

The mysterious case of the partially inflated ball

By Luis Fragoso

A claimant reported that a blockage in one of our member's main sewer line caused her basement to flood with raw sewage. City staff inspected the section of the line in question and determined that the most probable cause of the blockage was a partially-inflated ball, grease and other solids that were found in the sewer line before the line was cleared. The claim was denied because a public sewer system is considered an "open" system and the City is not liable for items introduced into the system by third parties. Moreover, the City had maintained the line ten months earlier and satisfied reasonable maintenance requirements.

The claimant then retained an attorney who alleged the City was strictly liable (strict liability is liability that does not depend on actual negligence or intent to harm; thus, the attorney claimed that the mere fact the backup occurred meant the City was liable for it) and would be filing a lawsuit.

In addition to the property damage, the claimant alleged that the sewage caused her both bodily injury (an alleged skin rash) and emotional distress. To avoid the time, expense and uncertainty of litigation, the City and WCIA agreed to participate in a mediation session while still in the claim stage. Unfortunately, the claimant had very unrealistic expectations and initially demanded \$2 million to resolve her claim and then came down to a "more reasonable" \$900,000 (the value of the home at the time was in the low-to-mid-\$100,000s and the claimant had only a few hundred dollars in medical bills).

At the mediation we argued the City was not responsible for the backup and that the claimant had failed to mitigate her damages because she refused to pay the remediation company and they left before completing the job even though her insurance company paid her \$10,000 under her sewer backup coverage. The claimant alleged that a representative of the City told her which remediation company to use and that the City would pay their bill.

When litigation started we found out that the City did not have any maintenance/inspection records of the sewer line prior to this incident and most of the City employees who worked the incident were no longer employed by the City. During the discovery process, photographs taken by City staff working the incident were reviewed but they did not clearly show the contents of the blockage. We retained an expert to provide an opinion on the Standard of Care for sewer maintenance and compare the City's actions to the standard. In the meantime, the plaintiff also claimed that she'd developed a breathing ailment and that she had to move out of the house due to its uninhabitable condition.

The plaintiff's expert prepared a report in which she accused the City of having a poor maintenance program, owning old equipment that was useless, not following its own maintenance schedule and being reactive rather than proactive in the maintenance of its sewer lines.

As the trial date approached, we asked the plaintiff's attorney if his clients would like to re-open settlement negotiations but they would not commit so we had our defense attorney move forward with a Motion for Summary Judgment. Our defense counsel argued that the City's sewer line did not fail but it was blocked by items, including a partially-inflated ball, that were introduced in the line by an unknown party. Therefore, plaintiff could not show that any actions by the City caused the backup. Fortunately, the Judge agreed and granted our motion and dismissed the case against the City.

Here are some takeaways to consider:

- 1) Generally, municipalities are not responsible for a sewer backup if unknown parties introduce foreign objects that cause a blockage in the Public Sewer System – an argument can be made, however, if the City knew or should have known that a particular line is prone to blockages and does not have a proactive maintenance program in place to prevent them;
- 2) A prompt investigation, if possible, of the cause of the blockage is critical;
- 3) All evidence should be preserved, i.e., photographs of the items that caused the blockage should be taken and saved and City staff should prepare an incident report to describe what they found, and, last but not least;
- 4) What City staff tells citizens at the time of an incident and what they will remember hearing will rarely match so it's best to just explain how to submit a Claim for Damages form and refer them to WCIA if a claim is presented.