

17.  
30.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
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2009-0502      Claim      Claim Report

American Family Mutual Insurance Company communication submitted on behalf of Laverne D. Plopper regarding vehicle damage allegedly sustained on June 26, 2009.

Introduced: 8/4/2009

Controlling Body: Administration & Finance Committee

### COMMITTEE RECOMMENDATION

*Denial*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
SEP 01 2009			Barczak				
			Czaplewski				
			Kopplin	✓			
			Lajsic	✓			
		✓	Narlock	✓			
			Reinke	✓			
			Roadt				
			Sengstock				
			Vitale	✓			
		Weigel					
		TOTAL		5			

### SIGNATURE OF COMMITTEE MEMBER

*Just Kopplin*  
 Chair      Vice-Chair      Member

### COMMON COUNCIL ACTION

*Denied*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
SEP 01 2009			Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
		Weigel	✓				
		TOTAL		10			



OFFICE OF THE CITY ATTORNEY

August 3, 2009

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:**

**American Family Insurance on Behalf of its Insured Laverne D. Plopper -**  
**Amount: \$4,866.07**

This is a claim for property damage to the claimant's insured's vehicle on June 26<sup>th</sup>, 2009, when the insured mistakenly drove her vehicle into a construction zone and struck holes in the cement at 2030 South 116<sup>th</sup> Street, West Allis, WI causing damage to the front and passenger side of the insured's vehicle. The insured felt that the construction zone was poorly or improperly barricaded causing her to drive into the wrong lane of traffic. The claimant insurance company agreed that the area was poorly set up to control traffic and filed a claim against the City on July 14<sup>th</sup>, 2009.

Our investigation of this matter also came to the conclusion that the construction area was poorly or improperly barricaded making it difficult for a motorist to know where to drive. However, at the time of the accident, a private contractor (Payne & Dolan, Inc.) was working on City of West Allis Contract 2009 No. 6. The City's contract with Payne & Dolan, Inc. requires the contractor to erect and maintain traffic control devices to ensure the safety of motorists and pedestrians at all times. The City's contract with Payne & Dolan, Inc. also requires them to have insurance that protects the City against loss, which arises from the performance of the contract. In other words, by contract, the City is not responsible for negligent acts committed by independent contractors. Therefore, the proper party for the claimant insurance company to seek damages from is the contractor, Payne & Dolan, Inc. and/or its subcontractor in charge of barricading the construction zone. This was explained to the claimant insurance company by a courtesy letter from the City Attorney's Office sent on July 22<sup>nd</sup>, 2009.

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



## AMERICAN FAMILY INSURANCE GROUP

BUSINESS ADD: 302 N WALBRIDGE AVE. • MADISON WI 53783-0001 • PHONE: (608) 249-2111

Mailing Address: 6000 AMERICAN PKWY • MADISON WI 53783-0001

July 28, 2009

RECEIVED  
JUL 30 2009  
WEST ALLIS  
CITY ATTORNEY

City of West Allis  
7525 W Greenfield Ave  
West Allis, WI 53214

RE:   Your Claim Number:  
      Your Insured:           City of West Allis  
      Date of Loss:           June 26, 2009  
      Our Claim Number:      00-651-478944-1518  
      Our Insured:            Laverne D Plopper

We are writing about the accident involving our insureds.

Our investigation shows that your insured's negligence was the cause of this accident. Our subrogation interest is \$4,766.07 plus \$ 100.00 which is our insured's deductible interest. Please send us your payment or offer of settlement.

**IN THE EVENT THAT THIS PERSON IS NOT INSURED WITH YOUR COMPANY PLEASE SEND US A DENIAL LETTER ON YOUR COMPANY LETTERHEAD.**

Respectfully,

Dawn Gillitzer  
Subrogation Adjuster  
American Family Insurance  
302 N Walbridge ave  
Madison, WI 53714  
Attn: Subrogation  
800-692-6326 Ext 44165  
Fax: 866-364-0982  
dgillitz@amfam.com

Police Report  
  Photos  
  Estimate  
  Proof of Payment





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*

July 20, 2009

Tamara S. Koss  
American Family Mutual Insurance Company  
6000 American Pkwy.  
Madison, WI 53783-0001

Dear Ms. Koss:

This letter acknowledges receipt of your communication submitted on behalf of your insured Laverne D. Plopper, your claim number 00-651-478944-1518, regarding vehicle damage allegedly sustained on June 26, 2009.

The original document will be submitted to the Common Council at its meeting of August 4, 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,

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

Monica Schultz  
Assistant City Clerk

/amn  
cc: City Attorney



## AMERICAN FAMILY INSURANCE GROUP

SCANNING CENTER • 6000 AMERICAN PKWY • MADISON WI 53783-0001 • 1-800-MYAMFAM (1-800-692-6326)

July 14, 2009

65-TSK002  
CITY OF WEST ALLIS  
7525 W GREENFIELD AVE  
WEST ALLIS WI 53214-4648

RECEIVED

JUL 16 2009

CITY OF WEST ALLIS  
CLERK/TREASURER

RECEIVED  
JUL 16 2009  
WEST ALLIS  
CITY ATTORNEY

RE: Claim Number: 00-651-478944-1518  
Our Insured Name: Laverne D Plopper  
Date of Loss: June 26, 2009

Dear City Of West Allis:

We have received notice of the above claim from our insured. Our preliminary investigation indicates you were the cause of our insured's damages.

We anticipate making payment(s) to our insured. Once payment is made, our Subrogation Department will send supporting documentation to you or your insurance company to reimburse our claim payment(s) and our insured's deductible, if applicable. If you have a liability insurance policy, please complete the enclosed form and return it to us, marked "Attn: Subrogation Dept". We can then handle this matter directly with your insurance company.

If you have any questions, please contact me at the number below.

Sincerely,

Tamara S Koss  
Casualty Claim Desk Senior Adjuster  
American Family Mutual Insurance Company  
1-800-MYAMFAM (1-800-692-6326) X 48314  
tkoss@amfam.com  
Fax: (800) 977-9029  
www.amfam.com/claims

Enc:

Wisconsin Motor Vehicle Accident Report MV4000e 01/2005 PK2007

BRS0S0W

CCDD09070973187M0901.03D

POLICE # 09028398

ACCIDENT # A09062603

<input checked="" type="checkbox"/> Reportable Accident		<input type="checkbox"/> On Emergency		<input type="checkbox"/> Amended		DOT Document Number BRS0S0W		Document Override Number	
Agency Accident Number A09062603				Police Number 09028398					
4 - Accident Date 06/26/2009		5 - Time of Accident (Military Time) 1348		6 - Total Units 01		7 - Total Injured 01		8 - Total Killed 00	
2 - County MILWAUKEE - 40		3 - Municipality WEST ALLIS - 60, CITY				11 - Accident Location NON-INTERSECTION			
14 - On Hwy No.		14 - On Street Name 116TH ST S			14 - Bus/Fm/Rmp		15 - Est. Dist 300	F/WI F	15 - Hwy. Dir SOUTH
16 - Fr/At Hwy No.		16 - From/At Street Name ROGERS ST W			16 - Business/Frontage/Ramp				
17 - Structure Type HOUSE #		17 - Structure Number 2030		12 - Latitude			13 - Longitude		
80 - First Harmful Event OTHER FIXED OBJECT				93 - Manner of Collision NO COLLISION WITH MOTOR VEHICLE IN TRANSPORT					
112 - Access Control NO CONTROL		113 - Road Curvature STRAIGHT		113 - Road Terrain LEVEL/FLAT		Surface Type CONCRETE - 1			
115 - Traffic Way NOT-PHYSICALLY-DIVIDED-(2-WAY TRAFFIC)									
117 - Relation To Roadway ON-ROADWAY									
114 - Light Condition DAYLIGHT			116 - Road Surface Condition DRY			118 - Weather CLEAR			
<input type="checkbox"/> 9 Hit and Run	<input checked="" type="checkbox"/> 9 Government Property		<input type="checkbox"/> 9 Fire	<input type="checkbox"/> 9 Photos Taken		<input type="checkbox"/> 9 Trailer or Towed			
<input type="checkbox"/> 9 Truck, Bus, or Hazardous Materials			<input type="checkbox"/> 9 Load Spillage		<input checked="" type="checkbox"/> 9 Construction Zone		<input checked="" type="checkbox"/> 9 Names Exchanged		
101 <input checked="" type="checkbox"/> Supplemental Reports		102 <input type="checkbox"/> Witness Statements			103 <input type="checkbox"/> Measurements Taken		79 - E M S Number		

Operator/Pedestrian

Unit Status		81 - Most Harmful Event: Collision With OTHER FIXED OBJECT		23 - Dir Of Travel NORTH		24 - Speed Limit 30		
36 - Operating as Classified D CLASS		37 - Endorsements		35 <input type="checkbox"/> Operating Commercial Motor Vehicle				
29 - Driver License Number P4165252595501		30 - State WI	31 - Expiration Year 2016	34 - On Duty Accident				
25 - Operator/Pedestrian Last Name PEOPPER			25 - First Name LAVERNE		25 - Middle Initial A	25 - Suffix		
32 - Date Of Birth 12/15/1925		33 - Sex FEMALE						
26 - Address Street & Number 2759 S 111ST						26 - PO Box		
27 - City WEST ALLIS			27 - State WI	27 - Zip Code 53227		28 - Telephone Number (414) 543-3723 EXT.		
39 - Seat Position FRONT-SEAT-LEFT-SIDE-(MC/BIKE DRIVER, TRAIN CONDUCTOR)				40 - Safety Equipment SHOULDER-BELT-AND-LAP-BELT-USED				
38 - Injury Severity C - POSSIBLE INJURY		41 - Airbag NON-DEPLOYED		42 - Ejected NOT-EJECTED		44 <input type="checkbox"/> Medical Transport		
43 - Trapped/Extricated NOT-TRAPPED		92 - Pedestrian Location		92 - Pedestrian Action				
119 - What Driver Was Doing GOING-STRAIGHT			120 - Traffic Control NO-CONTROL			82 - No. of Citations Issued 0		
64 - 1st Statute No.		64 - 2nd Statute No.		64 - 3rd Statute No.		64 - 4th Statute No.		64 - 5th Statute No.
122 - Driver Factors NOT-APPLICABLE								
88 - Driver or Pedestrian Cond APPEARED NORMAL			89 - Substance Presence NEITHER-ALCOHOL-NOR-DRUGS-PRESENT					
80 - Alcohol Test TEST NOT GIVEN			90 - Alcohol Content		91 - Drug Test TEST-NOT-GIVEN			

OPERATOR/PEDESTRIAN 01

Wisconsin Motor Vehicle **BRS0S0W**  
Accident Report MV4000e 01/2005  
PK2007

CCDD09070973187M0901.04D

91 - Drugs Reported
124 - Highway Factors CONSTRUCTION-ZONE

Vehicle

VEHICLE 01	21 - Unit Type AUTOMOBILE		Vehicle Type PASSENGER-CAR			22 - Total Occupants 1
	56 - License Plate Number 471PEC		57 - Plate Type AUT	58 - State WI	59 - Exp Year 2009	55 - Vehicle Identification Number 1FAFP34R33W227639
	50 - Year 2003	51 - Make FORD	52 - Model FOCUS	53 - Body Style 4D	54 - Color SIL	100 - Skidmarks to Impact (Ft) 5
	94 - Vehicle Damage UNDERCARRIAGE					
	95 - Extent Of Damage MODERATE		96 <input checked="" type="checkbox"/> Vehicle Towed Due To Damage		97 - Vehicle Removed By N & S TOWING	
123 - Vehicle Factors NOT-APPLICABLE						

Vehicle Owner

VEH OWNER 01	45 <input type="checkbox"/> Vehicle Owner Same As Operator				
	46 - Vehicle Owner Last Name PLOPPER		46 - First Name SUSAN	46 - Middle Initial J	46 - Suffix
	48 - Company Name				
	47 - Address Street & Number 2759 S 111ST			47 - PO Box	
	48 - City WEST ALLIS		48 - State WI	48 - Zip Code 53227	49 - Telephone Number (414) 543-3723 EXT

