

16.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2009-0041	Claim	Claim Report
Lana Bainer communication regarding vehicle damage allegedly sustained at 7635 W. Dakota Street on December 19, 2008.		
Introduced: 1/20/2009		Controlling Body: Administration & Finance Committee

## COMMITTEE RECOMMENDATION

*POF*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAR 17 2009</u>			Barczak				
			Czaplewski				
			Kopplin				
		X	Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
		X	Roadt	✓			
			Sengstock				
			Vitale	✓			
		Weigel					
		TOTAL		5			

## SIGNATURE OF COMMITTEE MEMBER

*Krist Kopplin*  
 Chair \_\_\_\_\_ Vice-Chair \_\_\_\_\_ Member \_\_\_\_\_

## COMMON COUNCIL ACTION

**PLACE ON FILE**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAR 17 2009</u>			Barczak	✓			
			Czaplewski	✓			
		✓	Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
		Weigel	✓				
		TOTAL		10			



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

March 9, 2009

Common Council  
City of West Allis

RE: City Attorney's Report of Claim

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05 (8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. Our Opinion regarding liability is as follows:

**It is the recommendation of this office that the following claim be paid and placed on file:**

**Lana Bainer– Amount \$645.81**

This is a claim for property damages to the claimant's vehicle on December 19<sup>th</sup>, 2008, when it was struck, while unoccupied and legally parked, by a City of West Allis snowplow performing plowing operations at or near 7635 West Dakota Street in the City of West Allis, WI. As a result of the accident, the claimant's driver's side mirror was knocked off of her vehicle. The claimant obtained estimates for repair and filed a claim against the City on January 12<sup>th</sup>, 2009.

Our investigation of this claim indicated that the City's operator of the snowplow was at fault for the damages by plowing too close to vehicles and failing to have his vehicle under control at the time of the accident. The estimates for repair submitted by the claimant were reasonable given the nature of the damages. Pursuant to settlement guidelines, the City Attorney's Office settled this claim in the amount stated above and obtained a Property Damage Only Release signed by the claimant.

Based upon the above, it is the recommendation of the City Attorney's Office to place this claim on file.

Respectfully submitted,

Jeffrey J. Warchol  
Assistant City Attorney

JJW:da

**PROPERTY DAMAGE ONLY RELEASE**

KNOW ALL MEN BY THESE PRESENTS that LANA BAINER, for and in consideration of Six Hundred Forty-five and 81/100 Dollars (\$645.81) the receipt whereof is hereby acknowledged, do hereby forever release, acquit and discharge the City of West Allis, Wisconsin, a municipal corporation, its departments, commissions, officials, agents and employees, his, her, its or their successors and assigns and all others directly or indirectly liable, from any and all claims and demands, actions and causes of action, damages, both known and unknown, including future developments thereof, costs, loss of service and compensation on account of, or in any way growing out of, any and all known and unknown property damage resulting or to result from an accident on or about December 19<sup>th</sup>, 2008, when a City's snowplow struck a legally parked unoccupied vehicle owned by Lana Bainer at 7635 West Dakota Street, West Allis, WI, causing damage to the driver's side mirror of Ms. Bainer's vehicle.

I agree that this settlement is in full compromise of a doubtful and disputed claim both as to the question of liability and damages and that the payment is not to be construed as an admission of liability.

I agree that this is a complete release of property damage only and it is understood and agreed that it doesn't constitute a release for any bodily injury resultant from this accident as there were no bodily injuries as a result of this accident.

I further agree that this release and payment pursuant thereto is not to be construed as a waiver by or an estoppel of any party released to prosecute a claim or action against the undersigned for any damages sustained.

This Release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this Release are contractual and not a mere recital.

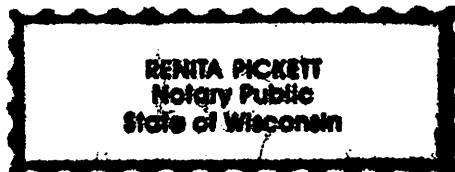
**I HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND IT. I FURTHER UNDERSTAND THAT I HAVE THE OPPORTUNITY TO DISCUSS AND NEGOTIATE THE TERMS OF THIS RELEASE WITH THE WEST ALLIS CITY ATTORNEY AND SPECIFICALLY WAIVE SUCH OPPORTUNITY.**

Signed and sealed this 2<sup>nd</sup> day of March, 2009.

Lana M. Bainer  
Lana Bainer

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of March, 2009.

