

# MAK NEWS

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## MAK'S NEWEST PARTNER PAUL STEVENS BLEEDS FOR HIS CLIENTS. LITERALLY...

As a government and public affairs consultant for Cerrell & Associates in the early 1990s, Paul Stevens lent his extensive knowledge of public relations and media affairs to many local and national political campaigns. Although his efforts directly benefited the campaigns at issue,



Paul Stevens Partner

he characterized his work at the time as "being for the people" because he believed so passionately that the individuals and ballot measures he worked for would directly improve people's lives.

Paul brings this same passion to the practice of law at Milstein, Adelman & Kreger, where he was named a partner in July. As a senior member of the firm's complex consumer litigation group, Paul supervises a team of younger lawyers and litigates primarily in the field of consumer expectation and warranty law. Again, he focuses his efforts on cases that directly benefit the individual consumer, providing relief in cases for individuals who have been injured by the decisions and omissions of large corporations.

Of particular interest to Paul these days is the housing market. Over the past few years he has successfully certified and settled two large class actions against the manufacturers of aluminum window products that were failing prematurely and causing damage to people's homes. Several more such cases are currently in litigation and one is on appeal. Another series of cases relate to home builders' ties to various title insurers and the alleged illegal kickbacks that deprived consumers



of meaningful choice in purchasing the proper insurance for their homes.

Paul is also heading up the years-long struggle of some 250 homeowners along the Inland Empire's I-210 corridor and their battle with the State of California over damage related to the planning and construction of the freeway extension in their neighborhoods. "This has been a war," he says of the case, which is set for trial in 2010.

Frequently keeping late hours and expressing a dogged pursuit of victory in his cases, Paul is described by his partners as a "pit bull". One day in 2006 while en route to a class certification hearing in northern California, Paul happened upon a 20-car pile-up on the I-80 Freeway. While he was able to avoid the wreckage ahead of him, he was rear-ended at a high rate of speed by another car that wasn't able to stop in time.

As he lay on a gurney in the emergency room of the Doctor's Medical Center in San Pablo, his right arm lacerated and his clothes covered with blood, Paul phoned his colleagues from the firm who were also heading to the courthouse for the hearing and told them of the wreck. "We thought he was just messing with us at first," says Wayne Kreger, the firm's senior partner in charge of the complex consumer litigation group. But when he realized what was happening, Kreger said he would call the court and inform them of the accident. "Paul started yelling at me to not continue the hearing, that he would be out of the ER soon, that he could make it. I thought, 'is he serious?' But that's just Paul. He loves what he does." He has since had surgery on his back and hand stemming from the crash, but he has recovered and is back at full speed.

Paul is proud of his career and has no intention of letting up anytime soon. "When I was in PR there wasn't much respect for lawyers," he says. "But I have witnessed first hand how we can help people by holding corporate America accountable. I love making a difference".

## Milstein, Adelman, & Kreger, LLP

A full service plaintiff's litigation firm specializing in construction defect and consumer class action cases.

## IN THIS ISSUE

2 LEGAL TRENDS | 3 RESULTS | 4 ANNOUNCEMENTS

## LEGAL TRENDS

### **BUILDERS BEWARE:** ARBITRATION AGREEMENTS ARE INAPPLICABLE IN CONSTRUCTION DEFECT CASES

It may be in tiny print among the numerous pages of closing documents. It may be found in an obscure third-party warranty taken out by the builder on behalf of the homeowner and only received by the homeowner months after the close of escrow, if at all. It may be only a few lines buried deep in a multi-page code of covenants that are received by the homeowner along with other title documents after the close of escrow. And although the language is often written in dense legalese, make no mistake: as presented, the alternative dispute resolution clause translates into a giant trap door for purchasers of new homes.

Welcome to the unfair and undemocratic world of builder-drafted alternative dispute resolution provisions, where many California builders have made it their practice to include unconscionable and often illegal ADR provisions within adhesive contracts and/or other closing documents for the purchase and sale of new homes. These restrictive agreements contain provisions that limit the nature and amount of damages a homeowner can recover against the builder, preclude a homeowner's right to have their matter tried before a jury of their peers, and sometimes even mandate that the builder and/or a third party warranty administrator have full and unilateral discretion at the time of any dispute to choose the arbitrator and/or ADR service used to resolve the dispute.

