

Thus, plaintiff's counsel argued that the plaintiffs lost their business and source of mining income in the amount of up to \$80 million for the Hardestys and up to \$40 million for the Schneiders. Defense counsel noted that the damages sought by the plaintiffs arose from the alleged inability to mine over the next 50 to 100 years.

The defense's valuation expert estimated that the plaintiffs' losses were less than \$5 million in total.

RESULT The jury found that the county violated all of the plaintiffs' procedural due process rights and substantive due process rights. It also found that the county violated the Schneiders' rights to petition the government for redress, and that Sherry's conduct harmed the Hardestys and was malicious, oppressive or in reckless disregard of the Hardesty's rights. The jury further found that Sherry, Gamel, and Dickinson's conduct harmed the Schneiders and was malicious, oppressive or in reckless disregard of the Schneiders' rights.

On March 21, 2017, the jury determined that the plaintiffs' damages totaled \$106,875,000, which was comprised of \$105,000,000 in actual damages and \$1,875,000 in punitive damages.

In order to obtain final judgment against the defendants at trial, the plaintiffs moved to sever all adjudicated claims from the remaining claims against O'Bryant. However, since filing the motion, the plaintiffs settled with O'Bryant. As a result, the Ninth Circuit dismissed O'Bryant's appeal. In addition, the trial court dismissed the remaining claims against defendants O'Bryant, Norris, Testa, Koehler and Taras, with prejudice. Thereafter, judgment was entered in accordance with the jury verdict on June 9, 2017.

TRIAL DETAILS Trial Length: 18 days
 Trial Deliberations: 1.5 days
 Jury Vote: Unanimous
 Jury Composition: 5 male, 4 female

PLAINTIFF EXPERT(S) Cheryl Bly-Chester, Ph.D., P.E., environmental, Roseville, CA
 Gilbert Coleman, Ph.D., economics, Reno, NV (damages)
 Jeff Light, P.G., geology, Sacramento, CA (aggregate resources)
 Don Olsen, P.E., P.G., geotechnical engineering, Chico, CA (reclamation bond)

DEFENSE EXPERT(S) Steven J. Hazel, C.P.A., valuation, Los Angeles, CA

POST-TRIAL The county contended that the federal court lacked jurisdiction to hear the plaintiffs' claims, as the plaintiffs had failed and refused to exhaust state judicial remedies available under C.C.P. § 1094.5, and because the decision of the Board of Supervisors requiring a conditional use permit was entitled to preclusive and binding effect, and could not

be re-litigated or reconsidered by federal courts. Thus, the county will file post-trial motions, seeking a reversal of the verdict.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel and defense counsel for the county, Gamel, Dickinson and Sherry. Information was also gleaned from court documents. Counsel for the remaining defendants were not asked to contribute.

-Priya Idiculla

TWENTY-TWO

FRAUD

Real Estate Transactions

Bank allegedly misled developer, sold debt to competitor

VERDICT \$98,000,000

CASE David Bagwell, Individually and as Trustee of The David S. Bagwell Trust; Broughton Limited Partnership; Old Grove Limited Partnership; and Broadland Limited Partnership, Marilyn D. Garner, Chapter 7 Trustee of the Estate of The David Bagwell Company and Trustee of the Evermore Communités, LTD v. BBVA Compass; Sam Meade, The Ridge At Alta Vista Investments I, LLC, and Toll Brothers, Inc., No. DC14-00991

COURT JUDGE DATE Dallas County District Court, 101st, TX Stáci Williams 12/13/2017

PLAINTIFF ATTORNEY(S) Derrick S. Boyd, Boyd, Powers & Williamson, Decatur, TX (Broadland Limited Partnership, Broughton Limited Partnership, David Bagwell, Old Grove Limited Partnership)
 Kristy Campbell, Boyd, Powers & Williamson, Decatur, TX (Broadland Limited Partnership, Broughton Limited Partnership, David Bagwell, Old Grove Limited Partnership)
 Peyton J. Healey, Powers Taylor LLP, Dallas, TX (Estate of The David Bagwell Company, Marilyn D. Garner, Trustee of the Evermore Communités, LTD)

Jeffrey S. Levinger, Levinger P.C.,
Dallas, TX (Broadland Limited Partnership,
Broughton Limited Partnership, David
Bagwell, Old Grove Limited Partnership)
Matthew W. Myer, Decatur, TX (Broadland
Limited Partnership, Broughton Limited
Partnership, David Bagwell, Old Grove
Limited Partnership)
Patrick W. Powers, Powers Taylor LLP,
Dallas, TX (Estate of The David Bagwell
Company, Marilyn D. Garner, Trustee of
the Evermore Communitites, LTD)

DEFENSE**ATTORNEY(S)**

Michael A. Logan (lead), Kane Russell
Coleman Logan PC, Dallas, TX (BBVA
Compass, Sam Meade)
Kenneth C. Riney, Kane Russell Coleman
Logan PC, Dallas, TX (BBVA Compass,
Sam Meade)
Jeffrey S. Seeburger, Kane Russell Coleman
Logan PC, Dallas, TX (BBVA Compass,
Sam Meade)
Cliff A. Wade, MBL Law, Dallas, TX (Toll
Brothers Inc.)
None reported (The Ridge at Alta Vista
Investments I, LLC)

FACTS & ALLEGATIONS On July 13, 2006, plaintiff David Bagwell, a residential property developer, entered into loan guarantees with BBVA Compass Bank for financing of development of three luxury properties. The properties developments were the Broughton, Broadland and Old Grove, located in Collesville. Sam Meade was the BBVA loan officer in the financing. Bagwell alleged that BBVA Compass and Meade began secretly negotiating to sell the loans at a substantial discount to a competing developer. After acquiring the loans, the competing developer foreclosed on Bagwell's three properties and forced him into bankruptcy, he alleged.

In 2014, Bagwell, individually and as trustee of the David S. Bagwell Trust; Broughton Limited Partnership; Old Grove Limited Partnership; and Broadland Limited Partnership sued BBVA Compass, Meade, The Ridge At Alta Vista Investments I LLC and Toll Brothers Inc., alleging claims for common law fraud, statutory fraud in real estate transactions; fraud by nondisclosure; negligent misrepresentation; and conspiracy and enterprise. Prior to trial, The Ridge At Alta Vista and Toll Brothers were dismissed prior trial. The trial proceeded against BBVA and Meade only.

Bagwell alleged that through 2010, BBVA and Meade repeatedly assured him that the subject loan notes would be renewed and their terms extended as had occurred in the past. Bagwell claimed he subsequently discovered that BBVA and Meade were secretly dealing with competing developers The Ridge at Alta Vista Investments and Toll Brothers, which were also creating luxury homes like Bagwell was doing.

Bagwell alleged that BBVA and Meade disclosed Bagwell and his company's non-public information to his competing developers without informing him.

Bagwell alleged that as a result of this illegal action, it gave his competitors unfair advantage and a corresponding detriment to Bagwell and his companies. Bagwell alleged that BBVA and Meade's action provided Ridge and Toll Brothers the incentive to move forward in obtaining the notes in January 2010 unknown to him. Bagwell further alleged that in February 2010, Ridge and Toll Brothers made a formal demand to him on the defaulted loans. Bagwell alleged that because he was unable to perform on their guarantees, in April 2010, Ridge and Toll Brothers sued him to recover the amounts due under the notes they illegally obtained.

Marilyn D. Garner, chapter 7 trustee of the estate of The David Bagwell Co. and trustee of the Evermore Communitites LTD, joined the action as intervening plaintiffs against BBVA and Meade. Bagwell's company and Evermore were entities formally owned by Bagwell but filed for bankruptcy. Once the Ridge judgment was entered, Evermore and Bagwell's company were placed into bankruptcy. The trustee of each estate then pursued intervening claims against BBVA Compass and Meade.

BBVA and Meade denied all of Bagwell's allegations of fraud.

They argued that no oral modifications were permitted under the agreement. They further claimed the causes of action asserted by all of the claimants constituted an unwritten verbal modification. Meade also contended that he never lied to or misled Bagwell. Meade claimed he just did not volunteer additional information.

Meade also claimed that he stated that Bagwell's notes had not "been sold," but did not volunteer the additional information that he sought approval to sell the notes from the loan committee and that the loan committee had approved the sale.

INJURIES/DAMAGES Bagwell sought to recover actual damages of \$50 million. He also sought unspecified exemplary damages.

The plaintiffs' lost profits expert opined that he analyzed the real estate market from 2010 to 2017 and the historical performance of Bagwell in real estate over his 40-year career up to 2009. He opined that Bagwell had a substantial property development history in the subject area.

Using the underlying foundational data that lenders (including Compass Bank) relied on in making loans to Bagwell, the expert projected what Bagwell would have earned from future real estate projects (not the three in question but from future developments) that he was prevented from doing as a result of the events that led to the foreclosure, bankruptcy and the civil judgment on his personal guaranty.

The expert opined that Bagwell could have reasonably engaged in one to five additional property developments had his development career not been derailed by the misrepresentations that were the basis of the subject lawsuit.

The defense's accounting expert opined that the plaintiff's expert projections ignored the performance of Bagwell's developments during the real estate slowdown of 2007 to 2009.

RESULT The jury found that BBVA and/or Meade committed fraud against Bagwell, his company, Evermore Communities, Old Grove, Broadland and Broughton. The jury found that the harm to Bagwell and his companies resulted from fraud attributed to BBVA and/or Meade. The jury awarded \$98 million.

TRIAL DETAILS Trial Length: 6 days
Trial Deliberations: 3 hours
Jury Composition: 4 male, 8 female

PLAINTIFF EXPERT(S) Allyn B. Needham, Ph.D., C.E.A., economics, Fort Worth, TX

DEFENSE EXPERT(S) Karl Weisheit, C.P.A., business interruption/lost profits, Dallas, TX

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

—Gary Raynaldo

TWENTY-THREE

WORKER/WORKPLACE NEGLIGENCE

Transportation

Worker crushed by steel tubing in unloading accident on trailer

VERDICT \$95,477,464
ACTUAL \$86,429,718

CASE Robert Montagano and Mary Montagano v. Leading Edge Group Inc., Leading Edge Hydraulics Inc., an Illinois Corporation, and Metal-Matic Inc., a Foreign Corporation, and Metal-Matic Inc. v. Shari Motors Inc., No. 2014-L-008096

COURT JUDGE Cook County Circuit Court, IL
DATE Marguerite Ann Quinn
11/2/2017

PLAINTIFF ATTORNEY(S) Joseph A. Power, Jr. (lead), Power Rogers & Smith, L.L.P., Chicago, IL
James I. Power, Power Rogers & Smith, L.L.P., Chicago, IL

DEFENSE

ATTORNEY(S) John W. Patton, Jr. (lead), Patton & Ryan LLC, Chicago, IL (Metal-Matic Inc.)
Scott D. Stephenson (lead), Litchfield Cavo LLP, Chicago, IL (Leading Edge Group Inc., Leading Edge Hydraulics Inc.)
Cole G. Dunnick, Litchfield Cavo LLP, Chicago, IL (Leading Edge Group Inc., Leading Edge Hydraulics Inc.)
Ben Levinsky, Patton & Ryan LLC, Chicago, IL (Metal-Matic Inc.)
Paul D. Motz, Patton & Ryan LLC, Chicago, IL (Metal-Matic Inc.)
Michael A. Pauletto, Lewis Brisbois Bisgaard & Smith LLP, Chicago, IL (Shari Motors, Shari Motors Inc.)
Timothy J. Young, Lewis Brisbois Bisgaard & Smith LLP, Chicago, IL (Shari Motors, Shari Motors Inc.)

FACTS & ALLEGATIONS On July 1, 2014, plaintiff Robert Montagano, 52, a truck driver, hauled 9.5 bundles of 32-foot-long carbon steel tubing from Metal-Matic Inc. in Bedford Park to Leading Edge Hydraulics in Rockford. Montagano parked his truck at Leading Edge's warehouse interior loading dock, walked to the rear of the truck and got on the trailer to assist in securing the bundles to an overhead crane. A full bundle of steel weighing about 3,400 pounds rolled off of the trailer, knocked him to the ground and landed on top of him. He was pinned under the tubes and sustained massive crush injuries that led to amputations.

Montagano and wife Mary Montagano sued Metal-Matic and Leading Edge, alleging that Metal-Matic improperly loaded and secured the tubing on the trailer and Leading Edge's employee improperly unloaded it. Leading Edge and Metal-Matic brought a third-party claim against Shari Motor Sales, which owned the tractor-trailer and employed Montagano. Shari settled the claim prior to trial. The matter proceeded to trial against Leading Edge and Metal-Matic.

The Montaganos alleged that Metal-Matic improperly loaded and secured the truck by placing a single half-bundle of steel tubing under several full bundles, and that this violated industry customs and standards, as well as the procedures in Metal-Matic's own safety manual.

The plaintiffs alleged that Leading Edge's employee, Robert McGuire, the crane operator improperly unloaded the trailer by failing to allow Montagano to get out of the "zone of danger" before lifting the top bundle of steel tubes with the crane. The plaintiffs also alleged that McGuire failed to perform a job safety analysis prior to operating the overhead crane and unloading the trailer, and put Montagano in danger by failing to rig the load to the crane himself and requiring Montagano to do it even though he wasn't trained to do so.

When the steel tubing was loaded onto the trailer at Metal-Matic, Montagano placed three pieces of 3x4 wood dunnage on his trailer bed and the crane operator at Metal-Matic