Brenta Pickett  
Notary Public, State of Wisconsin  
My Commission Expires March 25, 2012



January 7, 2009

To Whom It May Concern:

In the AM on Friday, December 19, 2008 my son and I were out in the front of our home shoveling/digging out my 1997 Isuzu Rodeo. I live at 7635 W Dakota St. The Rodeo was actually parked in front of my neighbor's house across the street from me as the night before was an even number night that required my vehicle to be parked on that side. In looking around, it was discovered that the city plow truck was coming down our street headed from S 76<sup>th</sup> Street towards Cleveland Avenue. He was coming at an alarming rate of speed that I would estimate to be at least 35 to 40 miles per hour. My son and I both stepped out of the way (understanding the man has a job to do), but I do not believe a) that he needed to moving at this high rate of speed or b) that he needs to be inches away from the vehicles that are parked on the street. In the process of his plowing, he damaged the driver's side mirror on my Rodeo. He also bent the driver's side mirror on my pick up truck that was parked in from of my Rodeo. That one was not damaged, but had to be bent back into proper alignment. He continued to go up and down the street several times, NEVER slowing down. My neighbor (who's house my car was in front of) even commented on how fast he was going and what disregard he had for the safety of persons and vehicles on the street. I called the city and after being transferred several times I got to a person who stated she would send someone out to look at. She did. That gentleman took pictures of both of my vehicles and told me to get two estimates for the Rodeo and send them in. Those two estimates are enclosed here with my letter. I would appreciate you processing this claim as soon as possible as it is not legal for me to operate this vehicle on the streets with the mirror damaged and hanging.

My neighbor is willing to give a statement if necessary as will my son.

I would also like to comment that this same driver caused similar damage to another vehicle in the 7700 block of W Cleveland Ave just a few days after the incident with mine. I don't believe it is coincidental, but rather that he needs to slow down for his safety and ours. Thank you.

Lana Bainer  
7635 W Dakota St  
West Allis WI 53219  
414-688-0615



12/26/2008 at 03:49 PM  
30749

Job Number:

**SCHLOSSMAN IMPORTS, INC.**  
HONDA - OLDSMOBILE - ISUZU CITY  
3450 SO. 108TH. STREET  
bodyshop@honda4you.com  
GREENFIELD, WI 53227  
(414)328-3500x163 Fax: (414)328-3515

**RECEIVED**

**JAN 12 2009**

CITY OF WEST ALLIS  
CLERK/TREASURER

**PRELIMINARY ESTIMATE**

Written By: JAMIE BOHNERT  
Adjuster:

<b>Insured:</b> LANA BAINER	<b>Claim #</b>
<b>Owner:</b> LANA BAINER	<b>Policy #</b>
<b>Address:</b> 7635 W DAKOTA ST	<b>Deductible:</b>
WEST ALLIS, WI 53219	<b>Date of Loss:</b>
<b>Day:</b>	<b>Type of Loss:</b>
<b>Evening:</b>	<b>Point of Impact:</b>

**Inspect**  
**Location:**

**Insurance**  
**Company:**

Days to Repair

1997 ISUZU RODEO 4X4 LS 6-3.2L-FI 4D UTV Int:

VIN: 4S2CM58V5V4332406 Lic: Prod Date: Odometer:

Air Conditioning	Rear Defogger	Tilt Wheel
Cruise Control	Intermittent Wipers	Rear Window Wiper
Dual Mirrors	Privacy Glass	Console/Storage
Luggage/Roof Rack	Clear Coat Paint	Two Tone Paint
Power Steering	Power Brakes	Power Windows
Power Locks	Power Mirrors	Heated Mirrors
AM Radio	FM Radio	Stereo
Cassette	Anti-Lock Brakes (2)	Driver Air Bag
Passenger Air Bag	4 Wheel Disc Brakes	Cloth Seats
Bucket Seats	Recline/Lounge Seats	5 Speed Transmission
4 Wheel Drive	Overdrive	Aluminum/Alloy Wheels

NO.	OP.	DESCRIPTION	QTY	EXT. PRICE	LABOR	PAINT
1		FRONT DOOR				
2	Repl	LT Mirror assy power mirror w/o heated	1	567.85	0.6	
3	R&I	LT R&I trim panel			0.5	
Subtotals ==>				567.85	1.1	0.0

**PRELIMINARY ESTIMATE**

1997 ISUZU RODEO 4X4 LS 6-3.2L-FI 4D UTV Int:

Parts		567.85
Body Labor	1.1 hrs @ \$ 52.00/hr	57.20
-----		
SUBTOTAL		\$ 625.05
Sales Tax	\$ 625.05 @ 5.6000%	35.00
-----		
GRAND TOTAL		\$ 660.05
ADJUSTMENTS:		
Deductible		0.00
-----		
CUSTOMER PAY		\$ 0.00
INSURANCE PAY		\$ 660.05

MOTOR VEHICLE REPAIR PRACTICES ARE REGULATED BY CHAPTER ATCP 132, WIS. ADM. CODE, ADMINISTERED BY THE BUREAU OF CONSUMER PROTECTION, WISCONSIN DEPT. OF AGRICULTURE, TRADE AND CONSUMER PROTECTION, P.O. BOX 8911, MADISON, WISCONSIN 53708-8911.

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Unless otherwise noted all items are derived from the Guide AEO4625, CCC Data Date 12/01/2008, and the parts selected are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (\*) or Double Asterisk (\*\*) indicates that the parts and/or labor information provided by MOTOR may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. Non-Original Equipment Manufacturer aftermarket parts are described as AM, Qual Repl Parts or Comp Repl Parts which stands for Competitive Replacement Parts. Used parts are described as LKQ, Qual Recy Parts, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries. Some 2009 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The Pathways estimator has a complete list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

CCC Pathways - A product of CCC Information Services Inc.

