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City of San Diego loses \$5.4 million case

By Daniel Coffey

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On Oct. 1 and 2 a bench trial was held in Superior Court before the Hon. William S. Dato to determine the amount of total attorney fees, costs and interest the City of San Diego is required to pay to the six innocent former city employees who were obliged to expend their own money to defend themselves against a baseless criminal case filed by District Attorney Bonnie Dumanis seven years ago.

Political hysteria took over the press and San Diego leading them all to reenact San Diego's version of the Salem Witch Trials. It has been left to judges to right the listing ship of state.

The completely innocent, good and decent people, whose lives were utterly destroyed for no proper reason and who have been forced to sue the city for the money they spent to defend themselves, are: Cathy Lexin, Mary Elizabeth Vattimo, Teresa Aja Webster, Sharon Kay Wilkinson, Ronald Saathoff, and John Anthony Torres.

The City of San Diego has a legal obligation to pay for their defense, but nearly three years after California's seven-member Supreme Court unanimously opined the utter legal innocence of five of the defendants, the City of San Diego continues their financial hardships, forcing them to sue the city for indemnity, extending the legal affront of the original wrongful prosecution.

At the conclusion of the two-day trial, Judge Dato granted the entire amount of monies sought by the six individual plaintiffs. The precise amounts for each plaintiff vary, but the total of over \$5.4 million breaks down approximately as follows: \$3.4 million in original fees for nearly seven years of highly successful and effective defense work against bizarre criminal charges and over \$2 million for interest due to delays.

The \$2 million in interest is based on a series of different individual calculations and differing time periods, but currently roughs out at nearly 40 percent of the total and climbing. The large sum for interest is entirely attributable to the delay efforts mounted by the city to avoid its obligations. Whether this is for political reasons or merely acting on bad advice, one cannot know, but the taxpayers are now also paying 10 percent interest on a multi-million dollar principal obligation.

Had the city settled or paid when first asked, the taxpayers of San Diego could have avoided \$2 million in interest – and climbing, and could have avoided the fee-on-fee amount associated with the trial, a number that is expected to be easily an additional \$1 million, for a total judgment of \$6.4 million. Prompt payment could have avoided a cost to the city of nearly \$3 million. Notably the city offered no witnesses in the recent trial.

Judge Dato's judgment was both legally and morally right. The City of San Diego once upon a time publicly and officially voted to indemnify and pay the defendant's attorney's fees, but then when called upon to act accordingly, it responded in a most disgraceful fashion finding it politically expedient to abandon the defendants to fend for themselves.

What these six innocent citizens have endured over the intervening years as a result of a continuing series of political and attorney-driven delay tactics by the City of San Diego is injury upon injury, with some of the press providing insults and misinformation. Based on past practices, the city will continue to pursue more delays and appeals in a politically motivated effort to kick the can further down the road and hope for lightning to strike, saving them from a bill which will easily rise to \$10 million.

The extraordinary attorneys who represented these innocent people were a dream team cobbled together by fate and circumstance from some of the best firms in California. They created both an efficient and formidable barrier to overreaching by San Diego City Attorney Michael Aguirre, San Diego District Attorney Bonnie Dumanis, and the George Bush appointed U.S. Attorney Carol Lam. All of the governments' massive cases disintegrated into pixie dust under proper scrutiny.

The defense lawyers in the underlying criminal case, *People v. Lexin* (filed May 17, 2005), are as follows: for Lexin (Gibson, Dunn & Crutcher LLP -- Nick Hanna lead attorney); for Saathoff (Coughlan, Semmer & Lipman, now Coughlan, Semmer, Fitch & Pott, LLP -- Jerry Coughlan lead attorney); for Torres (Sheppard, Mullin, Richter & Hampton LLP -- Bob Rose lead attorney, and later Greg Maizlish of the San Diego County Public Defender's Office); for Vattimo (Hahn & Adema, PC, now David A. Hahn Attorney at Law -- Jane Hahn and David Hahn lead attorneys); for Webster (Law Office of Frank Vecchione -- Frank Vecchione lead attorney); and for Wilkinson (Damiani Law Group APC -- Lisa Damiani lead attorney).

The inside story of this legal debacle is as grotesque a miscarriage of justice as any in the history of the country. It's time for the City of San Diego to end its delay tactics, stop the debt clock from running, and do the right thing.

Coffey is an attorney based in San Diego. He can be reached at daniel.coffey@sddt.com. Comments may be published as Letters to the Editor.



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