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Litigators of the Week: After Taking On Arizona Developer's Broken Deal Suit Less Than a Year Before Trial, a $296M Verdict

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Our Litigators of the Week are Gibson, Dunn & Crutcher partners Collin Cox and Sydney Scott and associate Ben Betner, who led a trial team representing two entities run by real estate developer Bruce Gray.

Following a 12-day trial and about five hours of deliberations, Maricopa County Superior Court jurors found that ZOM Holding Inc.—a Florida developer the Gray Companies had partnered with on projects at four Arizona properties—had breached a non-circumvention agreement barring ZOM from buying the underlying properties in a trustee's sale, as well as the duty of faith and fair dealing under the deal. Jurors awarded $296,448,624 in damages—the Gray Companies' full ask.

Lit Daily: Who was your client and what was at stake?

Collin Cox: Our clients were Gray Development Group and Gray Services, two Arizona-based real estate companies that have been in business for more than 30 years. The Gray Companies had put together a pipeline of four high-end projects on very desirable land in Phoenix and Scottsdale. Then, they brought in another company to help provide the capital to develop those projects. That company, the defendant in our case, ended up with everything. We talked about this "imbalance" throughout the trial. We asked the jury for $296 million, representing the Gray Companies' lost value of the projects.

How did this matter come to you and the firm?

Cox: Bruce Gray, the President and CEO of both companies, contacted me in July 2024. He had been litigating his case for a few years but wanted to think about how it would be presented at trial. We were flattered that he thought of us. Ben Betner and I quickly flew to Phoenix to meet in person with him and his wonderful wife, Barb. Since that initial meeting, we've been thinking about the best way to try the case. After a long and successful career, Bruce and Barb had put everything they had into this pipeline of projects, and Bruce wanted to finish his career by completing these four beautiful projects in his home state.

After coming into this case late on the plaintiff's side, what steps did you take to get this case ready to be presented to a jury—"a simple and sad story with three chapters," as you called it, Collin?

Cox: Real estate cases can be complicated, with so many special-purpose entities involved in a transaction and a lot of money at stake. But no matter the context, written

Related People

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promises are easy to grasp, and jurors pick up on those promises quickly. We focused on what the parties agreed to do, and we told a story about what the defendants chose to do instead. One thing that helped a lot was making sure the jury had their own individualized copies of the key documents, including the parties' contract. From the opening statement, we directed them to certain language. I was thrilled when jurors started highlighting and annotating in the first 10 minutes of the 12-day trial. And, as always, we tried to present the evidence in a straightforward way, using graphics, pictures and charts to keep things interesting.

What were the barriers to telling this as "a simple and sad story"? The way real estate developers structure their deals isn't always straightforward and jury-friendly.

Cox: Every case of this magnitude has its challenges, and this one was no different. The jurors heard a lot from the excellent lawyers on the other side about different proceedings and the development of the projects after the Gray Companies were removed. As the plaintiffs, we faced the age-old challenge of handling each defense—waiver, estoppel, supersession and the like—when raised without losing the focus on your core themes and evidence.

Ben Betner: The biggest barrier was organizing stacks of relevant evidence into an understandable and straightforward story. Given the complicated nature of commercial real estate transactions, we decided to present our case chronologically, with three chapters. We then bucketed the evidence under each of these chapters to provide structure to the narrative. The jury appeared engaged with how we presented this story in the opening, so we structured the closing around those same themes, adding important testimony from trial. When we spoke with the jury after the verdict, they commented on how much they enjoyed and appreciated our presentation as they initially felt overwhelmed by the quantity of information they had to consider.

Who all was on your team and how did you divide the work?

Cox: It was a high-functioning team of lawyers who all could slot into different roles. My partner Sydney Scott and our colleague Kylie Calabrese spent weeks preparing Bruce to testify. I've never seen a witness-prep team that was more effective or that worked harder. Sydney and Ben handled the expert witnesses. Sydney's cross of their expert was a true highlight for the trial. Johanna Smith handled the first witness we called.
And Bryston Gallegos and Jaime Barrios, associates from our Dallas office, adroitly handled so much of the pretrial and in-trial arguments before and after the evidence. Our paralegal, Eugenia Varela, worked tirelessly to make sure we were organized each and every day. We all sat together in a Phoenix hotel conference room. Every idea was welcome, and no task was too small for someone to handle. There was no room for ego in that space.

I hear that all the associates on the team had a chance to speak in court. What form did that take? And how did you get the client comfortable with letting junior members of the team have a stand-up role?

Cox: I think jurors enjoy hearing from a variety of voices, especially ones as effective as the ones we had in Phoenix. The client knew that the associates who presented the witness or argument had done the underlying work. Bruce also saw us practice each examination internally, over and over, to minimize any chance of surprise. Our associates are the best in the country, and Ben led this team brilliantly. They earned these opportunities.

Betner: Associate involvement started early, and the client had an opportunity to watch each and every associate perform prior to trial, whether in depositions, hearings or the pre-trial conference. This was just a culmination of all the stand-up opportunities they had already excelled at, so the client trusted the entire team could deliver.

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Some of the facts underlying this case unwound during the early days of the COVID pandemic here in the U.S.—a turbulent time for many in the real estate industry. How did that play into your dispute?

Cox: We thought about COVID a lot and certainly worked questions about the pandemic into our witness outlines. But I must say that even though COVID wasn't that long ago, it feels in some ways like a million years ago. And because construction workers were indispensable workers during the pandemic, COVID-related construction delays—at least for projects that had started in Arizona—weren't that significant.

$296,448,624. That's a big ask–and a specific one. How did you get there and how did you convince the jurors that was what your client was entitled to?

Cox: We had two excellent experts speak to the profits the projects were set to generate. We went through the models comprehensively, providing enough details, hopefully, without belaboring the point. Both experts were excellent communicators, and the connection to the jury was important. And although the jury gave us the $296 million number twice, on two separate claims, we told them directly that we'd only be entitled to it once. We wanted to be as transparent as possible about every dollar we requested.

Sydney Scott: Oftentimes in complex business disputes, we shy away from compelling personal narratives. But I think it was important to allow Bruce to tell his story in his own words. Bruce is a self-made man who earned every bit of success that he achieved in his nearly 40 years in real estate development. Collin described him as a "maverick" in the opening, and the jury saw some of that firsthand during Bruce's two days on cross. I admit I was nervous about how that would come across, but Bruce's authenticity and passion really resonated with the jury. Despite the large damages claim, they could see this wasn't a money grab. It was a man standing up for what he had rightfully earned—nothing more, nothing less.

What can others take from the way you tried this case?

Cox: I've learned so much from people who taught me how to try cases, and I use so many lessons from my mentors in every one of my trials. I also think it's important that the lead lawyers be open to being corrected by their colleagues. We believe that the best idea always should win, no matter how junior or senior the person who brings the idea forward. And we sweat the small stuff—font size on graphics, the order for presenting testimony and the like.

Scott: It's not always easy to do, but our team did an excellent job of tuning in to what seemed to resonate with the jurors throughout the trial. We incorporated those insights into our closing argument in a way that reinforced our key themes and messages—something the jurors later told us they found especially persuasive.

Betner: Build a great team, empower them and give them responsibility early. And when you get to trial, make sure everyone's strengths are utilized.

What will you remember most about this matter?

Cox: Two things: First, I'll remember the arc of the relationship with Bruce and Barb Gray—from meeting them fifteen months ago to seeing them through this difficult chapter. And second, I'll always remember this team. I'm lucky to practice law with these fabulous people who bring their very best every day.

Scott: Nothing makes me happier than seeing my teammates step up to the plate and knock it out of the park. That's what each person on our team did day in and day out—especially our associate team. From conducting their first direct and cross examinations to handling the charge conference, our associates put on a stellar performance. Those moments are ones I'll never forget.

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Betner: The strength of the team that we put together. Everyone performed at the highest level to get the best result possible for our clients.

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