

THE RECORDER

132ND YEAR NO. 177

www.callaw.com

MONDAY, OCTOBER 13, 2008

An incisivemedia publication

Duane Morris ordered to pay big

*As co-plaintiffs,
firm and client
must pay \$3.4M
to San Francisco*

By Evan Hill
RECORDER STAFF WRITER

The law firm of Duane Morris saw first hand Friday why it can be risky for lawyers to become co-litigants with their clients.

After sinking millions of dollars into a contract suit against San Francisco — and winning a substantial jury award in 2007 — the firm saw San Mateo County Superior Court Judge Carol Mittlesteadt grant the city roughly \$3.4 million in attorneys fees and costs.

Mittlesteadt had already thrown out the jury's verdict earlier this year.

Because the Philadelphia-based firm was itself a co-plaintiff, as part of a fee arrangement with client Airis Holdings, Duane Morris could take a significant hit.

"We're of course disappointed, but we anticipated this outcome," said Oliver "Lock" Holmes, a Duane Morris partner, as he left court.

Mittlesteadt's decision marks a turn of the tables for Holmes and Duane Morris, no strangers to litigation against San Francisco. In 2007, Holmes was awarded repayment of costs and fees because an expert witness for the city had lied about his occupation.

In the current case, Holmes and fellow partner Richard Seabolt led the complicated breach-of-contract suit against the city, which stemmed from a failed 2003 negotiation between San Francisco and Airis, a company that builds and runs airport facilities. In December of that year, the county board of supervisors rejected Airis' bid to design and construct new cargo facilities at San Francisco International Airport.

When the airport decided to move ahead with its own plan, Airis sued in federal court. The company dismissed that action vol-



CITY WIN:
Former Deputy City Attorney David Newdorf, now with Newdorf Legal, argued Friday for the city in its long-running case against Airis Holdings and Duane Morris. Airis accused the city of reneging on an airport construction deal.

JASON DOY

untarily and eventually sued in San Mateo County. By that point, Duane Morris had assumed from Airis the right to pursue some of its claimed damages.

In exchange, the firm agreed to write off \$750,000 in fees, which was half of the amount Airis owed for the firm's help in the initial airport negotiations, said former Deputy City Attorney David Newdorf, now of Newdorf Legal, who saw the arrangement spelled out in a liquidation agreement disclosed by Duane Morris in discovery.

"I think perhaps because they were so involved themselves in the case, they didn't have the detached judgment that an attorney should have about the strength and weaknesses," said Newdorf, who has continued to

represent the city. "[They] undertook a financial risk that I think was larger than they truly understood."

Holmes said he has appealed Mittlesteadt's decision overturning the jury's verdict and will appeal the ruling on attorneys fees as well. He believes the judge assigned more liability to the firm than was warranted. He said Duane Morris was a "pass-through" claimant and shouldn't be on the hook for Airis' liabilities, noting it wasn't a party to the original contract. "The judge seemed to assume in her rulings that the contract could be assigned," he said.

Seabolt told Newdorf after the jury first ruled in favor of the firm that he was preparing to ask for \$5 million in attorneys fees,



REVERSAL:

San Mateo County Superior Court Judge Carol Middlesteadt overruled many of a jury's findings against the city of San Francisco in the Airis case.

JASON DOY

Newdorf said in an interview. Holmes said that figure was more in the area of \$3.5 million.

Newdorf estimated that Duane Morris spent a total of \$9.7 million on the suit, by adding the write-off, attorneys fees and costs to the award Middlesteadt gave the city on Friday. Holmes disputed this estimation as well, saying it was much lower, and noted that Airis has already paid the firm a “signifi-

cant amount” for its work.

Holmes said the city’s lawyers are “apoplectic” because he has prevailed against them in an estimated eight consecutive lawsuits in the last decade.

“What they’re doing here is ginning up a story on the attorneys fees issue, which are going to be set aside on appeal.”

Middlesteadt sided with the jury in part of her ruling: The city had breached its agree-

ment with Airis by not providing enough airport staff at a committee meeting about the plan, she wrote, but the statute of limitations had expired for that specific allegation.

The judge went on to overrule the jury’s three other findings, saying Duane Morris hadn’t shown that the board of supervisors would have approved the Airis plan had they gotten better information from airport authorities.

Holmes said that the plaintiffs didn’t need to prove that the supervisors would have approved the plan, since Duane Morris and Airis were only looking to recoup the losses incurred during negotiations, and not any lost potential profits.

Todd Schneider, founder of San Francisco plaintiffs firm Schneider Wallace Cottrell Brayton Konecky, and who was not involved with the Airis suit, said he had never heard of a law firm becoming a litigant in its own case and couldn’t think of a situation where it would be an effective strategy.

He said it was a risky business move and might be “a reflection of our economic times.”

Reporter Evan Hill’s e-mail address is evan.hill@incisivemedia.com.



Newdorf Legal represents business and public entities in state and federal trial and appellate courts. For more information about Newdorf Legal's big-firm results with small-firm attention and service, visit our website, www.NewdorfLegal.com, or contact David Newdorf at 415.357.1234 or david@newdorf.com.