



## OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC  
MUNICIPAL CLERK

April 29, 2004

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

Ezra B. Jones, III  
Attorney at Law  
115 Perimeter Center Place  
South Terraces Suite 1010  
Atlanta, GA 30346

04-R-0574

RE: Arlene & Russell Bolt

Dear Attorney Jones:

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 April 19, 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

RCS# 5585  
4/19/04  
3:03 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG(S) 1-18, EXCEPT:04-R-0538  
04-O-0487 04-R-0473  
ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 0

|           |             |           |            |
|-----------|-------------|-----------|------------|
| Y Smith   | Y Archibong | Y Moore   | Y Mitchell |
| Y Starnes | NV Fauver   | Y Martin  | Y Norwood  |
| Y Young   | Y Shook     | Y Maddox  | Y Willis   |
| Y Winslow | Y Muller    | Y Boazman | NV Woolard |

CONSENT I

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 03L0970

Date: March 16, 2004

Claimant /Victim ARLENE AND RUSSELL T. BOLT
BY: (Atty) (Ins. Co.) Ezra B. Jones, III, Esq. PENDERGAST & JONES, P.C.
Address: 115 Perimeter Center Place, South Terraces, Suite 1010, Atlanta, Georgia 30346
Subrogation: Claim for Property damage \$ Bodily Injury \$ 200,000.00
Date of Notice: 12/15/03 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 8/22/03 Place: 188 14th Street, NE
Department WATERSHED MANAGEMENT Bureau: Drinking Water
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimants allege that they sustained bodily injuries when Arlene stepped into a water valve that was left open and in an unsafe condition. However, the claimants have filed a lawsuit to settle the issues of their claim.

INVESTIGATION:

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

Respectfully submitted,

Gwendolyn Burns
INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2P01 2H01
Claims Manager: Concur/date 03/17/04
Committee Action: Council Action

LAW OFFICES OF  
**PENDERGAST & JONES, P.C.**

115 PERIMETER CENTER PLACE  
SOUTH TERRACES, SUITE 1010  
ATLANTA, GEORGIA 30346

EZRA B. JONES, III  
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Direct Fax: (678) 578-3575

TELEPHONE: (770) 392-0303  
FACSIMILE: (770) 392-0909  
ejones@penderlaw.com

ENTERED - 12-22-03 - SB  
03L0970 - GWEN BURNS

December 3, 2003

**VIA CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED**

Mayor Shirley Franklin  
The City of Atlanta  
55 Trinity Avenue  
Atlanta, Georgia 30303

**Re: Arlene Bolt & Russell T. Bolt v. The City of Atlanta**

Dear Mayor Franklin :

This letter is being presented to you to satisfy the notice requirements of O.C.G.A. 36-33-5 and all other requirements of notice that may be required to the City of Atlanta (the "City") of the presentation of a claim by Arlene Bolt and Russell T. Bolt.

**Factual Background.**

Mr. & Mrs. Bolt are residents of St. Simons Island, Georgia, and on the weekend of August 22, 2003, they were in the City visiting their son and daughter in law. On the evening of August 23, Mr. & Mrs. Bolt were out walking their dogs on the City's sidewalk on 14<sup>th</sup> Street just outside the Sheraton hotel. Mrs. Bolt was using the appropriate care as she walked on the City's sidewalk.

Unknown to Mrs. Bolt, the City had left an open hole in the sidewalk. Because it was in the evening, Mrs. Bolt could not see the open hole. She stepped in the uncovered hole causing her to fall. I have included a number of pictures that were made immediately after her fall. As you can see, the debris in this open hole indicates that it has been open for quite some time. The fall caused Mrs. Bolt severe personal injuries including the fracture of her right hip.

Mrs. Bolt is 54 years old, and at the time of the fall was in excellent health. She was taken by ambulance to Piedmont Hospital, and the following day, surgery was performed on her right hip. As you can see from the enclosed medical records and

**RECEIVED**  
BY *mkch* | DATE *12/04/03*

*BURNS*  
*12/15/03*  
*[Signature]*

*HAW*  
*[Signature]*  
*[Signature]*

|

Letter to Mayor Shirley Franklin  
December 3, 2003  
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surgical report, Mrs. Bolt had both screws and pins inserted in her hip to repair the fracture. She has been advised by her doctors that her hip has been compressed at the area of the fracture. Because of this compression, her right leg will be about ¼ inch shorter than before the incident. The long-term effect can include lower back problems. In addition, Mrs. Bolt has been advised that as a result of the injury, she is a candidate for future hip replacement surgery.

As a proximate cause of the City's negligence, the maintaining of this nuisance and the resulting fall, Mrs. Bolt has endured extreme pain and suffering and has incurred permanent physical and mental injuries. Her medical expenses to date are \$19,061.04. Mrs. Bolt will incur additional medical expenses before she is released from her doctor's care.

The City knew or in the ordinary course of its business should have known that the hole was uncovered and posed a serious danger to the public. The City was negligent in not maintaining the sidewalk in a safe condition and specifically leaving an uncovered hole in an area where pedestrians regularly traverse. The paint on the sidewalk which goes into the hole indicates that the cover was off at the time the painting was done. Thus, it is obvious that the City intentionally left the hole open, with no warnings or devices to alert the public of this inherent danger. Painting and notes of distances are sprayed on the sidewalk. Thus, it is inconceivable that the City did not know that this water line cover was not in place. Furthermore, the depth of the hole is such that stepping into the hole creates tremendous force on the leg and hip, which obviously caused Mrs. Bolt's injuries.