Insurance

INS 01	63 - Liability Insurance Company AUTO-CLUB-INS-ASSOC		60 <input checked="" type="checkbox"/> Policy Holder Same As Owner			
	61 - Policy Holder Last Name PLOPPER		61 - Policy Holder First Name SUSAN			
	61 - Policy Holder Company					

School Bus

BUS 01	Bus Travelling to/from <input type="radio"/> To <input type="radio"/> From		School Name	Body Make	Seating Capacity
	School District Contracted With				

Property

Organization Type GOVERNMENT	84 - Property Owner Last Name	84 - First Name	84 - Middle Initial	84 - Suffix
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Wisconsin Motor Vehicle Accident Report MV4000e 01/2005  
PK2007

CCD09070973187M0901.05D

<b>PROPERTY OWNER 01</b>	84 - Company Name <b>WEST ALLIS CITY OF</b>		Government Property Type <b>COUNTY/MUNICIPAL</b>	
	85 - Address Street & Number <b>7525 W GREENFIELD AVE</b>		85 - PO Box	
	86 - City <b>WEST ALLIS</b>	86 - State <b>WI</b>	86 - Zip Code <b>53214</b>	87 - Telephone Number <b>(414) 302-8200 EXT</b>
	83 - Government Damage Tag Number			
	<b>Fixed Objects Struck</b>			
82 - Striking Unit <b>1</b>	82 - Object Struck <b>OTHER-FIXED-OBJECT</b>	82 - Striking Unit	82 - Object Struck	
82 - Striking Unit	82 - Object Struck	82 - Striking Unit	82 - Object Struck	
82 - Striking Unit	82 - Object Struck	82 - Striking Unit	82 - Object Struck	

**Diagram and Narrative**

<b>DIAGRAM AND NARRATIVE</b>	105 - PHOTOS BY
<p>UNIT 1 WAS TRAVELING NORTH ON S 116 ST IN A CONSTRUCTION ZONE THAT WAS POORLY BLOCKED BY BARRICADES. UNIT 1 ENCOUNTERED A BREAK IN THE BARRICADES AND THE DRIVER MOVED TO THE RIGHT BELIEVING THAT THE BARRICADES AHEAD OF HER DIVIDED THE LANE. WHEN SHE PROCEEDED PAST THE BARRICADES SHE OBSERVED A LARGE RECTANGULAR HOLE CUT INTO THE CONCRETE. THE DRIVER ATTEMPTED TO STOP, BUT STRUCK THE HOLE. THE VEHICLE STRUCK PAVEMENT BOUNCED IN THE AREA TWISTING TO THE RIGHT AND STRUCK A SECOND HOLE BEFORE COMING TO A REST. THE VEHICLE SUSTAINED MODERATE DAMAGE TO THE FRONT WHEELS AND AXLE. THE DRIVER COMPLAINED OF A SORE HEAD, BUT REFUSED TRANSPORT BY RESCUE SQUAD. SHE WAS LATER TAKEN TO THE HOSPITAL BY A FAMILY MEMBER.</p>	

**Officer Information**



**Wisconsin Motor Vehicle BRS0S0W**  
**Accident Report MV4000e 01/2005**

PK2007

CCD09070973187M0901.06D

<b>OFFICER INFORMATION</b>	125 - Officer Last Name <b>CLEMENTI</b>		125 - First Name <b>TODD</b>		125 - Middle Initial		131 - Officer ID		
	129 - Law Enforcement Agency No. <b>4116</b>			130 - Law Enforcement Agency Name <b>WEST ALLIS POLICE DEPARTMENT</b>					
	126 - Law Enforcement Agency Address Street & Number <b>11301 WEST LINCOLN AVENUE</b>								
	127 - City <b>WEST ALLIS</b>			127 - State <b>WI</b>		127 - Zip Code <b>53227</b>		128 - Telephone Number <b>(414) 302-8000 EXT.</b>	
	132 - Date Notified <b>06/26/2009</b>			133 - Time Notified (Military Time) <b>1404</b>		134 - Time Arrived (Military Time) <b>1418</b>		135 - Date Of Report <b>06/27/2009</b>	
	Agency Accident Number <b>A09062603</b>			Police Number <b>09028398</b>		19 - Special Study			
	18 - Agency Space								



