

BREACH OF FIDUCIARY DUTY

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2 Plaintiff next contends that the City as trustee has knowingly and
3 willfully violated its fiduciary obligations to its beneficiaries. As a basis for this
4 claim, Plaintiff cites to the City closing the beach in 1997, which it claims it
5 has never reopened. The lifeguards have not been kept current on the official
6 status of the Children's Pool. The City knew of the release of harbor seals near
7 the Children's Pool by Hubbs-SeaWorld and did nothing about the build-up of
8 seals at the Pool. The City violated the right of the public to have access to the
9 beach by roping off the beach to the public. The City kept the rope in place
10 from 1999 until late 2004. [Exh. 321.] The City failed to prosecute violations
11 of its own municipal codes, ordinances and regulations that would regulate the
12 presence and activities of activists at the beach, including use and placement
13 of signs, harassment of the public and other similar activities.

14 As further evidence of breach, Plaintiff contends that the City failed to
15 place wordage required by San Diego County on signs it posted at Children's
16 Pool. The City assured the County in 2003 it would incorporate the required
17 wordage on the new signs posted at the Children's Pool. The County also left
18 approximately 12 copies of the new required County sign with the City, with
19 the understanding the signs would be installed at the Children's Pool. The
20 signs were not installed as promised. Also, the sign created by the City did not
21 contain the warning information required by the County. The County had to
22 personally install the correct signs at Children's Pool. [Exh. 409.]

23 The City responds to Plaintiff's contentions by arguing that "[a]s trustee,
24 the City is held to administer the Trust with reasonable care, skill, and caution
25 under the circumstances then prevailing. The evidence has clearly shown that
26 the City has and continues to draw from all the available resources in
27 determining the best way in which to manage the trust property." [City's
28 Written Argument at 10.] To the contrary, the evidence is that the City has
taken no steps to manage the property so as to preserve the Children's Pool for