

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

UNITED STATES OF AMERICA, et al.,  
Plaintiffs,

Case No. 1:02-cv-107  
Barrett, J.  
Litkovitz, M.J.

vs.

BOARD OF HAMILTON COUNTY  
COMMISSIONERS, et al.,  
Defendants.

**ORDER RE: REQUEST  
FOR REVIEW BY  
HELEN L. EVANS**

This matter is before the Court on the Request for Review of the denial of a Sewer Backup (“SBU”) claim by Helen L. Evans (Doc. 1588) and the response of the Metropolitan Sewer District of Greater Cincinnati (“MSD”) (Doc. 1677). Ms. Evans’ Request for Review of MSD’s decision on her SBU claim does not include a request for a hearing.

Ms. Evans’ request for review is filed under the Sewer Backup<sup>1</sup> program (formerly known as the Water-in-Basement [WIB] Claims Process Plan) (Doc. 131, Consent Decree, Exhibit 8). The Plan states in relevant part:

Subject to the requirements of this Plan, occupants who incur damages as a result of the backup of wastewater into buildings due to inadequate capacity in MSD’s Sewer System (both the combined and the sanitary portions) can recover those damages. This plan also provides a means for occupants to recover damages arising from backups that are the result of MSD’s negligent maintenance, destruction, operation or upkeep of the Sewer System. The Claims Process is not intended to address water in buildings caused by overland flooding not emanating from MSD’s Sewer System or caused by blockages in occupants’ own lateral sewer lines.

(*Id.* at 1). In determining the cause of SBU, MSD must exercise its good faith reasonable engineering judgment and consider the following non-exclusive factors: amount of precipitation,

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<sup>1</sup>The “Water-In-Basement” program has been renamed the “Sewer Backup” program to more accurately reflect MSD’s responsibility for sewage backups caused by inadequate capacity in MSD’s sewer system. *See* Doc. 452 at 4; Doc. 454 at 16.

property SBU history, condition of the sewer system in the neighborhood, results of a visual inspection of the neighborhood to look for signs of overland flooding, neighborhood SBU history, capacity of nearby public sewer lines, and topography. (Doc. 131, Consent Decree, Ex. 8 at 2). Damages arising from basement backups for which MSD is responsible are limited to documented real and personal property. *Id.* Homeowners who are dissatisfied with MSD's disposition of a claim under the SBU program may request review of the decision by the Magistrate Judge, whose decision is binding and not subject to any further judicial review. (Docs. 154, 190).

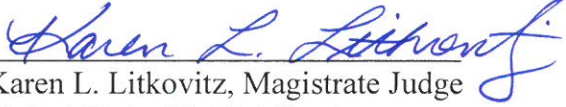
Ms. Evans is the owner of the property located at 5205 Warren Avenue, Cincinnati, Ohio. On February 23, 2018, Ms. Evans experienced a sewer backup in her basement which resulted in damage to her personal property. The Court notes there is no dispute that one of the causes of damage to Ms. Evans' personal property was an MSD sewer backup. The only issue in this case is the amount of damages for Ms. Evans' property loss.

Ms. Evans made a claim to MSD for the February 23, 2018 sewer backup into her basement, seeking compensation for damage to her washer and dryer. (Doc. 1677, Ex. B). MSD made an offer of \$749.88 to Ms. Evans as compensation for her claim. Ms. Evans rejected the offer and filed this appeal, seeking the original purchase price of the washer and dryer in the amount of \$838.00.

Under the Consent Decree, damages for SBU claims are determined based on the market value of personal property *as of the date of loss* (the depreciated value) and not on the original purchase price or cost of replacement, which it appears that Ms. Evans is seeking in this case. MSD's offer of \$749.88 reflects the depreciated current market value of the washer and dryer.

(Doc. 1677, Ex. C). Ms. Evans has not offered any evidence to suggest that the depreciated values assessed by MSD are inaccurate. Therefore, the Court finds MSD's offer to be fair and reasonable and awards Ms. Evans \$749.88 in damages in this case.

**IT IS SO ORDERED.**

  
Karen L. Litkovitz, Magistrate Judge  
United States District Court