

9.  
45.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2008-0242	Claim	Claim Report
Deutch & Weiss, LLC Notice of Claim on behalf of American Family Mutual Insurance Co regarding damages allegedly sustained on W. Greenfield Ave. at or near S. 56th St. on April 11, 2007.		
Introduced: 5/6/2008		Controlling Body: Administration & Finance Committee

### COMMITTEE RECOMMENDATION

*Deny*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>JUN 03 2008</u>	<input type="checkbox"/>	<input type="checkbox"/>	Barczak				
	<input type="checkbox"/>	<input type="checkbox"/>	Czaplewski				
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Kopplin	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Lajsic	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Narlock	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Reinke	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Roadt				
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sengstock				
	<input type="checkbox"/>	<input type="checkbox"/>	Vitale	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Weigel				
TOTAL				<u>5</u>	<u>0</u>		

### SIGNATURE OF COMMITTEE MEMBER

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

### COMMON COUNCIL ACTION

*Deny*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>JUN 03 2008</u>	<input type="checkbox"/>	<input type="checkbox"/>	Barczak	✓			
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Czaplewski	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Kopplin	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Lajsic	✓			
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Narlock	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Reinke	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Roadt	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Sengstock	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Vitale	✓			
	<input type="checkbox"/>	<input type="checkbox"/>	Weigel	✓			
TOTAL				<u>10</u>	<u>—</u>		



May 14, 2008



OFFICE OF THE CITY ATTORNEY

Common Council  
City of West Allis

Scott E. Post  
City Attorney

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

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 (6)(a) 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 denied:**

**American Family Mutual Insurance/M Schrubka - By Attorney Michael Gall of Duetch & Weiss, LLC, Attorneys-at-Law - Amount: \$3,323.89**

This is a claim for property damage to the claimant's insured's vehicle as a result of an accident on April 11<sup>th</sup>, 2007, by the claimant's insured and a City of West Allis snowplow at or near West Greenfield Avenue and South 56<sup>th</sup> Street in the City of West Allis. At said time and place, the operator of the City plow was performing snowplowing operations with its emergency lights activated as the snow was heavy and driving conditions were extremely difficult. While backing up on West Greenfield Avenue to back around the corner on South 56<sup>th</sup> Street, the snowplow operator swung the snowplow out into the traffic lane while making the backing maneuver at which time the claimant's insured struck the front-end blade of the snowplow while attempting to go around it. The claimant's insured's vehicle sustained extensive damage as a result of the accident. On April 10<sup>th</sup>, 2008, one year after the accident, the claimant insurance company filed a claim against the City based on its subrogation rights in the amount of \$3,323.89.

Our investigation into this matter indicated that the snowplow operator proceeded in a reasonable manner and with caution in making its maneuver with its emergency lights activated and considering the deplorable condition of the roads on the day of the accident. The claimant's insured, on the other hand, was primarily negligent in this case by failing to keep his vehicle under proper control and by following too close to an emergency vehicle while performing snowplowing operations. It appears that the claimant's insured was simply in a hurry to get around the snowplow and in doing so, lost control of his vehicle by getting too close to the snowplow and striking its front-end. Given the conditions, there is nothing else the snowplow operator could have done to avoid the accident and thus, the operator is not negligent in this case. Furthermore, the claimant insurance company filed its claim approximately one (1) year after the accident in question in direct violation of the 120-day timeframe for filing claims stated in the Wisconsin Municipal Claims Statute 893.80. As an insurance company dealing with claims on a daily basis, there simply is no excuse for the claimant insurance company missing this important statutory deadline of the State Municipal Claims Statute.

Based upon the above, it is the recommendation of the City Attorney's Office to deny this claim pursuant to the provisions of Wisconsin Municipal Claims Statute 893.80.

Respectfully submitted,

  
Jeffrey J. Warchol  
Assistant City Attorney



**RECEIVED**

**APR 14 2008**

**WEST ALLIS  
CITY ATTORNEY**

**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. Ziebler**  
*City Admin. Officer, Clerk/Treasurer*  
**Monica Schultz**  
*Assistant City Clerk*  
**Rosemary West**  
*Treasurer's Office Supervisor*

April 14, 2008

Attorney Michael J. Gall  
Deutch & Weiss, LLC  
7670 N. Port Washington Rd.  
Suite 200  
Fox Point, WI 53217

Dear Mr. Gall:

This letter acknowledges receipt of your Notice of Claim on behalf of American Family Mutual Insurance Co., your File No. 98-30084, regarding damages allegedly sustained on W. Greenfield Ave. at or near S. 56<sup>th</sup> St. on April 11, 2007.

The original document will be submitted to the Common Council at its meeting of May 6, 2008.

**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

/amn

cc: City Attorney

# DEUTCH & WEISS, LLC

ATTORNEYS AT LAW

Alan H. Deutch  
Michael J. Gall  
Charles W. Kramer  
James L. McAlister  
Monte E. Weiss

7670 N. Port Washington Road  
Suite 200  
Fox Point, Wisconsin 53217  
(414) 247-9958  
(414) 247-9959 - Fax  
Michael.gall@deutch.com - email

April 10, 2008

Mr. Paul Ziehler  
City of West Allis Clerk  
West Allis City Hall Room 108  
7525 W. Greenfield Ave.  
West Allis, WI 53214

RE: Amer. Fam. Mut. Ins. Co. v. Stern, Steven, et. al.  
My File No.: 98-30084

Dear City Clerk:

Please find enclosed for service on you one (1) original Notice of Claim concerning a motor vehicle accident that occurred on April 11, 2007.