AMATO COLLISION CENTER  
 8301 NORTH 76TH STREET  
 MILWAUKEE, WI 53223  
 OFFICE: (414)357-8500 FAX: (414)357-8161

CD LOG NO 13075-1 DATE 01/02/09

SHOP: AMATO COLLISION CENTER NORTH INSP DATE: 01/02/09  
 ADDRESS: 8301 N 76TH STREET CONTACT: JASON BRAATZ  
 CITY STATE: MILWAUKEE, WI PHONE 1: (414)357-7800  
 ZIP: 53223- FAX: (414)357-8161

OWNER: BAINER, JON WORK PHONE: (414)588-6263  
 ADDRESS: 7635 W DAKOTA ST  
 CITY STATE: WEST ALLIS, WI  
 ZIP: 53219

POINT OF IMPACT: 0

LIC#: STATE: VIN: 4S2CM58V5V4332406  
 BODY COLOR: MILEAGE:  
 CONDITION: ACCTNG CTL#:

*=USER-ENTERED VALUE	E=REPLACE OEM	NG=REPLACE NAGS
EC=REPLACE ECONOMY	UE=REPLACE OE SURPLUS	UC=RECONDITIONED PRT
UM=REMAN/REBUILT PRT	EU=REPLACE SALVAGE	EP=REPLACE PXN
OE=REPLACE PXN OE SRPLS	PC=PXN RECONDITIONED	PM=PXN REMAN/REBUILT
TE=PARTL REPL PRICE	ET=PARTL REPL LABOR	IT=PARTIAL REPAIR
I=REPAIR	L=REFINISH	BR=BLEND REFINISH
TT=TWO-TONE	CG=CHIPGUARD	SB=SUBLET
N=ADDITIONAL LABOR	RI=R&I ASSEMBLY	P=CHECK
AA=APPEAR ALLOWANCE	RP=RELATED PRIOR	UP=UNRELATED PRIOR

1997 ISUZU RODEO LS 4DOOR WAGON 6CYL GASOLINE 3.2  
 CODE: I7303A/G OPTNS V/24ZABEVFGLHIJDSW

OPTIONS:

TWO-STAGE - EXTERIOR SURFACES	TWO-STAGE - INTERIOR SURFACES
HEATED REMOTE CONTROL MIRRORS	POWER DOOR LOCKS
POWER WINDOWS	PRIVACY GLASS
LUGGAGE RACK	REAR WIPER
SWING AWAY TIRE CARRIER	4-WHEEL DRIVE
POWER STEERING	TILT STEERING WHEEL
AIR CONDITIONING	HEATED BACK GLASS
CRUISE CONTROL	DUAL AIRBAGS

OP	GDE	MC	DESCRIPTION	MFG. PART NO.	PRICE	AJ%	B%	HOURS	R
E	0233		MIRROR, SPORT R/C	LT 8970794279	595.97			0.3	1

1 ITEMS



CITY CLERK/TREASURER'S OFFICE  
414/302-8200 or 414/302-8207 (Fax)  
[www.ci.west-allis.wi.us](http://www.ci.west-allis.wi.us)  
**Paul M. Ziehler**  
*City Admin. Officer, Clerk/Treasurer*  
**Monica Schultz**  
*Assistant City Clerk*  
**Rosemary West**  
*Treasurer's Office Supervisor*

January 12, 2009

Ms. Lana Bainer  
7635 W. Dakota Street  
West Allis, WI 53219

Dear Ms. Bainer:

This letter acknowledges receipt of your communication regarding vehicle damage allegedly sustained at 7635 W. Dakota Street on December 19, 2008.

The original document will be submitted to the Common Council at its meeting of January 20, 2009.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all communications are directed to the City Attorney's office for investigation. Common Council action regarding your communication will not be taken until the City Attorney's investigation is completed. Any questions you may have regarding this matter should be directed to their attention.

Sincerely,

Monica Schultz  
Assistant City Clerk

/jml

cc: City Attorney





OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

March 9, 2009

Common Council  
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

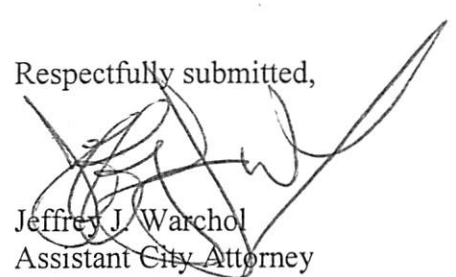
Dear Council Members:

The enclosed claims/lawsuits have been referred to this office in accordance with Section 3.05 (8) of the Revised Municipal Code. This office has examined the facts of each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

**The following claims/lawsuits have been paid and placed on file:**

Advanced Waste Services, Inc. (\$68,444.59)  
Lana Bainer (\$645.81)  
We Energies/S. 70<sup>th</sup> & 71<sup>st</sup> Streets & W. Natl. Ave. (\$13,875.00)  
Nicholas Yets (\$1,024.21)

Respectfully submitted,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC