

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

TODD ALAN STACY, individually and as
assignee of ADMINISTRATION SYSTEMS
RESEARCH CORPORATION, a Michigan
corporation,

Plaintiff,

vs.

J. MICHAEL BRANDON; and MARY J.
BRANDON,

Defendants.

Case No. 12-11945-NZB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S EXPERT REPORT AND PRECLUDE EXPERT TESTIMONY

With trial on the horizon in this long-running dispute, Defendants J. Michael Brandon and Mary Brandon have offered an interesting challenge to the expert witness retained by Plaintiff Todd Stacy. Although the defendants admit that the proposed expert witness, Russell Long, is eminently qualified to provide expert testimony in the field of accounting, the defendants insist that Mr. Long will simply play the unnecessary role of human calculator if he testifies at the upcoming trial. Thus, the defendants argue that Mr. Long's testimony should be prohibited because Plaintiff Stacy has not shown that Mr. Long's "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," as contemplated by MRE 702. As the defendants have framed the issue: "Because simple addition, subtraction and multiplication fall well within the purview of the jury, there is no need to cloak Plaintiff's purported claims with an expert label." Although the Court admires the defendants' clever argument, the Court must permit Mr. Long to testify as an expert.

In simple terms, Plaintiff Stacy has accused the defendants of looting the company that they once controlled, Administration Systems Research Corporation (“ASRC”), through a series of deals and actions that benefitted the Brandons at the expense of ASRC. Thus far, the Court has merely reached the conclusion that Stacy has presented potentially viable claims, which the Brandons may very well persuade the jury to reject. If Stacy can establish the Brandons’ liability to the satisfaction of the jury, however, Stacy must be allowed to seek recovery for damages suffered by Stacy himself and by ASRC. Because the Court has no intention of bifurcating the case to resolve liability first and then damages in a second trial if Stacy prevails on liability, Stacy must present evidence of damages during the one and only trial in this case. Stacy is prepared to furnish evidence of his alleged losses and the purported losses of ASRC, but Stacy intends to augment his presentation on damages with the expert testimony of Mr. Long, who is a certified public accountant (“CPA”).

The Court has become accustomed to expert testimony from CPAs on the broad subject of damages. A CPA can explain the process of reduction to present value, analyze the tax implications of business gains and losses, and even compare and contrast alternative theories for the calculation of uncertain future damages. Thus, a CPA can serve as an appropriate expert witness in a relatively wide range of cases. Here, however, the defendants assert that Mr. Long’s expertise in the areas the Court has described serve no purpose because Plaintiff Stacy simply intends to present Mr. Long to place his imprimatur as an expert witness upon routine damage calculations that anyone armed with a calculator can readily perform. Accordingly, the defendants have asked the Court to find that the specialized knowledge Mr. Long possesses will not “assist the trier of fact to understand the evidence or to determine a fact in issue” at the trial. See MRE 702. And if the Court makes that finding, the defendants believe that Mr. Long cannot testify as an expert witness.

Michigan law imposes a gatekeeper role upon the Court with respect to all expert testimony, see Gilbert v DaimlerChrysler Corp, 470 Mich 749, 779-782 (2004), so the Court must consider the threshold issue defined by MRE 702, *i.e.*, whether an expert's "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue[.]" As our Supreme Court has framed the issue: "There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute.'" People v Smith, 425 Mich 98, 106 (1986). Plaintiff Stacy argues convincingly that Mr. Long can aid the jury in sorting through the many components of damages to arrive at an aggregate award that provides adequate compensation to Stacy and ASRC for the full range of losses resulting from the defendants' complex machinations that siphoned funds from ASRC. As United States District Judge Gordon J. Quist explained:

It is of limited assistance to a jury for a CPA to do simple mathematical calculations which a reasonable juror or lawyer could perform. This Court recognizes, however, that certified public accountancy is a skilled profession which requires, in many instances, considerable education, training, experience, judgment and skill beyond that which an ordinary juror would possess. CPA's are subject to accountancy standards and are licensed by the state much as lawyers are licensed professionals. In other words, a CPA generally possesses the "specialized knowledge" to qualify as a helpful expert witness under the proper circumstances.

De Jager Construction, Inc v Schleining, 938 F Supp 446, 449 (WD Mich 1996). Of course, Mr. Long's testimony will serve no purpose if the jury finds that no misconduct occurred, but the Court cannot assume that the defendants will prevail on liability. Instead, the Court must anticipate that the jury may face the issue of damages. And if they do, the jury will benefit from the testimony of Mr. Long, who can provide structure and context for the jurors' analysis of the damages.

The Court's willingness to permit Mr. Long to testify as an expert witness comes with three important limitations, though. First, Mr. Long may not offer opinions about the defendants' liability, nor may Mr. Long blur "the distinction between substantive liability and a calculation of damages." See De Jager, 938 F Supp at 449. The Court has approved Mr. Long as an expert on damages, but not on any other subject. Second, Mr. Long's expert testimony on the subject of damages must be based upon "facts or data" that are "in evidence" at trial. See MRE 703. Therefore, the Court shall not permit Mr. Long to discuss components of damages outside the trial record. Third, Mr. Long's expert testimony on damages must be confined to those elements of loss flowing from theories of liability that the Court has permitted Plaintiff Stacy to pursue at trial. The Court harbors concerns that Stacy will take a blunderbuss approach to liability and damages, asking the jury to hold each of the defendants liable for a raft of improper acts and requesting damages for each of those acts. The Court intends to limit Stacy to the theories that have survived summary disposition based upon the express rulings in the Court's numerous written opinions in this case. Subject to those restrictions, the Court shall permit Mr. Long to provide expert testimony aimed at assisting the jury in its quest "to understand the evidence" and "to determine a fact in issue," see MRE 702, *i.e.*, the appropriate amount of damages to award to Stacy if he prevails on liability. Consequently, the Court shall deny the defendants' motion to strike Mr. Long's expert report and preclude his expert testimony during the upcoming trial.

IT IS SO ORDERED.

Dated: June 23, 2016



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge