Palm Beach Gardens filed a complaint in Palm Beach County Circuit Court six years ago against West Palm Beach-based Kolter and dozens of subcontractors that it hired to build the community. The lawsuit claimed that the garden-style condos suffered from numerous construction defects, such as water leaking through sliding glass doors, windows and roofs, rotting wood and cracked concrete slabs. The condo association claimed that the defective work was concealed behind the stucco walls.

Kolter built the 676-unit community through an affiliate, the Grand at Palm Beach Gardens. It was both the developer and the general contractor. Officials with the developer declined to comment.

Condo association attorney David Haber, of Haber Slade, said Kolter's insurance carriers agreed to pay the largest portion of the settlement, \$11.8 million, while insurance carriers for the various subcontractors will pay the rest. He said the money will help the condo association fund repairs, although he's not certain it would be enough to completely fix the damage. The association has already spent \$1.5 million on temporary repairs and legal costs, and it had to raise assessments to do so, he said.

The condo association had originally asked for \$36 million in damages. Haber said that, even if it had won that amount at trial, the litigation would have continued for years during the appeals process and as the insurance carriers disputed their liability under the policies. With the settlement, the association can get money for repairs right away, he said.

"It is discouraging to the homeowners at San Matera that they had to litigate for six years and spend millions of dollars and be in the courtroom, with a potential jury coming upstairs after two days of jury selection, in order to get the money they got," Haber said. "As my client has been saying [to the developer] all along, all we want is for you to fix the problems."

This was one of the largest lawsuits in Palm Beach County history. The case docket had more than 4,000 entries, including more than 100 motions in the past three months as the trial date neared. Haber said that, at one point, his legal team was facing 24

attorneys on the defense side. The judge set up a makeshift courtroom in Delray Beach because there was no other venue large enough to hold such a trial.



Attorney David Haber

Haber said the turning point that led to the settlement came in July, when the judge ruled that the condo association's expert witness on construction defects would be allowed to testify that his tests found a 100 percent failure rate of materials inside the walls of San Matera. In August, the court held three mock trials where a mock jury was presented with this testimony and shown evidence, including photos of property damage, and all three mock juries came back with a verdict for the condo association, Haber said.

The mock trials, which are a fairly new practice, helped the insurance carriers understand the risk of going to trial, Haber said.



The San Matera Condominium Association presented this photo as evidence of construction defects at the Palm Beach Gardens property.

“When insurance carriers who are defending for these defendants are staring down a jury with the photos and videos we had, there was a strong possibility they would get hit with the whole \$36 million,” Haber said.

In addition to Haber, the association's legal team included Haber Slade attorneys Frank Soto, Alex Leon and Katrina Sosa, and Stearns Weaver attorneys Joy Lundeen and Jonathan Ayers.

“The takeaway from this is make sure you do your background check on who is building your home and your condo, and the reputation of your developer,” Haber said.