

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

UNITED STATES OF AMERICA, et al.,
Plaintiffs

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

vs

BOARD OF HAMILTON COUNTY
COMMISSIONERS, et al.,
Defendants

**ORDER RE: REQUEST
FOR REVIEW BY
KIMBERLY RICHARDSON**

This matter is before the Court on the Request for Review of the denial of a Sewer Back Up (“SBU”) claim by Kimberly Richardson. (Doc. 630). Ms. Richardson seeks compensatory damages from the Metropolitan Sewer District of Greater Cincinnati (“MSD”) for sewer backup into her basement apartment.

Ms. Richardson’s request for review is filed under the Sewer Back Up¹ program (formerly known as the Water-in-Basement 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 Systems or caused by blockages in occupants’ own lateral sewer lines.

(Doc. 131, Consent Decree, Exhibit 8 at 1). In determining the cause of SBU, MSD must exercise its good faith reasonable engineering judgment and consider the following non-

¹The “Water-In-Basement” program has been renamed the “Sewer Back Up” 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.

exclusive factors: amount of precipitation, 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, Exhibit 8 at 2). Damages arising from basement backups for which MSD is responsible are limited to documented real and personal property. *Id.*

As an initial matter, the Court notes that there is no dispute that the cause of damage to Ms. Richardson's property was an MSD sewer backup. The only issues in this case are whether Ms. Richardson can recover medical expenses for personal injury sustained during the incident and the amount of compensation for her property loss.

Ms. Richardson is a tenant of the property located at 1921 Maple Avenue, Norwood, Ohio. On June 6, 2013, Ms. Richardson experienced an SBU incident in her basement apartment which resulted in damage to her personal property. MSD responded with a cleaning crew on June 10, 2013. Ms. Richardson states she was injured during the incident and received medical treatment for her injury.

Ms. Richardson made a claim for damages to MSD for the June 2013 sewer backup into her basement apartment. On August 14, 2013, MSD sent Ms. Richardson a letter offering to settle the claim for \$6,635.00. Ms. Richardson rejected the offer and filed this appeal.

The Court determines that Ms. Richardson may not recover on her claim for medical expenses relating to the personal injury she sustained as a result of the incident. The Consent Decree, which governs compensation under the SBU program, is limited to personal and real property damage and does not cover personal injury damages. The SBU claims program is designed "to compensate customers who experience WIB [now SBU] for real or personal

property loss or expenses. Such losses may include, *inter alia*, building restoration costs, and loss of furniture and/or property stored in the flooded areas.” (Doc. 131 at 47, Consent Decree and Exhibit 8 thereto). Therefore, Ms. Richardson’s request for compensation for personal injuries and medical expenses she may have sustained is **DENIED**.

Next, the Court turns to an evaluation of the personal property damages claimed by Ms. Richardson in this case. MSD values the loss of personal property at \$6,635.00. Ms. Richardson seeks in excess of \$32,000.00 in damages for the loss of personal property. It appears that Ms. Richardson based her claim for damages on the replacement value of the items lost. However, 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.

After careful review, the Court awards damages for the loss of personal property as follows:

- Leather Sectional: \$1,500.00
- 2004 Big Screen TV: \$900.00
- Marble Table: \$500.00
- Microwave Cart: \$25.00
- Reversible Mink Fur Coat: \$1,200.00
- Ranch Mink Fur Hat: \$100.00
- Blue Iris Mink Jacket: \$1,500.00
- Blue Iris Mink Hat: \$100.00
- Purple Leather Coat & Pants: \$250.00
- Blue Leather Cape Coat: \$150.00


- Bras (10): \$100.00
- Underwear (20): \$60.00
- Silk Shirts (5): \$65.00
- Linen Pant Suits (4): \$120.00
- Storybook Sweaters (20): \$400.00
- Jeans (7): \$140.00
- Regular Jeans (10): \$100.00
- Sweat Suits (22): \$400.00
- Shoes (30): \$400.00
- Purses (27): \$270.00
- Comforter Sets (3): \$300.00
- Dresses (24): \$240.00
- Skirts (10): \$100.00
- Black and White Pea Coat: \$50.00
- Red and Blue Pea Coat: \$50.00
- Blue Pea Coat: \$50.00
- Set Suits (5): \$50.00
- Jean Suits (2): \$100.00
- V-Tech Phone: \$35.00
- Total: \$9,255.00

In conclusion, the Court awards **\$9,255.00** to Ms. Richardson for the damages sustained

in this case.

IT IS SO ORDERED.

Date: 1/14/14



Karen L. Litkovitz, Magistrate Judge
United States District Court