

LEGISTAR NO.

120066

IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

RAY LEWIS,

Plaintiff,

vs.

CASE NO. 2012 CA 838
K

CITY OF GAINESVILLE

Defendant.

J.K. TELFER, JR.
CLERK OF COURTS
ALACHUA COUNTY, FL

2012 MAR -2 PM 4:51

FILED
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COMPLAINT

COMES NOW the Plaintiff, RAY LEWIS, by and through his undersigned counsel, and hereby sues the Defendant, CITY OF GAINESVILLE, and alleges as follows:

PARTIES

1. At all times relevant to this cause of action, Plaintiff RAY LEWIS (hereinafter "PLAINTIFF") was a resident of the State of Florida.
2. At all times relevant to this cause of action, Defendant CITY OF GAINESVILLE, (hereinafter "DEFENDANT"), was a city in Alachua County, Florida.
3. At all times relevant to this cause of action, DEFENDANT was engaged in operating a business named or doing business as REGIONAL TRANSIT

Case: 2012 CA 000838
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DR: C080-R



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SYSTEM ("RTS") with its operations office located at 100 SE 10th Avenue, Gainesville, Florida, 32627, in which transportation services were provided for a fee to the general public.

4. At all times relevant to this cause of action, RTS was, and still is, a common carrier providing transportation services for a fee to the general public.

JURISDICTION

5. This action is for damages that exceed \$15,000, exclusive of costs and fees.

6. Venue is proper in Alachua County, Florida, pursuant to Fl. Stat. § 47.011.

CONDITION PRECEDENTS

7. Pursuant to Fla. Stat. § 768.28(6), notice of the injuries described in this Complaint by Plaintiff RAY LEWIS was provided to DEFENDANT, on January 14, 2010. Copies of the notices are attached to this Complaint as Exhibit "A" and "B", respectively.

8. On July 28, 2011, DEFENDANT, by and through its claims representative, made a final disposition of the Plaintiff's claim. Thus, the Plaintiff's claim is deemed denied for purposes of the notice requirements imposed by Florida Statute 768.28, also known as the Florida Tort Claims Act.

9. After reasonable inquiry, the Plaintiff has no knowledge of any prior adjudicated unpaid claim owed to the State of Florida in excess of \$200.00.

10. Plaintiff has complied with all conditions precedent to bringing the causes of action asserted herein.

COMMON ALLEGATIONS

11. The incident that is the subject of this Complaint took place on or about March 3, 2008, in Alachua County, Florida.

12. At all times material to this Complaint, PLAINTIFF was lawfully onboard an RTS bus owned by DEFENDANT as a business invitee for the purpose of paying for transportation services.

13. On March 3, 2008 prior to the occurrence alleged herein, DEFENDANT knew or should have known that an RTS bus was accumulating a clear liquid at or near the front passenger seat of the bus and extending onto the WALKING SURFACES, creating potentially hazardous conditions for its business invitees

14. At that time and place, PLAINTIFF entered DEFENDANT'S RTS bus as a business invitee without any knowledge as to the conditions of the WALKING SURFACES on said bus.

15. At that time and place, PLAINTIFF walked on the WALKING SURFACES upon which the clear substance had traveled.

16. At that time and place, PLAINTIFF slipped and fell on the clear substance, resulting in severe knee injuries.

17. Immediately after falling, PLAINTIFF was informed by the RTS bus driver that the liquid had come from a leak in the bus ceiling which had not been repaired causing water to accumulate inside the bus.

COUNT ONE – NEGLIGENCE

18. PLAINTIFF repeats and re-alleges each and every allegation contained in Paragraphs 1 through 17 as if fully set forth herein.

19. At all times material to this Complaint, PLAINTIFF was lawfully onboard an RTS bus owned by DEFENDANT as a business invitee for the purpose of paying for transportation services.

20. At all times material to this Complaint, DEFENDANT owed PLAINTIFF a duty of reasonable care and a duty to warn of any hazards that may be present, including but not limited to, clear liquid left carelessly and negligently in the aisle, floor, or stairwell of the RTS bus.

21. At all times material to this Complaint, DEFENDANT had a duty to maintain its buses and the publicly accessible walking surfaces therein, including but not limited to, the aisle, floor, or stairwell of the bus, (hereinafter "WALKING SURFACES"), as well as its general facilities in a reasonably safe condition for business invitees.

22. Additionally or alternatively to the foregoing, DEFENDANT had a duty as a common carrier to exercise the highest degree of care consistent with the practical operation of a bus.

23. At that time and place, DEFENDANT knew or should have known that a leak had formed in the ceiling of the RTS bus, and failed to repair said ceiling.

24. In addition or alternatively to the foregoing, at that time and place, DEFENDANT knew or should have known of the risk posed to the public by a leaking ceiling which allowed clear liquid to travel onto the WALKING SURFACES, and the likelihood that without a warning sign, it would cause someone to slip and fall, resulting in bodily injury.

25. At that time and place, the clear liquid on the WALKING SURFACES created a slippery floor, which was a dangerous condition for business invitees.

26. At that time and place, DEFENDANT negligently failed to inspect, clean or maintain the WALKING SURFACES and ceiling of the RTS bus in a reasonably safe condition and keep it free from clear liquids and transitory substances which created slippery and unsafe conditions for business invitees.

27. In addition or alternatively to the foregoing, DEFENDANT failed to warn business invitees of the dangerous and unsafe conditions present on the RTS bus.

28. In addition or alternatively to the foregoing, DEFENDANT allowed the hazardous condition to manifest itself in such a way that business invitees were endangered as a result.

29. In addition or alternatively, Defendant breached its high duty as a common carrier by allowing a dangerous condition to remain on its WALKING SURFACES.

30. At that time and place, PLAINTIFF slipped and fell on the clear liquid in the WALKING SURFACES as a result of the DEFENDANT's negligent allowance of liquid on the WALKING SURFACE or the negligent failure to repair the bus roof.

31. As a direct and proximate result of Defendant's negligence, PLAINTIFF suffered bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, the expense of medical and

nursing care, lost wages, loss of capacity to earn future wages, as well as the activation or aggravation of a preexisting condition. These losses are permanent in nature, and PLAINTIFF will continue to suffer from these losses in the future.

WHEREFORE, PLAINTIFF demands judgment for damages against DEFENDANT, and a trial by jury of all issues so triable.

LAW OFFICES OF DeCARLIS, SAWYER & ALBA, P.L.

By: 

Gilbert J. Alba
FL Bar No.: 0819751
5000 NW 27th Court, Suite C
Gainesville, FL 32606
(352) 371-3838 (telephone)
(352) 376-3442 (facsimile)
Attorney for PLAINTIFF

LAW FIRM OF
DeCarlis, Sawyer & Alba, PLLC

ATTORNEYS AT LAW

WILLIAM N. DeCARLIS
MICHAEL SAWYER
GILBERT J. ALBA
SHANE R. BACHMAN

5000 NW 27TH COURT, SUITE C
GAINESVILLE, FLORIDA 32606
(352) 371-3838; (352) 373-7777; FAX (352) 376-3442
INFO@DECARLISANDSAWYER.COM

OCALA OFFICE:
CHARLESTON CENTER:
6035 SW 54TH STREET, SUITE 100
OCALA, FL 34475
(352) 368-2485

SUNNY SHUPING, PLS
OFFICE MANAGER

REPLY TO: GAINESVILLE OFFICE

January 14, 2010

VIA CERTIFIED MAIL

Mayor Pegeen Hanrahan
City of Gainesville
200 E. University Avenue
Gainesville, Florida 32601

Re: Bodily Injury Claim for:
Claimant: Ray Lewis
Date of Accident: March, 2007

Dear Mayor Hanrahan:


Pursuant to Florida Statute 768.29(6), please be advised that Ray Lewis is presenting a claim against the City of Gainesville as a result of negligence from an incident that occurred when Mr. Lewis tripped and fell on a Regional Transit System Bus. Mr. Lewis suffered bodily injuries.

Please be advised of the following regarding this claim:

- A. Ray Lewis' date of birth is 12/12/48.
- B. Ray Lewis' place of birth is Gainesville, Florida.
- C. Ray Lewis' Social Security Number is 113-42-5353
- D. There exists no prior adjudicated unpaid claim in excess of \$200.