If you have any questions, please feel free to contact me.

Very truly yours,

DEUTCH & WEISS, LLC

  
Michael J. Gall

Enclosure

cc Atty

**NOTICE OF CLAIM**

TO:

Mr. Paul Ziehler  
City of West Allis Clerk  
West Allis City Hall Room 108  
7525 W. Greenfield Ave.  
West Allis, WI 53214

PLEASE TAKE NOTICE that pursuant to Wis. Stats. §893.80 and §345.05, **AMERICAN FAMILY MUTUAL INSURANCE COMPANY** makes the following claim for damages against the **City of West Allis**, and **Steven A. Stern**, its servant and/or employee:

1. That the Plaintiff, **AMERICAN FAMILY MUTUAL INSURANCE COMPANY** is a domestic insurance corporation, duly authorized to conduct business within the State of Wisconsin with a principal place of business located at 302 North Walbridge Ave. Madison WI 53783, the Plaintiff is involved in the business of selling insurance policies for a premium.
2. On **April 11, 2007**, **Michael W. Schrub**a was driving a **1999 Hyundai** on **Greenfield Ave. W. at or near 56<sup>th</sup> St. S.**
3. At the same time and place a **City of West Allis truck** operated by **City of West Allis** employee **Steven A. Stern** negligently struck the vehicle of **Michael John Thesing**.
4. That as a direct and proximate result of the negligence of **Steven A. Stern**, the vehicle and/or the insured of Plaintiff insurance corporation sustained damages.
5. As a result of the collision, the vehicle and/or **Michael W. Schrub**a Plaintiff insurance corporation sustained damages in the amount of **\$3,323.89**.
6. Pursuant to a policy of insurance between **AMERICAN FAMILY MUTUAL INSURANCE COMPANY** and **Michael W. Schrub**a, **AMERICAN FAMILY MUTUAL INSURANCE COMPANY** paid the sum of **\$3,323.89** to or on behalf of **Michael W. Schrub**a and, as a result of the payments, is subrogated to the rights of **Michael W. Schrub**a.
7. **AMERICAN FAMILY MUTUAL INSURANCE COMPANY** makes a claim for damages in the amount of **\$3,323.89**.

Dated this **10th Day of April, 2008**

**DUETCH & WEISS, LLC**  
**AMERICAN FAMILY MUTUAL INSURANCE COMPANY**



Michael J. Gall  
State Bar No. 1062052



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

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

May 22, 2008

Common Council  
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

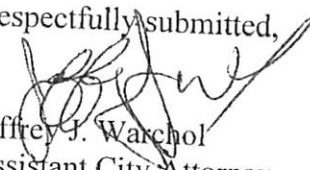
Dear Council Members:

The enclosed claims/lawsuits have been referred to this office in accordance with Section 3.05 (6)(a) 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.

**It is the recommendation of this office that the following claims/lawsuits be denied:**

Cynthia L. Gutschow by Attorney Robert L. Jackson, Jr. (\$10,000 plus emotional distress)  
Georgia T. Sullivan (\$2,317.13)  
Danielle Bilder (\$ 720.22)  
Nicole Nyhof (\$ 145.68)  
American Family Mutual Insurance/Michael Schrubba by Attorney Michael Gall  
of Duetch & Weiss, LLC, Attorneys-at-Law (\$3,323.89)

Respectfully submitted,

  
Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC



**NOTICE OF DISALLOWANCE OF CLAIM**

June 4, 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

American Family Mutual Insurance Company  
302 North Walbridge Avenue  
Madison, WI 53783

Re: Your Claim Against the City of West Allis  
Date of Loss: 4/1108

Dear Sir or Madam:

At its meeting on June 3<sup>rd</sup>, 2008, the Common Council of the City of West Allis considered your claim received on April 14<sup>th</sup>, 2008, regarding vehicle damage allegedly sustained at West Greenfield Avenue at or near South 56<sup>th</sup> Street, West Allis, Wisconsin and denied it in full.

Please be advised that no lawsuit may be brought on this claim against the City of West Allis or any of its officials, officers, agents or employees after six (6) months from the date of receipt of this letter.

Sincerely,

Paul M. Ziehler  
City Administrative Officer  
Clerk/Treasurer

PMZ:da  
L:\jeff\claims\denial\trs\ltr-denial-Amer Fam Ins

cc: Attorney Michael J. Gall, Deutch & Weiss, LLC  
City Attorney's Office  
City Clerk's Office

CITY ADMINISTRATIVE OFFICE

**PAUL M. ZIEHLER**  
City Administrative Officer  
Clerk/Treasurer

414/302-8294  
414/302-8207 (Fax)

City Hall  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214

pziehler@ci.west-allis.wi.us  
www.ci.west-allis.wi.us