

<p><b>APPROVAL</b></p> <p><i>slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p>February 6, 2018</p>
<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p><i>LaShun Gray v. City of Franklin</i>, United States District Court, Eastern District of Wisconsin, Case No. 17-CV-1057. The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the subject litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.9.</i></p>
<p>The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the subject litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p> <p style="text-align: center;"><b>COUNCIL ACTION REQUESTED</b></p> <p>Motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the subject litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p>		

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<p style="text-align: center;"><b>APPROVAL</b></p> <p><i>Slw</i> </p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;"><b>02/6/2018</b></p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;"><b>Notice of Claim from Nancy Tomashek for Injuries and Damages Sustained When Riding the Super Slide During the Franklin Civic Celebration Event</b></p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.10.</i></p>

Notice of claim received January 19, 2018 from Claimant Nancy Tomashek by Patrick M. Bertrandt, Attorney for the Claimant, for injuries and damages sustained when going down the Super Slide ride with her granddaughter on her lap during the Franklin Civic Celebration on July 2, 2015. The Common Council may enter closed session pursuant to §19.85(1)(e) and (g), Stats., to consider a notice of claim from Nancy Tomashek for injuries and damages sustained when going down the Super Slide ride with her granddaughter on her lap during the Franklin Civic Celebration on July 2, 2015, and may reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

**Staff recommends denial of the claim** pursuant to Wisconsin Statute 893.80(1g) for disallowance of the claim, based upon and in concurrence with the insurance adjuster that the investigation revealed that the City of Franklin was not negligent or liable for this incident as the owner of the rides, including the slide in question, and the employer of the employee who told the clamant to ride down the slide with her granddaughter on her lap, is Rainbow Valley Rides, Inc. ACE American Insurance Company insures Rainbow Valley Rides and has agreed to accept the tender of this claim as the City of Franklin is listed as an additional insured on their policy.

**COUNCIL ACTION REQUESTED**

The Common Council may enter closed session pursuant to §19.85(1)(e) and (g), Stats., to consider a notice of claim from Nancy Tomashek for injuries and damages sustained when going down the Super Slide ride with her granddaughter on her lap during the Franklin Civic Celebration on July 2, 2015, and may reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

Motion to deny the claim of Nancy Tomashek pursuant to Wisconsin Statute 893.80(1g), based upon and in concurrence with the insurance adjuster that the investigation revealed that the City of Franklin was not negligent or liable for this incident as discussed in the Council Action Sheet.

OR

Motion to layover and refer to staff for additional information.

# **Statewide Services, Inc.**

Claim Division

1241 John Q. Hammons Dr.  
P.O. Box 5555  
Madison, WI 53705-0555  
677-204-9712

January 22, 2018

CITY OF FRANKLIN  
9229 W. LOOMIS ROAD  
FRANKLIN, WI 53132

RE: Our Claim #: WM000402260180  
Date of Loss: 07/02/2015  
Claimant: Nancy Tomashek, 7868 Chapel Hill Court, Franklin WI 53132  
Attorney: Patrick Bertrandt, Action Law Offices  
933 North Mayfair Road, Suite 200, Milwaukee WI 53226

Dear Ms. Huening:

Statewide Services, Inc. administers the claims for the League of Wisconsin Municipalities Mutual Insurance, which provides the insurance coverage for the City of Franklin. We are in receipt of the "Notice of Claim" submitted by Action Law Offices alleging Nancy Tomashek was injured when she was going down the Super Slide with her granddaughter on her lap on July 2, 2015 during the Franklin Civic Celebration at Lions Legend Park.

Our investigation has revealed that the City of Franklin was not negligent or liable for this incident as the owner of the rides, including the slide in question, and the employer of the employee who told the claimant to ride down the slide with her granddaughter on her lap, is Rainbow Valley Rides Inc. ACE American Insurance Company insures Rainbow Valley Rides and has agreed to accept the tender of this claim as the City of Franklin is listed as an additional insured on their policy. Therefore, in the absence of negligence on the part of the City of Franklin, we recommend that the City disallow this claim pursuant to the Wisconsin Statute for disallowance of claim 893.80(1g). The disallowance of the claim in this manner will allow us to shorten the statute of limitations period to six months. We are tendering this claim to ACE American Insurance Company for handling.

