October 25, 1988

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
RECENT LITIGATION: SAN YSIDRO DEVELOPMENT COMPANY V. CITY OF SAN DIEGO, ET AL. (DEVELOPER'S SUIT FOR DAMAGES BASED ON HIGH CITY WATER PRESSURE)

The Superior Court, on October 11, 1988, rendered a ruling in favor of the City of San Diego granting the City's motion for summary judgment based upon a writ of mandate obtained by the City from the Fourth District Court of Appeal. The litigation will proceed to trial between the remaining parties without the City.

FACTS

In early 1984, the plaintiff in this litigation constructed a 66-unit apartment complex at 2005-2065 Alaquinas Drive, San Ysidro, for the San Diego Housing Commission. As part of the permit process, the plaintiff filled out a water meter data card and was informed by the City that the normal maximum City water pressure at the project would be 60 pounds per square inch and that pressure regulators were not required.

On August 30, 1984, plaintiff was notified by the Housing Commission that the development had sustained damage to a retaining wall and to the adjacent parking lots and landscaping. Upon investigation, plaintiff discovered that an irrigation line was leaking in a number of places. The plaintiff alleged that the water from the failed irrigation system percolated under the parking lots towards a retaining wall and caused extensive damage to the parking lot paving and retaining wall. The irrigation system was shut off to prevent further damages. This, in turn, caused the lawns and landscaping plants to die.

About January 21, 1985, the Housing Commission notified plaintiff it was withholding $90,000.00 of plaintiff's funds which were being held in an escrow account. This precipitated the filing of the complaint by the plaintiff developer against the City and the Housing Authority/Commission.

Plaintiff was notified in April 1985 by the Housing Commission that fire sprinkler heads installed in the development had malfunctioned causing interior damage to units located at the development. The fire sprinkler system was also shut down to prevent further damages.

In November 1985, it was learned that water pressure supplied by the City generally was in the range of 125 to 150 psi, with pressure spikes to 200 psi. This was more than double the pressure stated on the water meter data card.

The plaintiff alleged that the failure of the irrigation lines and the fire sprinkler system were attributable to the fact that the installed systems could not withstand the high water pressures and pressure spikes that they were being subjected to, since no pressure regulators had been installed.

The plaintiff also claimed that the high City water pressure contributed to the failure of the "Qest" flexible plumbing domestic water supply installed in the apartment buildings.

Plaintiff's legal theories regarding the City included negligence, negligent misrepresentation, detrimental reliance, and equitable indemnity.

DAMAGES

The Housing Commission listed its damages to the apartment complex as being $1,702.703.86 as of September, 1988. The plaintiff, in turn, alleged that the City's negligence and negligent misrepresentation were responsible for the majority of the damages and claimed that the plaintiff was entitled to be indemnified by the City for any damages it had to pay to the Housing Commission. The Housing Commission earlier had cross-complained against the plaintiff for construction defects and breach of warranty and other damages.

THE LITIGATION AND COURT DECISION

In addition to the original complaint, cross-complaints for indemnity and contribution were filed against the City by Miller Paving Corporation, Shell Oil Company, and the United States Brass Corporation. All three of these cross-complainants alleged that the City was responsible for the damages at the development.

On May 4, 1988, the City calendared a motion in the Superior Court for summary judgment and summary adjudication of issues based on the immunities contained in Government Code section

818.8/822.2 (misrepresentation) and Municipal Code sections 67.08 and 67.12 (hold harmless from damages arising from low or high pressure conditions or pressure fluctuations). This motion was denied.

The City filed a writ of mandate with the Fourth Appellate District on May 28, 1988 to have the ruling overturned. The Fourth District Court of Appeal, Division One, on July 28, 1988, granted the City's petition for a peremptory writ of mandate based on its California Government Code immunity for misrepresentation. Thereafter, the plaintiff had 90 days to

appeal that decision but did not do so.

The plaintiff attempted to avoid the City's tort immunity by twice setting motions to file a third amended complaint alleging a breach of contract based on the water meter data card. These attempts were thwarted when the City's opposition to the motions was successful in Superior Court. In addition, the City was successful in continuing the August 15, 1988 scheduled trial to a later date pending issuance of the certified final decision on the writ of mandate by the Fourth District Court of Appeal.

Thereafter, on September 28, 1988, the Court of Appeal issued a remittitur to the Superior Court certifying its decision as final. Subsequently, Superior Court Judge Arthur W. Jones heard arguments from the parties as to the meaning and effect of the writ of mandate. He granted the City's motion for summary judgment against the plaintiff and Miller Paving on October 11, 1988.

Negotiations are presently in progress between the City and Shell Oil Company to have the last remaining cross-complaint against the City dismissed. A trial involving the plaintiff and the Housing Authority/Commission has been set for January, 1988. A separate trial on the cross-complaints will follow the primary trial.

Deputy City Attorney Larry E. Renner represented the City in the Superior Court and the Fourth District Court of Appeal.

Respectfully submitted,
JOHN W. WITT
City Attorney

LER:lh:Lit(x043.1)
RC-88-52