

San Diego Settles Decades-Old, \$136M Business Park Dispute

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Law360, New York (November 18, 2015, 8:12 PM ET) -- San Diego's general fund won't pay a dime of the \$136 million it had earlier been on the hook for thanks to settlements that will see insurers pay \$33.2 million to resolve a decades-old dispute over a stalled development project, the city attorney announced Tuesday.

The dispute in question arose when the developer of the so-called Border Business Park sued the city in 1995 claiming breach of contract, following an agreement struck nearly a decade earlier for development of the 312-acre project in San Diego's Otay Mesa neighborhood along the Mexican border.

Four additional lawsuits, a jury trial and 20 years later, the city settled with entities controlled and owned by developer Roque de la Fuente II.

"From the city's perspective, it is a phenomenal outcome," Robert M. Howard, counsel for the city, told Law360 in an interview Wednesday. "From the verge of bankruptcy to an outcome where the city is made completely whole, over the course of 20 years, it's probably the biggest single legal turnaround story in the city's history."

Per the terms of the settlement, two former insurance carriers for the city of San Diego have agreed to pay \$8.2 million to the city and \$25 million to Border Business Park.

The settlement also paves the way for development of the business park.

"It's an excellent settlement. It's complex and it trades cooperation and integration in exchange for decades more litigation," David B. Casselman, counsel for the developer, told Law360 in an interview Wednesday.

"This settlement has created an opportunity for the parties to repair their decades of distrust and bad blood in

favor of incremental progress, cooperation, coordination and facilitation of a project that is going to be mutually beneficial for all the parties," Casselman added.

The City Council approved the settlement in a closed session on Tuesday, according to Goldsmith's announcement. Retired Judge Leo S. Papas oversaw the monthslong settlement process.

Following that initial lawsuit in 1995, the developer filed subsequent suits in 1999 and 2000. In 2001, a jury rendered a \$94 million verdict against the city, saying San Diego had breached its development agreement.

The city appealed, and that figure later grew to as high as \$136 million.

The dispute had been on track for a trial in the spring of 2016.

"It's a tremendous result for San Diego, and for the San Diego taxpayers," Cecilia O. Miller, who has represented the city on insurance matters related to the dispute for more than a dozen years, told Law360 in an interview on Wednesday.

"They can put the specter of these litigations basically in the rearview mirror and turn their focus to developing an area that holds a lot of promise for San Diego's future," she added.

The city of San Diego is represented by Robert M. Howard, Christopher W. Garrett, Jake Ryan and Clif Williams of Latham & Watkins LLP, Cecilia O. Miller of Procopio Cory Hargreaves & Savitch LLP, City Attorney Jan I. Goldsmith and San Diego Chief Deputy City Attorney David J. Karlin, Chief of Staff Travis Knowles of council member David Alvarez's office, Deputy Chief of Staff Felipe Monroig of the San Diego mayor's office, and Deputy Director Michael Richmond, Director Bob Vacchi and senior civil engineer Tony Khalil of San Diego's Development Services Department.

Border Business Park is represented by David B. Casselman of the Casselman Law Group, Vincent J. Bartolotta Jr. of Thorsnes Bartolotta McGuire LLP and David Wick, CEO of de la Fuente Enterprises.

The cases are Border Business Park Inc. v. City of San Diego (1995), case number 692794, National Enterprises Inc. v. City of San Diego (1999), case number 730011, Otay Acquisitions LLC v. City of San Diego (2000), case number 753247, Otay Truck Parking LP v. City of San Diego (2009), case number 37-200900095661, and Border Business Park Inc. v. City of San Diego (2011), case number 37-201100090494, all in the Superior Court of the State of California, County of San Diego.

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