Please send the disallowance, on your letterhead, directly to the claimant and the attorney at the above listed addresses. This should be sent certified or registered (restricted) mail and must be received by the claimant within 120 days after you received the claim. Please send me a copy of the Notice of Disallowance for my file.

Thank you.

Sincerely,

Ginger Kimpton  
Senior Casualty Claims Adjuster  
855-828-5515 / 866-828-6613 fax  
[gkimpton@statewidesvcs.com](mailto:gkimpton@statewidesvcs.com)

CC: Scott Huibregtse, Agent

## ***Statewide Services, Inc.***

Claim Division

1241 John Q. Hammons Dr.  
P.O. Box 5555  
Madison, WI 53705-0555  
877-204-9712

January 22, 2018

NANCY TOMASHEK  
7868 CHAPEL HILL COURT  
FRANKLIN, WI 53132

Regarding:    Our Insured:    City Franklin  
                  Claim No:        WM000402260180  
                  Date/Loss:        07/02/2015

Dear Ms. Tomashek:

Statewide Services, Inc. administers the claims for the League of Wisconsin Municipalities Mutual Insurance, which provides the insurance coverage for the City of Franklin. We are in receipt of the Notice of Claim you submitted alleging you were injured when you were going down the Super Slide with your granddaughter on your lap on July 2, 2015 during the Franklin Civic Celebration at Lions Legend Park.

We have performed an investigation and determined that there is no negligence or liability on behalf of the City of Franklin. Our investigation has revealed that the owner of the rides, including the slide in question, and the employer of the employee who told the claimant to ride down the slide with her granddaughter on her lap, is Rainbow Valley Rides Inc. ACE American Insurance Company insures Rainbow Valley Rides and has agreed to accept the tender of this claim as the City of Franklin is listed as an additional insured on their policy. The adjuster at ACE American is John Wolfe, phone number 913-676-9353. Claim # JY15J0424534. Therefore, in the absence of negligence on the part of the City of Franklin, Statewide Services Inc. is advising the City to disallow your claim. We have tendered this claim to ACE American Insurance Company for further handling.

Sincerely,

Ginger Kimpton  
Senior Casualty Claims Adjuster  
855-828-5515 office  
866-828-6613 fax  
[gkimpton@statewidesvcs.com](mailto:gkimpton@statewidesvcs.com)

CC:    City of Franklin  
      Scott Huibregtse, Agent  
      Patrict Bertrandt, Claimant Attorney

# Statewide Services, Inc.

Claim Division

1241 John Q. Hammons Dr.  
P.O. Box 5555  
Madison, WI 53705-0555  
877-204-9712

January 22, 2018

JOHN WOLFE  
ACE AMERICAN INSURANCE COMPANY

via email

Our Claim #: ~~WM000402360095~~ WM000402260190  
Our Insured: CITY OF FRANKLIN  
Claimant: NANCY TOMASHEK  
Date of loss: 07/02/2015

Dear John:

Statewide Services, Inc. administers the claims for the League of Wisconsin Municipalities Mutual Insurance, which provides the insurance coverage for the City of Franklin. We are in receipt of the above-stated claim in which the claimant is asserting a claim for injuries she sustained when she was going down the Super Slide with her granddaughter on her lap.

It is my understanding that the owner of the rides, including the slide in question, and the employer of the employee who told the claimant to ride down the slide with her granddaughter on her lap, is Rainbow Valley Rides Inc. It is also our understanding that ACE American Insurance Company has the City of Franklin listed as an additional insured on their policy.

Based on our investigation, we fail to find any liability on the behalf of our insured and are tendering the handling of this claim to your company. Per our telephone conversation on January 22, 2018, you indicated that you would be accepting the tender of this claim and would take care of it. I have advised our insured to disallow the Notice of Claim that they were served with, and I am sending them a copy of this letter. A copy of the Notice of Claim is enclosed for your reference.

