

Entered 04/03/07 sb
CL 07L0297 - LISA CARTER

**CLAIM OF: ATLANTA AMERICAN
OWNER, LLC AND
COLUMBIA SUSSEX
CORPORATION**
through their attorney,
Douglas F. Aholt
1360 Peachtree Street
Suite 910
Atlanta, Georgia 30309

MAR 15 2010

For damages alleged to have been sustained as a result of a water main leak between 2001 and 2008 at 160 Spring Street, NW.

THIS ADVERSED REPORT IS APPROVED

BY: _____

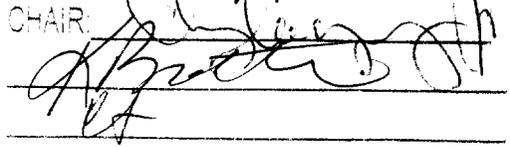
JERRY L. DELOACH
DEPUTY CITY ATTORNEY

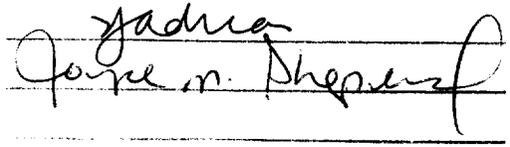


ADVERSE REPORT

PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE

DATE 3/9/10

CHAIR: 



RECEIVED
MAY 18 2010
CITY OF ATLANTA

MAR 15 2010
ADVERSED BY
CITY COUNCIL



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON
MUNICIPAL CLERK

March 19, 2010

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6030
FAX (404) 658-6273

Mr. Douglas F. Aholt, Esquire
1360 Peachtree Street
Suite 910
Atlanta, Georgia 30309

10-R-0455

**RE: Atlanta American Owner, LLC and
Columbia Sussex Cororation**

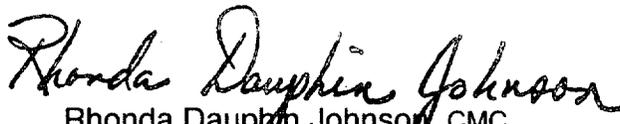
Dear Mr. Aholt

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 15, 2010. 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. 07L0297

Date: February 10, 2010

Claimant /Victim ATLANTA AMERICAN OWNER, LLC AND COLUMBIA SUSSEX CORPORATION

BY:(Atty)(Ins.Co.) Douglas F. Aholt

Address: 1360 Peachtree Street Suite 910 Atlanta, Georgia 30309

Subrogation: Claim for Property damage \$ Not Specified Bodily Injury \$

Date of Notice: 03/30/07 Method: Written, proper X Improper

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

Date of Occurrence 2001-2008 Place: 160 Spring Street, NW

Department Watershed Management Bureau: Drinking Water Office:

Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimants allege that they sustained damages as a result of a water main leak at 160 Street, Street, NW. However, an investigation determined that the cause of the alleged damages to the clients' property was due to the city's water main having been bored through by a fiber optic casing by Bellsouth. The claimants have been advised to pursue their claim with Bellsouth.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral

Pictures X Diagrams X 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 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

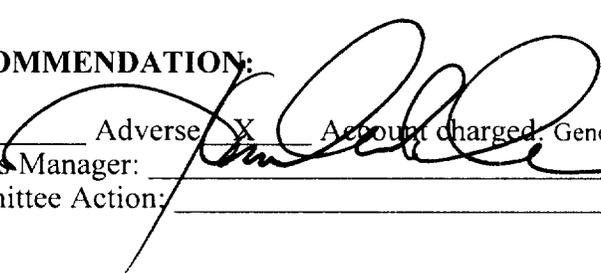
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - LISA CARTER

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation

Claims Manager:  Concur/date 02/22/10

Committee Action: Council Action

005

CHAMBERS, AHOLT & RICKARD, LLP

ATTORNEYS AT LAW

Eugene P. Chambers, Jr.
Douglas F. Aholt
Clyde E. Rickard, III
Dale C. Ray, Jr.
Laura W. Speed-Dalton

One Midtown Plaza
1360 Peachtree Street
Suite 910
Atlanta, Georgia 30309
Phone - (404) 253-7860
Facsimile - (404) 253-7875

WRITER'S DIRECT DIAL
(404) 253-7870

email: doug@carllp.com

www.carllp.com

March 28, 2007

ENTERED - 4-3-07 - SB
07L0297 - LISA CARTER

CARTER
04/03/07
P

CERTIFIED - RETURN RECEIPT
REQUESTED #704135000012573497

Honorable Shirley Franklin
City of Atlanta Mayor
Department of the Mayor
55 Trinity Avenue
Atlanta, GA 30303

CERTIFIED - RETURN RECEIPT
REQUESTED #70041350000012573510

Atlanta City Council
%Ms. Rhonda Johnson
Municipal Clerk - Office of Municipal Clerk
55 Trinity Avenue
Suite 2900
Atlanta, GA 30303

CERTIFIED - RETURN RECEIPT
REQUESTED #70041350000012573503

Elizabeth B. Chandler
City of Atlanta Attorney
City of Atlanta Department of Law
68 Mitchell Street
Suite 4100
Atlanta, GA 30303

RECEIVED

APR 30 2007
CITY OF ATLANTA LAW DEPT.

