

MEMORANDUM

July 6, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ROGER H. GRANBO
Assistant County Counsel
Law Enforcement Services Division

RE: Claim of Michael and Danette McPherson

DATE OF INCIDENT: November 25, 2004

AUTHORITY REQUESTED: \$32,700

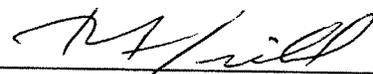
COUNTY DEPARTMENT: Department of Public Works

CLAIMS BOARD ACTION:

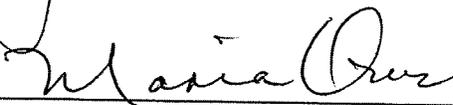
Approve

Disapprove

Recommend to Board of Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on August 1, 2005

SUMMARY

This is a recommendation to settle for \$32,700 a claim for damages filed by Michael and Danette McPherson, whose home was damaged by sewage that flowed into their home from a sewer line maintained by the County.

LEGAL PRINCIPLES

A public entity is liable for injuries caused by a dangerous condition of its property, if the property was in a dangerous condition at the time of the injury, the injury was caused by the dangerous condition, the dangerous condition created a foreseeable risk of the type of injury that was suffered, and the public entity had actual or constructive notice of the dangerous condition.

A public entity is liable under the law of inverse condemnation for damage caused to property, when the damage was caused by a public improvement as deliberately designed and constructed by the public entity, whether or not the damage was foreseeable. Inverse condemnation liability can be based on an improper maintenance plan of the public entity. A prevailing plaintiff in an inverse condemnation action is entitled to an award of reasonable attorney's fees.

SUMMARY OF FACTS

On November 25, 2004, a County-maintained sewer line in San Gabriel backed up into the lateral sewer line of Michael and Danette McPherson. Raw sewage flooded into their master bathroom, and spread throughout the house. The County-maintained sewer line had become clogged by tree roots, which caused the sewage to travel into the McPherson's lateral sewer line.

The sewage soaked and destroyed carpet, linoleum, furniture, cabinets, drapes and walls, and caused damage to various items of personal property.

The County had a preventative maintenance program in place in the neighborhood that consisted of semi-annual visual inspections of the sewer line. The sewer line had been inspected on September 30, 2004, and no stoppages in the sewer line were seen.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Clean up services	\$ 5,000
Damage to personal property	\$ 3,000
Damage to real property	\$17,700
Mold remediation and testing	<u>\$15,000</u>
Total	<u>\$40,700</u>

The proposed settlement calls for the County to pay the McPhersons \$32,700 for all of their claims for damages, costs and attorney's fees.

STATUS OF CASE

This matter is in the claim stage, and no expenses have been incurred.

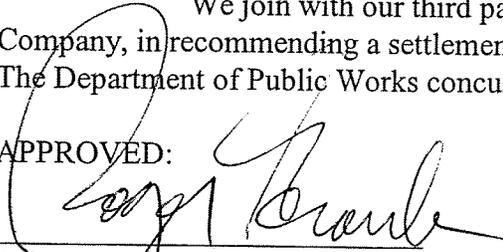
EVALUATION

This is a claim of disputed liability. Should this matter become a lawsuit and proceed to trial, a jury could find that the County's sewer maintenance plan was defective, because the visual inspections were not sufficient to detect or prevent tree roots in the sewer line. If the jury finds that the plan was defective, the County could be liable under an inverse condemnation cause of action.

A reasonable settlement at this time will avoid litigation costs and a potential jury verdict that could exceed the proposed settlement.

We join with our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$32,700. The Department of Public Works concurs in the recommendation.

APPROVED:


ROGER GRANBO
Assistant County Counsel
Law Enforcement Services Division

RHG:scr