

September 26, 1988

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
BALLARD, ET AL. v. CITY OF SAN DIEGO, ET AL.
(1983 FLOODING OF 19th AND PALM AREA)

We are pleased to inform you of favorable jury verdicts, court decisions and a settlement as to two plaintiffs after a trial of this case.

FACTS

Plaintiffs are 16 owners of residential properties, an owner of a commercial building and four lessees of the commercial building. The properties are located in the vicinity of 19th and Palm Avenue adjacent to Imperial Beach on Palm Avenue, Dahlia Street and Donax Street.

The residential properties are nine single family dwellings on eight lots and a three-unit apartment house. The properties suffered flood damage on three days in February and March, 1983. The area lies at a low elevation and was annexed to the City of San Diego from the County in 1957.

Nestor Creek runs through the area commencing east of I-5, passing under 19th Street just south of Palm Avenue then going under Palm Avenue at 18th Street and eventually into a low lying area where the Otay River drains about a mile from San Diego Bay.

A culvert that allows water in Nestor Creek to pass under 19th Street was built in 1953 and has been owned by the City since annexation. The culvert under Palm Avenue was owned by the State at the time of the flooding. The City owns a drainage easement for part of the channel between 19th and 18th Streets.

Some of the plaintiffs' properties had suffered some flooding from overflow of Nestor Creek before 1983, and the owners were paid relatively small sums of money for damage to carpets and furnishings by the Risk Management Department.

In February and March of 1983, plaintiffs were flooded by waters from several sources. Water from the Nestor Creek channel flowed through a pipe designed to drain low lying lots into the creek when the water level rose and began flowing through the pipe onto the low lying lots. As the water rose it overflowed the channel and crossed Dahlia to the south. Street drainage waters also flooded many of the properties. Water levels inside the buildings reached levels of several feet.

THE LITIGATION

Plaintiffs alleged that the flooding was caused by: inadequate capacity of the creek channel and culverts under 19th Street and Palm Avenue; lack of maintenance of the channel; allowing development upstream; refusal to pump water out of a vacant lot between storms; the plugging and removal of drain pipes and raising the streets without providing proper drainage.

Plaintiffs sought to recover for damage to real and personal property, diminution in value of real property, emotional distress and as to some houses, structural problems due to soil settlement. Their initial demand at settlement conference was in excess of 1.5 million dollars. Shortly before trial the plaintiffs' attorney conveyed a verbal statement that the case could settle for \$600,000.00 - \$800,000.00.

Upon recommendation of the City Attorney's Office the Council authorized us to settle the case for the total sum of \$321,836. A statutory offer was made to all plaintiffs in varying amounts, totalling \$321,836.00. Four plaintiffs settled for a total of \$63,527.07 and the insurance companies insuring several plaintiffs settled for \$25,779.00.

THE TRIAL

The case proceeded to trial as to the remaining 17 plaintiffs on May 3, 1988. A jury decided negligence issues of nuisance and dangerous condition of public property while the court decided the issues of inverse condemnation. The State of California was a defendant as to its culvert under Palm Avenue on a theory of inverse condemnation only.

The jury returned defense verdicts in favor of the City as to all plaintiffs except for James and Gretchen Miller whose property received waters deflected from 19th Street by a traffic control berm. The judge rendered a decision of no liability to any plaintiff for inverse condemnation as to both the City and the State.

The trial had been bifurcated to try the issues of liability separately from issues of the amount of damages. Rather than proceed with a second trial on the issue of the Miller's damages the parties reached agreement on the amount of \$1,805.80 including costs.

In view of the fact that the remaining plaintiffs did not recover any amounts from the City we filed a motion to recover costs pursuant to the statutory offer provisions seeking to recover our expert witness fees in the amount of \$146,864.15 in addition to ordinary costs in excess of \$8,000.00. The recovery of expert fees is discretionary with the court and has not been ruled on as of this date by Judge Mack P. Lovett who presided over the trial.

Most of the same plaintiffs in this suit have sued the City for flooding damages occurring in 1984 and 1985 and we are attempting to arrive at a reasonable settlement of those actions.

It is our intent to discuss settlement of the 1984 and 1985 cases along with the issue of street drainage improvement solutions in the near future in closed session.

Respectfully submitted,

JOHN W. WITT

City Attorney

CAS:dk:Lit.(x043.1)

RC-88-48