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**SAN FRANCISCO AWARDED \$3.4 MILLION IN ATTORNEYS FEES
AGAINST A TEXAS DEVELOPER AND ITS LAW FIRM.**

SAN FRANCISCO, October 13, 2008 —A San Mateo County (California) judge ordered a large national law firm and a Texas developer to pay the City and County of San Francisco \$3.43 million in attorneys' fees and costs for its unsuccessful four-year legal battle against the San Francisco International Airport. This is the largest fee ever awarded to the San Francisco City Attorney's Office for its successful defense of a lawsuit.

Developer Airis Holdings LLC of Houston, Texas, and its attorneys from Duane Morris LLP had sued San Francisco for breach of contract stemming from the City's rejection of a proposed \$250 million air cargo facility at the airport. The Board of Supervisors voted against the project in December 2003, citing concerns over the sufficiency of lease payments to the Airport, use of a private developer to build and manage the facility, and the fairness of the process by which Airis had been granted exclusive negotiation rights for the project.

The case is unusual both for the size of the fee award and the fact that a major law firm is liable for its opponent's fees and costs, said San Francisco litigator David Newdorf, who represents the Airport. Duane Morris entered into an arrangement with Airis whereby the law firm wrote-off \$750,000 in legal fees owed by Airis for an assignment of the developer's right to sue. The developer and law firm then joined as plaintiffs in the lawsuit against the City.

In explaining the size of the fee award at a court hearing on Friday, October 10, 2008, San Mateo Superior Court Judge Carol L. Mittlesteadt said that the case had been "litigated, and litigated, and litigated" since it was filed in 2005. She praised the legal work done by the San Francisco City Attorney's Office as "excellent" and comparable in quality to major national law firms that undertake similar complex litigation. Newdorf headed the defense as a Deputy City Attorney and continued to represent the City after he opened his own litigation firm in San Francisco, Newdorf Legal.

Aaron Peskin, president of the San Francisco Board of Supervisors, said: "David Newdorf's tireless advocacy made the difference and saved taxpayers millions of dollars."

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Airis Holdings LLC develops and manages air cargo facilities around the world. Duane Morris LLP employs more than 700 lawyers in 24 offices from coast to coast in the U.S., in Europe and Asia. Duane Morris was ranked the 71st largest law firm in the United States based on 2007 gross revenue, according to *American Lawyer* magazine.

Duane Morris's lawsuit against San Francisco was marked by ups and down for both sides. The developer originally pressed claims for lost profits, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel and unjust enrichment. The developer and their lawyers sought \$40 million and were motivated to take the case to trial, Newdorf said.

Facing numerous legal and factual theories, the City Attorney's Office mapped out a legal strategy to eliminate the developer's claims one by one, according to Newdorf. After two years of discovery and pre-trial motions, the case had been reduced to only three legal theories and a monetary demand of \$2.1 million. At a five-week trial in May and June 2007, the City prevailed on two of the three claims, but was hit with a jury verdict of \$1.05 million for breach of the implied covenant of good faith and fair dealing.

The City filed a post-trial motion for judgment notwithstanding the verdict (known as a JNOV motion). In granting the City's motion, the judge ruled that Airis's and Duane Morris's claims and evidence were insufficient as a matter of law and threw out the verdict. The Exclusive Negotiation Agreement between Airis and the City required the loser in any lawsuit concerning the agreement to pay reasonable costs and attorneys fees to the prevailing party. The post-trial order granting judgment in favor of the City laid the groundwork for the fee application that was granted last week.

"We're of course disappointed, but we anticipated this outcome," Duane Morris partner Oliver Lock Holmes told a reporter as he left court. Duane Morris said it would appeal the rulings.

"Perhaps because they were so involved themselves in the case, Duane Morris didn't have the detached judgment that an attorney should have about the strengths and weaknesses of its case," said Newdorf. "The firm undertook a financial risk that I think was larger than they truly understood."

The case had high stakes for both sides. If the developer had won, the City would have been liable for the \$1 million verdict and an additional \$4 million to \$5.5 million in attorneys fees and costs incurred by Duane Morris. Including the fee award to San Francisco, the litigation has cost Duane Morris and its client \$9 million or more, Newdorf estimated.

Newdorf said that Airis knew going into the negotiations with the Airport that there would be no deal unless and until the Board of Supervisors approved the project and that the developer bore the financial risk that the Board might not approve it.

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“This award is fair and reasonable compensation for the thousands of hours of attorney time required to fend off this lawsuit,” Newdorf said. “But the taxpayers will never recoup the true cost of the litigation because the City will not be compensated for the thousands of hours that Airport and City officials were required to spend on this lawsuit.”

ABOUT NEWDORF LEGAL

David Newdorf has represented businesses and public entities in trials and appeals for 14 years. He was a litigator at the San Francisco office of O’Melveny & Myers LLP and a trial attorney and supervisor at the San Francisco City Attorney’s Office. He has been lead counsel in hundreds of lawsuits, including class actions and high-stakes commercial disputes. He founded Newdorf Legal to provide business and public entities large-firm results combined with small-firm service and attention. For more information, visit the firm’s website, <http://www.newdorfllegal.com>.

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