Jeffrey P. Kerrane, Esq.
Benson, Kerrane, Storz & Nelson, P.C.

Fifteen years ago, when Benson, Kerrane, Storz & Nelson opened its doors in Colorado, construction defect legislation was not the hot topic it is today. In 1986, Colorado quietly reduced its statute of repose from 10 years down to 6 years, giving Colorado the distinction of having one of the shortest statutes of repose in the country. In 2001 and then again in 2003, the legislature passed reforms which limited the types of damages homeowners could collect and created a pre-litigation notice of claim process. Additionally, the legislature capped damages under Colorado's Consumer Protection Act. With each change, the builders declared victory and announced that the changes they wanted to protect the residential construction industry.

From Left to Right-Duncan L. Griffiths, Alex M. Nelson, Tia M. Zavaras, Michael J. Lowderl, Douglas W. Benson, Annmarie M. Spain, Heidi E. Storz, Christopher J. Griffiths, Jeffrey P. Kerrane, Not in picture: William J. Rogers

While it may have seemed natural to fight against the notice of claim process imposed on Colorado homeowners, our firm embraced it. We took every opportunity we could to work with builders outside of the traditional lawsuit arena to settle cases. We pushed forward in every creative way possible; working with neutrally retained experts and mediated repair plans. As a result, we settled many, if not most, of our cases without ever filing a lawsuit. We were able to make our clients whole, keep litigation costs low for all parties in the case, and resolve cases quickly. Our success was a result of cultivating a trusting relationship with the builders and their lawyers. While the builders certainly did not like being sued, they appreciated that they could resolve cases while paying less in attorney fees and expenses than if the cases proceeded to litigation. While most of the bigger builders embraced this process, many of the smaller builders rebelled against it, insisting on traditional litigation and trials. This probably turned out to be a good thing, because our success at bringing the smaller builders to trial maintained our reputation with the larger builders such that they knew it was not in their best interests to take cases to trial with our firm.

The days of settling construction defect cases without filing a lawsuit came to an end in 2008, when the Colorado Supreme Court announced its *Goodyear* decision, which eliminated pre-judgment interest in construction defect cases. Again, the builders declared victory. With no prejudgment interest, big builders and small builders alike no longer had any motivation to settle cases, and neutral repair plans gave way to lawsuits. In the past few years, a series of cases has further eroded homeowner rights. The *Smith* case eliminated equitable tolling in 2010. The 2007 *Ingold* case took jury trials away from many defect cases. With each bill and each case, the builders declared victory. When the *General Security* case threatened to limit the insurance available to builders, the legislature immediately stepped up and expanded insurance coverage for builders in 2010, even though insurance representatives testified that the natural result would be higher premiums and carriers leaving the Colorado market - another builder victory.

It began to look like Colorado builders could not possibly ask for anything more. But then the recession hit, and builders saw an opportunity. Using the Metro Mayors and the Chamber of Commerce as their surrogates, the builders took what has become a national problem—the lack of affordable housing—and used it as an excuse to push for construction defect tort reform in Arizona, Texas, Nevada, Colorado, and a handful of other states.

For the past three years, working with CTLA, Build Our Homes Right and the Community Associations Institute, we have fought and won tough battles in the legislature protecting homeowners from attempts to further limit homeowners' recoverable damages and access to the courts. We are a proud supporter of CTLA and an EAGLE member because we share CTLA's mission for protecting homeowner and consumer rights. Most recently, we stood with CTLA in successfully opposing proposed changes to the Rules of Civil Procedure that would have limited the recovery of litigation expenses for prevailing parties. As long as there are builders trying to avoid responsibility for the construction defects they cause through legislation, we will be proud supporters of CTLA and its consumer-driven mission. ▲▲▲

2014-2015 EAGLE RECRUITING STARS

Thank you to our phone-a-thon participants & EAGLE recruiters for their time and commitment to the welfare of CTLA, as well as the protection and advancement of your practice. As of 6/11/2015.

Recruiter Name	Recruiting Value	# of Recruits
Michael Keating	$27,600	6
Michael Sawaya	$26,000	5
Debbie Taussig	$22,500	9
Thomas Neville	$19,250	16
Saul Sarney	$17,700	8
Mari Bush	$16,900	10
Angela Ekker	$12,100	8
Marc Harden	$10,500	6
James Olsen	$7,450	9
Sommer Luther	$7,350	7
Dan Lipman	$7,100	6
Julia Thompson	$6,350	4
Michael Mihm	$6,200	2
Steve Wahlberg	$6,000	2
Mari Newman	$5,350	5
William Babich	$5,100	4
Ross Pulkrabek	$4,500	2
Rick Eddington	$3,500	5
Jason Jordan	$3,100	4
Greg Gold	$3,100	4
Dan Gerash	$3,000	4
Porya Mansorian	$2,450	8
Larry Lee	$1,600	2
Kerri Atencio	$1,050	2
Deirdre Ostrowski	$1,050	3
Molly Greenblatt Welch	$700	2
Steve Shapiro	$600	2
Lorraine Parker	$500	1