



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

Item No.
6

Meeting Date: **FEBRUARY 10, 2011**

Subject:

Authorize the Rejection of the Claim of Maureen Rafael

Recommendation:

Adopt Resolution No. 2011-0016, authorizing the rejection of the claim of Maureen Rafael.

Background/Justification:

On January 12, 2011, Maureen Rafael ("Rafael") filed a claim with the Authority alleging that on July 12, 2010, she injured her knee when she fell on the sidewalk near the Southwest Airlines check-in area at Terminal One at San Diego International Airport. Rafael claims damages in an unknown amount to include medical expenses, lost income and emotional costs.

Rafael alleges in her claim that on July 12, 2010, she was dropped off at the curb area in front of Southwest Airlines. As she walked to the end of the line of passengers waiting to check their luggage she lost her balance and fell when one of two wheeled suitcases she was pulling behind her became "temporarily stuck" in something in the sidewalk. Rafael claims other passengers helped her to a bench where she called a friend to transport her to an emergency room to have her injuries evaluated and treated.

Rafael's claim should be denied. It appears from the claim that Rafael's attention was on another group of passengers when she was pulled off balance by one of two suitcases she was pulling behind her as she states. In addition, the sidewalk area in front of all terminals at San Diego International Airport are inspected for dangerous conditions on a regular basis by Authority personnel. The general area where Rafael claims she fell was thoroughly inspected in May, 2010, when the Pacific Flyaway exhibit was installed. The Pacific Flyaway exhibit, part of Phase I of the Authority's Capital Improvement Plan, is a public art installation located at the exterior plaza and sidewalks of Terminal One. An investigation into the incident revealed no unsafe condition of public property nor any notice of an unsafe or dangerous condition.

Fiscal Impact:

Not applicable.

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Environmental Review:

- A. California Environmental Quality Act: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

SUZIE JOHNSON
PARALEGAL

ATTACHMENT

JAN 12 2011

Maureen R. Rafael

San Diego County Regional Airport Authority

Document No. CL-137

Filed 1/12/2011

January 11, 2011

San Diego Regional Airport Authority Board of Directors:

Mr. Bruce Roland, Mr. Greg Cox, Mr. Jim Desmond, Ms. Ramona Finnila,
Mr. Robert Gleason, Mr. Jim Panknin, Mr. Paul Robinson, Mr. Tom Smisek,
and ex-officio members Ms. Laurie Berman and Colonel Frank Richie

Third Floor, Commuter Terminal
3225 North Harbor Drive
San Diego, California 92101

Re: Story of an injury sustained at San Diego's Lindbergh Field Airport

Dear Members of the San Diego Regional Airport Authority Board of Directors:

This is a story about an individual (myself) who fell and sustained a serious injury at your airport. My intention in telling you this story is to turn your attention to the cause of that fall. My intention in writing this letter is to ask you to focus your attention on two important questions: (1) "What remediation needs to be done to the sidewalk in front of Southwest Airlines at Lindbergh Field so that this story is never repeated?"; (2) "Given that the individual whose story is being told here has chosen not to file a personal injury lawsuit that could run to great expense of money, time and effort on both sides, should she be compensated for the expenses directly related to her injury received at San Diego Lindbergh Field Airport?" Herewith, the story . . .

At approximately 6:10 am on the morning of July 12 of 2010 I was dropped off in front of Southwest Airlines at the San Diego Airport by my friend, David Beardsley. He dropped me and my two carry-on bags off at curbside and then drove away. Pulling my rolling carry-on bags behind me – one in each hand – I started walking towards the end of the long line that had formed at the Southwest outdoor check-in counter.

I noticed that a couple with a "differently abled" pre-teen child in a wheelchair was walking in the same direction near me. When the thought dawned on me that their experience of life was probably very different from that of the average American family, my heart went out to them. All of a sudden, I observed that the woman/wife who was pushing the wheelchair was struggling a little with the wheelchair. Apparently one of its wheels was temporarily caught in something. Almost immediately the wheels of the suitcase in my right hand also got caught and temporarily stuck in something in the sidewalk. The next thing I knew I was fighting for my balance and then heading towards the ground.

