

15.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2008-0570	Claim	Claim Report
Nathan D. Mertens communication regarding vehicle damages allegedly sustained at the 2200 block of S. 83 St. on June 7, 2008.		
Introduced: 9/2/2008		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

Deny

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUL 07 2009			Barczak				
			Czaplewski				
			Kopplin	✓			
			Lajsic	✓			
		✓	Narloch	✓			
			Reinke	✓			
			Roadt				
			Sengstock				
			Vitale				✓
		Weigel					
		TOTAL		4			1

SIGNATURE OF COMMITTEE MEMBER

[Signature] _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION

Denied

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUL 07 2009			Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narloch	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale				✓
		Weigel	✓				
		TOTAL		9			1

**STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL**

ADMINISTRATION & FINANCE

Chair: Kurt E. Kopplin
Vice-Chair: Vincent Vitale
Thomas G. Lajsic
Richard F. Narlock
Rosalie L. Reinke

PUBLIC WORKS

Chair: Gary T. Barczak
Vice-Chair: Martin J. Weigel
Michael J. Czaplewski
Daniel J. Roadt
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SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Richard F. Narlock
Kurt E. Kopplin
Rosalie L. Reinke
Vincent Vitale

LICENSE & HEALTH

Chair: Michael J. Czaplewski
Vice-Chair: James W. Sengstock
Gary T. Barczak
Daniel J. Roadt
Martin J. Weigel

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Daniel J. Roadt
Kurt E. Kopplin
Richard F. Narlock
Vincent Vitale



June 18, 2009

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(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 denied:

Nate Mertens - Amount: \$1,000.00 (approximately)

This is a claim for damages to the claimant's vehicle when it was severely flooded while parked on the street on June 7th, 2008, in the 2100 block of South 83rd Street, West Allis, WI. Due to construction being done on the street in June of 2008, the contractor placed a black fabric material over the sewers to block the construction sediment from entering the sewer system. This type of inlet protection is a WDNR requirement, which the City enforces on contractors during construction when the possibility of dirt entering the sewer system is present. The claimant believes that the fabric mesh blocked the sewers on the day in question resulting in the ultimate flooding of his vehicle. On August 9th, 2008, the claimant filed a Notice of Claim and then followed the same up with a Demand for Damages on June 12th, 2009.

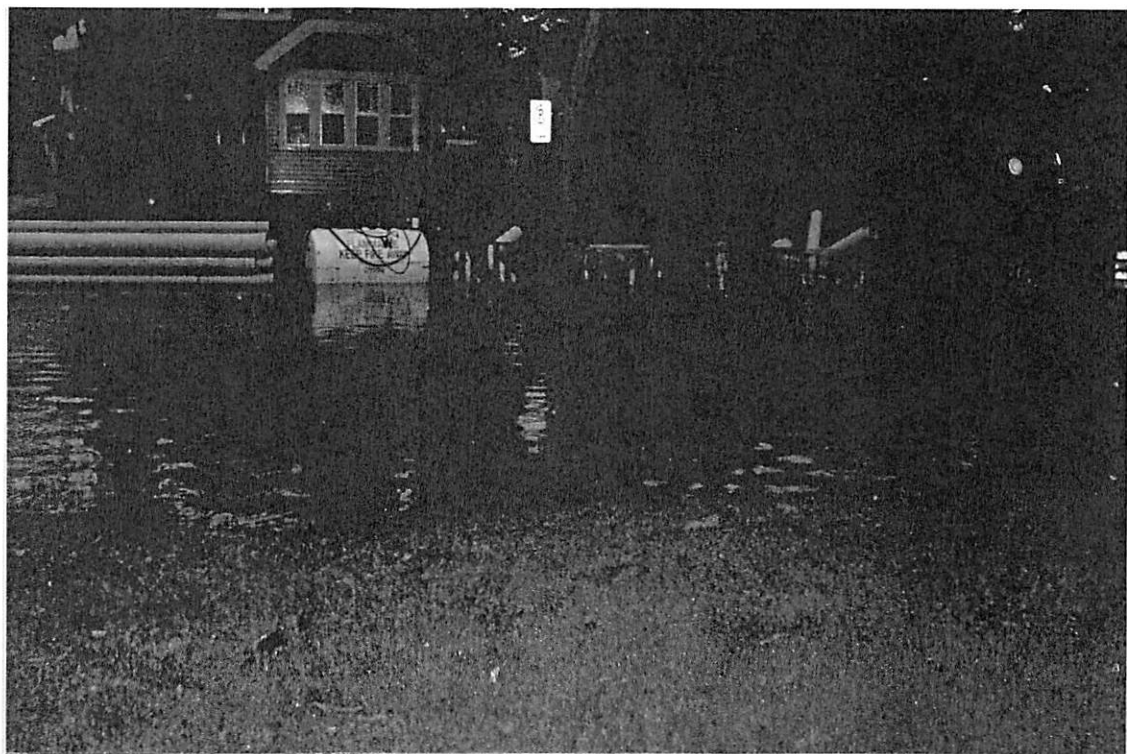
This claim was investigated by both the Department of Public Works and Engineering, which both came to the same conclusion that the City bears no legal responsibility for this incident. No municipal sewer system was designed to handle the extreme rain that occurred in the City on June 7th, 2008. Many homes and streets, etc. were flooded as a result of said storms. Liability, if any, would fall to the independent contractor working on the streets but even if said fabric was not in place, it is extremely likely that the streets would have flooded in the similar manner on the day in question. In other words, this is an act of God, which would be best handled by the claimant's automobile insurance provider.

