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CITY ATTORNEY UPDATE

ABOUT THE SAN DIEGO READER, SEWER GAS AND INSURANCE

Once again, the San Diego Reader has published a misleading story on a legal matter involving the City of San Diego. As is typical, the Reader takes a piece of true information and fabricates an untrue story around it. This time it is about lawsuits against the city for alleged faulty sewage piping and an insurance claim.

The article can be found here: <http://www.sandiegoreader.com/news/2013/nov/10/ticker-city-30-million-lawsuit-downtown-sewer/>

The author, Dorian Hargrove, did not contact our office before writing the story. He did do so the day after its publication.

The Reader story, entitled "City faces \$30M in liabilities for condos' defective pipes", proclaims in the very first sentence:

"Last month, a New York state judge ruled that the city failed to submit three claims in a reasonable time frame to their insurer, Indian Harbor Insurance. The delay violated a clause in the policy, leaving the city on the hook for damages expected to be more than \$30 million."

The Reader's hyped-up story is, at best, misleading. It's spin that the city now faces a \$30 million liability without insurance coverage is fabricated.

The \$30 Million Dollar Liability

Lawsuits were filed by condo homeowners' associations against the city alleging that sewer gas from the city's public sewer system caused corrosion damage to the cast iron piping in the condos. The city disputes those allegations and believes, based upon its experts' opinions, that the design and installation of the in-building plumbing systems caused the corrosion and damage to the buildings. Earlier this year, one of the cases was settled, without admission of any liability, for \$50,000. The other cases are set for trial next year. It is a leap to report as fact that the city has a \$30 million liability before there has even been a trial.

“...city on the hook for damages”

The Reader spins as fact that the city’s failure to give timely notice to “their insurer” leaves the city “on the hook for damages.” This is untrue. The city’s insurer is CSAC Excess Insurance Authority. The Indian Harbor insurance policy was obtained by CSAC (as the insured) for the city (as an additional insured) as part of the pooled risk that also involved other insurers. The city believes both insurers are responsible to pay for a judgment against the city, if any.

So, what happened?

Risk Management is a Department of the city under the Mayor’s office. The Risk Management Director is appointed by and reports to the Mayor. Here is its website:

<http://www.sandiego.gov/riskmanagement/>

Among other things, Risk Management is responsible for tendering claims and providing notice to CSAC and other insurance carriers. It provided timely notice to CSAC. There was some delay in CSAC and Risk Management providing notice to Indian Harbor, as one of the pooled risk insurers. Indian Harbor filed a lawsuit in New York against the city and CSAC in which Indian Harbor sought relief from its pooled risk policy on the basis that the city and CSAC failed to provide timely notice. The New York judge denied coverage due to that delay. Both CSAC and the city believe that decision was erroneous. It is being appealed by both the city and CSAC.

The New York judge’s decision does not mean that the city is without insurance and “on the hook”, as spun by the Reader. In fact, the city is well-insured. Nor, does it mean that there is a \$30 million judgment against the city. To the contrary, the city is vigorously defending against these claims with full support and cooperation from our insurer.