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I took the brunt of the fall on the heels of both hands and my right knee, less so on my left knee. The couple I just mentioned rushed up to help me. Their faces showed concern; their voices were solicitous. I acknowledged their concern and asked them to give me a moment to collect myself. It took me several moments to straighten my legs out in front of me. The heels of my hands were burning a little and my right knee hurt a lot. So I did what was easiest -- I straightened out my left leg first. When I went to straighten out my right leg I experienced a lot more discomfort. But slowly, slowly, I was able to straighten it out. When I reached down to rub my right knee I immediately knew that the injury was not a minor one. I could feel that my right knee cap was no longer in one piece. (It's a one-of-a-kind sensation to feel a broken patella, believe me.) I was stunned.

Eventually I let the husband/father help me up. I was shaky, and he had to bear almost all of my weight. He helped me hop over to a nearby bench and sit down, then he went back for my suitcases. He and his wife asked if I needed any further help. I thanked them as graciously as I could and said I didn't know what they could do to be of further help. I thanked them again and wished them a good trip.

I sat on that bench for some time trying to compose myself. Needless to say, I was having trouble wrapping my mind around the fact that the long-planned vacation with my significant other that I had joyfully embarked upon earlier that morning was summarily cancelled — let alone the ramifications of a broken knee cap.

I knew that I needed to get to a hospital emergency room. I was also aware that it would only cause more shock to my system to go through the whole ambulance routine, complete with gawking onlookers. So I called David's cell phone (the friend who had brought me to the airport). He said he'd get right off of the northbound freeway and return to pick me up. I told him he would find me sitting on a bench not too far from where he'd dropped me off. Then I called my significant other, Ron Gerber, and told him as tearlessly as possible that I wasn't going to be able to make it back East to join him. To put it mildly, he was stunned!

Before David arrived I had the presence of mind to look around to see what on earth could have caught my suitcase wheel and caused my fall. I was very surprised to notice that there were numerous long, deep grooves cut into the sidewalk in front of Southwest Airlines. These grooves had clearly been machine cut and ran at random diagonals across entire expanses of the sidewalk. Also, these grooves were clearly longer, deeper and wider than the standard expansion joints that are built into sidewalks. (The sidewalk also had expansion joints, but they were insignificant compared to these atypical long, wide and deep groove cuts.) During the time I was looking at the sidewalk I watched as several people stutter-stepped or stumbled — but fortunately did not fall — when their high heels or suitcase wheels got caught in one of these long grooves.

When David arrived he pulled up to the curb and got out of his car. Pointing at me sitting on the bench, he told the two uniformed traffic police who approached him that he had

come to pick up his injured friend. They offered no further argument to David, and one of them came up to check on me, asking if I needed an ambulance. I declined, saying that my friend would drive me to the hospital. David then put my bags into his car and came back to get me. Leaning on the shoulders of David and the traffic policeman who'd spoken to me, I hopped to the car on my left leg. They helped me hoist myself backwards into the back seat with my legs stretched straight out in front of me on the seat. The drive up to Encinitas was dicey but I was happy to be getting closer to home with every jostle and bump in the road.

Accompanied by my friend David, I spent the rest of the morning in the Emergency Room at Scripps Hospital in Encinitas (the hospital nearest my home). By the afternoon I was being seen by the knee surgeon at CORE Orthopedics. My open knee surgery was scheduled for the following morning, June 13. Dr. Michael Skyhar, my orthopedic surgeon, told me in my pre-op appointment that it would be a minimum of four weeks but most likely six weeks before I would be able and allowed to do any weight bearing on my right leg. I was sent home on crutches in a hip-to-ankle leg brace/splint with a prescription for pain pills. I spent that first night of a month of nights on my living room couch and used a pitcher as a bed pan. Negotiating the stairway to my bedroom was out of the question.

My open knee surgery under general anesthesia was the following day. According to the doctor's report that was dictated during the surgery he removed all the small, shattered pieces of my patella that he could find and wired together the five larger pieces that could be salvaged. For the next three days I lay on my living room couch recovering from the general anesthesia and trying to come to grips with my injury.

For the next four weeks I lived on the couch, wearing my hip-to-ankle leg brace/splint and dealing with the effects of the surgery and the injury: intense swelling, bruising, pain, highly compromised mobility and the exhaustion of efforting to get up from a prone position to a sitting or standing one. Getting around on crutches and "doing for myself" with a leg that cannot be bent at the knee or bear weight was a significant ongoing challenge, to be sure.