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

JJW:da









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

August 25, 2008

Nathan D. Mertens
2211 S. 83 St.
West Allis, WI 53219

Dear Mr. Mertens:

This letter acknowledges receipt of your communication regarding vehicle damage allegedly sustained at the 2200 block of S. 83 St. on June 7, 2008.

The original document will be submitted to the Common Council at its meeting of September 2, 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,

A handwritten signature in cursive script that reads "Monica Schultz".

Monica Schultz
Assistant City Clerk

/amn

cc: City Attorney

Formal Written Claim/Complaint of Property Damage

Complainant: Nathan D. Mertens
2211 S. 83rd St.
West Allis, WI 53219
Phone: 414-313-1194

RECEIVED

AUG 19 2008

CITY OF WEST ALLIS
CLERK/TREASURER

On June 7, 2008, the 2200 block of S. 83rd St. was severely flooded. There was some street/sewage construction being done on the 2100 block of S. 83rd during the time of the flooding and the workers had covered the street drains on the 2200 block with some type of black mesh. This mesh did not allow the street to properly drain and the city was called June 5, 2008 (two days prior) because my block was flooding due to the rain we were receiving that week. A city worker arrived and pulled back the mesh from the drains allowing the street to drain and then replaced the mesh once things had dried up.

During the late afternoon hours on June 7, 2008, I began to hear tornado sirens blaring across the town. When I turned on the News, there were tornado warnings and the newscasters were telling everyone to get into their basements for protection, which I promptly did. I could see an immense amount of rain coming down and even noticed a small amount seeping into the corner of the basement. Seeing the water coming into the basement, I remembered that my car was parked on the street causing me to think about the partial flooding two days prior.

I quickly ran up stairs and outside to see my whole block completely flooded. The water was coming up the driveways and my car, along with several of my neighbors' vehicles, was partially under water (past the middle of the rims of my tires). At the same time, several of my neighbors were coming out of their homes and we all jumped into action mode. (Pictures of the flooding are included to show how severe it was)

We began pushing the cars that were parked in the street out of the flooded road to dry areas in the blocks East, West, and South of the 2200 block of S. 83rd St. Once we removed the cars from the flooded area, we began poking holes in the mesh that covered the street drains or ripping the material out. After about one half-hour, the block had drained completely and you could see the water was almost at the top of the street drains.

Due to the flooding, my vehicle suffered severe damage. The vehicle is a green 1997 Acura CL, license plate is a Wisconsin plate, number 733-MDZ. The inside of the car was completely flooded up to the bottom of the seats (pictures of the car are present to show the extent of the flooding) and the vehicle would not start and the engine would not turn over. I personally replaced the starter and the car started up but would not stay running. Eventually I had the vehicle towed to Auto Analyzers at the intersection of 84th and Greenfield in West Allis.

They informed me that the car's main computer had taken in water and needed to be cleaned and dried out before they could assess the full damage. They were able to

salvage the computer and get the car running but my stereo, keyless entry, alarm system, and air conditioning were all shorted out due to water damage. I also missed 2 days of work as I was trying to get things in order with my vehicle and paid all expenses out of pocket.