Sincerely,

Ginger Kimpton  
Senior Casualty Claims Adjuster  
Office: 608.828.5515  
Fax: 866.828.6613  
[gkimpton@statewidesvcs.com](mailto:gkimpton@statewidesvcs.com)

cc. City of Franklin

Enclosure

Emailed to  
Ginger @ Statewide  
& Marie RR & Jane  
on 1/22/18

**NOTICE OF CLAIM**

PROCESS SERVER Walt  
TIME 10:55 AM / PM DATE 1-19  
 PERSONAL       SUBSTITUTE  
 POSTED           CORPORATE

TO: CITY OF FRANKLIN  
9229 W. LOOMIS ROAD  
FRANKLIN, WI 53132-9728

**PLEASE TAKE NOTICE** Pursuant to Wisconsin Statute §893.80 that the undersigned is making a claim for injuries and damages against you by virtue of the reasons set forth hereafter:

**NAME OF CLAIMANT:**

Nancy Tomashek

**DATE AND TIME OF INJURIES SUSTAINED:**

July 2, 2015

**PLACE OR LOCATION WHERE INJURY OR DAMAGES OCCURRED:**

Lions Legend Park/Franklin Civic Celebration

**MANNER IN WHICH DAMAGES OR INJURIES WERE RECEIVED OR OCCURRED:**

Claimant was in at the Franklin Civic Celebration, a fair, held at Lions Legend Park in the City of Franklin. Claimant was going down the Super Slide with her granddaughter on her lap. As she went down the slide and picked up speed, it launched her into the air and as she came back down she was injured.

**GROUNDS ON WHICH CLAIM IS MADE:**

Negligence on the part of City of Franklin, Department of Public Works and the Rainbow Valley Rides, Inc. by its agents, servants, and employees including but not limited to management, negligent hiring, training, and supervision of its employees of the City of Franklin.

RECEIVED  
CITY OF FRANKLIN  
2018 JAN 19 AM 10:55

**GENERAL DESCRIPTION OF INJURIES AND DAMAGES:**

**PERSONAL INJURIES:**

- Headaches
- Closed Head Injury
- Neck/Whiplash Injury
- Shoulder Pain
- Back Sprain/Strain
- Back Contusion
- Abdominal Pain/Distension
- Left Hand Weakness/Atrophy
- Left Upper Extremity Cubital Tunnel Syndrome
- Severe Left Ulnar Neuropathy
- Sacrum/Coccyx Pain/Contusion
- Right Groin Pain/Strain
- Right Leg Radiculopathy
- Nausea
- Disturbed Sleep

**PLEASE TAKE NOTICE** that satisfaction for such injuries or damages is claimed, and that pursuant to Section 893.80, Wisconsin Statutes, an itemization of Special Damages is attached hereto and this demand is in the sum of Two Hundred Fifty Two Thousand, Three Hundred Forty Six Dollars (\$252,346.00).

Dated at Milwaukee, Wisconsin, this 16 day of January, 2018.

Claimant: NANCY TOMASHEK  
7868 CHAPEL HILL COURT  
FRANKLIN, WI 53132

ACTION LAW OFFICES

BY:

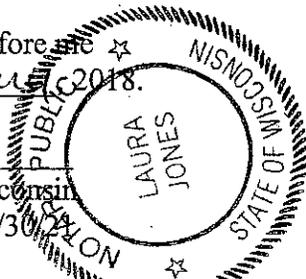


PATRICK M. BERTRANDT  
Attorney for the Claimant  
933 North Mayfair Road  
Suite 200  
Milwaukee, Wisconsin 53226  
Telephone: (414) 456-1111

Subscribed and sworn to before me  
this 16 day of January, 2018.

Jaurasm

Notary Public: State of Wisconsin  
My Commission Expires: 4/30/2018



**THIS IS A CLAIM PURSUANT TO § 893.80, WISCONSIN STATUTES.**

Nancy Tomashek

7/2/2015

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**Itemization of Medical Information & Special Damages**

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**1 Aurora St Luke's Medical Center**

REC	070/3/15		IN
STMT	07/03/15	\$	961.00
REC	07/09/15		IN
STMT	07/09/15	\$	3,983.90
STMT	07/31/15	\$	1,980.00
REC	10/12/15		IN
STMT	10/12/15	\$	2,245.00
STMT	10/19/15	\$	4,289.50
REC	10/22/15		IN
STMT	10/22/15	\$	14,873.79
REC	06/27/16		IN
STMT	06/27/16	\$	1,963.00

**2 Aurora Medical Group - Franklin Clinic**

REC	07/07/15 - 03/29/17		IN
STMT	07/07/15 - 03/29/17	\$	2,603.00

**3 Aurora Medical Group - St. Luke's Office Bldg**

REC	07/13/15		IN
STMT	07/13/15	\$	597.00
STMT	07/13/15	\$	76.00
REC	10/20/15		IN
STMT	10/20/15	\$	408.00

**4 Aurora Advanced Healthcare**

REC	07/29/15 - 03/02/17		IN
STMT	07/29/15 - 03/02/17	\$	15,399.00

**5 Aurora West Allis Medical Center**

STMT	07/07/15	\$	4,885.28
STMT	07/08/15	\$	659.00
REC	10/08/15 - 01/10/17		IN
STMT	10/08/15 - 01/10/17	\$	6,395.00

**6 Aurora Physician Billing**

STMT	07/03/15	\$	84.00
STMT	07/07/15	\$	1,072.00
STMT	07/08/15	\$	295.00
STMT	07/09/15	\$	525.00
STMT	07/31/15	\$	491.00
STMT	10/12/15	\$	1,536.00
STMT	10/19/15	\$	643.00
STMT	06/27/16	\$	957.00
STMT	02/02/17	\$	76.00
STMT	05/10/17	\$	1,468.00

**7 Aurora Advanced Healthcare - Laboratory Billing**

STMT	07/20/15 - 08/11/17	\$	1,505.00
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**8 ERMED, S.C.**

STMT	07/09/15	\$	663.00
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**9 Anesthesiology Associates Of WI, S.C.**

STMT	10/22/15	\$	1,365.00
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**10 Kneuppel Healthcare Services, Inc.**

STMT	08/31/15	\$	170.85
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**11 Clinic Of Cosmetic Surgery**

REC	02/08/16		IN
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**12 Mileage**

\$	263.47
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**Total**      \$      **72,432.79**

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<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> 2/6/18
<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS LICENSES</b>	<b>ITEM NUMBER</b> H.1.

See attached list from meeting of February 6, 2018.

**COUNCIL ACTION REQUESTED**



<b>APPROVAL</b> <i>JB Slow</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>2/6/18</b>
<b>Bills</b>	<b>Vouchers and Payroll Approval</b>	<b>ITEM NUMBER</b> <b>I. 1</b>

Attached are vouchers dated January 19, 2018 through February 1, 2018 Nos. 167669 through Nos. 167837 in the amount of \$ 1,517,150.46. Included in this listing are EFT's Nos. 3682 through Nos. 3692 and Library vouchers totaling \$ 18,054.24.

Early release disbursements dated January 19, 2018 through January 31, 2018 in the amount of \$ 574,428.26 are provided on a separate listing and are also included in the complete disbursement listing. These payments have been released as authorized under Resolution 2013-6920.

The net payroll dated February 2, 2018 is \$ 371,663.57 previously estimated at \$ 375,000.00. Payroll deductions dated February 2, 2018 are \$ 199,419.87 previously estimated at \$ 236,500.00.

The estimated payroll for February 16, 2018 is \$ 379,000.00 with estimated deductions and matching payments of \$ 381,000.00.

Attached is a list of property tax refunds, settlements and payments Nos. 17748 through Nos. 17810 and EFT Nos. 195 through Nos. 198 dated January 19, 2018 through February 1, 2018 in the amount of \$ 5,919,261.17. \$5,850,000 of this represents the transfer of collections to investment accounts and \$ 69,261.17 are refunds. These payments have been released as authorized under Resolution 2013-6920. Voided checks in the amount of (\$ 9,934.30) are separately listed.

### **COUNCIL ACTION REQUESTED**

Motion approving the following:

- City vouchers with an ending date of February 1, 2018 in the amount of \$ 1,517,150.46 and
- Payroll dated February 2, 2018 in the amount of \$ 371,663.57 and payments of the various payroll deductions in the amount of \$ 199,419.87 plus City matching payments and
- Estimated payroll dated February 16, 2018 in the amount of \$ 379,000.00 and payments of the various payroll deductions in the amount of \$ 381,000.00, plus City matching payments and
- Property Tax refunds and payments with an ending date of February 1, 2018 in the amount of \$ 5,919,261.17.

**ROLL CALL VOTE NEEDED**