
Immunity helps city fend off odd claims

By Lorri Denise Booker

Staff Writer

Every once in a while, after a month or so of checking out sewer backups and fender-benders, claims investigator Dianne Mitchell will sit down at her desk in the city law department, close her eyes and open a mental file that puts a smile back on her face.

Peculiar claims: Money demands from citizens who blame the city of Atlanta for freak occurrences, bizarre accidents, even for their own negligence. Mrs. Mitchell and

investigator James Payne have seen them all, from people who fall into manholes to people with cars damaged by city-owned cows.

"Things might not be so funny to the people they happened to, but you need to maintain some sense of humor," Mrs. Mitchell said. "If you lose your sense of humor, you'll end up being a not very nice person."

The categories of unusual claims broaden every year to include some never-before-seen cases. Sometimes they have basis;

other times they're frivolous. Few of them get paid because of a centuries-old law called sovereign or governmental immunity. It has its roots in the ancient notion that "the king can do no wrong," but an increasing number of states and cities across the country are amending or abolishing the law. Atlanta is not among them. While the Georgia Supreme Court in June overturned the state's immunity defense in liability suits, Attorney General Mike Bowers is

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seeking a rehearing on the ruling.

"It is an idea and a subject that is in considerable debate across the country," said City Attorney Marva Jones Brooks. "The notion serves society well. There would have to be an enormous amount of revenue increases in the city ... if that law is abrogated or abolished."

The city is self-insured. That means that taxpayers actually pay the claims, and the money from paying a greater number of claims would come from them — probably in the form of higher taxes. The city law department is frugal. Of the 495 claims filed in the first three months of 1987, it paid only 21. They all were vehicle-related cases and were settled for an average of \$600. The city has set a limit of \$1,000 on vehicular accidents.

"We're more than equitable with people who have claims, but it's our duty not to give away the city's money," said Henry Murph, the assistant city attorney who specializes in claims against the city. "It's so much easier to pay [all] the claims, but we have a legal obligation."

Many of the claims cases have the city's police horses as the offender. Though the horses are trained not to be spooked by normal big-city noises, the training is not foolproof.

Four years ago, a police officer tied his horse to a pole as he rushed to break up a brawl at the Piedmont Arts Festival in the park. The 1,100-pound horse broke loose and galloped through the crowd, knock-

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ing over glasses, crushing picnic baskets and kicking festival patrons. One man, who said he had sustained serious injury to his neck, back and legs, filed a claim against the city.

Other horses have, over the years, damaged cars by panicking in traffic or damaged buildings by kicking in plate glass windows. In most cases, the city claimed immunity.

"Horses are real funny," Lt. Emory Sikes, head of the Atlanta police department's mounted patrol. "Something very minor like a balloon or a paper sack blowing down the street might scare them. We try to get them used to everything."

The city water lines are another source of trouble. Once, when sand inexplicably got into the water lines that ran to a brewery, it produced a batch of grainy beer and a claim against the city. Another time, a woman washing clothes at a laundromat peeked into the washer and discovered that she was washing them in muddy water caused by another water line mishap. She asked the city for \$250 to replace or clean the stained clothes. The city said no.

"Even though we do our work with zeal and vigor, it's not the happiest thing to do," Mrs. Brooks said. "Everybody would rather not be the bad guy. But the buck stops here."

When City Council members, spurred by an angry constituent,

complain that the law department is not paying claims to "the little guy," Brooks simply explains that if they want to pay "moral claims," they'll have to take out their personal checkbooks.

"Often that brings a little calm to the debate," she said.

Occasionally, the unforeseen happens. One man was driving down the street behind a city truck when a chunk of concrete fell onto his car. A woman was brought to an abrupt stop at an intersection two years ago when the cables snapped on a traffic light, sending it crashing onto her car. In another case, a Pennsylvania man was driving near the city-owned work farm on Key Road one Saturday night when his car collided with a black cow that had escaped the farm through a fence. Sometimes, the city pays these claims, as in the case of the man whose car was damaged by the concrete. But usually it doesn't.

There is a large category of claims that probably would not be paid even if the city did not have immunity, because the victim was negligent. Many of those involve people slipping on ice, tripping on stairs or falling into manholes. One man blamed the city when he walked into a manhole — and onto the back of a city employee — as he strolled down the street while reading a newspaper. Another wom-

an caught her heel in iron grating on a sidewalk at the airport and fell "flat on her face." She wanted the city to pay X-ray charges and replace her skirt, the crystal on her Rolex watch and her panty hose. The city declined on all counts.

Some claims — serious and amusing — read like blurbs from "Ripley's Believe It or Not." In one, a man was driving down the road when it collapsed beneath his vehicle. In another 3-year-old case, a woman passenger in a wrecker was injured when, at the scene of the accident, the wrecker driver had an argument with the firefighter directing traffic. The firefighter threw his flashlight at the truck as it passed him, and it flew through the driver's window, bounced off the windshield and hit the woman in the mouth, knocking out her front tooth.

Another case involved two cars that were commandeered by police on Interstate 75 to form a temporary roadblock to stop an escaped convict. The convict reached the roadblock and kept going, badly damaging both cars and injuring one of the drivers. The city acknowledged that it was negligent, but still claimed immunity.

Despite the limitations imposed by governmental immunity, Mrs. Brooks says 75 percent to 85 percent of the cases are settled satisfactorily. Claimants pursue lawsuits in about 10 percent of the cases.

"I would consider that the law had outlived its usefulness when only 5 percent are settled to everyone's satisfaction," said Mrs. Brooks. "We have to work under an umbrella of the law. The harshness of the law is something we do recognize, but it is on balance, I think, a necessity."