Please consider this formal notice of this claim. If you wish to settle this claim prior to the six month moratorium running, we would be happy to engage in further negotiations in order to avoid the necessity of filing a lawsuit after the expiration of the six month period.

Sincerely,


Gilbert J. Alba, Esquire
DeCarlis, Sawyer & Alba, PLLC

GJA/kc

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>[Signature]</i>
1. Article Addressed to: Mayor Pegeen Hanrahan City of Gainesville 200 E. University Ave Gainesville, FL 32602	B. Received by (Printed Name) C. Date of Delivery <i>DIANE HANRAHAN</i> 1/15/10
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No
PS Form 3811, February 2004	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
Domestic Return Receipt	7005 1160 0001 4252 8266
PS Form 3811, February 2004	102595-02-M-1540

7005 1160 0001 4252 8266

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 40.44 0516
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$2.30
Restricted Delivery Fee (Endorsement Required)	10.00
Total Postage & Fees	\$ 65.54
Sent To: Mayor Pegeen Hanrahan Street, Apt. No. or PO Box No.: 200 E University Ave City, State, ZIP+4: Gainesville, FL 32601	
PS Form 3809, June 2002 See Reverse for Instructions	

LAW FIRM OF

DeCarlis, Sawyer & Alba, PLLC

ATTORNEYS AT LAW

5000 NW 27TH COURT, SUITE C
GAINESVILLE, FLORIDA 32606
(352) 371-3838; (352) 373-7777; FAX (352) 376-3442
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6035 SW 54TH STREET, SUITE 100
OCALA, FL 34475
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WILLIAM N. DeCARLIS
MICHAEL SAWYER
GILBERT J. ALBA
SHANE R. BACHMAN

SUNNY SHUPING, PLS
OFFICE MANAGER

REPLY TO: GAINESVILLE OFFICE

January 14, 2010

VIA CERTIFIED MAIL

Russ Blackburn, City Manager
City of Gainesville
200 E. University Avenue
Gainesville, Florida 32601

Re: Bodily Injury Claim for:
Claimant: Ray Lewis
Date of Accident: March, 2007

Dear Mr. Blackburn:

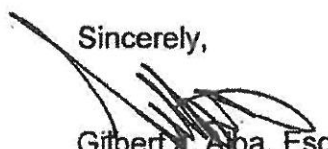
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Please consider this formal notice of this claim. If you wish to settle this claim prior to the six month moratorium running, we would be happy to engage in further negotiations in order to avoid the necessity of filing a lawsuit after the expiration of the six month period.

Sincerely,


Gilbert J. Alba, Esquire
DeCarlis, Sawyer & Alba, PLLC

GJA/kc

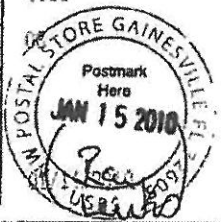
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>*A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>11/10/10</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to: <i>Russ Blackburn, City Manager City of Gainesville 200 E. University Ave Gainesville, FL 32601</i></p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) <u>7005 1160 0001 4252 8273</u></p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7005 1160 0001 4252 8273

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 00.44
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$2.30
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 5.54

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Sent To	
<i>Russ Blackburn, City Manager</i>	
Street, Apt. No., or PO Box No. <i>200 E. University Ave</i>	
City, State, ZIP+4 <i>Gainesville FL 32601</i>	

PS Form 3808 June 2002 See Reverse for Instructions



July 28, 2011

Law Firm of DeCarlis, Sawyer & Alba
Attn: Gilbert Alba, Esq.
5000 NW 27th Court, Suite C
Gainesville, FL 32606

RE: Our Client: City of Gainesville/Regional Transit System
Our Claim #: GC2008814456
Date of Loss: March 3, 2008
Your Client: Ray C. Lewis

Dear Mr. Alba:

As you are aware, Underwriters Safety & Claims is the third party claims administrator for the City of Gainesville. This letter serves as our client's response to your May 4, 2011 letter and demand package.

We have completed our liability investigation, and examined the medical documentation you have submitted on behalf of your client. Our investigation of this incident has failed to uncover any relevant facts that would indicate that there was any negligence on the part of RTS personnel which caused or contributed to your client's injury. Therefore, based upon the results of our investigation we have no choice but to deny your client's bodily injury claim. Our client's decision to deny your client's bodily injury claim is based upon the following:

- 1) **Liability:** You have asserted in your letter that your client, Ray Lewis, was a passenger on a Regional Transit System bus, owned and maintained by the City of Gainesville. You have indicated that the bus made a schedule stop at your client's destination. You went on to say that as Mr. Lewis proceeded to exit the bus, he slipped on a "significant amount liquid and debris that had been left carelessly on the stairs inside the bus, resulting in an instant slipped and fall". You mention that this fall caused your client to severely twist both of his knees. You have asserted that our client's failure to keep and maintained the bus in a reasonable safe condition led to your client's slip and fall and subsequent injury. We understand that it is common knowledge that maintaining one's premises in a reasonable and safe condition includes the duty to correct dangerous conditions of which our client either knew or should have known by the use of reasonable care and the duty to warn any parties of the potential dangers.

A Full Service Insurance Agency

c/o Department of Risk Management • P.O. Box 490 • Station 60 • Gainesville, FL 32602-0490

Phone (352) 334-3152 • Fax (352) 334-3198

Insurance • Bonds • Third Party Administration



To address your allegations, we have uncovered the following facts that disprove your theory of liability: a) RTS buses are inspected and cleaned thoroughly by service attendance personnel before they leave the RTS compound. In addition, the assign bus operator does a "pre-trip" inspection before taking the bus out on its assigned routes. Upon return to the RTS compound, the buses undergo a second inspection and cleaning by RTS service attendance personnel. As you can see, our client's transit personnel conduct daily inspections of the buses to eliminate potential hazards that could be a danger to the riding public or its invitees. It would be unreasonable for a bus operator to conduct an inspection after each stop along his or her assigned routes. In this case, the bus operator was not aware of any debris/liquids in the area of the stairs. b) There's no indication your client informed RTS personnel of his slip and fall incident. We contacted the RTS Safety Coordinator to secure a report of the incident and the possibility of video footage. After an extensive search, the name of Ray C. Lewis does not appear in the RTS system for an incident/accident that allegedly took place on March 3, 2008. Your client's failure to report the occurrence of this alleged incident to RTS personnel or the City's Risk Management Department raises questions to its legitimacy. c) Finally, our client owns only a duty to protect against those hazards/risks which are reasonably foreseeable, and to ensure the safe operation of the bus. Each passenger that rides the bus has some stake in their personal safety. That means using a handrail while boarding or exiting the bus, remain seated while the bus is in motion, etc...

- 2) Injuries/Medicals: Reviewing the medical information we have notice that your client has a wide assortment of medical problems. Some of which could be related to a slip and fall incident, several pre-existing medical problems; and at least one medical problem that appears to have no relationship to your client's knee and soft tissue injuries. However, we do not intend to elaborate further on the injury aspect of this claim because we see no liability/negligence on our client, nor on their employee(s).
- 3) Final Analysis: It is our contention that you have failed to provide the burden of proof needed to substantiate your client's claim. There's no evidence to prove that the bus driver in question or RTS personnel had actual notice of this alleged dangerous condition. Furthermore, there's no indication that our client-RTS was responsible for creating the conditions that cause your client to slipped and fall. Finally, your client did not immediately report the accident to RTS or City personnel. We have no record that the incident/accident actually happens, or names of witnesses who could verify the facts of loss on behalf of your client.

A Full Service Insurance Agency

c/o Department of Risk Management • P.O. Box 490 • Station 60 • Gainesville, FL 32602-0490

Phone (352) 334-3152 • Fax (352) 334-3198

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Based upon the above, we must respectfully deny any and all liability on behalf of our client, the City of Gainesville, and will be unable to offer any voluntary settlement on this claim. At this time my client considers the matter close. However, if you need to contact our office you can reach us at (352) 334-3152 or the City Attorney Office at (352) 334-5011.

Sincerely,

Curtis Luster
Sr. Claims Adjuster

CC: City Attorney Office
Department of Risk Management
Regional Transit Systems

A Full Service Insurance Agency

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