13-R-3080

1941

Entered – 7-26-11- SB
CL 11L0559– DWM/11 – JANINE J. EDMONDS

CLAIM OF: **Dwain Tharpe through his attorney Paul B. Mazur, P.C. Attorney at Law**
P.O. Box 550229
Atlanta, Georgia 30355

For bodily injury alleged to have been sustained from a motor vehicle accident on March 28, 2011 at Cascade Road.

THIS ADVERSED REPORT IS APPROVED

BY: _____
ERIC RICHARDSON
DEPUTY CITY ATTORNEY

CERTIFIED
MAY 06 2013
ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
MAY 06 2013
MUNICIPAL CLERK

ADVERSE REPORT

PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE

DATE: 4/30/13

CHAIR: _____

ADVERSED BY CITY COUNCIL
MAY 06 2013

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

Dwain Tharpe
c/o Attorney Paul B. Mazur, PC
P. O. Box 550229
Atlanta, Georgia 30355

13-R-3080

Dear Mr. Tharpe:

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

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 11L0559 Date: April 16, 2013

Claimant/Victim Dwain Tharpe
BY: (Atty) (Ins. Co.) Paul B. Mazur, Attorney at Law
Address: 44 Broad Street, Suite 600, Atlanta, Georgia 30303
Subrogation: _____ Claim for Property damage $_____ Bodily Injury $ 600,000
Date of Notice: 07/22/11 Method: Written, Proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 03/28/11 Place: Cascade Road
Department: Watershed Management Bureau: Management Office: _____
Employee involved: Gary Andrews Disciplinary Action: Driver's training

NATURE OF CLAIM: Claimant alleges bodily injury sustained when the vehicle he was riding in was struck by a city vehicle. The investigation determined the claimant has filed a lawsuit to resolve his claim.

INVESTIGATION:

Statements: City employee X Claimant X Others _____ Written X Oral X
Pictures X 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 _____ Ministerial X
Improper Notice _____ More than Six Months _____ Other _____ 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 – JANINE J. EDMONDS

RECOMMENDATION:

Pay $ _____ Adverse X Account charged: General Fund _____ Water & Sewer _____ Aviation _____
Claims Director/Manager: [illegible] Concur/date 4/19/13
Deputy City Attorney: _____ Concur/date _____
Committee Action: _____ Council Action _____
FORM 23-61

PAUL B. MAZUR, P.C.
ATTORNEY AT LAW
THE GRANT BUILDING, SUITE 600
44 BROAD STREET, N.W.
ATLANTA, GEORGIA 30303

(404) 525-9000
FAX (404) 522-9933

Hayes
GB
7/22/11

ENTERED - 7-26-11 - SB
11L0559 - W. HAYES

July 7, 2011

Mayor Kasim Reed
c/o City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, GA 30303

BY CERTIFIED MAIL
DOMESTIC RETURN RECEIPT
ARTICLE #: 7010 3090 0002 7437 2469

Mr. Ceasar C. Mitchell, President
c/o Atlanta City Council
55 Trinity Avenue, S.W.
Atlanta, GA 30303

BY CERTIFIED MAIL
DOMESTIC RETURN RECEIPT
ARTICLE #: 7010 3090 0002 7437 2476

Chief George N. Turner
c/o City of Atlanta Police Department
226 Peachtree Street
Atlanta, GA 30303

BY CERTIFED MAIL
DOMESTIC RETURN RECEIPT
ARTICLE #: 7010 3090 0002 7437 2483

RE: My Client: Mr. Dwain Tharpe
Responsible Entity: City of Atlanta
Responsible Driver: Mr. Gary Andrews
Date of Loss: 3/28/11

Dear Mayor Reed and Council President Mitchell and Chief Turner:

Please be advised the undersigned and Attorney Frank B. Lieppe represent Mr. Dwain Tharpe regarding serious and painful personal injuries and damages sustained by him as a direct result of a rear-end automobile collision caused completely and entirely by the negligence of Mr. Gary Andrews Monday, March 28, 2011, on Cascade Road approaching its intersection with Utoy Springs Road in Fulton County, Georgia. Please accept this letter as our client's *ante litem notice* to the City of Atlanta pursuant to O.C.G.A. § 36-33-5. Accordingly, please be advised of the following:

NOTICE OF OCCURRENCE AND CLAIM:

Liable Entity: City of Atlanta

Liable Individual: Mr. Gary Andrews

Date of Occurrence: March 28, 2011

Time of Occurrence: Approximately 4:35 p.m.

Nature of Loss:	The past, present and future pain and suffering sustained by Dwain Tharpe. The past, present and future medical expenses incurred by Dwain Tharpe. The past, present and future emotional distresses sustained by Dwain Tharpe. The past, present and future lost wages sustained by Dwain Tharpe.
Amount Claimed:	In excess of $5,000,000.00.
Claimant:	Mr. Dwain Tharpe 120 Olde Overlook Court Atlanta, GA 30331
Claimant's Attorneys:	Frank B. Lieppe, P.C. 6445 Powers Ferry Road Suite #: 265 Atlanta, GA 30339 (770) 612-0000 Paul B. Mazur, P.C. 44 Broad Street, N.W. Suite #: 600 Atlanta, GA 30303 (404) 525-9000

PRELIMINARY INFORMATION REGARDING CLAIM:

At approximately 4:35 p.m. on March 28, 2011, Ms. Tammy Clark was lawfully operating her 2004 Kia Optima vehicle in an easterly direction on Cascade Road approaching its intersection with Utoy Springs Road in Fulton County, Georgia. Mr. Dwain Tharpe was a passenger in the aforementioned vehicle lawfully operated by Ms. Clark. The front of a 2005 Chevrolet Silverado vehicle operated by Mr. Gary Andrews forcefully and violently impacted

Mayor Kasim Reed
c/o City of Atlanta

Mr. Ceasar C. Mitchell, President
c/o Atlanta City Council

Chief George N. Turner
c/o City of Atlanta Police Department

RE: My Client: Mr. Dwain Tharpe
Responsible Entity: City of Atlanta
Responsible Driver: Mr. Gary Andrews
Date of Loss: 3/28/11

with the rear of the 2004 Kia Optima vehicle that contained Mr. Tharpe. Mr. Gary Andrews was a City of Atlanta employee at the time of the aforementioned occurrence, acting within the course and scope of his employment for the City of Atlanta. Accordingly, based upon principles of *respondeat superior*, the City of Atlanta is vicariously liable to Mr. Tharpe for the tortious acts and omissions of its employee, Mr. Gary Andrews. As a result of the aforementioned collision, Mr. Tharpe sustained personal injuries and physical pain and suffering and emotional pain and suffering and seeks compensation from the City of Atlanta for same.

A copy of Georgia Uniform Motor Vehicle Accident Report #: 2011-004211 is enclosed herewith for your review.

Pursuant to O.C.G.A. § 33-3-28 (a), request is hereby made that you provide me with a certified copy of the declaration pages of all insurance policies which may provide coverage for this loss. This request specifically encompasses any and all excess or umbrella coverages that may in any way be applicable to this loss. The original of my affidavit in furtherance of this request for insurance coverage information is enclosed herewith for your review.

Thank you very much for your attention regarding this most important matter.

Of course, should you have any questions and/or concerns whatsoever, please feel completely free to contact the undersigned at your earliest convenience.

Very truly yours,
PAUL B. MAZUR, P.C.

Paul B. Mazur

PBM/jfc
Enclosures (As Indicated)
cc: Mr. Dwain Tharpe (With Enclosures)
Frank B. Lieppe, Esq. (With Enclosures)

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

+

		05-06-13
ITEMS ADOPTED ON CONSENT	**ITEMS ADOPDED 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