



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2003-0642	Claim	Claim Report
Dowling & Blumenfield, LLP Law Offices communication on behalf of their clients Doreen Berg and Eugene Berg, regarding Notice of Injury which allegedly occurred at 2892 S. 98 St. on June 12, 2003.		
Introduced: 10/21/2003		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

Denied

ACTION
DATE:

MAY 18 2004

MOVER SECONDER

_____	_____	Barczak
_____	_____	Czaplewski
_____	_____	Dobrowski
_____	_____	Kopplin
_____	_____	Lajsic
_____	_____	Narlock
_____	_____	Reinke
_____	_____	Sengstock
_____	_____	Vitale
_____	_____	Weigel

AYE	NO	PRESENT	EXCUSED
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TOTAL

5 - _____

SIGNATURE OF COMMITTEE MEMBER

Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

Denied

ACTION
DATE:

MAY 18 2004

MOVER SECONDER

_____	_____	Barczak
_____	_____	Czaplewski
_____	_____	Dobrowski
_____	_____	Kopplin
_____	_____	Lajsic
_____	_____	Narlock
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TOTAL

10 - _____



CITY OF WEST ALLIS

WISCONSIN

OFFICE OF THE CITY ATTORNEY

April 29, 2004

Common Council
City of West Allis

Re: City Attorney's Report of Claim/Lawsuit

Dear Council Members:

The attached claim/lawsuit 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 as follows:

It is the recommendation of this office that the following claim/lawsuit be denied:

(Eugene and Doreen Berg – Amount: Doreen's - \$100,000.00; Eugene - \$25,000.00)

This is a claim for personal injuries allegedly sustained by Doreen Berg from a slip and fall accident on June 12, 2003, as well as a claim for loss of consortium on behalf of Eugene Berg, the husband of the injured party, Doreen Berg. On June 12, 2003, Doreen Berg suffered a fractured right ankle when she fell after stepping on a scum-like slippery substance on the sidewalk in front of 2892 South 98th Street, West Allis, Wisconsin. To date, Doreen Berg has incurred medical and hospital charges in the amount of \$29,000 as a result of the fall and surgery related thereto. On July 1, 2003, Charles S. Blumenfield, attorney for Doreen and Eugene Berg, filed a Notice of Injury pursuant to Wisconsin Statutes 893.80 with the City of West Allis. Said Notice of Injury was followed up with a Notice of Claim filed on March 10, 2004, by Attorney Blumenfield seeking damages in the amount of \$100,000 for Doreen Berg and \$25,000 for Eugene Berg.

Our investigation into this matter revealed that the scum-like slippery substance on the sidewalk where Ms. Berg fell came directly from a discharge hose to the property owner's sump pump located at 2892 South 98th Street, West Allis, Wisconsin. Although the owner of the property, Lynn Letkewisz, claimed that the discharge hose ended approximately fifteen (15) feet away from the sidewalk in the grass area, our reports indicated that said discharge hose was only approximately two (2) feet from the sidewalk at the time of the accident. Therefore, the property owner was allowing discharge from the sump pump to flow directly onto the sidewalk area. Although the City may have been aware of the discharge issue at Ms. Letkewisz's residence in the past, the City had nothing to do with Ms. Letkewisz's decision to attach a hose to the sump pump in the first place and allow drainage of water in the matter as heretofore described.



City Attorney
Scott E. Post

Assistant City Attorneys
Sheryl L. Kuhary
Jeffrey J. Warchol
Janilyn K. Knorr

After reviewing the facts in this matter, it is the City Attorney's position that if negligence occurred, liability rests with the homeowner and not the City of West Allis. Also, there is an unpublished case, which backs up the City's position in this case as it relates to accumulation of water discharged from a sump pump, and flowing over lands leading to a sidewalk area. Furthermore, the law places a cap on the amount of damages that the City would be liable in a case like this at \$50,000.00, which is well below the claimant's demand.

Based upon the above, it is the recommendation of the City Attorney's Office to deny both Doreen and Eugene Berg's claims pursuant to the provisions of Wisconsin Municipal Claims Statute 893.80.

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney

JJW:da

LAW OFFICES

DOWLING & BLUMENFIELD, LLP

A Limited Liability Partnership

Charles S. Blumenfield*

Court Commissioner

Robert G. Dowling

*also admitted in New York

735 North Water Street, Suite 1200

MAILING ADDRESS:

P.O. Box 611

Milwaukee, Wisconsin 53201-0611

(414) 271-5529

Fax: (414) 271-0611

October 9, 2003

Legal Assistants

Jennifer Livingston

Jill C. Heg

RECEIVED

OCT 09 2003

CITY OF WEST ALLIS
CLERK/TREASURER

VIA MESSENGER

City of West Allis
Attn: City Clerk
7525 West Greenfield Avenue
West Allis, WI 53214

Re: Our Clients: Doreen and Eugene Berg
Date of Injury: June 12, 2003
Notice of Injury

Dear Sir/Madam:

Enclosed please find an original and a copy of the Notice of Injury in regard my client, Mrs. Doreen Berg. Please stamp the extra copy of the Notice of Injury and return it to my office via the waiting messenger.

