

Entered - 02-05-13sb
CL 13L0053 - APD/06 - CLAUDE COLE

CLAIM OF: **Jay Berger and G. Brian Spears,**
His Attorney
1126 Ponce de Leon Ave., NE
Atlanta, Georgia 30306-4517

For personal injury alleged to have been sustained as result of an arrest on August 26, 2012 at 3050 Cheshire Bridge Road, Atlanta, Georgia.

THIS ADVERSED REPORT IS APPROVED

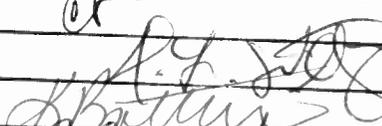
BY: 
ERIC RICHARDSON
DEPUTY CITY ATTORNEY

ADVERSE REPORT

PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE

DATE: 4/30/13

CHAIR: 

at







Rene D. ...
MEMORIAL CLERK



CITY OF ATLANTA
OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.
SUITE 2700
ATLANTA, GEORGIA 30303
Main (404) 330-6033
Fax (404) 658-6103
Email municipalclerk@atlantaga.gov

May 13, 2013

Jay Berger
c/o Attorney G. Brian Spears
1126 Ponce de Leon Avenue, NE
Atlanta, Georgia 30306

13-R-3076

Dear Mr. Berger:

I sincerely regret that you have been adversely affected by the circumstances raised in your 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 claim at its regular meeting on May 3, 2013.

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.

Sincerely,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 13L0053

Date: April 10, 2013

Claimant /Victim: JAY BERGER
BY: (Atty) (Ins. Co.) G. BRIAN SPEARS, PC
Address: 1126 Ponce de Leon Ave. NE, Atlanta, Georgia 30306-4517
Subrogation: Claim for Property damage \$ Bodily Injury \$
Date of Notice: 1/29/13 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence: 8/26/12 Place: 3050 Cheshire Bridge Road
Department: POLICE Bureau: Office:
Employee involved: Dorn Lawrence Disciplinary Action: Pending

NATURE OF CLAIM: Claimant alleges personal injury sustained during his arrest by an Atlanta police officer. The investigation determined the claimant has filed a lawsuit to resolve his claim.

INVESTIGATION:

Statements: City employee X Claimant Others Written X Oral
Pictures Diagrams Reports: Police X 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 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,

Claude A. Cole
INVESTIGATOR - CLAUDE A. COLE

RECOMMENDATION:

Pay Adverse X Account charged: General Fund Water & Sewer Aviation
Claims Director/Manager: Concur/date 4/10/13
Deputy City Attorney: Concur/date
Committee Action: Council Action

JAN 24 2013

LAW OFFICES OF
G. BRIAN SPEARS, P.C.

ENTERED - 2-5-13 - SB
13L0053 - C. COLE

Referred to: Law

TEL: (404) 872-7086

FAX: (404) 892-1128

EMAIL: BSpears@mindspring.com

1126 Ponce de Leon Ave, NE
Atlanta, Georgia 30306-4517

*New
Assign
to CAC*

Cole

January 22, 2013

RECEIVED

1/28/12

JAN 24 2013

CITY OF ATLANTA
DEPT OF LAW

JB

Certified Mail -
Return Receipt Requested

Mayor Kasim Reed
55 Trinity Avenue SW, Suite 2500
Atlanta, GA 30303

Cesar C. Mitchell
Atlanta City Council President
Atlanta City Hall
55 Trinity Ave, S.W., Second Floor East
Atlanta, GA 30303-3584

Amber

LASHAWN

re: Ante Litem Notice
Claimant: Mr. Jay Berger
Date of Injury: August 26, 2012

Dear Mayor Reed and City Council President Mitchell:

I represent Mr. Jay Berger. Mr. Berger was arrested on August 26, 2012, by Officer D.M. Lawrence, an officer of the City of Atlanta Police Department. The arrest occurred at or around 2050 Cheshire Bridge Rd., Atlanta, Georgia, at approximately 3:15 a.m. Mr. Berger was arrested without probable cause. The arresting officer used excessive force in making the arrest, causing a significant tear to Mr. Berger's anterior cruciate ligament [ACL]. Mr. Berger has recently undergone surgery for the torn ACL and is currently undergoing extensive physical therapy in an effort to regain his physical capacity. Mr. Berger was seen at the scene of his arrest by an EMS unit, was transported to the Atlanta Detention Center and from there was transported to Grady Memorial Hospital - all prior to his eventual release from custody later that same day.

