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Judge considers motion to dismiss in long-running public corruption case

By **Amanda Schallert**

A San Bernardino County Superior Court judge will consider a motion to dismiss the most serious criminal charges in one of the state's largest public corruption cases, after two days of arguments over the crux of a grand jury indictment and the integrity of attorneys on both sides.

In the long-running dispute, Colonies Partners LP developer Jeffrey Burum allegedly bribed four San Bernardino County officials in a \$102 million settlement in 2006. Prosecutors said Burum paid former supervisor Paul Biane, former assistant county assessor James Erwin and the former supervisor's chief of staff Mark Kirk \$100,000 each, in addition to other gifts. The agreement concluded a lawsuit between the county and developer over how much the county should pay for flood control damages. The criminal trial is set for October.

The Johnson motion debated Friday in front of San Bernardino County Superior Court Judge Michael A. Smith alleged prosecutorial misconduct leading to the grand jury indictment in 2011. The defense maintains Deputy Attorney General Melissa Mandel and Deputy District Attorney Lewis Cope did not present exculpatory evidence to the grand jury while trying to prove the criminal intent of Burum and officials. If missing evidence results in a substantial prejudice from a grand jury, parts of an indictment can be dismissed.

The motion alleges that prosecutors tried to prove the 2006 settlement was so outlandish it must have been corrupt. The defense alleges prosecutors limited testimony supporting the reasonableness of the settlement, namely from County Counsel Mitchell Norton and other former county counsel.

The county and its attorneys had said the colonies settlement was reasonable - and even a good deal - in several related civil cases at the same time the grand jury hearings were taking place, said Burum's lawyer Stephen G. Larson, a partner at Arent Fox LLP.

In the related civil cases, the county took on the San Bernardino Associated Governments, or SANBAG, and the California State Association of Counties Excess Insurance Authority, CSAC, to try to recover some of the money paid during the settlement and obtain insurance coverage. Some experts in those cases said the county could have ended up paying up to \$300 million to Colonies if it hadn't settled.

The grand jury did receive a Johnson letter from Burum before the indictment discussing the SANBAG litigation and the perceived reasonableness of the settlement. Judge Smith denied a similar Johnson motion last year.

On Friday, Erwin's attorney Rajan R. Maline said "the county can't have it both ways" and accused prosecutor Mandel of twisting words to mislead the grand jury.

In response, Mandel said Larson and Maline had made false claims to gain a tactical advantage, accusing them of trying to mislead the judge.

Judge Smith said he was concerned the grand jury could have misinterpreted Norton's opinion. Norton's testimony was limited and only showed he believed the settlement was

unreasonable in 2006 - not that he had changed his mind by 2011, Smith said.

Smith said he will give his decision Jan. 15.

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