

## City Sewer Main Backup: California Appellate Court Addresses Inverse Condemnation Claim



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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A California Appellate Court in a June 13th Opinion addressed whether the City of Oroville (“City”), California could be found liable in an inverse condemnation action resulting from a city sewer main backup onto private property. See *City of Oroville v. The Superior Court of Butte County, California Joint Powers Risk Management Authority*, 2017 WL 2554447.

The opinion describes an event on December 29, 2009 in which:

. . . a large amount of raw, untreated sewage backed up from the City’s sewer main, through the private sewer lateral of the office building, through sinks, toilets, and drains, and into the interior spaces of the building. City dispatched technicians to clear a blockage from the municipal sewer main. The building was uninhabitable during decontamination, and the dentists had to relocate their practices for the duration.

Three dentists (“dentists”) owned the office building and filed an inverse condemnation action against the City. The pleading included allegations that:

- (1) city sewer lines were deliberately designed and maintained to divert sewage from the building and were being used for their internal purposes at the time of the incident; and
- (2) City failed to maintain the sewer main free of blockages.

An intervener (the dentists’ insurance company [TDIA]) intervened.

A lower court found the City liable. It rejected the City’s claim that the sole reason the sewage entered the building was the dentists failure to install a backwater valve mandated by ordinances that adopted the Uniform Plumbing Code.

The City petitioned the appellate court for a preemptory writ mandate. The appellate court issued an alternative writ and stayed trial court proceedings on damages.

The appellate court rejected the City’s argument that the dentists failure to install a backwater valve eliminates liability. It stated that this argument is premised on a mistaken view that:

. . . “the only reason” sewage backed up onto private property is that the private property owner defeated, even “sabotaged” the design of the sewer system by failing to install a backwater valve on the private sewer lateral, as mandated by city ordinances and the state plumbing codes.

In order to “absolve itself of liability” for inverse condemnation the City was stated to have to prove “other forces alone produced the injury.”

The appellate court noted that the trial court had found that there were two concurrent causes for the sewage in the building:

(1) blockage in the City's sewer main from tree root intrusion was the primary cause; and

(2) the property owner's failure to install a backup valve was deemed a "significant secondary cause."

The appellate court upheld the lower court and stated that the City failed to demonstrate grounds for reversal. Also rejected was the City's argument that there was no showing that the damage was caused by a deliberately deficient maintenance plan by the City.

The lower court was affirmed and the City found liable in inverse condemnation.

[A copy of the opinion can be downloaded here.](#)