

17.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

| File Number | Title | Status |
|---|-------|--|
| 2008-0511 | Claim | Claim Report |
| Summons and Complaint in the matter of American Family Mutual Insurance Company vs City of West Allis, et al. | | |
| Introduced: 8/5/2008 | | Controlling Body: Administration & Finance Committee |

COMMITTEE RECOMMENDATION

POF

| ACTION DATE: | MOVER | SECONDER | | AYE | NO | PRESENT | EXCUSED |
|--------------------|-------|----------|------------|----------|----|---------|----------|
| <u>DEC 16 2008</u> | | | Barczak | | | | |
| | | | Czaplewski | | | | |
| | | | Kopplin | ✓ | | | |
| | | | Lajsic | | | | ✓ |
| | X | | Narlock | ✓ | | | |
| | | X | Reinke | ✓ | | | |
| | | | Roadt | | | | |
| | | | Sengstock | | | | |
| | | | Vitale | ✓ | | | |
| | | | Weigel | | | | |
| | | | TOTAL | <u>4</u> | | | <u>1</u> |

SIGNATURE OF COMMITTEE MEMBER

Kurt Kopplin _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION PLACE ON FILE

| ACTION DATE: | MOVER | SECONDER | | AYE | NO | PRESENT | EXCUSED |
|--------------------|-------|----------|------------|----------|----|---------|----------|
| <u>DEC 16 2008</u> | | | Barczak | ✓ | | | |
| | | | Czaplewski | ✓ | | | |
| | ✓ | | Kopplin | ✓ | | | |
| | | | Lajsic | | | | ✓ |
| | | | Narlock | ✓ | | | |
| | | | Reinke | ✓ | | | |
| | | | Roadt | ✓ | | | |
| | | | Sengstock | ✓ | | | |
| | | ✓ | Vitale | ✓ | | | |
| | | | Weigel | ✓ | | | |
| | | | TOTAL | <u>9</u> | | | <u>1</u> |



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

November 25, 2008

Common Council
City of West Allis

RE: City Attorney's Report of Claim/Lawsuit

Dear Council Members:

The enclosed claim/lawsuit 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/lawsuit and the applicable law. Our Opinion regarding liability is as follows:

It is the recommendation of this office that the following claim/lawsuit be placed on file:

Summons and Complaint in the matter of *American Family Mutual Insurance v. City of West Allis, et al.* (Case No. 08-SC-023703)

This was a claim for property damage to the claimant's insured's vehicle as a result of an accident on April 11th, 2007, by the claimant's insured and a City of West Allis snowplow at or near West Greenfield Avenue and South 56th 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 56th 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 10th, 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.

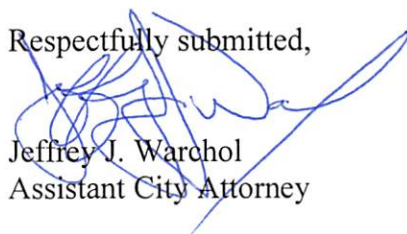
Based upon the above, the Common Council denied this claim at its regular meeting of June 3rd, 2008, and a Notice of Disallowance of Claim was mailed to American Family Mutual Insurance Company on June 4th, 2008.

Despite said denial, American Family Insurance Company commenced legal action against the City of West Allis and City employee Steven Stern on July 9th, 2008, in the Circuit Court for Milwaukee County (Case #08-SC-023703). On or about July 30th, 2008, the City Attorney's Office filed an Answer and Affirmative Defenses in response to said action reiterating its position that primary negligence rests with the insured as opposed to the City employee in this matter. The parties had complete opposing views of the merits of this case, thus, settlement negotiations, as expected, did not amount to any resolution.

On October 29th, 2008, this case went to trial in Milwaukee County Small Claims Court resulting in a judgment in favor of the City and ultimate dismissal of the case. After hearing all evidence of both parties, the court found the negligence issue to be 60% against the insured and 40% against the City employee. To date, the case has been dismissed and the time to appeal said ruling has expired.

Based upon the above, this matter should be placed on file.

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney



CITY CLERK/TREASURER'S OFFICE
414/302-8200 or 414/302-8207 (Fax)
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

July 15, 2008

Deutch & Weiss, LLC
Monte E. Weiss
7670 N. Port Washington Ave., Suite 200
Milwaukee, WI 53202

RE: Case Code No.30201

Dear Mr. Weiss:

This letter acknowledges receipt of the Summons and Complaint in the matter of American Family Mutual Insurance Company *vs. City of West Allis, et al.*

The original document will be submitted to the Common Council at its meeting of August 5, 2008.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all complaints are directed to the City Attorney's office for investigation. Common Council action regarding the complaint 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

PLAINTIFF (NAME AND ADDRESS)

Demandante y Nombre y Direccion

American Family Mutual Ins. Co.

302 North Walbridge Avenue

Madison, WI 53783

VS.

