

Entered -01-13-99 - sb
CL 99L0014 - GWENDOLYN BURNS

01-R-0380

CLAIM OF:

**GREGORY ELECTRIC COMPANY,
PERRY CONTRACTING and ACSI**
through their attorney
Charles Ratz, Esq.
GRAY & GILLILAND, P.C.
Suite 1050
400 Perimeter Center Terrace
Atlanta, Georgia 30346

For property damages alleged to have been sustained as a result of the City's failure to mark a water line on August 11, 1999 at 41 Marietta Street.

THIS ADVERSED REPORT IS APPROVED

ADVERTISING CITY COURIER MAR 19 2001

BY: Rosalind Rubens Newell
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

Public Safety
3/19/01
C. T. Monte
Michael [Signature]
Cela [Signature]
Wolfe
H...

CERTIFIED
MAR 19 2001
ATLANTA CITY COUNCIL PRESIDENT
Richard A. Pitts

CERTIFIED
MAR 19 2001
R. D. [Signature]



CITY OF ATLANTA
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

March 30, 2001

Gray & Gilliland, P.C.
Charles Ratz
Attorney at Law
400 Perimeter Center Terrace
Suite 1050
Atlanta, GA 30345

01-R-0380

RE: Gregory Electric Company, Perry
Contracting and ACSI

Dear Attorney Ratz:

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 March 19, 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. 99L0014

Date: March 1, 2001

Claimant /Victim GREGORY ELECTRIC COMPANY, PERRY CONTRACTING and ACSI
BY: (Atty) (Ins. Co.) Charles Ratz, GRAY & GILLILAND, P.C.
Address: Suite 1050, 400 Perimeter Center Terrace, Atlanta, Georgia 30346
Subrogation: Claim for damages \$ Unspecified Bodily Injury \$
Date of Notice: 1/7/99 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 8/11/99 Place: 41 Marietta Street
Department WATER Division
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimants allege that they sustained damages when they bored and ruptured a water main as a result of the Water Department's failure to mark the water main. They further contend that the City failed to shut off the flow of water within minutes after the rupture took place which caused several businesses down the street to become flooded. However, an investigation determined that the water main was properly marked by the City and upon receiving notice of the problem, the City shut off the water main at its first opportunity.

INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
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 Ministerial X
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 X City Negligent Joint Claim Abandoned

Respectfully submitted,

[Handwritten signature of Gwendolyn Burns]
INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse account charged: 1A01 2J01 2H01
Claims Manager Concur/date 030201
Committee Action: Council Action

cc: Dianne
Witcher

BURNS
01/07/99
[Signature]

GRAY & GILLILAND, P.C.
ATTORNEYS AT LAW

JOHN C. GRAY
T. COLLEEN GILLILAND
CHARLES RAY
HERBERT C. BROADFOOT II
MELISSA A. GARRETT
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MADE B. BULLMAN
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ENTERED - 1-13-99 - SB
99L0014 - GWEN BURNS

OF COUNSEL
DAVID S. CURRIE
E. REID GARRETT
P. STEVEN KRATZCH

January 6, 1999

BY HAND DELIVERY

The Honorable William Campbell, Mayor
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Robert L. Pitts, City Council President
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Atlanta City Council Members
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

- Vern McCarty, District 1
- Debi Starnes, District 2
- Michael Bond, District 3
- Cleta Winslow, District 4
- Sherry Dorsey, District 5
- Cathy Woolard, District 6
- Lee Morris, District 7
- Clair Muller, District 8
- Felicia A. Moore, District 9
- Clarence T. Martin, District 10
- Jim Maddox, District 11
- Derrick Boazman, District 12
- Mable Thomas, Post 1-At-Large
- Julia Emmons, Post 2-At-Large
- Doug Alexander, Post 3-At-Large

Sherry Butler
City of Atlanta
Law Department
68 Mitchell Street, S.W., Suite 4100
Atlanta, Georgia 30335-0332

