

COA Opinion: Wayne County was not immune from suits for sewage back-ups when it received notice of a sewage event but did not inform the affected residents how to file a claim.

26. March 2010

In *Dybata v. County of Wayne*, Nos. 283413 & 283414 (published Mar. 25, 2010), the Court of Appeals, in an opinion by Judge Jansen, concluded that Wayne County did not qualify for governmental immunity under MCL § 691.1419 against claims for damages that resulted when sewage backed up into the plaintiffs' homes after a significant rainfall. Section 691.1419(1) requires persons intending to sue a state governmental agency to notify the agency in writing within 45 days "of a claim of damage," or the claim will be barred, and here the plaintiffs did not notify the county of their claims. But § 691.1419(2) provides that if a person owning property affected by a sewage event notifies "a contacting agency orally or in writing of an event before providing notice of a claim," the contacting agency shall provide the person with written information concerning where and how to file a claim. While the county received a list of persons affected by the sewage back-up, the county failed to provide the affected persons with information about how to file a claim. This failure by the county brought § 691.1419(3) into play, and that section specifically provides that a notice failure does not bar the claims if claimant notified the governmental agency under subsection (2) and if the claimant's failure to provide notice resulted from the agency's failure to provide information. Because the plaintiffs specifically alleged that their failure to provide notice resulted from Wayne County's failure to provide them with information about how to file a claim, Wayne County was not entitled to immunity under the statute.