

July 1, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

SUMMITT V. CITY OF SAN DIEGO, ET AL.

We are pleased to inform you of a favorable ruling by the court at the trial of this case which should result in a judgment in favor of the City when approved as to form by counsel and signed by the judge.

FACTS

Plaintiff, Lois C. Summitt, owns a single family residence at 1856 Nautilus Street, La Jolla. She sued the City to recover damages due to soils movement related damage to her property resulting from the City's activities in constructing Nautilus Street and placement and testing of fill soils comprising a portion of Mrs. Summitt's lot in the mid-1960's. Mrs. Summitt claimed her damages to be in excess of \$350,000 not including interest and attorney's fees. She became aware of damage to her property in 1989.

THE TRIAL

The City asserted that plaintiff was barred from recovery by a 10-year statute of limitations which commenced to run at the time the City completed the grading in 1966. Plaintiff claimed the statute of limitations was not applicable to a public entity. This issue was tried on agreed facts without a jury with Judge William C. Pate presiding. Judge Pate ruled on June 27, 1991 that the statute applied to the City and that plaintiff was barred from proceeding on the merits of her case. A judgment to that effect should be entered in the near future. Plaintiff's counsel has indicated he may appeal the trial court's ruling. Chief Deputy C. Alan Sumption tried the case on behalf of the City.

Respectfully submitted,
JOHN W. WITT
City Attorney

CAS:dk:Lit.(x043.1)
RC-91-35