



## Office of the City Administrator

**To:** City of Milton Personnel & Finance Committee  
**From:** Inga Cushman, Assistant to the City Administrator  
**Date:** September 20, 2016  
**Subject:** Discussion and Possible Action Regarding a claim against the City of Milton from William and Catrina Schoen, 1015 W. Madison Avenue

---

### Summary

The City of Milton received a claim from William and Catrina Schoen, 1015 W. Madison Avenue, for a sewer backup resulting from G.M.S. Excavators, Inc. breaking the private lateral sewer line for their residence. The City of Milton does not locate private utility lines. It is the recommendation of the City of Milton's insurance company, CVMIC, to deny the claim. Sewer backup claims are not covered under the City's insurance policy.

In the contract with G.M.S. Excavators, Inc. in Section 6.13 Safety and Protection it states, "Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:...3) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of construction."

In addition, the Indemnification clause states, "To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable."

### Recommendation

To deny the claim submitted by William and Catrina Schoen, 1015 W. Madison Avenue.



**Attachments**

- CVMIC Response
- Contract Sections:
  - Section 6.20: Indemnification
  - Section 6.13: Safety and Protection
- Picture 1 – 1015 W. Madison Avenue
- Picture 2 – 1015 W. Madison Avenue
- William & Catrina Schoen – Claim Against the City