

Entered - 02/26/04 - sb
CL04L0121 - DIANNE C. MITCHELL

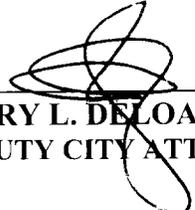
CLAIM OF: **CHRIS MICALLEF,**
through his attorney,
Kevin D. Hudson
5 Piedmont Center
Suite 750
Atlanta, Georgia 30305-1541

04-R -1546

For damages alleged to have been sustained as a result of
the recovery and subsequent sale of claimant's motorcycle.

THIS ADVERSED REPORT IS APPROVED

BY:



JERRY L. DELOACH
DEPUTY CITY ATTORNEY

**ADVERSED BY
CITY COUNCIL**

SEP 07 2004

ADVERSE REPORT

**PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE**

DATE: 9/31/04

CHAIR: H. D. Wood

Joyce M. Shepard

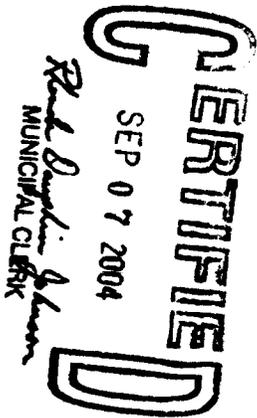
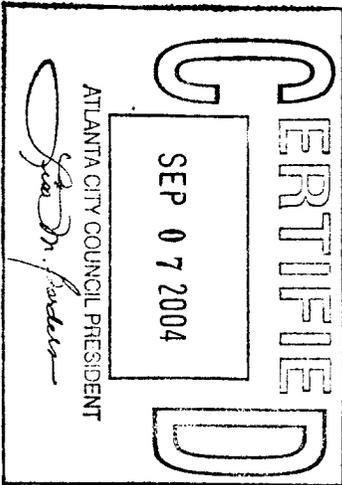
Mary Wood

C. T. Marks

Harold She

Carla Smith

John



DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 04L0121

Date: August 3, 2004

Claimant/Victim CHRIS W. MICALLEF
BY: (Atty.) Kevin D. Hudson
Address: 5 Piedmont Center, Suite 750, Atlanta, Georgia 30305-1541
Subrogation: Claim for Property damage \$ 7,500.00 Bodily Injury \$
Date of Notice: 02/20/04 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 02/04/04 Place: 675 Ponce de Leon Avenue
Department Police Bureau:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that the City wrongfully sold his stolen motorcycle after it was recovered without notification. However, the claimant has filed a lawsuit in the Superior Court of Fulton County 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

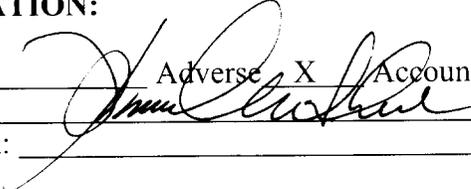
BASIS OF RECOMMENDATION:

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,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01 2P01
Claims Manager:  Concur/date 08/18/04
Committee Action: Council Action

FOLTZ MARTIN LLC

ATTORNEYS AT LAW

5 PIEDMONT CENTER SUITE 750 ATLANTA GA 30305-1541
TELEPHONE 404-231-9397 / FACSIMILE 404-237-1659

ENTERED - 2-26-04 - SB
04L0121 - DIANNE MITCHELL

February 17, 2004



of
CITY OF ATLANTA LAW DEPT.
CITY OF ATLANTA LAW DEPT.

Mitchell
02/23/04
DM

VIA CERTIFIED MAIL

Honorable Shirley Franklin
Atlanta City Hall, Suite 2400
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Officer W.N. Gilmore
Atlanta Police Department - Auto Theft Unit
675 Ponce De Leon Avenue, 6th Floor
Atlanta, Georgia 30308

Ms. Linda DiSantis, Esq.
Attorney for the City of Atlanta
68 Mitchell Street, S.W.
Suite 4100
Atlanta, Georgia 30335

Sergeant Liber
Atlanta Police Department - Auto Theft Unit
675 Ponce De Leon Avenue, 6th Floor
Atlanta, Georgia 30308

RE: Notification of Claim Pursuant to O.C.G.A § 36-33-5

Dear Mayor and Other City of Atlanta Representatives:

This firm represents Chris W. Micallef in connection with a claim involving the City of Atlanta's (the "City") ministerial negligence involving Mr. Micallef's stolen motorcycle. See *Greenway v. Thompson*, 368 F. Supp. 387 (N.D. Ga. 1973)(imposing liability on City for ministerial negligence). Specifically, Mr. Micallef properly reported the theft and VIN number of his motorcycle on June 30, 2003. Due to a ministerial error, the City's police department failed to include all of the VIN numbers from Mr. Micallef's motorcycle.

Apparently, the City recovered Mr. Micallef's motorcycle the same day it was stolen. Because of the City's error in inputting the VIN number into the City's system, the City was not able to ascertain that it was in possession of Mr. Micallef's motorcycle. The City never notified Mr. Micallef that it was in possession of his motorcycle. When Mr. Micallef's motorcycle went unclaimed (due to the City's failure to notify Mr. Micallef of the recovery), the City auctioned Mr. Micallef's motorcycle to a Mr. Hough, who in turn sold the motorcycle.

These matters came to Mr. Micallef's attention on February 4, 2004, when Mr. Micallef discovered his motorcycle on page 85 of Motorcycle Trader Magazine, advertised by Mr. Hough. After this discovery, Mr. Micallef set up a meeting with Mr. Hough. Mr. Micallef was shown a court order by Mr. Hough indicating a sale by the City to Mr. Hough.

Subsequently, a conference call was held on or about February 7, 2004 to address responsibility for this matter. Sergeant Liber participated on behalf of the City. During the conference call, Sergeant Liber indicated that reimbursement should be obtained directly through the City, in light of his admitted

ministerial mistake that the VIN number was incorrectly imputed. The replacement value of the motorcycle, as including after-market upgrades, is approximately \$7,500.00, and Mr. Micallef demands payment of this amount from the City. Pursuant to O.C.G.A. § 36-33-5(c), Mr. Micallef requests payment within thirty (30) days. Please send Mr. Micallef's payment to my office, and I will provide same to Mr. Micallef. Thank you for your prompt attention to this matter.

Sincerely,

FOLTZ MARTIN

A handwritten signature in black ink, appearing to read "Kevin H. Hudson", with a long horizontal flourish extending to the right.

Kevin H. Hudson

cc: Mr. Chris Micallef



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

September 14, 2004

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

Kevin D. Hudson
Attorney at Law
5 Piedmont Center
Suite 750
Atlanta, Georgia 30304-1541

04-R-1546

RE: Chris Micallef

Dear Attorney Hudson:

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 September 07, 2004. 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