However, just because a builder includes an arbitration or other ADR provision, does not mean such a provision is enforceable. Over the last year and a half alone, Lee Jackson, a Senior Associate at Milstein, Adelman & Kreger, has successfully

opposed more than twenty-five motions to compel arbitration and/or other ADR procedures.

While many of the ADR provisions drafted by builders appear similar, if not practically identical, it is important to treat each agreement for arbitration or other ADR procedures as unique and distinct from others encountered. Some may be unconscionable

while others may be impractical for procedural reasons. And quite frequently, a builder's ADR provisions are, in fact, both unconscionable and procedurally impractical. But the subtle differences in language and in effect should never be ignored or overlooked, as those differences ultimately determine the enforceability (or unenforceability) of each individual ADR clause.

While years ago it was hard to imagine that a homeowner's access to justice and the court system would be at risk as a result of unscrupulous ADR clauses, it has now become a widespread problem we are facing on behalf of our clients. At the time of purchasing a

home, the builders have the upper hand over the home buyer: Builders have deep pockets compared to their customers, they draft the Purchase documents and forbid their customers to strike or alter any part of same, and they continuously look for ways to limit or eliminate home buyers' access to the one place where the builders can be held accountable—our courts. It is imperative we continue to advocate on behalf of our clients, the homeowners, and fight and push back against these deceptive and unfair practices of builders.



## RECENT RESULTS

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- Class action settlement on behalf of California consumers against electronic gaming accessory manufacturer for negligently designed and manufactured product.
- \$1,174,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Diego, California.
- \$1,000,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Jacinto, California.
- Class action settlement on behalf of California consumers of time share units and amenities.
- \$1,174,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Diego, California
- \$1,000,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Jacinto, California.
- \$1,105,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Temecula, California.
- Class action settlement in nationwide class action for alleged lead contamination and lower calcium levels than represented in multivitamins.
- \$1,300,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Bakersfield, California
- \$1,378,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Chula Vista, California.
- Class action settlement on behalf of New York consumers against mortgage provider for fraudulently charged fees.
- \$1,932,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Delano, California.
- \$1,175,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Jose, California.
- \$2,500,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Fontana, California.
- \$1,956,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Patterson, California.
- \$1,441,000 - complex multi-party construction defect litigation on behalf of residential homeowners in San Diego, California.
- \$1,092,000 - complex multi-party construction defect litigation on behalf of residential homeowners in Lodi, California.



**Speaking of...**

**Mark Milstein:**  
**CAALA Seminar**  
 Las Vegas, August 29  
 "SB 800"

**San Jose Bar Association**  
 San Jose, October 14  
 New Developments in  
 Construction Defect Litigation

**Mealeys Construction  
 Defect Seminar**  
 Las Vegas, November 5  
 Insurance Coverage Issues in  
 Construction Defect Cases

**Wayne Kreger:**  
**Louisiana Trial  
 Lawyers Association**  
 New Orleans, December 11 & 12  
 New Developments in California  
 Class Action Practice

**Ben Llaneta:**  
**MC Consultants, Inc.**  
 Broadmoor, Colorado, October 17  
 California Coverage and Current  
 Trends in Construct Defect Litigation

**We keep growing!**

The firm has opened a new office on the east coast in Elmwood Park, New Jersey. Donald Beshada, formerly of Drinker, Biddle & Reath will head up that office, conveniently located a stones throw from the headquarters of some of the world's largest pharmaceutical and neurtaceutical companies...

MAK is also pleased to announce that Jessica Foster has joined the firm as an associate. Jessica is a fourth-year lawyer and a graduate of Pepperdine Law School. She will work primarily on construction defect cases...

Jennifer Steinberg has joined the firm as a new associate. A recent graduate of Georgetown Law School, Jennifer will be working with the firm's class action group.

**Three-Time LA County  
 Lawyers' League Champions**



Left to Right (Standing): Nick Mills, Wayne Kreger, John Opgenorth and Andrew Hang  
 Kneeling: Jason Rudolph, Lee Jackson and Dave Grove

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**MAK  
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A full service plaintiff's litigation firm specializing in construction defect and consumer class action cases.

2800 Donald Douglas Loop North,  
 Santa Monica, California 90405  
 (310) 396-9600 Telephone  
 (310) 396-9635 Facsimile  
[www.maklawyers.com](http://www.maklawyers.com) Website

