

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

CASEY GWINN  
CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Casey Gwinn**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1200  
SAN DIEGO, CALIFORNIA 92101-4184  
TELEPHONE (619) 533-5800 FAX (619) 533-5847

August 29, 2003

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

*MARIO BLANCO V. CITY OF SAN DIEGO*

## INTRODUCTION

Mario Blanco suffered broken ribs and a punctured lung as the result of a bicycle accident on Torrey Pines Road. He sued the City alleging that a sunken water valve cover caused the accident. The case was tried before a jury, and on August 13, 2003, the jury returned a defense verdict in favor of the City.

## FACTS

In the afternoon of July 15, 2001, Plaintiff was riding his bicycle south on Torrey Pines Road across from the campus of the University of California at San Diego. Plaintiff was a competitive cyclist, having competed in over 100 triathlons, and he was riding an ultralight road racing bike with extremely thin tires. As he crossed the intersection of Expedition Way, Plaintiff claimed that he moved to his right into the crosswalk across Expedition Way to stay as far away from traffic as possible. As he moved into the crosswalk, he claimed that his front wheel went off a 1-inch separation between two slabs of concrete, and into a 2-inch deep, 15-inch diameter hole created by a water valve cover that was below the surface of the street. According to Plaintiff, these two actions caused him to lose control of his bicycle and pitch over the handlebars.

Plaintiff landed on his left side in the street, breaking three ribs. One of the broken ribs punctured his left lung, and his lung collapsed. Paramedics transported Plaintiff to the hospital, where he stayed for four days as his lung was re-inflated with a chest tube. Plaintiff consequently

missed two months of work as a food salesman to large companies. Plaintiff's total medical expenses and lost wages were \$35,000.

### **LITIGATION**

Plaintiff sued the City alleging that a dangerous condition of public property caused his injuries and damages. The City's investigation revealed no previously reported accidents attributable to the sunken cover. However, City standards require water covers to be installed flush with the street surface. It could not be determined when the valve cover had been installed, and whether it had been installed improperly or had somehow sunk below the level of the roadway over time.

At trial, Plaintiff's bicycle expert testified that the hole created by the cover was dangerous to bicyclists, and that Plaintiff's move to the right in the intersection was safer than staying in the bike lane and near traffic. The City's bicycle expert testified that it would be safer to stay in the extension of the bike lane through the intersection, because the bicycle rider would be more visible to traffic. The City's bike expert showed a video in trial in which he rode his bike over the hole created by the sunken cover several times, proving that a bicyclist who sees the hole can ride over it without losing control. However, on one of the runs the bike suffered a flat tire and damaged rim. The City's expert thus conceded that the hole could be a hazard for bicyclists who did not see it.

In his trial testimony, Plaintiff admitted that he was not sure what his bike had hit. Plaintiff had not seen the hole or cover at the time of his accident, and he only speculated that he had hit it upon returning to the scene after being released from the hospital. Plaintiff's attorney, Richard Verlasky, argued that the hole was a dangerous condition that caused the accident, and he asked the jury for an award of \$85,000. Deputy City Attorney David Engel-Brodie, who tried the case on behalf of the City, argued that Plaintiff was not using due care and should have seen the hole if he had been paying attention to the road in front of him.

The jury trial lasted three days in Superior Court before the Honorable J. Richard Haden. On August 13, 2003, the jury returned a verdict in the City's favor finding that, although the sunken valve cover was a dangerous condition, Plaintiff could not prove that it was the cause of his injury.

Respectfully submitted,

CASEY GWINN  
City Attorney

DEB:aml:Civ.  
R-2003-23