**West Allis  
Police Department**

**A09062603**

CCD09070973187M0901.07D

**Accident Investigation**

Event #: 09-028398

Date of Accident: 06/26/09 Time of Accident: 1348hrs

Location: 2030 S 116 St

Investigating Officer(s) T. Clementi Assisting Officer(s) J. Petrich

Traffic Investigator: None

**Investigation**

**STATEMENT LAVERNE PLOPPER**

Plopper stated she was N/B in the construction zone and observed a large gap in the barricades. When they began again she believed it was set up to split up traffic moving her lane to the right. She went to the right into what she perceived was the correct lane. As she proceeded she observed large holes cut into the cement. She tried to stop, but could not avoid striking the hole. She believes the area was poorly set up to control the traffic.

**STATEMENT BRIAN WALKER**

Brian D Walker, M/W 12/27/1962 of 835 S 101 St West Allis, Wi 53214 Ph# 258-8740

Brian is the City of West Allis Engineering Inspector and had been on the job site at the time of the crash. He did not see the accident, but did observe the large gap in the barricades where the accident occurred. Brian indicated that in the fashion the barricades were set up it did appear that the lane shifted to the right. He indicated that the concrete crew from McDowell Affordable Concrete (2929 Chase Ave Milwaukee, WI Ph# 397-5626) had been moving barricades from all over the area making it difficult for a motorist to know where to drive.

**STATEMENT LISA BRUX**

Lisa M Brux F/W 12/04/1974 of 200 James St Unit B Slinger, Wi 53086 Ph# 262-366-5097

Lisa is the project supervisor for this project and is employed by the contractor Payne and Dolan (N3W23650 Badinger Rd Waukesha, WI 53187 Ph# 262-524-1788)

Lisa arrived on scene and I explained to her the circumstances of the accident. She viewed the current barricade locations and indicated that it was unsatisfactory. She said it was clearly not the driver's fault and was the result of not having the area properly barricaded. She immediately called for more barricades to be delivered. She believed that they had area marked properly earlier and felt that the sub contractors McDowell Affordable Concrete and moved the barricades making it unsafe.



**West Allis  
Police Department**

**A09062603**

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**Accident Investigation**

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**OFFICER OBSERVATIONS**

I observed a gap between where the barricades blocked off the right lane of approx. 250-300ft. That gave it the appearance that when the barricades started again traffic should move over. In my opinion the area was not properly blocked off leading to this accident.

CCD09070973187M0901 08D



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

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

August 17, 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.

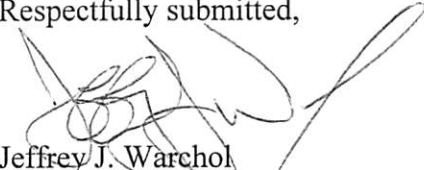
**The following claims/lawsuits have been paid and placed on file:**

Donald Wiedmann (\$1,918.12)

**The following claims/lawsuits have been denied:**

Lisa Yancey (\$Unknown Amount)  
American Family Insurance on Behalf of Lavern D. Plopper (\$4,866.07)  
Scott and Sandra Blaha (\$14,000.00)

Respectfully submitted,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC



**NOTICE OF DISALLOWANCE OF CLAIM**

September 4, 2009

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

Ms. Tamara S. Koss  
American Family Mutual Insurance Company  
6000 American Parkway  
Madison, WI 53783-0001

Re: Your Claim Against the City of West Allis  
Date of Loss: 6/26/09

Dear Ms. Koss:

At its meeting on September 1<sup>st</sup>, 2009, the Common Council of the City of West Allis considered your claim received on July 16<sup>th</sup>, 2009, regarding property damage allegedly sustained by your insured, Laverne D. Plopper, while traveling north on South 116<sup>th</sup> Street in the City of 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-Amer Fam-L Plopper

cc: 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