

# Daily Journal

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THE 2020 CLAY AWARDS

CLAY

## 24<sup>TH</sup> ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

### Inverse Condemnation

10

CITY OF OROVILLE  
VS. SUPERIOR  
COURT OF BUTTE  
COUNTY

**L**ia M. Juhl-Rhodes was a fresh associate in 2010—she’s a name partner now at Peters, Habib, Juhl-Rhodes & Cardoza LLP—when the City of Oroville retained her firm to defend a suit by dentists and their insurers claiming millions of dollars in damages due to a sewage overflow from municipal lines into their offices.

Oroville was ready to settle the case. “Inverse condemnation cases are so onerous on defendants that we were on the verge of conceding liability,” name partner Mark A. Habib said. Still, he assigned Juhl-Rhodes to check through discovery material. She hit pay dirt.

The crucial piece of evidence was a receipt for a piece of plumbing equipment called a backwater valve. Juhl-Rhodes has a construction background; she checked further and learned the dentists bought the valve as part of the damage repair. Further investigation showed there had been no valve in place before the overflow incident—although it is legally required by the city’s plumbing code. Absent the valve, the damage would likely not have occurred.

“Lia found one slip of paper in a huge production of documents,” Habib said. “We vigorously contested the matter after that.”

## Lawyers convince the state Supreme Court to revisit inverse condemnation law

The result was a decade of litigation culminating in a 2019 state Supreme Court opinion rebalancing the law of inverse condemnation to give government entity defendants a better chance at success. The ruling reversed a 3rd District Court of Appeal opinion. “We got pummeled there,” Juhl-Rhodes said.

Habib said he got significant aid with the appeals from Peter A. Urhausen and A. Byrne Conley of Gibbons & Conley, representing Oroville’s insurers. Michael G. Colantuono of Colantuono, Highsmith & Whatley PC argued Oroville’s case before the high court.

There, the justices saw the issue differently. “Public entities are not strictly or otherwise automatically liable for any conceivable damage bearing some kind of connection, however remote, to a public improvement,” wrote Associate Justice Mariano-Florentino Cuéllar for the unanimous court. *City of Oroville v. Superior Court of Butte County*, S243247 (SCOCAL, opinion filed Aug. 15, 2019).

The outcome is significant for the way inverse condemnation law is applied in California. It will, Habib wrote in his petition for review, answer “critical and important questions of law impacting hundreds of public entities that provide sewage disposal services throughout Cities and Counties of the State of California, potentially millions of private property owners through the State, and untold millions of dollars in actual and potential expenses and expenditures of public and private funds.”

Beyond sewer problems, the opinion came just as inverse condemnation was a trending legal topic in the state amid much litigation over liability for the destructive wildfires that ravaged California recently. “We’ve seen that immediately municipalities were using this



**LEFT TO RIGHT: JENNIFER L. PANCAKE** COLANTUONO, HIGHSMITH & WHATLEY PC  
**MICHAEL G. COLANTUONO** COLANTUONO, HIGHSMITH & WHATLEY PC  
**PETER A. URHAUSEN** GIBBONS & CONLEY  
**MARK A. HABIB** PETERS, HABIB, MCKENNA, JUHL-RHODES & CARDOZA LLP  
**SCOTT HUBER** OROVILLE CITY ATTORNEY

ruling,” Juhl-Rhodes said. Habib’s petition for review drew support from groups such as the League of California Cities and the California State Association of Counties.

“Until now, there’s been almost a presumption of strict liability against public agencies in inverse condemnation cases,” Habib said. “But courts now are encouraged to study the connection between causes of damage and the conduct of public agencies. People have to protect their own property.”

The case went on for so long that its documentation filled almost an entire room full of cabinets and boxes within Habib’s law offices. “There are about 30 percipient and party witnesses and about a dozen designated experts,” Habib said. “During the last ten years about half the time was spent actively

#### Mark A. Habib, Lia M. Juhl-Rhodes

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#### A. Byrne Conley, Peter A. Urhausen

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#### Michael G. Colantuono, Jennifer L. Pancake

Colantuono, Highsmith & Whatley PC

litigating the case, and half spent waiting on rulings and appellate decisions. Unfortunately, few parties can survive the cost of contested, long term litigation.”

He added: “Successful inverse condemnation cases allow for the recovery of attorney fees by plaintiffs. Inverse condemnation plaintiffs and attorneys sometimes take the position that ‘...it is not a question of whether we will recover, but when and how much we will recover.’ This is now a dangerous approach for plaintiffs to take.”

— John Roemer