DEFENDANT (NAME AND ADDRESS)

Demandado y Nombre y Direccion

Steven Stern, 1315 South 113 Street, West Allis, WI

53214 and City of West Allis, 7525 West Greenfield

Avenue, West Allis, WI 53214

FILED AND AUTHENTICATED
SC JUL 09 2008 SC
JOHN BARRETT
CLERK OF CIRCUIT COURT

08SC023703

Case No.

Número de Caso

If you need help in this matter because of a disability, please call: 278-4120

Claim Under Dollar Limit 31001
Reclamo menor del limite

Replevin 31003 Re: Arbitration Award 31006
Juicio de Arbitracion

SUMMONS CITA

You are being sued as described below.
Usted ha sido demandado.

If you wish to dispute this matter, you must appear at the date and time stated.
If you do not appear, a judgment may be granted to the plaintiff in the amount demanded.

You are encouraged to bring with you all papers and documents relating to this matter, but there is no need to bring witnesses at this time.

Defendants who are not residents of Milwaukee County may join issue without appearing on the return date by serving a copy of their written answer to the complaint upon the plaintiff or the plaintiff's attorney, if any, and filing the original answer with the Clerk of Circuit Court, Room 400, 901 North 9th Street, Milwaukee, Wisconsin 53233.

Si desea usted disputar este asunto, aparezca en la fecha y hora notado en esta hoja.

Si usted no presenta, un juicio podría ser otorgado al demandante en lo cantidad demandado.

Se le aconseja que traiga todos los papeles y documentos relacionados con este asunto, pero, no es necesario traer testigos esta vez.

Acusados quienes no son residentes del Condado de Milwaukee pueden responder sin hacer la apariencia personal en la primera vista si se sirven al abogado del demandante o al demandante (si el no tiene abogado), y tambien con la corte, una respuesta escrita antes de la fecha de la primera vista en: Sala 400, 901 Norte Calle 9, Milwaukee, Wisconsin, 53233.

When to Appear
Visa en la corte

Date *8-6-08* Time *9:00 a.m.*
Fecha Hora

Place to Appear
Direccion

Milwaukee County Courthouse
901 North Ninth Street, Room 400
Milwaukee, WI 53233

COMPLAINT DEMANDA

Plaintiff's demand: *Demandante demanda:*

The plaintiff states the following claim against the defendant:

Demandante alega el siguiente reclamo contra el demandado:

1. Plaintiff demands judgment for: (Check as appropriate.)

Demandante demanda juicio por (Marca como apropiado.)

Money \$ 3,202.08 Return of property (Describe in 2. below.) (Not to include §425.205 stats. actions.)
Dinero Regreso de propiedad (Describe en 2. abajo.)

Confirmation, vacation, modification or correction of arbitration award.
Confirmacion, correccion, o cambio de un juicio de arbitracion

Plus interest, costs, attorney fees, if any, and such other relief as the court deems proper.

La cantidad mas intereses, costos de corte, costos de abogado, u otro, remedio que la corte juzge propio

2. Brief statement of dates and facts:
see attached complaint

PROCESS SERVER
TIME *2:40 P.M.* DATE *7/14/08*
SERVED UPON & ADDRESS

PERSONAL SUBSTITUTE
 POSTED CORPORATE

Mark box if additional information is attached. Provide copy of attachments for court and defendant(s).

Plaintiff's Attorney or Plaintiff (Signature)
Firma del Abogado firma del Demandante

Date *6/23/08*
Fecha

Law Firm and Address *Direccion*
Deutch & Weiss, LLC
7670 North Port Washington Road, Suite 200
Glendale, Wisconsin 53217

Telephone Number *Telefono*

Attorney's State Bar Number

1049546

Subscribed and sworn to before me

on *June 23 2008*
Notary Public, State of Wisconsin

My commission expires *June 13, 2010*

Verification: Under oath, I state that the above complaint is true, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true

I am: plaintiff attorney for the plaintiff

Signature of Plaintiff/Attorney

| | | |
|--------------------|--|------------------|
| STATE OF WISCONSIN | CIRCUIT COURT SMALL CLAIMS DIVISION | MILWAUKEE COUNTY |
|--------------------|--|------------------|

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

STEVEN STERN and
CITY OF WEST ALLIS,

Defendants.

Case No.:
Case Code: 30201

RECEIVED
JUL 14 2008
CITY OF WEST ALLIS
CLERK/TREASURER

COMPLAINT

NOW COMES the above named plaintiffs, **AMERICAN FAMILY MUTUAL INSURANCE COMPANY**, by their attorneys, **DEUTCH & WEISS LLC.**, for a cause of action against the Defendants, hereby alleges and shows to the court, upon information and belief, as follows:

1. 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 Avenue in Madison, Wisconsin 53783-0001.

2. At all times material hereto, the plaintiff insurance corporation issued a policy of motor vehicle insurance which provided for, among other types of insurance coverage collision coverage to its insured.

3. The defendant, Steven Stern, is an adult male resident of the State of Wisconsin residing at 1315 South 113 Street, West Allis, Wisconsin 53214.

4. The defendant, City of West Allis, is a municipal corporation with its principle place of business located at 7525 West Greenfield Avenue, West Allis Wisconsin 53214.