For example, going to the bathroom was an outright "high hurdle" as my challenges went. Remember, I could not bend my right leg at the knee at all, nor could I put even a smidgeon of weight on it. Here are some of the strategies and essential competencies that were required for the mundane task of using the commode:

- *First, you must jockey yourself carefully into position on your crutches in the small space available in the WC in order to shut the door.*
- *A stool must then be crutch-maneuvered into place, while balancing yourself on your one good leg and the other crutch or the wall, before you try to sit on the commode.*
- *Crutches must then be carefully leaned against the wall so that they don't fall down and out of reach. Again, you have to balance yourself on one leg during this process.*

- *This next step requires strong quadriceps muscles in your good leg, to say the least. You have to lower your body weight down to the toilet very slowly on your good leg as you simultaneously pick up your bad leg with one hand by grabbing onto the brace and carefully placing the swollen and bruised foot of that leg on the stool. Getting anything other than the correct angle of the leg relative to the stool, the commode, your hip and the rest of your body is non-negotiable. The knee will not take any torque at all. Even with the proper angle achieved, there is always pain and considerable effort involved in this process.*
- *Then you must reverse the process, as well as maneuver yourself, either by hopping or by crutches, to the sink to wash your hands.*
- *NOTE: If you're a woman, you will have to use this laborious procedure every time you need to use the toilet for the entire time you are in the brace/splint and unable to bend your knee.*

Believe me, I could go on and on and on with the blow-by-blow details of how one's life abruptly changes, the intricacies of the mental, emotional and monetary "expenses" involved, and the specifics of how difficult it is to physically perform most any function in life with a broken knee cap that is slowly mending. But I imagine that, by now, you appreciate the impact of this story on my life.

At this point I will merely give you a summary overview of the sequelae to my July 12, 2010 fall at San Diego's Lindbergh Field. I have divided this overview into four basic areas of impact with broad-brushstroke bulleted items listed below each.

TIMELINE AND WHAT WAS/IS INVOLVED

- Open knee surgery to wire together right knee cap (July 13, 2010)
- Four weeks living and sleeping on downstairs couch when on crutches – easier and more practical access to toilet, kitchen and patio.
- Four weeks with no weight bearing on or bending of right leg; crutches required
- Six weeks of physical therapy (beginning August 13, 2010) to free up the knee cap from adhesions and scars, to mobilize the now frozen right knee joint, and to recuperate proper function of all muscles, ligaments, tendons and joint affected.
- Unable to drive until August 29, seven weeks after my first surgery
- Second open knee surgery to remove wires November 12, 2010
- Physical therapy and Chiropractic sessions to get mobility back
- Persistent pain and physical limitation in right knee function in perpetuity

INCOME LOSSES

- Unable to physically sit at my armoire computer desk to do my professional editing work while in brace/splint.
- Unable to sit in one position (without severe knee pain and/or stiffness) long enough to do my work on laptop computer until the last week of December 2010

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EXPENSES

- Medical Expenses
- For six weeks I was required to pay for someone to drive me if I needed to go anywhere when friends/family members were not available.
- For six weeks I was required to pay for someone to do food shopping and essential errands for me.
- Physical therapy
- Chiropractic sessions
- Osteopathic sessions
- Psychotherapy

EMOTIONAL COSTS

- Missing vacation with significant other on the East Coast
- Loss of independence
- Deprived of ability to do most anything physical that I had previously been able to do (walk, use my own bedroom, drive, exercise, play sports, etc.)
- Unable to continue 15-year hula dancing career; AND future uncertain
- Pain and suffering experienced since July 12
- Future pain and suffering from the injury

I was brought to tears as I sat here typing out the previous section of this letter. In fact, this is perhaps only the third time that I have allowed myself to be moved to tears since my fall on July 12, 2010. In all honesty, this is the first time that I have felt I can finally "afford" to cry, as I am not having to invest the better part of my energies into the business of getting through a day or dealing with outright pain or compensating for significant physical deficit.

Since July I have had an extraordinary number of people – acquaintances and strangers alike – ask me if I was planning to sue the San Diego Airport. My answer has been that I believe that our society has become far too litigious and that, in the end, it is only the attorneys who really win. I also believe that the atypical grooves in the airport sidewalk out in front of Southwest Airlines are, purely and simply, "accidents waiting to happen." Indeed, it seems that accidents have already happened—mine being only one of them.

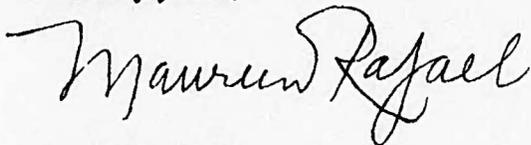
I am appealing to you to take immediate action to rectify the situation: to fill in those atypical, dangerous grooves in the sidewalk or do whatever it takes to make that sidewalk as safe a zone as possible for the public. (How many thousands of people walk across that sidewalk every day? . . . Tens of thousands every week? . . . Hundreds of thousands every year?)

I am also appealing to you to reimburse my out of pocket expenses and income losses, for which I am happy to provide you documentation and written statements.

I am enclosing three items with this letter. The first is a group of photos of the dangerous atypical grooves (i.e., not expansion joints) in the sidewalk outside of Southwest Airlines at the San Diego Airport. The second is a copy of my surgeon's report of findings during my first open knee surgery on July 13, 2010 along with copies of photos that were taken during that surgery showing the repair work that needed to be done. The third is a letter from the personal injury attorney I consulted in November just before my second open knee surgery.

Thank you so much for your attention to this letter. I look forward to hearing from you at your earliest convenience, and I will be happy to answer any questions you may have at that time.

Sincerely yours,

A handwritten signature in black ink that reads "Maureen Rafael". The signature is written in a cursive style with a large, stylized initial "M".

Maureen Rafael

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THESE PAGES INTENTIONALLY LEFT BLANK

MICHAEL A. KAPLAN

ATTORNEY AT LAW

3232 GOVERNOR DRIVE, SUITE A
SAN DIEGO, CALIFORNIA 92122-2489
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e-mail: mkaplanesq@gmail.com

November 11, 2010

Maureen Rafael

RE: Your Fall at Linberg Field – July 12, 2010

Dear Ms. Rafael:

I have now heard back from the consulting engineer following his inspection of the site of your fall, adjacent to the Southwest outdoor check-in at Linberg Field. While his measurements and photos are not included with this letter, his findings of the sidewalk included multiples "deep gouges/indentations" creating a "dangerous condition." He felt this was especially true since you fell in the area known for its heavy traffic, especially those wheeling suitcases which could get caught. He also learned of prior falls at that location. He is willing to testify on your behalf and his fee schedule is enclosed.

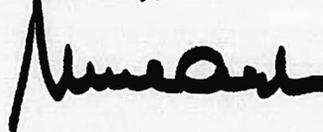
There will be a time limit within which you must initiate legal action if you want to proceed against the various potential defendants – i.e. the Port, the contractor for the sidewalk, etc.

In any event, it was a pleasure meeting you. Should your claim go to trial, I believe you would be an excellent witness. You are credible and articulate and would have excellent jury appeal.

The best result in your claim would be your full recovery coupled with reasonable compensation for your past and future pain and suffering, medical expenses and impaired earning.

Please let me know if I may be of further assistance.

Sincerely,



MICHAEL A. KAPLAN

Enc.
MAK/hel

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MICHAEL A. KAPLAN

ATTORNEY AT LAW

3232 GOVERNOR DRIVE, SUITE A
SAN DIEGO, CALIFORNIA 92122-2489
(858) 453-6122 • FAX (858) 453-2155
e-mail: mkaplanesq@gmail.com

January 3, 2011

Maureen Rafael

RE: Your fall at San Diego Lindbergh Field--July 12, 2010

Dear Ms. Rafael:

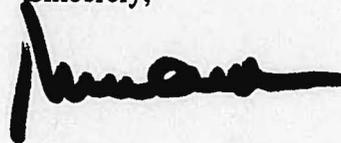
I have now heard back from the consulting engineer following his inspection of the site of your fall at Lindbergh Field adjacent to the Southwest Airlines outdoor check-in counter. His findings were that the sidewalk had multiple "deep gouges/indentations" creating a "dangerous condition." He felt this was especially true given that the area where you fell sustains regular heavy traffic of pedestrians wheeling suitcases whose wheels could easily get caught in those deep grooves. He also learned of prior falls by passengers at that location. He is willing to testify on your behalf; his fee schedule is enclosed.