Re: Claims of Gregory Electric Company, Inc., Perry Contracting, and ACSI

The Honorable William Campbell, Mayor
Robert L. Pitts, City Council President
Council Members
January 6, 1999
Page 2

Ladies and Gentlemen:

This law firm represents Gregory Electric Company, Inc., Perry Contracting, and ACSI (a/k/a and d/b/a ACSI of Atlanta). These businesses are contractors and subcontractors, respectively, on a project requiring excavation on Marietta Street in downtown Atlanta for the purpose of installing fiber optic telephone lines.

In the early hours of August 11, 1998, while boring under Marietta Street in the vicinity of the United States Post Office located at the corner of Marietta and Spring Streets, employees of Perry Contracting struck and ruptured a water main located under the street. Prior to commencing this boring, Gregory Electric Company and Perry Contracting contacted the Underground Protection Center and the City of Atlanta Water Department to advise of their intended boring and excavation in this location and to obtain the assistance of those organizations in the location of underground utilities, including water lines.

Subsequently, water line locations were marked by the City of Atlanta Water Department or its designee in "Safety Precaution Blue"; however, on the morning of August 11th, while boring approximately 4 feet to the side of the existing water line markings, the aforementioned water line was struck and ruptured at 12:40 a.m. The City of Atlanta Water Department was immediately notified of the rupture and the fact that water was running uncontrolled down the street, and an employee of the Water Department appeared at the scene in response to the call at approximately 1:00 a.m. Despite the fact that water was flowing freely down Marietta Street at the time, the water Department employee left the scene without stopping the flow of water.

At 1:35 a.m., when the Water Department representative had not returned, Mr. Perry of Perry Contracting made several additional calls to locate Water Department personnel to turn off the water flow, but to no avail.

At 3:00 a.m., the Water Department employee originally summoned to the scene reappeared with one other individual who located the shut-off valve and stopped the water flow at approximately 3:18 a.m.

As a result of this incident, businesses located in and around the Post Office claim to have suffered both property damage and business interruption damage. To date, the following businesses have made damage claims against Gregory Electric Company, and/or Perry Contracting, and/or ACSI in the amounts indicated (if known):

1. Law Office of Melvin Robinson: \$50,000.00 (See enclosed law suit);

The Honorable William Campbell, Mayor
Robert L. Pitts, City Council President
Council Members
January 6, 1999
Page 3

2. Q.V. Williamson & Company, Inc.: \$12,841.98;
3. Reading for Less Worldwide, Inc.: Amount unknown; and
4. Law Offices of Johnson & Lynch: Amount unknown.

Other claims may be made and the amounts set forth above may rise.

It is the contention of Gregory Electric Company, Perry Contracting, and ACSI that the ruptured water line and resulting damage were caused by the negligence of the City of Atlanta and its water department employees and representatives in failing to mark the water line in the first place and in failing to shut off the flow of water within minutes after the rupture when the opportunity arose.

Accordingly, please consider this the ante litem notice required by O.C.G.A. §36-33-5 to be presented to the City prior to the institution of any legal action against the City of Atlanta. Gregory Electric Company, Inc., Perry Contracting, and ACSI hereby make claim against the City of Atlanta for all damages for which they may be found liable to any entity as a result of the foregoing incident and for any and all expenses incurred by them and/or their insurer(s) in the defense of such claims and the prosecution of any third party claims against the City of Atlanta or others.

Further, Gregory Electric Company, Inc., Perry Contracting, and ACSI demand that the City of Atlanta assume the legal defense of Melvin Robinson v. Gregory Electric, Inc., et al., Civil Action No. 98-VS-146828-A, in the State Court of Fulton County and any other action which may be filed arising out of this incident, and that the city indemnify and hold Gregory Electric Company, Inc., Perry Contracting, and ACSI harmless from all judgments and claims arising therefrom.

