

January 14, 1986

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Re: Michael McCauley, et al. v. State of California, et al.

On February 4, 1980 at approximately 11:00 p.m., the plaintiff, Mr. Michael McCauley, a 21 year old sailor stationed in San Diego together with a group of friends, drove to the cliff area above Blacks Beach. The evidence indicated that the plaintiff and his friends had been consuming alcohol during the day and while at the cliff area. The night in question was foggy and it had been raining earlier in the evening. The plaintiff left his group of friends allegedly to go to the bathroom and was not seen again until approximately 3:30 on the morning of February 5, 1980 when he was located at the bottom of the cliff having fallen from an area near what is known as "Goat Trail." The plaintiff was removed from the area by San Diego Lifeguard Service, San Diego Police and Medivac Service. The plaintiff was hospitalized at Scripps Hospital from February 4 to February 8, 1980 and at Balboa Naval Hospital from February 8, 1980 through May 23, 1980 and at the Veterans Administration Hospital in Ann Arbor, Michigan from May 23, 1980 through September 26, 1980. He remained in a coma for approximately 3 1/2 months following his fall.

The plaintiff was diagnosed as having a brain injury resulting in seizure disorder, a right side spastic hemiparesis and bone abnormality secondary to a fracture resulting in limited use of the right upper extremity which reduced grasping, gripping and reduced use of the lower right extremity relative to walking, standing and climbing. In addition, he has no ability to stoop, squat or kneel. The mental disorders include slurred speech, difficulty with memory, reasoning deficiency such that the plaintiff is alleged to be unemployable and functionally incompetent.

The case was bifurcated and only the issue of the City's liability and the contributory negligence of the plaintiff was tried. Trial commenced before the Honorable Judge Harelson in Department 29 of the San Diego Superior Court on September 17,

1985 and was completed on October 11, 1985 and was submitted to Judge Harelson for decision, a jury having been waived by both sides.

On November 20, 1985, the court rendered its tentative

decision wherein it determined as follows:

1. The court found that the cliff area above Blacks Beech constituted a dangerous condition of public property within the meaning of the Government Code.

2. The court found that the area in question constituted a natural condition of public property within the meaning of Government Code section 831.2 and that the signing and other markings existing at that location were not sufficient to remove the condition from its unimproved state. The court therefore found that The City of San Diego was immune from liability.

3. The court further found that pursuant to Government Code section 831.4 if the plaintiff fell from the trail commonly known as Goat Trail that The City of San Diego was again immune pursuant to the Government Code section.

4. The court determined that an independent duty to warn the plaintiff of the condition of the cliffs did not exist in the instant case.

5. The court found that there was no evidence that any improvements by The City of San Diego misled the plaintiff or created any expectations on the part of the plaintiff which in any way contributed to the accident in question. The court therefore distinguished the case of *Gonzales v. City of San Diego* and found that liability had not been established. The court out of an abundance of caution indicated that in the event liability had been found on behalf of The City of San Diego that the contributory fault of the plaintiff for not utilizing due care for his own safety would have resulted in a verdict of 85% liability on the plaintiff's behalf and 15% on the part of The City of San Diego for its dangerous condition of public property.

The City of San Diego was represented in this matter by Senior Chief Deputy Ronald L. Johnson.

Respectfully submitted,
JOHN W. WITT
City Attorney

RLJ:db:Lit(x043.1)
RC-86-2