

Entered - 07/14/00 - sb
CL00L0424 - DIANNE C. MITCHELL

CLAIM OF: **DONALD M. BROWN,**
through his attorney,
Curt Blackburn Thompson, II
581 Simpson Street, NW
Atlanta, Georgia 30314-3839

For damages alleged to have been sustained as a result of pension payroll deductions between 1985 and 1999.

THIS ADVERSED REPORT IS APPROVED

BY: *Rosalind Rubens Newell*
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

CONSENT AGENDA

ADVISED REPORT
COM. Public Safety
2000 11/14/00
Curt Blackburn Thompson
Michael [unclear]
[unclear]
[unclear]
[unclear]

ADVERSED BY
CITY COUNCIL NOV 20 2000

CERTIFIED
NOV 20 2000
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
NOV 20 2000
Rhonda Douglas Johnson
MUNICIPAL CLERK



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6033
FAX (404) 658-6103

November 28, 2000

Curt Blackburn Thompson, II
Attorney at Law
581 Simpson St., NW
Atlanta, Ga 30314-3839

00-R-1827

RE: Donald M. Brown

Dear Attorney Thompsosn:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on November 20, 2000. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400.**

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: **Claims Division/Law Department**

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L024

Date November 1, 2000

Claimant /Victim DONALD M. BROWN
BY: (Atty) Curt Blackburn Thompson, II
Address: 581 Simpson Street, NW, Atlanta, Georgia 30314-3839
Subrogation: Claim for Property damage \$ not stated Bodily Injury \$
Date of Notice: 06/28/00 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 1985 - 1999 Place: 55 Trinity Avenue, SW
Department Police Division:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that he has been damaged due to the City's failure to include overtime in the calculation of pension benefits. The claimant has filed a lawsuit to resolve the issues raised in his claim.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,

[Signature]
INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager: [Signature] Concur/date 11-01-00
Committee Action: Council Action



INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

A DIVISION OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL/CIO

581 SIMPSON ST. NW, ATLANTA, GA 30314-3839
(404) 521-9043 OR 1-800-487-3658 FAX (404) 688-8208



June 27, 2000

VIA CERTIFIED MAIL

ENTERED - 7-14-00 - SB
00L0424 - DIANNE MITCHELL

The Honorable Bill Campbell, Mayor
City of Atlanta
55 Trinity Avenue, S.W., Suite 2400
Atlanta, Georgia 30335

JUN 28 2000

Mitchell
07/06/00
[Signature]

Ref: Donald M. Brown v. City of Atlanta, et al.
Constitutional Challenge to City Ordinance RL6:65 (Pensions) ss. 6-248

Dear Mr. Campbell:

Please be advised that I represent Donald M. Brown in the above referenced matter. Please direct all correspondence in this matter to my attention. This letter is to give your office and the City of Atlanta 30 days notice of our intention to file suit in the Superior Court of Fulton County to challenge the validity of the above referenced ordinance under the Georgia Constitution.

The ordinance, passed in 1985, reads that in calculating a pensioners benefits that overtime pay would be excluded from calculating benefits. This was done without the consent of employees at the time and no employee was asked at the time or afterwards if they would elect to be governed under this ordinance. Prior to that time overtime was used in calculating benefits. Additionally, pension contributions prior to this ordinance going into effect were taken out based on using overtime pay. No refund was ever made to employees for moneys taken out of overtime pay when this change was enacted and none has been made to date.

Mr. Brown is a City of Atlanta Police officer employed since 1980 under the 1978 pension plan. He did not elect to come under the 1986 amendments. He had pension deductions taken out of his paycheck from 1980 that included overtime wages and only learned that this was discontinued in 1985 when he went to apply for his pension benefits in 1999. He in no way consented to nor agreed to this change in his pension contract. Additionally he never received or accepted any refund for the pension contributions taken from his overtime pay from 1980-1985.

Mr. Brown has worked significant overtime over the years including the last three years as is relevant to calculating pension benefits. His expectation was that his pension benefit would be calculated considering the overtime pay per the terms of the pension plan when he was hired. He has since been told by Alexander Farrington with the Pension

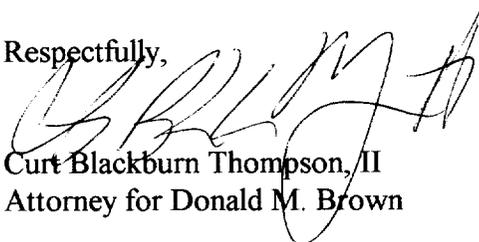
Board that he will not receive his pension benefits calculation based on his overtime pay. This results in a substantial reduction in the benefits otherwise owed to Mr. Brown.