Should you desire further information or wish to discuss this matter, please contact me at the above address or phone number.

Sincerely,

GRAY & GILLILAND, P.C.



Charles Ratz

CAR:msp
Enclosure

01- R -0380

RCS# 2725
3/19/01
2:52 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 thru 15

ADOPT

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 1

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

ITEM (S) REMOVED FROM
CONSENT AGENDA
01-O-0067

Woolard & Morris voted Nay on the
following items:

01-R-0379
01-R-0392
01-R-0393
01-R-0394
01-R-0395
01-R-0396

CONSENT

RCS# 2726
3/19/01
2:54 PM

Atlanta City Council

Regular Session

CONSENT *Reconsidered*
#1

Pages 1 thru 15

ADOPT

YEAS: 11
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 1

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

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

ITEM (S) REMOVED FROM
CONSENT AGENDA
01-O-0067
01-O-0354

Woolard & Morris voted Nay on the
following items:

01-R-0379
01-R-0392
01-R-0393
01-R-0394
01-R-0395
01-R-0396

CONSENT

RCS# 2753
3/19/01
5:40 PM

Atlanta City Council

Regular Session

CONSENT *Reconsidered*
#2

Pages 1 thru 15

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

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

ITEM (S) REMOVED FROM
CONSENT AGENDA
01-O-0067
01-O-0354
01-O-0188

Woolard & Morris voted Nay on the
following items:
01-R-0379
01-R-0392
01-R-0393
01-R-0394
01-R-0395
01-R-0396

CONSENT

**ITEMS ADOPTED ON
CONSENT AGENDA**

**ITEMS
ADOPTED ON
CONSENT
AGENDA**

**ITEMS
ADVERSE
ON CONSENT
AGENDA**

1. 01-O-0306
2. 01-O-0445
3. 01-O-0449
4. 01-O-0450
5. 01-O-0098
6. 01-O-0178
7. 01-O-0302
8. 01-O-0367
9. 00-O-1987
10. 01-O-0448
11. 00-O-2069
12. 01-O-0446
13. 01-O-0187
14. 01-O-0294
15. 01-R-0411
16. 01-R-0412
17. 01-R-0413
18. 01-R-0414
19. 01-R-0420
20. 01-R-0421
21. 01-R-0475
22. 01-R-0428
23. 01-R-0429
24. 01-R-0477
25. 01-R-0220
26. 01-R-0430
27. 01-R-0447
28. 01-R-0452
29. 01-R-0458
30. 01-R-0417
31. 01-R-0426
32. 01-R-0427
33. 00-R-1466
34. 01-R-0416
35. 01-R-0419
36. 01-R-0424
37. 01-R-0108
38. 01-R-0189

39. 01-R-0397
40. 01-R-0398
41. 01-R-0399
42. 01-R-0400
43. 01-R-0401
44. 01-R-0402
45. 01-R-0403
46. 01-R-0404
47. 01-R-0405
48. 01-R-0406
49. 01-R-0407
50. 01-R-0408
51. 01-R-0409
52. 01-R-0410
53. 01-R-0433
54. 01-R-0434
55. 01-R-0435
56. 01-R-0436

57. 01-R-0437
 58. 01-R-0438
 59. 01-R-0375
 60. 01-R-0376
 61. 01-R-0377
 62. 01-R-0378
 63. 01-R-0379
 64. 01-R-0380
 65. 01-R-0381
 66. 01-R-0382
 67. 01-R-0383
 68. 01-R-0384
 69. 01-R-0385
 70. 01-R-0386
 71. 01-R-0387
 72. 01-R-0388
 73. 01-R-0389
 74. 01-R-0390
 75. 01-R-0391
 76. 01-R-0392
 77. 01-R-0393
 78. 01-R-0394
 79. 01-R-0395
 80. 01-R-0396
 81. 01-R-0440
 82. 01-R-0439
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