

## \$5.5M awarded in sewer project trial

By Douglas Levy

When his real estate developer client sued a contractor after a sewer line project was not completed correctly, Don W. Blevins said he knew that the case would be full of contract pages and clauses as exhibits.

And with a 3½-inch-thick job contract, that would mean poring through to find the most effective evidence.

Blevins said that by the end of the case, the Macomb County jury had seen more than 100 exhibits and numerous clauses within those exhibits, and approximately 200 displays made it to the display screen.

But Blevins said that while that might seem excessive, the process of displaying and explaining the exhibits is an interactive process, and that jurors are stimulated because they're participating.

"I'm just convinced that juries are smart," said Blevins, of McAlpine PC in Auburn Hills. "They get it if you give them the tools for understanding."

He added that one such tool was a drawing of a trench makeup, "and by the end of the case, the jury had seen that detail so much, I believe they'd be able to draw it themselves. ... Everyone on that [jury] panel could have come back home and explained to their spouse exactly the engineering behind it."

On Oct. 10, the jury awarded \$5,483,529 to his client, plaintiff Longhorn Estates LLC, and to the township.

A Verdicts & Settlements report on *Longhorn Estates LLC v. Charter Township of Shelby* can be found on page 7.

### Bring in the experts

The case concerned installation of a sewer line across Longhorn's property in Shelby Township. Longhorn and the township agreed to enter into a contract with defendant Capital Contracting Co. to get it done.

At the end of the project, the township was satisfied that the pipe was in good condition, but Longhorn contended that the soil above the pipe was not compacted properly and a road could not be built on it.

Longhorn sued Capital for negligence, but also sued the township, knowing that whatever Longhorn could recover from the town-

ship, the township could recover from Capital in a breach of contract action, because Longhorn did not have a contract directly with Capital.

Longhorn then settled with the township by having the township assign all of its rights under its contract with Capital.

Blevins said that in cases like Longhorn's, he starts by walking the jury slowly through the contract clauses and the engineering drawings, all displayed on a large screen. This way, he said, by the end of his opening statement he's convinced that the jurors have a good understanding of what is going on in the dispute.

"Then I will bring a fact witness and bring those same drawings up, and then have that fact witness explain those drawings," he said. "So now they've heard it from two people what those drawings mean and what went wrong."

Following that, Blevins said he brought in a geotechnical engineering expert from the field to explain what the drawings meant and how the contract was drafted to meet the drawings' specifications.

"A good expert is very much like a professor; I'm not an advocate. I'm just explaining the science behind this," he said.

But Blevins — who tried the case with Ryan W. Jezdimir and David M. Zack, also of McAlpine — was quick to add that different people taught it to the jury in different ways.

"Not dumbing it down so it seems like we're not trusting [the jurors'] competence; they are competent, they're just not experts in this field yet," he said. "[The experts] make it a methodical approach in the presentation."

### When to scale back

He said that in any trial, the lawyers must be sure that the jury gives the lawyer enough feedback to know whether the presentation is working. This can include noting the jurors' intensity while looking at documents or exhibits, then making necessary adjustments, such as slowing down and giving less detail on some things in order to go to the next thing.

"I think a lot of times you can predict when you've given them too much and how much

you can give them before you lose them," he said.

"There's some conventional wisdom that you lose a jury after 20 minutes. I don't buy that one bit. I believe you can hold a jury attention through the better part of the day. Like a fishing line, you pull them forward, and if you think you've pulled them too far you let out the line a little bit and let them catch up."

As an example, he said that one part of the trial involved two sets of daily logs, one by an engineer and the other from a construction contractor. While going through the engineer's logs, Blevins said he got a sense that the jury was getting fatigued.

"So I had to speed that up and I just didn't think that that was as effective as it could have been," he said. "I had to change my approach, I had to weed out maybe half or two-thirds of the evidence and let that go."

"Otherwise I run the risk that [the jury] won't remember anything. Accept the possibility that the highlights are going to be enough to convince them. ... It's better for them to remember 10 important facts than for them to get 100 facts that all become a blur to them."

The jury deliberated four hours and awarded Longhorn \$3,848,469 and the township \$1,390,123 in damages on the breach of contract claim; and \$244,937 in damages for unjust enrichment.

Carl F. Schier, the Ypsilanti attorney who represented Capital, could not comment on the case.

"By the end of the case, the jurors, I'm convinced, were experts on geotechnical engineering insofar as they understand what's going on here," Blevins said.

"Even though geotechnical engineering is a complicated field, it's a narrow sliver of the field that the lawyers and the jury really need to understand. Once I get to the point where I understand it, because I'm no geotechnical engineer, then I can explain that to the jury."

*If you would like to comment on this story, please contact Douglas Levy at (248) 865-3107 or [douglas.levy@mi.lawyersweekly.com](mailto:douglas.levy@mi.lawyersweekly.com).*

# Verdicts & Settlements

## Developer, township sued for bad sewer line

Defendant didn't follow specifications

**\$5,483,529**

Plaintiff Longhorn Estates LLC, a real estate developer, and defendant/counter-plaintiff Shelby Township entered an agreement under which both parties would contribute funds for the installation of a sanitary sewer line across Longhorn's planned development.

The township contracted with defendant Capital Contracting Co. to do the work for approximately \$750,000. Longhorn and Shelby claimed that Capital failed to install the sewer line properly, specifically failing to install specified protective bedding material above the sewer line and failing to compact the soil backfill as required by the contract sufficient to support a planned road.

The plaintiffs presented engineering reports showing Capital's failure to perform the work in accordance with the contract specifications, with soil tests showing the failure of the soil to meet compaction requirements.

In terms of damages, the plaintiffs argued that they accumulated more than \$1.4 million in costs to remediate the defective installation, plus lost anticipated sales revenue suffered by Longhorn and anticipated tax revenue suffered by the township.



**BLEVINS**



**ZACK**



**JEZDIMIR**

Defendant responded that it had substantially performed according to the project specifications and focused on the project engineer's observation (without objection) of Capital's performance.

Capital further claimed that the township had waived any rights to object to Capital's performance when it inspected the site and made final payment.

With respect to damages, Capital

claimed that the parties failed to mitigate damages by pursuing a costly remedy and waiting too long to remedy the alleged defects.

A Macomb County jury awarded Longhorn \$3,848,469 and the township \$1,390,123 in damages on the breach of contract claim; and \$244,937 in damages for unjust enrichment.

**Type of action:** Breach of contract, negligence

**Type of injuries:** Damage to real estate due to contractor's failure to install sanitary sewer line properly and to compact soil sufficiently to allow installation of planned road

**Name of case:** *Longhorn Estates LLC v. Charter Township of Shelby*

**Court/Case no./Date:** Macomb County Circuit Court; 2011-001693-CZ; Oct. 10, 2014

**Tried before:** Jury

**Name of judge:** Mark S. Switalski

**Name of mediator:** Kevin S. Hendrick

**Verdict amount:** \$5,483,529

**Most helpful experts:** Richard Anderson, geotechnical engineering, Detroit; Lawrence Allen, financial damages expert, Troy

**Attorneys for plaintiff:** Don W. Blevins, Ryan W. Jezdimir, David M. Zack

**Attorney for defendant:** Carl F. Schier