RE: My Client : Atlanta American Owner, LLC and
Columbia Sussex Corporation
Site of Damage : Atlanta Marriott Downtown
160 Spring Street, N.W.
Atlanta, GA 30302
Date of Damage : Daily since 2001
Our File No. : 02-097

Dear Mayor Franklin, Ms. Chandler and Ms. Johnson:

I represent Atlanta American Owner, LLC and Columbia Sussex Corporation in connection with damages that are being sustained on a daily basis at the Atlanta Marriott Downtown hotel location which is situated at 160 Spring Street, N.W., Atlanta, Georgia 30302. As you may know, my clients acquired all property rights to the hotel from Wyndham International and Atlanta American Hotel Investors, Ltd. in connection with an agreement of

Honorable Shirley Franklin
City of Atlanta Attorney
Atlanta City Counsel
March 28, 2007
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purchase and sale. All further correspondence concerning the matter should be directed to my attention.

Enclosed you will find correspondence from Ms. Johnson dated December 11, 2006 concerning the subject matter of my client's claim. As your file should reflect, the City of Atlanta has been on notice since 2002 as to the damage that has been ongoing at this hotel site due to the City's negligence and its maintenance of a nuisance in allowing water to escape the City water system and penetrate the hotel structure.

The treated water seeps constantly through the concrete walls and floors of the hotel parking lot. The City is also aware that treated City water flows continuously, day and night, into a pipe installed in the parking lot wall along Spring Street in order to help relieve some of the pressure that builds along that wall from the leaking water that flows towards the hotel due to the grade of land in that area.

To date, the City of Atlanta has made various contentions concerning the source of the water that is penetrating the hotel parking lot at two locations. The contention by the City that the water penetrating the parking lot is condensation run-off from the Westin Peachtree Plaza Hotel is simply without merit. The City knows from the testing that has occurred at the site that the water is in fact treated water that is consistent with the water treatment specifications used by the City of Atlanta for its water.

The City of Atlanta has also been given access to inspect the property at issue and I believe it has concluded or should conclude that the water that is penetrating the hotel parking lot cannot and is not coming from a leak within the hotel property itself. Moreover, all potential non-city sources for the leak have been diligently ruled out. Only a leak in the City water system can explain the continuous flow into my client's parking lot at the location of penetration.

The continuous daily intrusion of unwanted water into my client's parking lot constitutes a nuisance as it affects the use of the parking lot by my client and its guests. More troublesome, however, is the visible damage to the structural integrity to the parking lot walls and flooring. My client is very concerned that if the City continues to ignore this problem, erosion and/or pressure due to continued water flow will cause significant structural damage to the property.

The time has come for the City to do the right thing and find the source of the leak in its water system and to compensate my client for the remedial measures that must be undertaken to repair the damage that has been sustained to the property due to the City's negligence and maintenance of a nuisance. As stated previously, the City is already on notice of the damage it has caused to my client. However, so that there will be no issues about notice, please accept this letter as my client's claim for property damage pursuant to O.C.G.A. §36-33-5. We incorporate by reference all previous notices that have been sent by my predecessor, Richard Sinkfield.

Honorable Shirley Franklin
City of Atlanta Attorney
Atlanta City Counsel
March 28, 2007
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10- R -0455

At this point, my client has taken steps to relieve the pressure caused by the water flow against and onto the property. Additionally, my client has taken remedial steps to drain this unwanted water from its parking lot. It is my client's intention to take whatever corrective measures that is necessary to prevent further water intrusion from the leaking City of Atlanta water system. Due to the fact that the water penetration continues to occur on a daily basis, we are not in a position to make a specific monetary demand at this time. Additionally, repair costs can only be fully calculated after repairs have been commenced. However, while the exact amount of money that will be incurred to accomplish such a solution is unknown at this time, it is expected to be in the six figures.

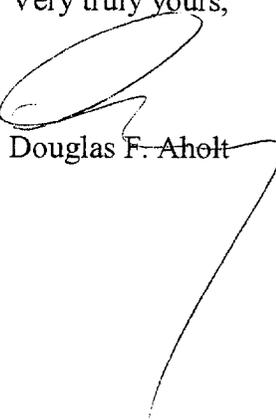
My client is willing to give the City of Atlanta one last opportunity to participate in the solution process. Additionally, we want to give the City one last chance to inspect the property before repairs are commenced to prevent any claim of spoliation by the City. We believe the cost to resolve the matter can be reduced if the City participates at this stage to locate the leak in its water system, and to assist my client in finding the best and most effective remedy for the damages that have been sustained to date to the structural integrity of the property. Hopefully, the City is willing to resolve this matter.

I believe the City knows that MACTEC Engineering and Consulting, Inc. is working with us on this matter. My client and the engineers from MACTEC are willing to meet with the City's Water Department and any other City employees in order to resolve this matter to the satisfaction of all. On the other hand, if the City continues to ignore its responsibility to my client, we will proceed to take what we consider to be the reasonable and necessary steps to keep the unwanted City water out of my client's parking deck. Thereafter, we will institute litigation for the cost of those repairs in addition to all other damages that my client will be entitled to for the City's negligence and maintenance of a nuisance, including but not limited to attorney's fees and costs.

The time for the City to act in this matter is now. If the City continues to deny its responsibility, we will initiate the repairs and litigation.

We look forward to your response.

Very truly yours,


Douglas F. Aholt

DFA:dml
Enclosure

RCS# 124
3/15/10
2:18 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

ADOPT

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

Y Smith	Y Archibong	Y Moore	Y Bond
B Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	B Sheperd	NV Mitchell

CONSENT I