Mr. Berger was charged with violating the Atlanta City Code through the "use of fighting words," and the commission of "disorderly conduct." The charges against Mr. Berger were dismissed on October 29, 2012. See, *City of Atlanta v. Jay Berger*, Case No. 12CR038154.



*Jay
CAC*

Ante Litem Notice - Berger
January 22, 2013
Page Two

In accordance with O.C.G.A. § 36-33-5, this letter serves as notice of Mr. Berger's claim for damages against Mr. Lawrence and against the City of Atlanta. The claim for damages arises from the wrongful arrest of Mr. Berger and from the clearly excessive use of force upon him - force which resulted in substantial physical harm to my client and which has already required surgery and physical therapy. These claims arise under both State and Federal law.

Please contact me in the event that you have any questions in connection with this matter. Upon your receipt of this Notice of Claim I request that you designate or identify a representative of the City of Atlanta for the purpose of investigating this claim and the purpose of determining whether or not to satisfy the claim presented by this letter.

Sincerely,



Brian Spears

BS:gb

cc: Chief George N. Turner
Atlanta Police Dept.
226 Peachtree St
Atlanta, Georgia 30303

Cathy Hampton, Atlanta City Attorney
Department of Law
68 Mitchell Street
Suite 4100
Atlanta, Georgia 30303

RCS# 2666
5/06/13
3:23 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I; ALL ITEMS
EXCEPT 13-O-0638
ADOPT

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

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

CONSENT I

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		05-06-13
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 13-O-0599	40. 13-R-3103	77. 13-R-3043
2. 13-O-0629	41. 13-R-3104	78. 13-R-3044
3. 13-O-0643	42. 13-R-3085	79. 13-R-3045
4. 13-O-0119	43. 13-R-3086	80. 13-R-3046
5. 13-O-0632	44. 13-R-3087	81. 13-R-3047
6. 13-O-0639	45. 13-R-3088	82. 13-R-3048
7. 13-O-0638	46. 13-R-3089	83. 13-R-3049
8. 13-O-0640	47. 13-R-3090	84. 13-R-3050
9. 13-O-0648	48. 13-R-3014	85. 13-R-3051
10. 13-O-0592	49. 13-R-3015	86. 13-R-3052
11. 13-O-0628	50. 13-R-3016	87. 13-R-3053
12. 13-O-0630	51. 13-R-3017	88. 13-R-3054
13. 13-R-3091	52. 13-R-3018	89. 13-R-3055
14. 13-R-3092	53. 13-R-3019	90. 13-R-3056
15. 13-R-3094	54. 13-R-3020	91. 13-R-3057
16. 13-R-3095	55. 13-R-3021	92. 13-R-3058
17. 13-R-3096	56. 13-R-3022	93. 13-R-3059
18. 13-R-3097	57. 13-R-3023	94. 13-R-3060
19. 13-R-3093	58. 13-R-3024	95. 13-R-3061
20. 13-R-3098	59. 13-R-3025	96. 13-R-3062
21. 13-R-3100	60. 13-R-3026	97. 13-R-3063
22. 13-R-3101	61. 13-R-3027	98. 13-R-3064
23. 13-R-3106	62. 13-R-3028	99. 13-R-3065
24. 13-R-3003	63. 13-R-3029	100. 13-R-3066
25. 13-R-3004	64. 13-R-3030	101. 13-R-3067
26. 13-R-3005	65. 13-R-3031	102. 13-R-3068
27. 13-R-3006	66. 13-R-3032	103. 13-R-3069
28. 13-R-3007	67. 13-R-3033	104. 13-R-3070
29. 13-R-3008	ITEMS ADVERSED ON CONSENT	105. 13-R-3071
30. 13-R-3009	68. 13-R-3034	106. 13-R-3072
31. 13-R-3010	69. 13-R-3035	107. 13-R-3073
32. 13-R-3011	70. 13-R-3036	108. 13-R-3074
33. 13-R-3013	71. 13-R-3037	109. 13-R-3075
34. 13-R-3000	72. 13-R-3038	110. 13-R-3076
35. 13-R-3001	73. 13-R-3039	111. 13-R-3077
36. 13-R-3002	74. 13-R-3040	112. 13-R-3078
37. 13-R-3083	75. 13-R-3041	113. 13-R-3079
38. 13-R-3084	76. 13-R-3042	114. 13-R-3080
39. 13-R-3102		115. 13-R-3081
		116. 13-R-3082