

## BUSINESS & FACILITIES UPDATE

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### **Claim For Damages To Private Property Against A Public Agency Requires That Plaintiff Show An Inherent Danger In The Deliberate Design, Construction Or Maintenance Of A Public Improvement As The Substantial Cause Of Damages.**

On December 29, 2009, sewage from the City of Oroville's sewer backed up into the sinks, toilets, and drains of a local office building in which a group of dentists operated their practice. The dentists, who conducted their business as WGS Dental Complex, sued the City for inverse condemnation, a legal action that permits the recovery of damages when a public improvement causes damage to private property.

WGS claimed that the City's sewer system failed to function as intended, and the City countered that the damage occurred because the dentists failed to install a legally-required backwater valve where the sewer line connects to the property.

WGS submitted the following evidence: there was a blockage in the City's sewer main; the blockage was most likely caused by roots; the blockage resulted in sewage backup in WGS's offices; and the backup caused damage to WGS's property. The City presented evidence that the sewer operates as a gravity-driven system, in which sewage flows downhill to a sewage treatment plant; that the City enacted an ordinance requiring property owners to install backwater valves; and that WGS had no backwater valve as required.

After considering the evidence, the Trial Court then determined that the City was legally responsible in inverse condemnation for the damage that resulted from the sewage backup even though the WGS shared responsibility. The Trial Court concluded that "primary cause of the blockage" was root intrusion in the sewer main and "a significant secondary cause of the damage" was WGS's failure to install a backwater valve on their private sewer line.

The City appealed the decision to the Court of Appeal where the City made three arguments: (1) the design and construction of the sewer system was not the cause of the damages; (2) WGS's failure to install and maintain the legally required backwater valve defeated the deliberate design and construction of the sewer system; and (3) the City acted reasonably in operating and maintaining its system. WGS argued that the trial court was correct in finding the City liable in inverse condemnation. However, the Court of Appeal concluded that the City failed to disprove the causal connection between sewer blockage and the damages, and therefore upheld the Trial Court's assessment of liability.

The California Supreme Court granted review to consider the matter, and the challenges in establishing the precise limits of a public entity’s responsibility in such circumstances. The Supreme Court explained that a reviewing court must undertake analyses of related, but distinct concepts of “substantial causation” and “inherent risk.”

The Court explained that the concept of “substantial causation” permits “private landowners [to] establish inverse condemnation liability even where the public improvement ... was only one of several concurrent causes [] provided the causal nexus between the risks inherent in the public improvement and the harm in question was sufficiently robust to create a pronounced likelihood of damage.” The Court then explained that the inherent risk assessment requires a reviewing court to consider whether the inherent dangers of the public improvement as “deliberately designed, constructed, or maintained” were the cause of the property damage. The Court stated that the inherent risk analysis operates as a preventive measure to ensure that not all private property damage that bear some causal relationship to a public improvement will necessarily result in liability to the agency.

The Court then connected the concepts and applied them to the factual circumstances at issue in the case. The Court clarified that a link to an “inherent risk” (i.e., adoption of a low-cost high-risk public improvement, negligent monitoring or maintenance of a low-risk improvement, etc.) is necessary, but not sufficient, for a successful inverse condemnation claim. The Court stated that the plaintiff must also establish substantial causation, and that the damages were “predominantly” produced by the improvement. The Court stated that a reviewing court must assess whether the damages were the result of a risk created not by the public improvement, but also by the acts of the private property owner.

The Court determined that WGS did not show the damage to its property was substantially caused by an inherent risk of the City’s sewer system, as deliberately designed, constructed, or maintained. Rather, the Court found that the City made reasonable assumptions in reaching its decision for the design, construction, or maintenance of the sewer system. The Court found that WGS’s failure to install and maintain the legally required backwater valve was a sufficiently significant intervening cause in the chain of causation, and that the sewage backup incident could have been averted had WGS installed the valve.

The Supreme Court held that the City was not liable in inverse condemnation because the Court of Appeal erred in failing to provide sufficient analysis of “substantial causation” and for presuming that the City was required to disprove causation. The Supreme Court concluded that the Court of Appeal could not reasonably conclude that the damage was substantially caused by the sewer system when WGS failed to fulfill a responsibility to install a backwater valve.

*City of Oroville v. Superior Court of Butte Cty.* (2019) \_\_ Cal.5th \_\_ [2019 WL 3820270].

**NOTE:**

*Districts should ensure competent design, construction and maintenance of public improvements through contract terms with design professionals and contractors. A well written contract document could help defend against a claim that there is an “inherent risk” with the public work.*

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