

Entered -6-12-00 - sb  
CL 00L0340 - GWENDOLYN BURNS

01- R-0136

CLAIM OF:

**DR. JAMES C. KINCAID**  
through his attorney,  
**Henry D. Fellows, Jr., Esq.**  
**FELLOWS JOHNSON & LA BRIOLA, LLP**  
Peachtree Center  
Suite 2300 South Tower  
225 Peachtree Street, NE  
Atlanta, Georgia 30303-1731

ADVERSED BY  
CITY COUNCIL  
FEB 05 2001

For property damages alleged to have been sustained from a sewer  
back up on February 17, 2000 at 3580 Piedmont Road, NE.

THIS ADVERSED REPORT IS  
APPROVED

BY: *Robert N. Godfrey*  
ROBERT N. GODFREY  
DEPUTY CITY ATTORNEY

**CERTIFIED**  
FEB 05 2001  
ATLANTA CITY COUNCIL PRESIDENT  
*Richard D. Pitts*

**CERTIFIED**  
FEB 05 2001  
*Richard D. Pitts*  
MUNICIPAL CLERK

REPORT  
*Public Safety*  
*1-30-01*  
*Clara Johnson*  
*James*  
*Wood*



## 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

February 15, 2001

Henry D. Fellows, Jr., Esq.  
Fellows Johnson & LaBriola, LLP  
Peachtree Center  
Suite 2300 South Tower  
225 Peachtree St., NE  
Atlanta, GA 30303-1731

01-R-0136

RE: Dr. James C. Kincaid

Dear Attorney Fellows:

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 February 05, 2001. 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. 00L0340

Date: January 19, 2001

Claimant /Victim DR. JAMES C. KINCAID
BY: (Atty) (Ins. Co.) Henry D. Fellows, Jr., Esq., FELLOWS JOHNSON & LA BRIOLA, LLP
Address: Peachtree Center, Suite 2300 South Tower, 225 Peachtree Street, NE, Atlanta, Georgia 30303-1731
Subrogation: Claim for Property damage \$ 111,399.00 Bodily Injury \$
Date of Notice: 8/1/00 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 Ante Litem (6 Mo.)
Date of Occurrence 2/17/00 Place: 3580Piedmont Road, NE
Department PUBLIC WORKS Division Sewer Operations
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimant alleges that his business sustained damages from a sewer back up. An investigation determined that the City responded to and resolved the back up in a timely manner. It further showed that the main line was cleared, the system flowed well and there was nothing found in the line that could have caused or encouraged a grease blockage. More importantly, the investigation showed that the grease blockage resulted from grease entering the system from the restaurants up stream on Roswell Road, NE, which is a violation of the City's grease ordinance (Atlanta City Code § 154-297). Moreover, the operation of the City sewer system is a government function and the City is immune from liability as set forth in O.C.G.A. § 36-33-1.

INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
Pictures Diagrams Reports: Police Dept Report X Other X
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 GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse Account charged: 1A01 2J01 2H01
Claims Manager: [Signature] Concur/date 01-19-01
Committee Action: Council Action



RCS# 2577  
2/05/01  
2:28 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-14

ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

SEE ATTACHED LISTING OF  
ITEMS ADOPTED/ADVERSED  
ON CONSENT AGENDA

Y McCarty	B Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM  
CONSENT AGENDA

00-O-2069  
01-O-0083  
01-R-0074  
01-R-0092  
01-R-0093

CONSENT

ITEMS ADOPTED ON CONSENT  
AGENDA

ITEMS ADVERSED  
ON CONSENT AGENDA

1. 00-O-1856
2. 01-O-0091
3. 01-O-0094
4. 01-O-0065
5. 01-O-0090
6. 01-O-0097
7. 01-O-0109
8. 00-R-2105
9. 01-R-0078
10. 01-R-0153
11. 01-R-0102
12. 00-R-0729
13. 01-R-0071
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