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Casino Developer Trashes Calif. City's \$2.3M Atty Fee Bid

By **Caroline Simson**

Law360, New York (April 23, 2015, 4:56 PM ET) -- A developer that had partnered with a Native American tribe in a failed bid for a casino in a Bay Area city has told a California federal court that a \$2.3 million fee bid from Morrison & Foerster LLP attorneys representing the city was unreasonably bloated.

Following up on its **opposition** to the city of Richmond's February motion for attorneys' fees — which was filed just over a year after a judge ruled that the city hadn't breached its contract with the tribe and the developer for the transfer of land underlying the proposed casino project — Upstream Point Molate LLC argued in a Tuesday brief that the firm's fees inappropriately relied on block billing and billing in quarter-hour increments.

"It is hard to believe there are any clients that prefer to be billed 15 minutes ... for six actual minutes of work ... let alone many such clients," Upstream said. "More importantly, just because everyone does it does not make the practice right, or reasonable."

Both of those methods have been found unreasonable by the Ninth Circuit, the developer — which had partnered with the Guidiville Rancheria of California Native American tribe in the casino endeavor — argued. Because the \$2.3 million fee incorporated the use of both practices, it would be appropriate to reduce the city's fees by at least 20 percent, according to the brief.

Moreover, unnecessary, duplicative or excessive tasks dominated the city's bills, justifying a reduction of at least another 50 percent, according to the brief. That unnecessary work included legal research for issues that were not litigated and other tasks wholly unnecessary to the resolution of the suit.

Richmond attorney Arturo J. Gonzalez of Morrison & Foerster LLP told Law360 on Thursday it was unreasonable for the developer and the tribe to complain that the city expended \$2 million to defend itself from their suit, which had sought more than \$1 billion in damages.

On the complaints about billing practices, Gonzalez noted that including block billing and billing in quarter-hour increments are commonplace for the majority of firms.

"Most clients don't expect me to tell them exactly what I did for every portion of the six hours," he said. "It's not something that most clients consider significant. The key is that you've got to make sure that you adequately jot down how much time you spent on the case each day, and that's what we do."

The battle over fees follows wrangling over a failed deal Upstream and Guidiville Rancheria tried to work out with Richmond. They planned to build a 240,000-square-foot casino, with two hotels holding 1,075 rooms and about 170,000 square feet of business, conference and entertainment facilities. Richmond said the deal included \$121 million in city subsidies to help finance the project.

Upstream first entered into an agreement in 2004 to purchase and lease 220 acres of land and about 134 acres of tidal or water property that had been transferred to the city by the U.S. Navy, as well as another 51 acres that had not yet been released by the government. The agreement stipulated that the city would transfer the property to Upstream for development of the casino subject to their securing the requisite permits and approvals.

The city later axed the casino project after an environmental review showed unavoidable impacts on traffic and historical resources.

In December 2013, U.S. District Judge Yvonne Gonzalez Rogers ruled that the city hadn't breached its land disposition agreement with Upstream and the tribe, and granted the city's motion for judgment on the pleadings.

In a reply submitted earlier this month, the city of Richmond pointed to the complicated nature of the litigation, which involved discovery into seven years of underlying conduct of hundreds of witnesses. It also noted the many laws that were implicated in the case, including federal Native American law, California contract law, California land use and planning laws, and the California Environmental Quality Act.

Richmond is represented by Christopher J. Carr, Arturo J. Gonzalez, Daniel Scott Gershwin and Navi S. Dhillon of Morrison & Foerster LLP and in-house by city attorneys Bruce Reed Goodmiller and Rachel Sommovilla.

Guidiville Rancheria of California is represented by Scott Crowell of Crowell Law Offices and Michael Patrick Scott of Lanahan Steever & Anderson LLP.

Upstream is represented by Shona L. Armstrong and Garet Damon O'Keefe of O'Keefe & O'Keefe LLP and Dean Allan Hanley of Hanley Legal.

The case is Guidiville Rancheria of California et al. v. U.S. et al., case number 4:12-cv-01326, filed in the U.S. District Court for the Northern District of California.

--Additional reporting by Michael Mello. Editing by Philip Shea.

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