



\$22 Million Settlement: The Benefits of a Summary Mock Jury Trial

Commentary by
David B. Haber
 and **Frank Soto**

One of the largest construction defect cases in Palm Beach County history was settled just days into the jury selection process.



Haber

Some would say that the prospect for settlement increased exponentially in the *San Matera Association v. Kolter* case a month before trial in September when the presiding trial judge ordered the parties to conduct a summary mock jury trial proceeding before three jury panels.

The plaintiff and 18 defendants presented their case in a courtroom filled with over 30 attorneys, multiple insurance adjusters and clients. The large courtroom barely fit the abnormally large crowd, and the three juries listened carefully before deliberating on the afternoon of the second day. Three verdicts were reached and all were in favor of the association — approximately \$36 million, \$35 million and \$17.5 million, respectively. Some defendants were found less at fault than others, but none were held more responsible than the Kolter entities, which were both developer and contractor on the project.



Soto

The mock trial concluded with the jurors sharing with counsel their individual views on the case and their verdicts. The insights of the jurors were invaluable to the parties, their counsel and the defendants' insurance adjusters in understanding and then analyzing the relative strengths and weaknesses of their positions.



MELANIE BELL

San Matera condo association's Jackie Durham, right, holds a poster showing wall damage at the Palm Beach Gardens community. She is accompanied by association attorney David Haber.

The mock trial concluded with the jurors sharing with counsel their individual views on the case and their verdicts. The insights of the jurors were invaluable to the parties, their counsel and the defendants' insurance adjusters in understanding and then analyzing the relative strengths and weaknesses of their positions.

For example, as plaintiffs counsel, we questioned the third jury panel, who rendered a \$17.5 million verdict. This third panel was comprised of younger jurors, none of whom owned homes or condominiums and were unable to relate to the plaintiff homeowners. This third panel focused more on a potential weakness which the defense tried to exploit as to lack of maintenance by the association, a defense tactic typically used in construction cases. The other two juries did not buy that ploy and instead focused on the extensive testing conducted by the plaintiff's expert and the lack of testing by the defense experts or repair protocols and specifications being offered by the defense. For these two juries, this was a shocking contrast to the two-page summary estimate provided by the main defense experts which did not have an accompanying repair protocol or specifications.

All of these revelations came to light in front of clients and adjusters, who watched with great interest, especially when the jurors were explaining their perceptions of the case which allowed all parties to reevaluate their relative positions in the case.

ADVANTAGES

The benefits of such a proceeding are obvious. Rather than bringing in countless fact witnesses and expert witnesses to testify in a jury trial, which was expected to cost the parties millions in attorney fees and costs, this mock trial was a significant motivating factor in causing the ultimate settlement of the San Matera case.

While sparingly used, mock trials are an invaluable tool to obtain a cost-effective view of the case from the eyes of real jurors and, as was the case in San Matera, encourages settlement of the case on realistic terms with real exposure to all sides adequately analyzed. Furthermore, it allows the trial judge to listen to the case details, making it easier to subsequently

address pretrial motions in limine, objections to deposition questions and other pretrial matters of importance to the parties. Finally, the interviews with the jurors following the presentations allows the litigants to truly hone in on the parts of the case that were most and/or least persuasive, so that each side can refocus their ultimate presentation to the real jury and also decide what type of juror they want for the real trial.

The mock trial process also helps the attorneys to prepare these complex cases for the ultimate trial of the case because the significant time constraints force the typically long-winded attorneys to focus on what is truly important for a jury to hear. Indeed, two days before mock juries saved judicial resources by not having one case paralyze the judge's docket and courtroom. In addition, there is a real benefit to the entire community as real jurors are not inconvenienced for weeks or months in a real trial. In addition, the parties are then encouraged to go back to mediation with the necessary ammunition to settle their case, including critical information which the defendant insureds may need to convince the insurers of ultimate exposure.

PROCESS

The mock trial can take from half a day to two days, including selection of jury panels, presentation of the evidence by proffer, deliberations, verdict and the post-verdict interviews with jurors. There are no live witnesses, no cross-examinations nor countless interruptions in the presentations as the court encourages limiting the number of objections and has the ability to require both sides to have a representative with authority to settle the case present during the mock trial.

During presentations, the attorneys are permitted to read reports and transcripts of key testimony in the case, present video and photographs of evidence, and explain to jurors how the evidence supports their respective client's positions in the case. The case is then given to the mock jurors to render a verdict based on the presentations.

Because the attorneys are permitted to ask the jurors questions afterward, the parties get a window into the minds of candid, real jurors about what they viewed as important, valuable or immaterial about the case and why they made their decision.

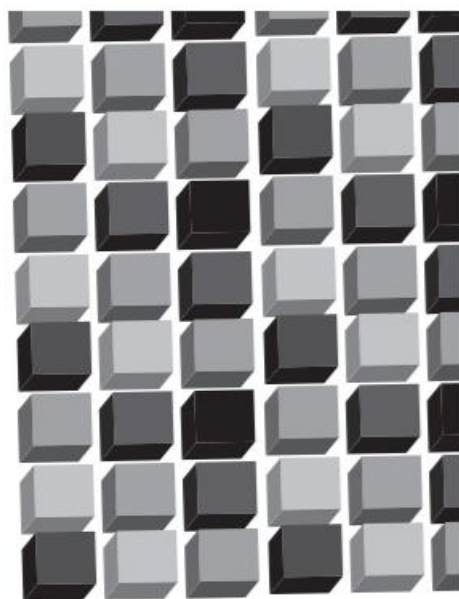
While it has inherent limitations, such as no live witnesses and summaries of evidence and testimony, it is undeniable that there is significant value gained from this process. There is no replacing the information that the litigants and clients gain from speaking with real jurors. That information will only assist the parties to further focus their case and ultimately be in the best position to either settle or proceed to the real trial. We urge parties and judges to consider this most effective tool in appropriate cases.

In the San Matera case, it yielded a \$22.5 million settlement on the third day of the real jury selection process.

David B. Haber is the founding partner and Frank Soto is a partner at Haber Slade in Miami. Haber is a commercial litigator, and Soto focuses on construction litigation. Contact Haber at dhaber@dhaberlaw.com and Soto at fsoto@dhaberlaw.com.

YOU STRIVE FOR PERFECTION.

■ SO DO WE.



We offer preselected and customizable bundles with cutting-edge content from industry leaders.

Bundles can be exclusive to an individual attorney or packaged for a legal team.

Take 20% off your choice of CLE for a limited time.

Use promo code ALM20

CLECenter.com | **ALM**
 Trusted. Affordable. Instant.