While this may have been an unclear area of law in 1985 it is very clear now that such a reduction in pension benefits without the consent of the pensioner violates the Georgia Constitution. In Horton v. State Employees Retirement System, 421 S.E.2d 703(1992), the Georgia Supreme Court clearly stated that changes to a pension plan benefit which REDUCE an employees benefits are a violation of the Georgia Constitution Article 1, ss 1, paragraph X. As such the ordinance as it is being applied to Mr. Brown specifically is unconstitutional. While it may be possible to apply this ordinance to employees hired after the ordinance went into effect the ordinance as it makes no distinction between when an employee is hired is on its face a violation of the same provision of the Georgia Constitution.

You hereby are on notice that the City of Atlanta and the Police Officers Pension Fund has 30 days to: cease applying this ordinance to Mr. Brown; allow him to pay into the pension fund any moneys for overtime pay that the City unconstitutionally refused to deduct from his pay; and to allow Mr. Brown to retire with the pension benefit he is due including calculating that benefit based on his regular salary with overtime pay. Your refusal to do so will result in immediate litigation in the Superior Court of Fulton to seek an injunction, to have the ordinance declared unconstitutional, and for costs and attorneys fees as the Court deems just and proper.

If you have any questions or concerns please contact me at your convenience. Thank you for your prompt attention to this matter.

Respectfully,



Curt Blackburn Thompson, II
Attorney for Donald M. Brown

cc: Robb Pitts, City Council President
Susan Pease Langford, City Attorney
Don V. Lee, Chair, Police Officers Pension Board
Donald M. Brown

00- R -1827

Council President Pro Tem Starnes
Presided

RCS# 2401
11/20/00
2:00 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-18

00-R-1849
(Morris Voted NAY)

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

Y McCarty
Y Starnes
NV Bond
Y Winslow

Y Dorsey
Y Woolard
Y Morris
Y Muller

Y Moore
Y Martin
Y Maddox
Y Boazman

Y Thomas
Y Emmons
NV Alexander
NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA

00-O-1111
00-R-1693
00-R-1694
00-R-1695
00-R-1696
00-R-1697
00-R-1804
00-R-1835

CONSENT

11/20/00 Council Meeting		
ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADVERSED ON CONSENT AGENDA
1. 00-O-1690 2. 00-O-1691 3. 00-O-1692 4. 00-O-1845 5. 00-O-1864 6. 00-O-0728 7. 00-R-1702 8. 00-R-1703 9. 00-R-1705 10. 00-R-1707 11. 00-R-1850 12. 00-R-1865 13. 00-R-1851 14. 00-R-1873 15. 00-R-1622 16. 00-R-1623 17. 00-R-1699 18. 00-R-1775* 19. 00-R-1776* 20. 00-R-1777* 21. 00-R-1782 22. 00-R-1687 23. 00-R-1668 24. 00-R-1786 25. 00-R-1789 26. 00-R-1799 27. 00-R-1800 28. 00-R-1813 29. 00-R-1814	30. 00-R-1815 31. 00-R-1849# 32. 00-R-1858 33. 00-R-1862 34. 00-R-1787* 35. 00-R-1790 36. 00-R-1791 37. 00-R-1794 38. 00-R-1798 39. 00-R-1861 40. 00-R-1686 41. 00-R-1843 42. 00-R-1869 43. 00-R-1870 44. 00-R-0973 45. 00-R-0816 46. 00-R-1803 47. 00-R-1805 48. 00-R-1806 49. 00-R-1807 50. 00-R-1808 51. 00-R-1809 52. 00-R-1810 53. 00-R-1811 54. 00-R-1812	55. 00-R-1816 56. 00-R-1817 57. 00-R-1818 58. 00-R-1819 59. 00-R-1820 60. 00-R-1821 61. 00-R-1822 62. 00-R-1823 63. 00-R-1824 64. 00-R-1825 65. 00-R-1826 66. 00-R-1827 67. 00-R-1828 68. 00-R-1829 69. 00-R-1830 70. 00-R-1831 71. 00-R-1832 72. 00-R-1833 73. 00-R-1834 74. 00-R-1836 75. 00-R-1837 76. 00-R-1838 77. 00-R-1839 78. 00-R-1840 79. 00-R-1841 80. 00-R-1842 * President Pitts recused himself. # Lee Morris not voting.