

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

201 Delafield Street, Waukesha, WI 53188

Tel: 262.524.3701 fax: 262.524.3899

www.ci.waukesha.wi.us

Source: City Attorney	Date: 3/30/2017
Common Council Item Number: 17-0491	Date: 4/6/2017
Submitted By: Brian Running, City Attorney	City Administrator Approval: Kevin Lahner, City Administrator Click here to enter text.
Finance Department Review: Rich Abbott, Finance Director Click here to enter text.	City Attorney's Office Review: Brian Running, City Attorney Click here to enter text.
Subject: Disallowance of claim for damages by Anthony Benz.	

Details:

A claim for property damages was served on the City by Anthony Benz. Mr. Benz was eastbound on St. Paul Avenue approaching Moreland Boulevard. A City snow plow turned left from Moreland Boulevard to eastbound St. Paul. Mr. Benz swerved to the right, believing he had to avoid collision with the plow. When he did so, he lost control of his car on the snowy, slippery road, hit a utility pole and then a fence. Mr. Benz claims \$16,186.55 in property damages. This matter was submitted to our liability insurer, which investigated and determined that Mr. Benz was at least as much at fault as the City's plow operator, and recommends disallowance of the claim.

A disallowance does not mean that Mr. Benz will not recover anything. The effect of the disallowance is only to begin the running of a six-month period within which Mr. Benz must file suit against the City or have his claim barred. If we do not formally disallow, the statute of limitations would be six years. The six-month period allows the City to manage its claims more efficiently, by allowing us to close out cases faster.

The City Attorney's Office will always recommend disallowance of claims in cases of negligence, such as this one. The reason is that negligence cases always involve an allocation of negligence among the parties; it is *extremely* rare when one party is unquestionably 100% at fault. A party's right to recovery is reduced by the party's percentage of fault, or even barred altogether. That allocation of negligence should be done in mediation or at trial, not at the claims-notice stage. Almost certainly, there will be a settlement of this matter, after a suit is filed.

Options & Alternatives:

We do not recommend any alternatives. They would be either to pay the claim immediately without any allocation of fault between parties, or to allow a six-year statute of limitations period.

Financial Remarks:

There is no immediate financial impact from a disallowance.

Staff Recommendation:

Disallow the claim of Anthony Benz and authorize the City Attorney to deliver a notice of disallowance to Mr. Benz's attorney.