

**CITY OF WAUKESHA****Administration**

201 Delafield Street, Waukesha, WI 53188

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www.ci.waukesha.wi.us

Committee: None	Committee Meeting Date: Click here to enter a date.
Agenda Item Number: 18-1716	Common Council Meeting Date: 11/20/2018
Submitted By: Brian Running, City Attorney	City Administrator Approval: Kevin Lahner, City Administrator KL
Finance Department Review: Rich Abbott, Finance Director RA	City Attorney's Office Review: Brian Running, City Attorney BER
Subject: Disallowance of claim for personal-injury damages submitted by Mary Ellison.	

Details:

Ms. Ellison alleges that she was injured while playing tennis at Buchner Park by stepping into a drainage gutter that's adjacent to the tennis courts. Her notice of claim and a photo of the court and gutter accompany this cover sheet. As with all personal-injury claims, there are issues of notice, fault, affirmative defenses, and potential subrogated interests of medical insurers. These are not issues that can be decided on the basis of the submitted documents, and the claim should be disallowed. Ms. Ellison should be notified that she should consult with her own attorney about filing suit against the City.

Options & Alternatives:

The claim could be paid. The current amount of the out-of-pocket expenses she wants reimbursed is \$93.17. However, she notes that her O-O-P for medical bills and PT is yet to be determined, and could be substantial. She probably does not realize that her medical insurance carrier would seek reimbursement of its subrogated interest, too, which would likely be very substantial. Therefore, payment of the present claim is not advisable.

Financial Remarks:

There is no immediate financial impact to the City as a result of disallowing the claim.

Staff Recommendation:

City Attorney's office recommends formal disallowance of the claim.

November 12, 2018

CLAIMANT

Mary K Ellison
5398 Wolfberry Circle
Greendale, WI 53129



CLAIM

City of Waukesha acted negligently by improperly locating drainage gully along sideline of tennis courts at Buchner Park which resulted in a fall into the gully and fracture of left shoulder. The court's design makes it hazardous to the typical user exercising due care.

Request reimbursement of all out of pocket medical expenses as a result of fractured shoulder.

Request extension of time in which to make this claim from 120 to 240 days in order to complete medical care and physical therapy, and allow time for receipt of all billing in order to provide specific sum of money damages.

CIRCUMSTANCES OF CLAIM

Incident occurred on September 7, 2018 at approximately 6:45pm at Buchner Park Tennis Court number one (court on north east corner). Weather free of rain and courts were dry.

While engaged in doubles tennis, completed back hand stroke from inside the northeast corner of doubles court. I was playing tennis in a normal manner. Follow through steps took me into the gulley which starts its slope 47 inches* from doubles sideline. Struck left shoulder on side of gully.

Fall was not the result of tripping. It was caused because I ran out of court beneath my feet and literally stepped into air. Unlike when someone trips and tries to break fall with hands, I was not aware of falling until I landed. Other than shoulder, no other body part was injured, scraped or bruised.

Received care at Waukesha Memorial Hospital's Emergency Department and diagnosed with closed fracture of the left shoulder.

Currently receiving care from Dr. James Stone at Orthopedic Institute, 3311 W Rawson Ave, Franklin, Wi. Anticipate approximately 10-12 visits.

Currently receiving physical therapy at ATI located at same address. Anticipate 14 or more physical therapy visits to return normal range of motion to arm.

ADDITIONAL INFORMATION

Can provide names and phone numbers of witnesses to incident if you request.

Courts were reserved from the city for the tennis group by Ralph Leach.

*Standards for tennis courts state that doubles side line should be 12 feet from side stop or other courts according to the American Sports Builder Association, the trade association for those who design and build tennis courts. Tennis is not a stationary sport. A gully would not be placed in the warning track of a baseball outfield or sideline of basketball court or football field.

Mary K Ellison

November 12, 2018

OUT OF POCKET EXPENSES

Emergency Medical Associates (bill attached)	\$22.66
ProHealth Care Waukesha Memorial (bill attached)	\$70.51
Orthopedic Institute	pending
ATI Physical Therapy	pending

Attachments:

Picture of actual tennis court where injury occurred

ProHealth Care Waukesha Memorial Hospital, Inc. documentation of visit

ProHealth Care Bill

Emergency Medical Associates Bill

