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Native American Co. Owed \$8M For 'Game-Changer,' Jury Told

By **Aaron Keller**

Law360, Stamford, Conn. (October 31, 2023, 7:51 PM EDT) -- A Native American-owned company that claims to have lined up a lucrative Procter & Gamble deal for a producer of herbal fragrances told a jury on Tuesday that it should be paid at least \$8 million in damages on a 2006 contract that fell apart.

During opening statements before a jury of six, Native Materials LLC said it inked a deal with Monroe, Connecticut-based fragrance maker Carrubba Inc. to act as a Native American-owned supplier to P&G, thus meeting corporate diversity and minority ownership requirements imposed by both P&G and preferred by major retailers. However, Native Materials claims Carrubba cut it out of the deal more than 15 years ago, choosing instead to work through Harris & Ford LLC, another minority-owned distributor, **court filings** indicate.

"This was the opportunity of a lifetime," said Eric Grayson, an attorney for Native Materials, in characterizing Carrubba's interest in the P&G deal. "This was a game-changer."

He said Carrubba had for years unsuccessfully courted P&G, which is not a party in the case, sending in more than 130 fragrance samples that apparently resulted in dead ends.

However, industry veteran Grant Mudge of Shaw Mudge & Co. joined forces with Choctaw Nation member Kimberly Chambers of Oklahoma to create Native Materials, according to its 2016 **complaint**. Chambers was the company's majority owner, and Mudge's company was a minority member.

Mudge had worked for years with P&G predecessor Clairol, earned a preferential position in the P&G supply chain, and secured a deal whereby Carrubba would produce fragrances for P&G with Native Materials' assistance, Grayson said.

Contracts shown to the jury during opening statements suggested that Carrubba, formerly of Milford, was to pay Native Materials what Grayson called a 20% "finder's fee."

"He brought to Carrubba the keys to the kingdom," the attorney continued, again referring to Mudge. "He gave them this seat at the table."

Grayson explained to the jury P&G's worldwide scale and importance as an economic driver in the fragrance industry. He said it was using the fragrances at issue in its Herbal Essences shampoo line.

Grayson added that Chambers was "entrepreneurial like you'll never believe" and "not a figurehead."

"This is a real company being run by a Native American woman working hard," he told the jury. "This was Kim's company to run. Grant may have negotiated the contracts with P&G, but Kim was running the day-to-day operations, to the exclusion of Grant."

Native Materials is seeking between nearly \$8.4 million and nearly \$8.9 million in damages as a starting point. It also wants 10% prejudgment interest, 8% interest under a Connecticut law that provides additional recovery for unrequited pretrial settlement offers, and attorney fees and punitive damages under the Connecticut Unfair Trade Practices Act.

The damages request is based on an estimated \$22.1 million in past and \$22.3 million in future Carrubba sales to P&G, Grayson said.

He cautioned the jury to consider Native Materials as an independent contractor, not an agent or partner to Carrubba.

"They're going to try to twist the words," he said of Carrubba.

The contract between the parties called for Native Materials to receive 20% of P&G's payments to Carrubba under an arrangement the deal described as similar to a "standard distributor fee," but the parties appear to have disagreed with describing Native Materials' actions as that of a "distributor," a joint trial management report suggests.

Native Materials called itself a "diversity supplier," but Anthony Musto, a lawyer for Carrubba, characterized it as a "buyer's agent for Procter & Gamble" that was banned under P&G's ethics rules from earning a separate "back end" fee directly from Carrubba after earning a "front end" fee from P&G.

P&G nixed the arrangement, according to Musto. Native claims its 20% fee agreement with Carrubba remained intact, but Carrubba says Native discussed shredding the contract after P&G's concerns became apparent.

Musto further claimed Carrubba needed no introduction to P&G. **He told the jury** Native Materials shut down in 2007 without doing any distribution work for his client, only to be "brought back to life, reinstated" for the purposes of suing Carrubba.

"Without distribution, you don't get a fee," Musto said, elsewhere calling the contract "void by its own words in 2006."

He also noted that P&G stopped working with Mudge altogether after the Native Materials deal unraveled. He further bemoaned that many "documents have been destroyed" that might have otherwise filled in several heavily contested factual gaps.

"Native didn't do what Carrubba hired it to do," Musto concluded.

Though Musto characterized the breakdown as the result of Native Materials' violations of P&G's ethics rules, Grayson urged the jury to conclude that Carrubba wrongly interfered with a valid deal and hid its future dealings with P&G from Native Materials to avoid paying the contemplated 20% fee.

Both sides cautioned jurors to examine the contracts and draw their own conclusions.

Among the issues in the case are whether the agreement was legal, whether Native Materials can recover on Carrubba's direct and indirect sales to P&G, and whether CUTPA's **treble damages and fee-shifting provisions** may increase a hypothetical verdict in Native Materials' favor.

Grayson told Law360 on Tuesday that Native Materials was committed to vindicating its legal rights and would continue to push the case forward through the ensuing week.

Attorneys for Carrubba declined to comment Tuesday.

Native Materials is represented by Eric D. Grayson of Grayson & Associates PC.

Carrubba is represented by Daniel D. Portanova of the Law Office of Daniel D. Portanova PC, Dennis J. Kokenos of Marino Zabel & Schellenberg PLLC, and Anthony Musto.

The case is Native Materials LLC v. Carrubba Inc., case number FST-CV16-6030190-S, in the Stamford-Norwalk Judicial District of the Connecticut Superior Court.

--Editing by Adam LoBelia.

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