REPORT TO THE HONORABLE
  MAYOR AND CITY COUNCIL
ALMELEH V. CITY OF SAN DIEGO
SAN DIEGO SUPERIOR COURT CASE NO. 579063

Plaintiff, a 57 year old U.S. Postal deliverer, brought this action against the City of San Diego for personal injuries. He alleged that the City negligently left a garbage can lid in the middle of the sidewalk on Doliva Street in San Diego after trash was picked up. Plaintiff alternatively alleged that the lid constituted a dangerous condition of public property.

FACTS

On January 15, 1986, at approximately 11:00 a.m., plaintiff parked on Doliva Street and proceeded to walk down the street to make his first mail drop. He was walking down the sidewalk sorting his mail in his hand when his foot stepped on the edge of a lid. Plaintiff fell backward and fractured his left ankle requiring steel plates and pins.

Plaintiff alleged that the City Waste Management Department emptied the trash approximately 30 - 45 minutes prior to plaintiff's fall and therefore, the City Waste Management Department placed the lid on the sidewalk in a negligent manner.

The City contended that the condition was open and obvious, and that if negligent placement by the City could not be proved, there was no notice to the City that the lid was in the middle of the sidewalk prior to the incident.

LITIGATION

Jury was waived by both parties and the case proceeded to trial before the Honorable Michael I. Greer. After plaintiff rested his case, the City moved for judgment in its favor on the ground that plaintiff had failed to prove that a City employee had negligently put the lid in the middle of the sidewalk. The court granted the City's motion for judgment declaring that the City did not have exclusive control over the lid's position for

30 - 45 minutes. The lid could have been moved into its ultimate position and, therefore the plaintiff had not proved negligence on the part of the City.

Deputy City Attorney Leslie E. Devaney tried the case on behalf of the City of San Diego.

Respectfully submitted,
JOHN W. WITT
City Attorney

LED:cj:Lit(x043.1)

RC-90-37