5. At all times material hereto, the Defendant, Steven Stern was acting in the scope of his employment with the Defendant City of West Allis.

6. That on or about April 11, 2007, the plaintiff insurance company's insured was traveling near the intersection of West Greenfield and South 56th Street in the County of Milwaukee, Wisconsin.

7. That at the same time and place, the defendant, Steven Stern, operated a motor vehicle owned by Defendant, City of West Allis, in a negligent, reckless and careless manner so as to cause the vehicle that he was operating to collide with the vehicle insured by the Plaintiff.

8. That as a direct and proximate result of the negligent conduct of the defendant, the vehicle of the plaintiff insurance corporation sustained damages in the amount of \$3,571.39.

9. That as a result of a full investigation of the facts and pursuant to the policy of motor vehicle insurance issued to the plaintiff insurance company's insured, the plaintiff insurance corporation determined that it was reasonable and necessary to pay on behalf of its insured the sum of \$3,071.39 for the property damage to or on behalf of its insured.

10. That as a result of the negligence of the Defendant, Steven Stern, the Plaintiff's insured incurred a property damage deductible of \$500.00.

11. That as a result of the junking of the Plaintiff's insured's vehicle, the Plaintiff recovered the sum of \$247.00.

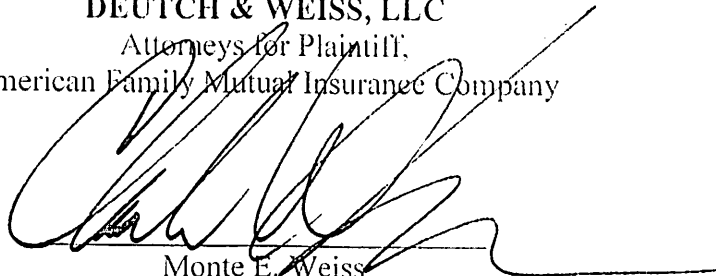
12. That on or before April 14, 2008, the Plaintiff caused to be served on the Defendants a Notice of Claim as that term is used in the Wisconsin Statutes.

13. That on or about June 3, 2008 that Notice of Claim was denied.

WHEREFORE, for the foregoing reasons, the plaintiff's hereby demand judgment against the defendants, Steven Stern and the City of West Allis, for the negligent operation of a motor vehicle in an amount to be determined by the trier of fact, pursuant to the laws of the State of Wisconsin, plus costs, disbursements, attorney's fees and whatever other relief this court deems just and equitable.

Dated this 23rd day of June 2008.

DEUTCH & WEISS, LLC
Attorneys for Plaintiff,
American Family Mutual Insurance Company



Monte E. Weiss
State Bar No.: 1003816
Charles W. Kramer
State Bar No.: 1021504

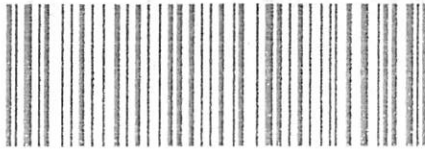
P.O. ADDRESS

DEUTCH & WEISS, LLC
7670 N. Port Washington Avenue, Suite 200
Milwaukee, WI 53202
(414) 247-9958
(414) 247-9959 Facsimile
Monte.Weiss@deutch.com
Charles.Kramer@deutch.com

Deutch & Weiss, LLC

7670 North Port Washington Road
Suite 200
Fox Point, Wisconsin 53217

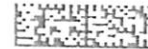
CERTIFIED MAIL™



7006 0810 0003 7027 1033

\$5.21 0
US POSTAGE
FIRST-CLASS
062S0006216761
53217

usps.com
S01408



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | |
|---|---------|------------------|
| Postage | \$.41 | Postmark Here |
| Certified Fee | 2.65 | |
| Return Receipt Fee (Endorsement Required) | 2.15 | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 5.21 | |

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

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

7006 0810 0003 7027 1033

Sent To Mr. Paul Ziehler
Street, Apt. No.,
or PO Box No. 7525 W. Greenfield Ave #108
City, State, ZIP+4 West Allis, WI 53214
PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- 1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 2. Print your name and address on the reverse so that we can return the card to you.
- 3. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. Paul Ziehler
City of West Allis Clerk
West Allis City Hall - Rm. 108
7525 W. Greenfield Ave.
West Allis, WI 53214

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type Return Receipt Requested
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label) 7006 0810 0003 7027 1033

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

AF
Stern, Steven



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

December 10, 2008

Common Council
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

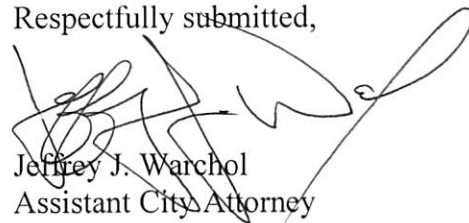
Dear Council Members:

The enclosed claim/lawsuit 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 each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

The following claim/lawsuit has been dismissed and placed on file:

**Summons and Complaint in the Matter of
American Family Mutual Insurance v. City of West Allis, et al.
(Case No. 08-CV-023703)**

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosures

cc: Thomas E. Mann, CVMIC