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February 15, 2005

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:

**Subject: Kaiser Aluminum & Chemical Corporation v. City of Oakland
Alameda County Superior Court Action No. 822752-0
City Attorney File No. 980178**

This is to advise you that the Supreme Court of California has denied Kaiser Aluminum & Chemical Corporation's petition for review.

FACTS

Kaiser sought a refund of business taxes that it paid to the City between 1994 and 2000 on its own behalf, and on behalf of Kalan.

In 1983, Kaiser Center, Inc., a wholly owned subsidiary of Kaiser sold the Kaiser Center Building and Mall (the "Property") to Kalan. Pursuant to a Purchase/Sale Agreement, Kalan agreed to lease the property to Kaiser. Pursuant to a Master Lease Agreement, Kaiser agreed to pay all Oakland business taxes on behalf of Kalan, as lessor. Kaiser subleased the property to tenants and paid separate business taxes to the City on its own behalf under the City's business tax ordinance [O.M.C. § 5.04.430 –Commercial Rents] until it sold the property in 2003.

DAMAGES

Kaiser paid \$1,450,125.00 in business taxes to the City on behalf of Kalan for the 1994 through 2000 tax years. Kaiser paid \$1,503,750.00 in business taxes to the City on its own behalf for the 1994 through 2000 tax years. Kaiser sought a total refund of business taxes in the amount of \$2,953,875.00.

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PROCEDURAL BACKGROUND

At trial, Kaiser sought a refund of the business taxes that it paid on behalf of Kalan on the grounds that the rents that it paid to Kalan were actually finance payments and not properly taxed under the City's gross receipts tax on commercial rents. Kaiser urged that the "economic reality" of the transaction was actually a sale/leaseback and was not subject to tax.

Kaiser, on its own behalf and on behalf of Kalan also claimed that the City's Business Tax violated the Commerce Clause of the United States Constitution because it was internally inconsistent and because it is was not fairly apportioned to reflect Kalan's out of City activity.

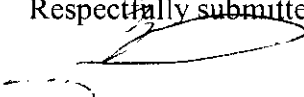
The trial court rejected Kaiser's arguments and entered judgment for the City.

Kaiser abandoned its other claims and argued on appeal that the structure of the City's business tax ordinance discriminates against intercity landlords and places an unconstitutional burden on interstate commerce. Appellate counsel for Kaiser, Charles Ajalat, argued that he had successfully litigated the same principles in three published cases. Throughout the appellate process, Ajalat repeatedly pressured the City to settle claiming that its tax refund exposure exceeded \$12,000,000.00, not including interest and attorney's fees.

The appellate court affirmed the judgment for the City and upheld the constitutionality of the tax on landlords under the City's Business Tax Ordinance.

The Supreme Court of California's denial of Kaiser's petition for review establishes the City's total victory in this case and ends the matter.

Respectfully submitted,


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