About one month later, I began experiencing problems with the clutch system of my car and had to take the care in again. This time I took the car to A-1 Radiator and Auto Repair located 8205 W. Lincoln Ave in West Allis. They informed that the hydraulic system had taken in an unusual amount of dirt due to the flooding and that the entire hydraulic system was ruined and needed to be replaced, which I again paid out of pocket to fix and missed another two days of work.

Our block would not have flooded if the street drains had not been covered. City workers had been to the 2200 block of S. 83rd St. two days prior to the severe flooding because the block was already beginning to flood and had pulled back the mesh that was covering the drains to allow the street to drain. That fact paired with the photo proof shows that the liability to the damage of my car lies with the City of West Allis. I am seeking compensation for the damages I have already paid for along with the other parts of my vehicle that have been damaged due to the flooding (the stereo, air-conditioning, alarm system, and keyless entry). I will submit estimates on the repair of the parts that are still not fixed along with receipts from the damages I have already paid for.

Please contact me with any questions.

Sincerely,



Nate Mertens
2211 S. 83rd. St
West Allis, WI 53219
Phone: 414-313-1194

I would also like compensation for the water damage to the interior of the vehicle including the carpeting and everything underneath.



C. O'Gormans Service, Inc., DBA

AUTO * ANALYZERS™



8404 W. GREENFIELD AVENUE • WEST ALLIS, WI 53214
PHONE: (414) 476-0077 • FAX: 414-476-5278 • www.autoanalzyers.net

INVOICE

Print Date : 06/13/2008

MERTENS, NATE
2211 S. 83RD ST.
Milwaukee, WI 53219
Home 414-313-1194

1997 Acura - 2.2CL

Lic # : 733-MDZ

Odometer In : 105854

Vin # : 015191-YL

Hat # :

Ref # :

Unit # : M/C

Part Description / Number	Qty	Sale	Extended	Labor Description	Extended
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				CUSTOMER COMPLAINT; VEHICLE WAS WATER FLOODED;NO START- CRANKS; REPLACED STARTER-THINK WATER GOT IN FUEL SYSTEM	N/C
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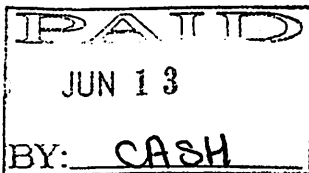
				TOWING	48.00
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				DIAGNOSE NO START PROBLEM; PERFORM FLOW CHART TESTING ON ELECTRICAL,IGNITION,EMISSION,FUEL AND MECHANICAL SYSTEMS;TAKE FUEL SAMPLE AND RECOMMEND FURTHER ATTEMPT TO DISASSEMBLE ENGINE COMPUTER AND CLEAN AND DRY TO START ENGINE.	75.00
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				FURTHER DISASSEMBLE DASHBOARD AND HARDWARE TO ACCESS COMPUTER. REMOVE COMPUTER AND DISASSEMBLE AND CLEAN,DRY,REASSEMBLE AND START ENGINE. TEST OPERATION AND ADVISE OF FURTHER RECOMMENDED WORK NEEDED. REASSEMBLE DASHBOARD.	200.00
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NOTES;
VEHICLE IS FLOOD DAMAGED;NO
WARRANTY.
SHOULD HAVE SPARK PLUGS,OIL AND
FILTER CHANGED.
FURTHER ELECTRICAL PROBLEMS MAY BE
EXPERIENCED DUE TO FLOOD DAMAGE.



I HEREBY AUTHORIZE the above repair work to be done along with necessary materials. You and your employees may operate above vehicle for purposes of testing, inspection or delivery at my risk. An express mechanic's lien is acknowledge on above vehicle to secure the amount of repairs thereto. You will not be held responsible for loss or damage to vehicle or articles left in case of fire, theft, accident or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I understand that all charges are due upon delivery of the vehicle. I acknowledge receipt of a copy of this agreement.

SIGNATURE _____

YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION.

