

NEWS

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August 31, 2015

## California's Right to Repair Laws Brought Back from the Dead as Fifth Circuit Issues Blistering Rebuke of Prior Liberty Decision

Appeals Court Soundly Rejects Plaintiff's Argument to Skirt a Builder's Right to Repair Actionable Claims

California builders have hopefully regained their legislative right to repair actionable claims brought against them, the Fifth Appellate District of California has ruled. In *McMillin Albany, LLC v. Superior Court*

(August 26, 2015 No. F06370) The Court issued a blistering rebuke of the Fourth District's ruling in *Liberty Mutual v. Brookfield*, which opened up a Pandora's box by allowing claims to circumvent the 12-year old Right to Repair Act otherwise known as SB 800.

In a 20-page decision, the McMillin Court carefully reasoned that the express language of the Act and the detailed Senate Judiciary Committee analysis clearly demonstrates the sole remedy for enacting *groundbreaking reform* for resolving construction defect claims.

In light of the Liberty Decision exactly two years ago, plaintiff attorneys quickly filed claims and refused to allow builders an opportunity to engage the homeowners directly and make repairs. By giving up SB 800 actionable claims, many of which do not require evidence of actual property damages, plaintiff lawyers seemed to shoot themselves in the foot by doing so, just to avoid the pre-litigation right to repair process. This new decision may cause plaintiff attorneys to re-think their game plan and allow builders with the resources to execute permanent repairs and resolve claims more quickly and efficiently.

Not surprisingly, there will likely be more confusion as to which direction the lower courts may now take, since we have two diametrically opposite decisions from the Appellate Courts.

Builders and homeowners alike certainly benefit from proper and thorough repairs to resolve actionable defects, but it may take a Supreme Court's ruling to determine whether the right to repair law as negotiated by all parties in interest back in 2002 will survive the test of time.

The Battle of the Courts Continues: Appellate Court Issues Blistering Rebuke of Liberty Decision and  
McMillin Albany LLC v Superior Court of CA (Aug 26, 2015, No F069370)

Liberty Mutual insurance Co v. Brookfield Crystal Cove LLC

Appeals Court Rules California Right to Repair Law is the Sole Remedy for Construction Defects  
Fourth Appellate District Ruling Issues Blistering Rebuke of Fifth Circuits Contrary Ruling in Liberty v. Brookfield

In reviewing the Liberty decision, the Court soundly rejected the 4th Circuit's decision. "We ultimately reject its reasoning and outcome, however, which we conclude are not consistent with the express language of the Act."

Citing Civil Code Section 896, the Court found that the express language contained in the Act "...any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction."

The legislature intended to create a comprehensive set of construction standards and to make the violation of any of those standards actionable under the Act.

You can view the entire ruling [here](#) .

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**Friday - March 6, 2015**

On Feb. 24 Nevada Governor Brian Sandoval signed into law sweeping amendments to the NRS 40 “Right to Repair” process, making it more difficult for plaintiff attorneys to reap what has become a lucrative industry of rewarding plaintiffs for the filing of unsubstantiated defect claims.

Nevada Assembly Bill 125 amends the definition of “constructional defect” which: 1) represents an unreasonable risk of injury to a person or property; or 2) which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance. Prior interpretations merely needed only an opinion of a code violation or manufacturer’s installation guideline, which placed a perfection standard on the construction industry.



## **AxisPointe Names Stan Luhr as CEO to Expand Its Builder Risk Management & Quality Platform**

Stan Luhr takes over as AxisPointe's new CEO, Company will Leverage Its Risk Management Software to Run on the New iPhone Operating System for Instant Sharing of Field Operations, Quality and Risk Data as it Expands Services in Canada and Abroad.

For additional information, please view the official [public release](#) .

**Wednesday - May 18, 2011**

**Contest Winners!**

At this year's West Coast Casualty Technology Fair we ran a "Name the Defect" contest at our defect exhibit located in the center of the exhibition area.

The contestants were asked to label as many defects they could find on our exhibit which was built with intentional defects. The contestant who correctly identified the most defects wins an iPod NANO! We have tallied up the results and we now have a winner!

**Congratulations to Rick Bush for correctly identifying the most defects!**

We also ran a business card raffle at our main booth for an iPod NANO as well. One business card was randomly selected from the ones that we received and we have a winner!

**Congratulations to Joyce J. Kapsal, an attorney with Epstein, Grinnell & Howell!**

Thank you all for your participation!

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**Thursday - May 12, 2011**

**The West Coast Casualty Technology Fair is currently in progress!**

Stop by our display located at the center of the exhibit hall! View our new and improved defect exhibit, live demonstrations of the various tools we utilize in the field, and take a shot at winning an iPod NANO by taking part in our Defect contest! Don't miss out!

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**Tuesday - April 12, 2011**

**A hand-picked panel of Construction Forensic Experts will be sharing Industry Secrets at the Upcomming Symposium!**

Click [here](#) to view the press release.

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**Wednesday - March 3, 2011**

**Stan Luhr has been selected to host a special Experts Panel at this years [West Coast](#)**

**[Casualty Seminar](#)**

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Click [here](#) to view the press release.

Click [here](#) to view Mr. Luhr's "If Expert's Could Rule the World" article published in the West Coast Casualty Seminar 2010 Syllabus.

To find out more about our upcoming events, click [here](#) .

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**Monday - February 21, 2011**

**Stan Luhr Ends Relationship with Quality Built - Click [here](#) to view the release!**

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Pacific Property Consultants launches their new website!