Even more disturbing is that when the ambulance arrived, an onlooker who came upon the scene shortly after Mrs. Bolt's fall commented that she too had stepped in this very same hole and had injured her ankle. Thus, we have strong reason to believe that the City was not only aware of the danger, but had been alerted by at least one other injured person of this exact nuisance.

Mr. and Mrs. Bolt are both full-time licensed Georgia real estate agents. Mrs. Bolt is a Sales Associate and the Property Manager of Century 21 Island Development Company. Mr. Bolt is a Sales Associate and the Sales Manager of the same company. In these capacities, the Plaintiffs are independent contractors. Their real estate income comes from commissions on sales and property rentals.

As a result of Mrs. Bolt's severe injuries, she has to walk with crutches, cannot drive a car, and is limited in the hours she can work due to requirements to rest, recuperate, and heal. She has been unable to service her clients' listings and show customers properties for sale or rent. She has also been unable to pursue new clients

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Letter to Mayor Shirley Franklin  
December 3, 2003  
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and customers. As a result, Mrs. Bolt's current and future income has been reduced.

Although Mr. Bolt's business is separate and distinct from Mrs. Bolt's, his business has suffered as he has attempted to perform key duties for Mrs. Bolt's clients and customers. At the present time, the Bolts' lost income, which can be directly attributable to Mrs. Bolt's injuries, is approximately \$7,000.00. Although Mrs. Bolt continues to heal, her lost income is likely to increase until such time as Mrs. Bolt's recovery allows her to return to work in what she hopes to be a fully recovered state.

The following items are enclosed and are incorporated into this demand.

1. Draft complaint against the City of Atlanta.
2. Photographs of the open hole in the sidewalk on 14<sup>th</sup> Street (16 separate photos taken the day after the incident). One of these photographs was made just west of the incident site and shows that the City roped off an open hole in the sidewalk.
3. Medical records for Mrs. Bolt from Piedmont Hospital.
4. Jury Verdict and Settlement Research Cases showing verdicts and settlements involving similar types of injuries and similar occurrences.

When reviewing the Jury Verdict Research, you will immediately note the case of *Molly and Donald Verene v. City of Atlanta*, Case Number: 91VS37951-F filed in State Court of Fulton County. The Verene case is very similar to the case here. The Verenes were awarded \$100,517 by a Fulton County jury in October of 1993, more than 10 years ago. Mrs. Verene was 50 years old and married. She worked as a secretary. She and her husband were walking on a sidewalk adjacent to North Highland Avenue in the City of Atlanta. Mrs. Verene stepped into a depression containing a water meter cover, caught her foot on a slight lip on the edge of the concrete and fell, fracturing her leg and injuring her ankle. The water meter cover was approximately two inches below the surrounding concrete. She fractured her tibia and fibula in her right leg and dislocated her right ankle. She required surgery, and had \$11,517 in past medical expenses and an estimated \$4,000 in future medical expenses. Our research indicates that like Mrs. Bolt's situation here, the jury was influenced by photos which indicated the length of time the defect existed.

Furthermore, Mrs. Bolt's injuries are more severe, and the leaving of the water meter cover off, exposing an open hole for an extended period of time is more egregious than a cover that is not flush with the ground. Furthermore, this is a busy area, outside a busy hotel where people walk after dark where a hole like this cannot be

Letter to Mayor Shirley Franklin  
December 3, 2003  
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easily seen.

**Demand for Settlement.**

The demand to settle this case is \$200,000.00. This demand does not include any claim for medical expenses that may be made by the health insurance provider. Thus, any settlement with Mr. & Mrs. Bolt must be with the concurrence of the health insurance provider. The demand is well within the range of similar cases with similar injuries as set forth in the Jury Verdict Research, without taking into consideration the punitive factor that this nuisance has been maintained for some time with the City's full knowledge.

This settlement demand shall be open for acceptance for 30 days. If you or the City's counsel would care to discuss the demand, please feel free to give me a call. If no response is received within 30 days, the enclosed complaint will be filed. This letter is being sent for settlement purposes only, and nothing herein shall be admissible in any subsequent action as a result of its inclusion herein.

If you have questions or would like to discuss the contents of this demand, please feel free to give me a call.

Sincerely,



Ezra B. Jones, III

Enclosures

cc: Mrs. Arlene Bolt (w/ encls)  
Mr. Russell T. Bolt (w/ encls)

**04-R-0574**

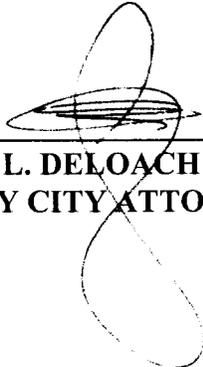
Entered -12-22-03 - sb  
CL 03L0970 - GWENDOLYN BURNS

CLAIM OF: ARLENE BOLT and RUSSELL BOLT  
through their Attorney  
Ezra B. Jones, III  
Pendergast & Jones, P.C.  
115 Perimeter Center Place  
South Terraces, Suite 1010  
Atlanta, Georgia 30346

04-12 -0574

For bodily injuries alleged to have been sustained after stepping  
into an open water valve on August 22, 2003 at 188 14<sup>th</sup> Street,  
NE.

THIS ADVERSED REPORT IS APPROVED

BY:   
JERRY L. DELOACH  
DEPUTY CITY ATTORNEY

### ADVERSE REPORT

PUBLIC SAFETY &  
LEGAL ADMINISTRATION COMMITTEE

DATE: 3/30/04

CHAIR: H. S. [Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

**ADVERSED**

APR 19 2004

**CERTIFIED**  
APR 19 2004  
Municipal Clerk

*Paul [Signature]*  
MUNICIPAL CLERK

**CERTIFIED**  
APR 19 2004

COUNCIL PRESIDENT PROTEM

*[Signature]*