1. I request an estimate in writing before you begin repairs. _____
 2. Please proceed with repairs, but call me before continuing if the price will exceed \$ _____
 3. I do not want an estimate. _____

NOTICE: THE CUSTOMER IS ENTITLED TO INSPECT OR RECEIVE ANY COMPONENTS, PARTS OR ACCESSORIES REPLACED OR REMOVED BY THE SHOP

Do you want the replaced parts you are entitled to? <input type="checkbox"/> Yes <input type="checkbox"/> No	Payment will be made by: <input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Charge	Call when vehicle is ready <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> This vehicle received without face to face customer contact.
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Motor vehicle repair practices are regulated by chapter ATCP 132, Wis. Adm. Code, administered by the Bureau of Consumer Protection, P.O. Box 8911, Madison, Wisconsin 53708-8911

ADDITIONAL AUTHORIZED BY: _____ NAME _____ A.M. _____ P.M. _____ NO. CALLED _____ NEW TOTAL ESTIMATE _____

DATE _____ TIME _____ SHOP REPRESENTATIVE SIGNATURE _____



C. O'Gormans Service, Inc., DBA

AUTO * ANALYZERS™



8404 W. GREENFIELD AVENUE • WEST ALLIS, WI 53214
PHONE: (414) 476-0077 • FAX: 414-476-5278 • www.autoanalzyers.net

INVOICE

MERTENS, NATE
2211 S. 83RD ST.
Milwaukee, WI 53219
Home 414-313-1194

1997 Acura - 2.2CL
Lic # : 733-MDZ
Vin # : 015191-YL
Hat # :
Unit # : M/C

Print Date : 06/13/2008

Odometer In : 105854

Ref # :

Part Description / Number	Qty	Sale	Extended	Labor Description	Extended
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Written By:

Org. Estimate \$ 341.09 Revisions \$ 0.00 Current Estimate \$ 341.09 Additional Cost Revised Estimate

Labor:	275.00
Parts:	0.00
Sublet:	48.00

Sub:	323.00
Tax:	18.09
Total:	341.09
Bal Due:	\$341.09

[Payments -]

I HEREBY AUTHORIZE the above repair work to be done along with necessary materials. You and your employees may operate above vehicle for purposes of testing, inspection or delivery at my risk. An express mechanic's lien is acknowledge on above vehicle to secure the amount of repairs thereto. You will not be held responsible for loss or damage to vehicle or articles left in case of fire, theft, accident or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I understand that all charges are due upon delivery of the vehicle. I acknowledge receipt of a copy of this agreement.

SIGNATURE _____
YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION.

1. I request an estimate in writing before you begin repairs.
2. Please proceed with repairs, but call me before continuing if the price will exceed \$ _____
3. I do not want an estimate.

NOTICE: THE CUSTOMER IS ENTITLED TO INSPECT OR RECEIVE ANY COMPONENTS, PARTS OR ACCESSORIES REPLACED OR REMOVED BY THE SHOP

Do you want the replaced parts you are entitled to? Yes No Payment will be made by: Cash Credit Card Charge Call when vehicle is ready Yes No This vehicle received without face to face customer contact.

Motor vehicle repair practices are regulated by chapter ATCP 132, Wis. Adm. Code, administered by the Bureau of Consumer Protection, P.O. Box 8911, Madison, Wisconsin 53708-8911

ADDITIONAL AUTHORIZED BY: _____ NAME _____ SHOP REPRESENTATIVE SIGNATURE _____
DATE _____ TIME _____ A.M. _____ P.M. _____ NO. CALLED _____ NEW TOTAL ESTIMATE _____



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

June 18, 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.

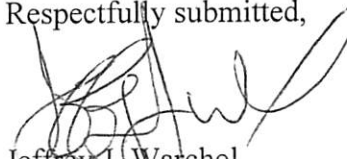
The following claim/lawsuit has been paid and placed on file:

Brillo Home Improvements Inc. (\$310.00)

The following claims/lawsuits have been denied:

Nate Mertens (\$1,000.00/approximately)
Sharon Harris (\$1,000.00)

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosures

cc: Thomas E. Mann, CVMIC



NOTICE OF DISALLOWANCE OF CLAIM

July 10, 2009

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Nathan D. Mertens
2211 South 83rd Street
West Allis, WI 53219

Re: Your Claim Against the City of West Allis
Date of Loss: 6/7/08

Dear Mr. Mertens:

At its meeting on July 7th, 2009, the Common Council of the City of West Allis considered your claim received on August 9th, 2008 (Notice of Claim) and June 12th, 2009 (Demand for Damages), regarding property damage allegedly sustained in the 2100 block of South 83rd 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\denialLtrs\ltr-denial-N Mertens

cc: City Attorney's Office
City Clerk's Office ✓