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Attorneys argue over key motion in big corruption case

By Amanda Schallert

SAN BERNARDINO - Attorneys in one of state's largest corruption cases Friday in San Bernardino County Superior Court argued the legitimacy of a motion that would dismiss the most significant parts of a 2011 grand jury indictment.

In a fervent argument to Judge Michael A. Smith, defense attorney Stephen A. Larson called the motion essentially their "last stance" before going to trial.

The motion is the latest in a saga that dates back to a 2006 settlement between Upland developer Colonies Partners LP and San Bernardino County officials involving flood control measures. State prosecutors claim Colonies co-partner Jeffrey Burum and former county officials Paul Biane, Mark Kirk and Jim Erwin were involved in a bribery scheme when they approved the \$102 million settlement. But the defense argues the settlement actually saved the county and taxpayers millions of dollars, because damages could have amounted to \$300 million.

The case has involved several civil and criminal lawsuits. The criminal case involved Bill Postmus, former chair of the county Board of Supervisors, who pled guilty to taking bribes among other criminal charges.

On Friday, the key motion addressed whether prosecutors failed to present exculpatory evidence to the grand jury, which indicted the four men in corruption related charges.

Under the measure, if prosecutors fail to disclose exculpatory evidence and it results in a substantial prejudice, it is grounds for a dismissal of a part of the indictment

In an equitable indemnity case filed in November 2004, the county tried to recover some of the \$102 million from the San Bernardino Associated Governments, the city of Upland and the State Department of Transportation. That effort was unsuccessful for the county, which argued the other agencies should pay their fair share. San Bernardino County Superior Court Judge Ronald S. Prager ruled in 2013 that the settlement violated specific government codes so the county couldn't seek indemnity.

But the county's stance that the settlement was reasonable in the indemnity case conflicted with what some prosecutors said before the grand jury. At the same time that county attorneys were arguing the indemnity case, district attorneys facilitated grand jury testimony to prove that the settlement was unreasonable based on expert officials.

Smith previously denied a the motion to dismiss but reconsidered it Friday based on new evidence that at the time of the grand jury proceedings, the district attorney and attorney general were aware of the indemnity and arbitration proceedings.

Burum's attorney, Arent Fox LLP partner Larson said the prosecution used the idea that the settlement was outrageous to try to prove criminal intent, since there could be no other explanation than bribery. He argued that prosecutors Melissa Mandel and Lewis Cope unethically limited the evidence presented to the grand jury.

"This was their case to the grand jury and it affected everything," Larson said at the

hearing on Friday. "It was the persistent theme."

"The grand jury never had the truth that was in the hands of these prosecutors," he said.

Prosecutors argued the grand jury's decision did not hinge on whether it believed the settlement was reasonable. Mandel said the argument was a "complete strawman." She added that prosecutors chose not to focus on the reasonableness of the settlement because of the specific timing of criminal acts.

"[To grant their motion] would be to impose a duty on a prosecution beyond any that has been imposed on criminal proceedings," Mandel said.

She said there's a lot of evidence of corrupt intent that goes beyond the reasonableness of the settlement, including secret meetings and fake phones. Mandel added that pre-2007, she thinks there was not much evidence that the settlement was sound.

Attorneys will finish arguments on Jan. 8.

In another motion, Judge Smith decided to push the trial from February back to October due to a medical issue of one of the defense attorneys.

Since the grand jury indictment there have been four years of continuances due to numerous statute of limitations motions, which even went up to the California Supreme Court.

Attorneys are also still waiting on a motion to suppress evidence seized with a federal search warrant that is now before the 9th Circuit Court of Appeals. A status conference is set for May 6.

amanda_schallert@dailyjournal.com

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