



The New York Times

NEW YORK TIMES v. BOVIS LEND-LEASE, INC., ET AL. (SUP. CT., N.Y. COUNTY, 2003)

Built to last?

THE CLIENT: PROSKAUER ROSE, LLP

THE CASE: In this breach of contract construction case, presided by Judge Gammerman, The New York Times claimed that the defendant, Bovis Lend Lease Corporation, breached its contract in the construction of sewer and fire protection systems at The New York Times' new state-of-the-art printing facility in College Point, Queens. DOAR's client, Proskauer Rose, helped to prove, through the use of graphic animations, that the defendant failed to ensure that construction crews followed the engineering and architectural plans while building the sewer and fire protection systems.

THE TRIAL: DOAR conducted in-venue focus groups and mock trials to test the use of demonstratives and to gauge jurors' understanding of the complex issues within this case. The research analysis indicated that potential jurors needed a basic understanding of the engineering and architectural framework that should have been employed at the College Point site. DOAR provided CAD drawings, PowerPoint slides and graphic boards to explain the multiple steps involved in construction of this magnitude. In addition, DOAR provided valuable input to the critical themes, order of proof and witness preparation, as well as utilized a shadow jury to deeply understand the jurors' perceptions as the case unfolded.

TRIAL TECHNOLOGY: DOAR also provided several layers of pre-trial preparation beginning with digitization and media conversion of discovery documents and deposition testimony. DOAR coded this information and stored it within a collaborative web repository for quick search and retrieval. By using Sanction™ presentation software during their cross-examination of the defendant's witnesses, DOAR's client was able to display document pull-outs highlighting the basic components of the contract between The New York Times and Bovis. These demonstratives crystallized the defendant's failure to satisfy even its basic obligations under the contract.

Given the complex nature of the case, the successful use of technology was crucial to the outcome of the trial. Evidence included numerous documents, trial boards, graphic animations and videotaped deposition testimony. Wireless communications from the courtroom enabled counsel to communicate imperceptibly with other trial team members via instant messaging and allowed them to quickly obtain additional documents and graphics from DOAR. The courtroom's communication system also provided for streaming of the trial transcript in real time to the war room for witness preparation and to plan the next day's events.

THE OUTCOME: In post-verdict interviews, jurors commented favorably on the use of the digital presentation of documents, demonstratives and animations. The jurors indicated that this evidence definitely helped them to understand the issues in the case. The jury returned a significant verdict in favor of DOAR's client, in excess of \$16.5 million, the amount requested of the jury.

Proskauer Rose's Tom Moore asserted that... when it comes to complex civil litigation, it's [jury research] a solid investment. Moore has used Blackman; DecisionQuest; DOAR; and Plantation, Fla.'s Amy Singer, whom he called the pioneer in the field. He's had good success with all of them, but favors DOAR because of its in-house team approach and its "incredible facilities." He asserted that splitting responsibilities between various consultants makes no sense. He involves the team the moment he gets involved in a case. "It's really an art—the people who do it well," Moore said.

Splashy Trials Keep Jury Consultants Busy
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