

CITY COUNCIL
ATLANTA, GEORGIA

A RESOLUTION

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

02-*R*-1528

**A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT
OF \$2,600.00 IN SETTLEMENT OF THE CLAIM OF ROBERT AND
MERRIMAC C. PENMAN AGAINST THE CITY OF ATLANTA**

WHEREAS, Robert and Merrimac C. Penman have filed a claim against the City of Atlanta seeking damages arising out of a sewer back up that occurred in their home on November 14, 2001; and

WHEREAS, Mr. and Mrs. Penman notified the City of the sewer back up, however, when the sewer crew arrived they determined that the sewer back up was on the Penman's property and that the City's mainline was open and running; and

WHEREAS, the Penman's hired a plumber who replaced their sewer line, however, upon completion of the installation of the new sewer line the plumber discovered that the sewer was still stopped up due to a blockage in the City's mainline; and

WHEREAS, the City sewer crew returned to the Penman's home and determined that there was in fact a collapse in the sewer line on the City's mainline that had caused the sewer to back up; and

WHEREAS, the City of Atlanta was on notice of said nuisance and yet the City failed to abate said nuisance; and

WHEREAS, inasmuch as the facts disclosed indicate said claim is not based on a claim of negligence, but is a nuisance which is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, the claimants have asserted damages in the amount of **\$2,600.00** and have agreed to accept this sum in full and complete satisfaction and settlement of their claim against the City of Atlanta; and

WHEREAS, the City Attorney has recommended that the claim of **Robert and Merrimac C. Penman** be settled for the sum of **\$2,600.00**.

THEREFORE, BE IT RESOLVED that the Council of the City of Atlanta, Georgia that **\$2,600.00** be paid by the City of Atlanta in satisfaction of any and all claims **Robert and Merrimac C. Penman** owners of property located at 1809 Walthall Drive, NW may have stemming from damages sustained to their property on November 14, 2001.

BE IT FURTHER RESOLVED that the Chief Financial Officer be and hereby authorized to pay the above mentioned sum from account number **2J01/529017/T31001**.

A true copy,

Rhonda Daughlin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

SEP 16, 2002
SEP 24, 2002

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0806

Date: August 28, 2002

Claimant /Victim ROBERT AND MERRIMAC C. PENMAN

BY: (Atty)(Ins. Co.) _____

Address: 1809 Walthall Drive, NW, Atlanta, Georgia 30318

Subrogation: _____ Claim for Property damage \$ 2,600.00 Bodily Injury \$ _____

Date of Notice: 12/13/01 Method: Written, proper X Improper _____

Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X

Date of Occurrence 11/14/01 Place: 1809 Walthall Drive, NW

Department Public Works Division: Sewer Operations

Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: The claimants are seeking reimbursement for plumbing expenses incurred due to a sewer back up. The claimants reported a sewer back up to the City, however, the crew that responded to their home advised them that the sewer back up was on their property, not in the City's mainline. The claimant's hired a plumber who replaced their sewer line. Upon completion of the installation, the plumber discovered that the sewer was still backing up and that there was a blockage in the City's mainline. The sewer crew returned and determined that the blockage was in fact in the City's mainline and was due to a collapse in the mainline.

INVESTIGATION:

Statements: City employee _____ Claimant _____ Others X Written _____ Oral X

Pictures _____ Diagrams _____ Reports: Police _____ Dept Report X Other _____

Traffic citations issued: City Driver _____ Claimant Driver _____

Citation disposition: City Driver _____ Claimant Driver _____

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial _____

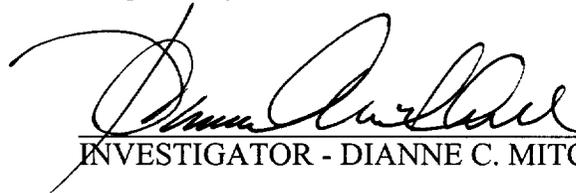
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable X