Should you file a claim and go to trial, I believe you would be an excellent witness. You are credible and articulate and would have excellent jury appeal.

The best result in your claim would be your full recovery coupled with reasonable compensation for your past and future pain and suffering, medical expenses and impaired earnings.

It was a pleasure meeting you. Please let me know if I may be of any further assistance.

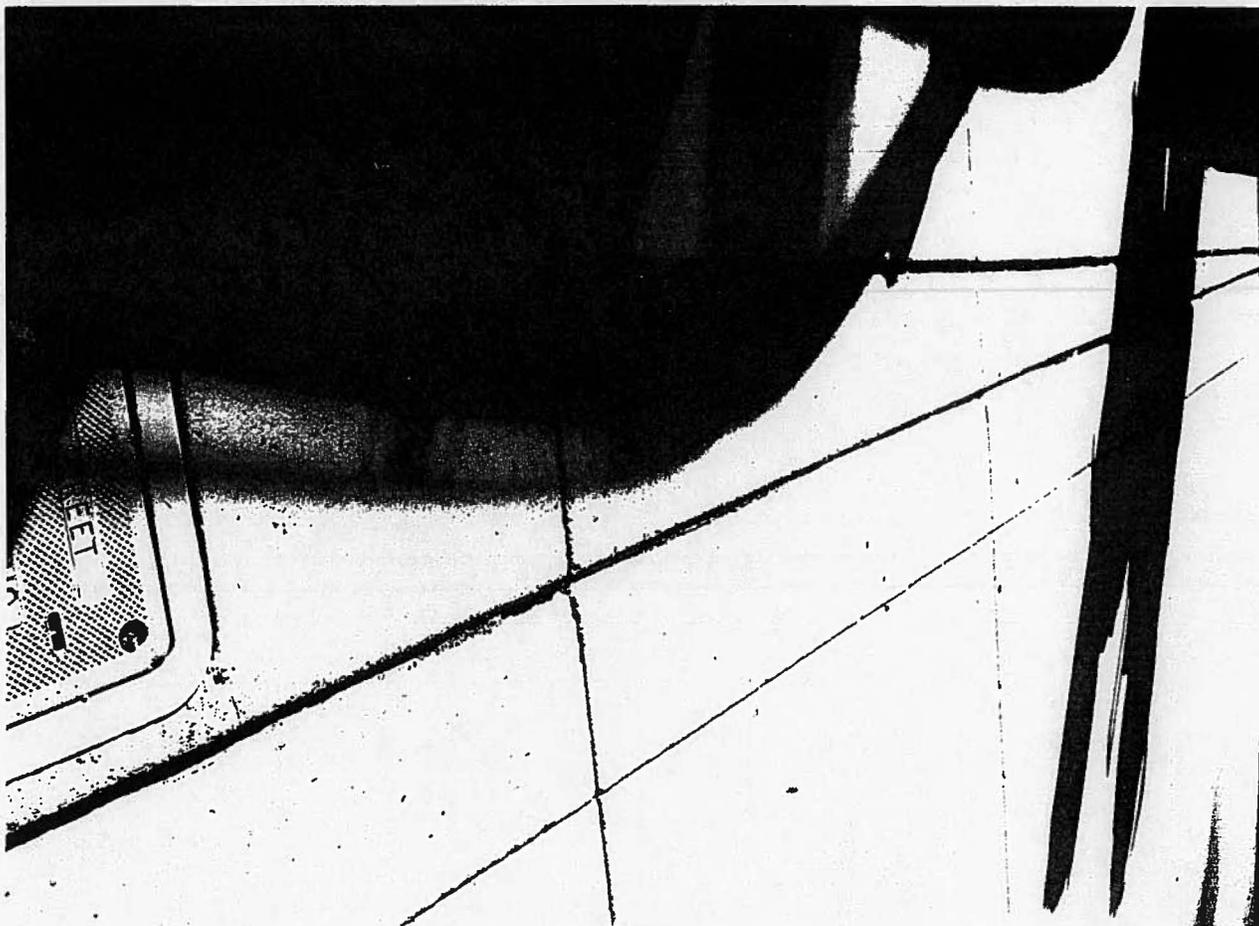
Sincerely,



MICHAEL A.KAPLAN

Enc.
MAK/hel

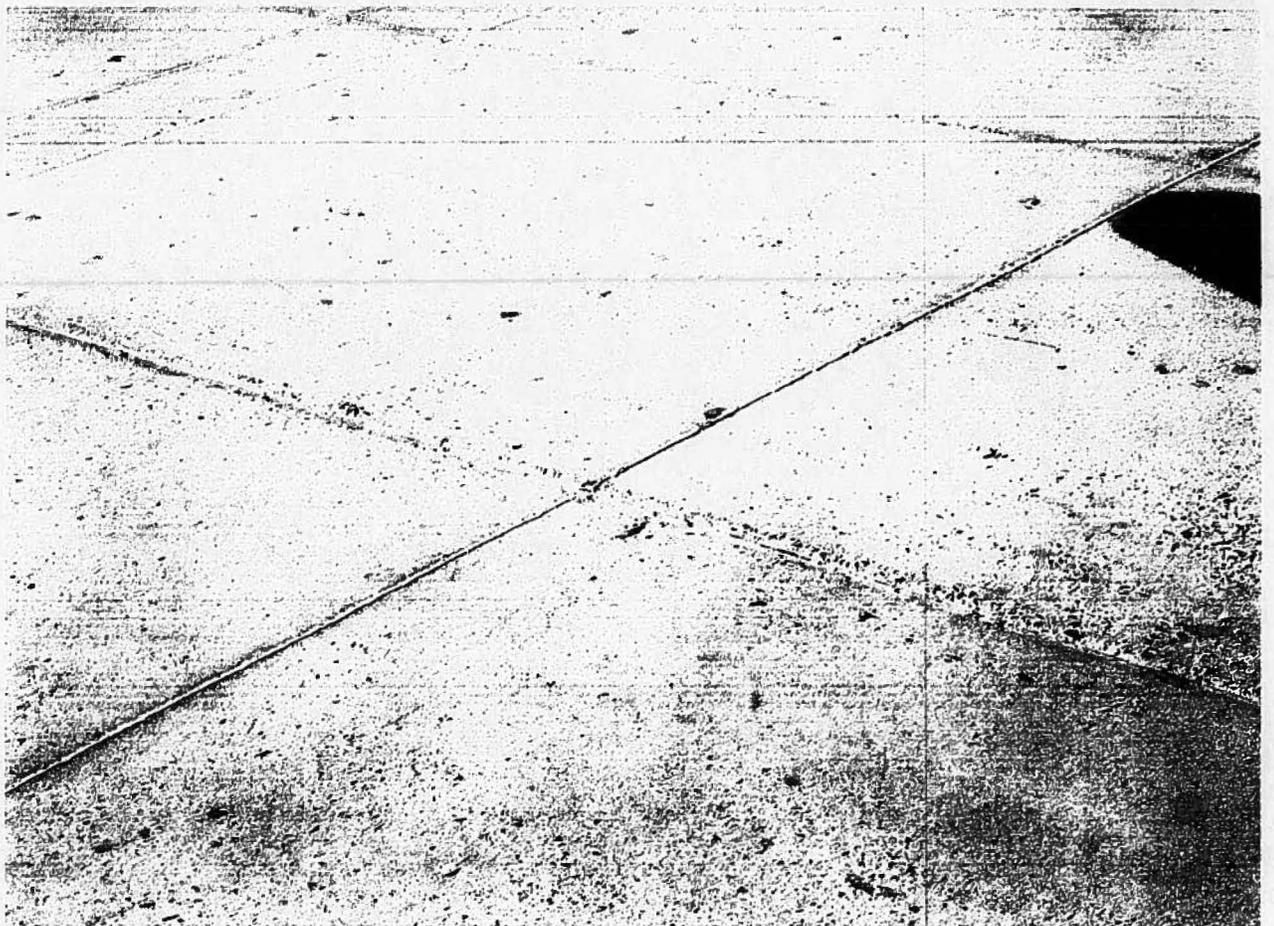
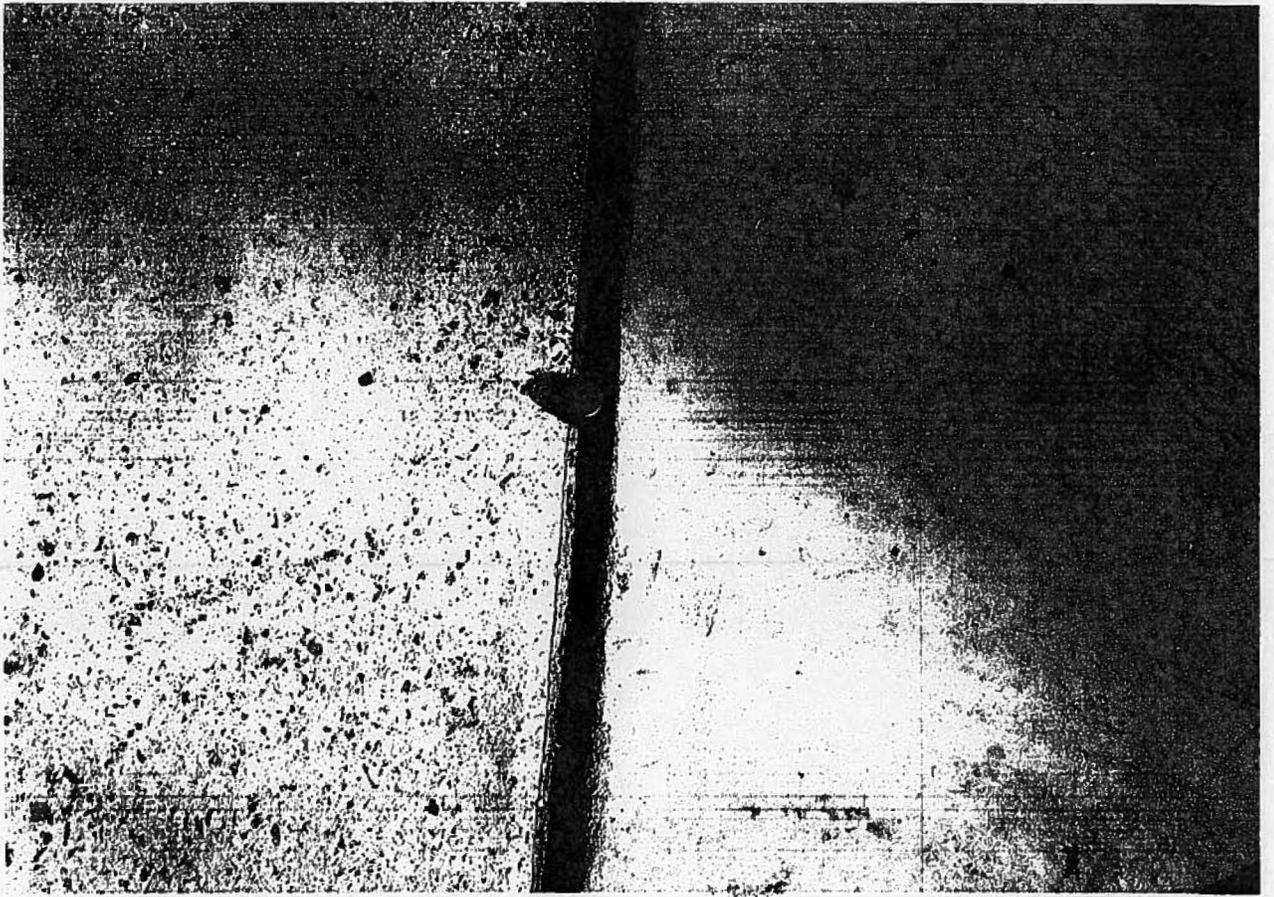
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RESOLUTION NO. 2011-0016

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY AUTHORIZING THE REJECTION OF
THE CLAIM OF MAUREEN RAFAEL

WHEREAS, on January 12, 2011, Maureen Rafael filed a claim with the San Diego County Regional Airport Authority for injuries she allegedly sustained as the result of falling on the sidewalk in front of Terminal One at San Diego International Airport on July 12, 2010; and

WHEREAS, at its regular meeting on February 10, 2011, the Board considered the claim filed by Maureen Rafael, the report submitted to the Board, and found that the claim should be rejected.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the rejection of the claim of Maureen Rafael.

BE IT FURTHER RESOLVED THAT this Board Action is not a "project" as defined by the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §21065; nor is it a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 10th day of February, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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