Thank you for your cooperation.

Very truly yours,

DOWLING & BLUMENFIELD, LLP

By: 

Charles S. Blumenfield

CSB:jch

Enclosures

cc: Mr. & Mrs. Eugene Berg

NOTICE OF INJURY
§ 893.80 (1)(a) Stats.

TO: City of West Allis
Attn: City Clerk
7525 West Greenfield Avenue
West Allis, WI 53214

NOTICE IS HEREBY GIVEN to the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin, for personal injuries and damages sustained by Doreen Berg and Eugene Berg, as set forth below:

1. The name of the law firm representing Doreen Berg is DOWLING & BLUMENFIELD, LLP, P.O. Box 611 Milwaukee, Wisconsin 53201-0611.

2. Doreen Berg, whose address is 9721 W. Rosedale Ave., West Allis, Wisconsin 53227, sustained personal injuries on June 12, 2003 when she fell after stepping on a wet, slippery substance on the sidewalk at 2892 S. 98th Street, West Allis, Wisconsin 53227.

3. As a result of the injuries suffered by Doreen Berg, her husband Eugene Berg suffered a loss of the society and companionship of his wife.

4. Upon information and belief, the proximate cause of said injuries was the negligence of the City of West Allis in failing to properly maintain the sidewalk and permitting sump pump effluent to be discharged so that it flowed across and pooled on the sidewalk resulting in the unnatural accumulation of water and a slippery substance camouflaged to users of the sidewalk.

5. As a direct and proximate result of the negligence of the City of West Allis and its employees, Doreen Berg suffered a broken ankle and other personal injuries.

6. This document is a Notice of Injury pursuant to §893.80 (1)(a) *Stats.*, served on the above-named City of West Allis. This is not a claim for damages. No claim for damages is being made at this time.

7. The undersigned is one of the attorneys for Doreen Berg and Eugene Berg, and is authorized to make this Notice of Injury regarding the circumstances of the claim.

Dated at Milwaukee, Wisconsin, this 9th day of October 2003.

DOWLING & BLUMENFIELD, LLP

Attorneys for Doreen and Eugene Berg

By 
Charles S. Blumenfield
State Bar No. 1016104

MAILING ADDRESS:

P.O. Box 611
Milwaukee, WI 53201-0611
Phone: (414) 271-5529



CITY OF WEST ALLIS

WISCONSIN



City Clerk/Treasurer Office

October 10, 2003,

Paul M. Ziehler
*City Administrative Officer
Clerk/Treasurer*

Dorothy E. Steinke
Deputy City Treasurer

Monica Schultz
Assistant City Clerk

Mr. Charles S. Blumenfield
Dowling & Blumenfield, LLP
P. O. Box 611
Milwaukee, WI 53201-0611

Dear Mr. Blumenfield:

This letter acknowledges receipt of your communication submitted on behalf of Doreen and Eugene Berg regarding an injury allegedly sustained at 2892 S. 98 St. on June 12, 2003.

The original document will be submitted to the Common Council at its meeting of October 21, 2003.

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

/dlm

cc: City Attorney



CITY OF WEST ALLIS

WISCONSIN



OFFICE OF THE CITY ATTORNEY

City Attorney
Scott E. Post

Assistant City Attorneys
Sheryl L. Kuhary
Jeffrey J. Warchol
Janilyn K. Knorr

May 4, 2004

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 and the applicable law. Our Opinion regarding liability is attached to each claim.

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

Doreen Berg (Amount of \$100,000.00)

Eugene Berg (Amount of \$25,000.00)

Respectfully submitted,

Jeffrey J. Warchol
Assistant City Attorney

JJW:da

Enclosures

L/Jeff/Claims/ltr cc&mann-denied

cc: Thomas E. Mann, CVMIC



CITY OF WEST ALLIS

WISCONSIN



City Administrative Office

NOTICE OF DISALLOWANCE OF CLAIM

Paul M. Ziehler
City Administrative Officer
Clerk/Treasurer

May 19, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Eugene Berg
9721 West Rosedale Avenue
West Allis, WI 53227

Re: Your Claim Against the City of West Allis
Date of Loss: June 12, 2003

Dear Mrs. Berg:

At its meeting on May 18, 2004, the Common Council of the City of West Allis considered your claim received on October 10, 2003, concerning costs for suffering loss of the society and companionship of his wife as a result of her injuries and damages allegedly sustained from falling on a slippery substance on the sidewalk at 2892 South 98th 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.

If you have any further questions on this claim, please feel free to contact the City Attorney's Office at 414-302-8450.

Sincerely,

Paul M. Ziehler
City Administrative Officer
Clerk/Treasurer

JJW:da
L:\jeff\claims\denialLtrs\ltr-denial-E Berg

cc: City Attorney's Office
Charles S. Blumenfield, Esq.