City not involved _____ Offer rejected _____ Compromise settlement _____

Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____

Claimant Negligent _____ City Negligent X Joint _____ Claim Abandoned _____

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ 2,000.00 Adverse _____ Account charged: 1A01 _____ 2J01 X 2H01 _____ 2P01 _____

Claims Manager: Dianne C. Mitchell Concur/date 08-28-02

Committee Action: _____ Council Action _____

09/16/02 Council Meeting

**ITEMS ADOPTED ON CONSENT
AGENDA****ITEMS ADVERSED
ON CONSENT AGENDA**

- | | | |
|---------------|---------------|---------------|
| 1. 02-O-1453 | 43. 02-R-1509 | 45. 02-R-1502 |
| 2. 02-O-1586 | 44. 02-R-1510 | 46. 02-R-1503 |
| 3. 02-O-1496 | | 47. 02-R-1504 |
| 4. 02-O-1389 | | 48. 02-R-1505 |
| 5. 02-O-1390 | | 49. 02-R-1506 |
| 6. 02-O-0791 | | 50. 02-R-1511 |
| 7. 02-O-1258 | | 51. 02-R-1512 |
| 8. 02-O-1298 | | 52. 02-R-1513 |
| 9. 02-O-1391 | | 53. 02-R-1514 |
| 10. 02-O-1395 | | 54. 02-R-1515 |
| 11. 02-O-1450 | | 55. 02-R-1516 |
| 12. 02-R-1535 | | 56. 02-R-1517 |
| 13. 02-R-1541 | | 57. 02-R-1518 |
| 14. 02-R-1546 | | 58. 02-R-1519 |
| 15. 02-R-1526 | | 59. 02-R-1520 |
| 16. 02-R-1527 | | 60. 02-R-1521 |
| 17. 02-R-1528 | | 61. 02-R-1522 |
| 18. 02-R-1529 | | 62. 02-R-1523 |
| 19. 02-R-1530 | | 63. 02-R-1524 |
| 20. 02-R-1531 | | 64. 02-R-1525 |
| 21. 02-R-1532 | | |
| 22. 02-R-1560 | | |
| 23. 02-R-1561 | | |
| 24. 02-R-1615 | | |
| 25. 02-R-1563 | | |
| 26. 02-R-1564 | | |
| 27. 02-R-1565 | | |
| 28. 02-R-1566 | | |
| 29. 02-R-1568 | | |
| 30. 02-R-1569 | | |
| 31. 02-R-1570 | | |
| 32. 02-R-1572 | | |
| 33. 02-R-1573 | | |
| 34. 02-R-1574 | | |
| 35. 02-R-1487 | | |
| 36. 02-R-1533 | | |
| 37. 02-R-1557 | | |
| 38. 02-R-1558 | | |
| 39. 02-R-1559 | | |
| 40. 02-R-1616 | | |
| 41. 02-R-1507 | | |
| 42. 02-R-1508 | | |

Consent I Vote: 14Yeas; 0 Nays (See RCS #3984)

Items Removed from Consent: 02-O-1591; 02-O-1592; 02-R-1589; 02-O-1540; 02-R-1542

02-R-1528

(Do Not Write Above This Line)

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BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF \$2,600.00 IN SETTLEMENT OF THE CLAIM OF ROBERT AND MERRIMAC C. PENMAN AGAINST THE CITY OF ATLANTA

APPROVED BY:

Rosalind Rubens Newell
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

ADOPTED BY

- CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1st ADOPT 2nd READ & REFER
PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred to

PSUA

9-10-02

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Handwritten signatures and names of committee members.

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

- 2nd, 1st & 2nd, 3rd Readings
Consent, V Vote, RC Vote

CERTIFIED

CERTIFIED SEP 16 2002
Catherine M. Woodard

CERTIFIED SEP 16 2002
Rosalind Rubens Newell
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
SEP 24 2002
MAYOR