



# MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commissioners

DATE: October 24, 2005

FROM: City Attorney

CONSENT


SUBJECT: Direct General Insurance Company as Subrogee of Erin U. James vs. City of Gainesville; Alachua County Court; Case No.: 01-05-SC-4163

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Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Direct General Insurance Company as Subrogee of Erin U. James vs. City of Gainesville; Alachua County Court; Case No.: 01-05-SC-4163.

On or about October 6, 2005, the City was served with a Summons/Notice to Appear for Pre-Trial Conference and Statement of Claim by Direct General Insurance Company as Subrogee of Erin U. James. Direct General Insurance Company alleges that on May 2, 2002, Erin James' vehicle and a RTS vehicle driven by employee Shameka L. Bannister collided. Direct General Insurance Company seeks money damages.

Prepared by:

  
Daniel M. Nee,  
Assistant Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

DMN/cgow

IN THE COUNTY COURT, IN AND FOR  
THE EIGHTH JUDICIAL CIRCUIT, ALACHUA COUNTY  
COUNTY COURTHOUSE - 201 EAST UNIVERSITY AVENUE  
P.O. BOX 600 - GAINESVILLE, FLORIDA 32602  
PHONE: (352) 374-3618 FAX: (352) 338-3207

DIRECT GENERAL INSURANCE COMPANY  
AS SUBROGEE OF ERIN U. JAMES  
PLAINTIFF

VS  
CITY OF GAINESVILLE

DEFENDANT

Case Number: 01 2005 SC 004163  
Division: WALTER M GREEN - DIV IV

SUMMONS SENT TO ATTORNEY TO EFFECT SERVICE

TRACKING #I000001193

SUMMONS/NOTICE TO APPEAR FOR PRE-TRIAL CONFERENCE  
STATE OF FLORIDA - NOTICE TO PLAINTIFF(S) AND DEFENDANT(S)

CITY OF GAINESVILLE  
C/O MAYOR PEGEEN HANRAHAN  
200 UNIVERSITY AVE  
GAINESVILLE FL 32601

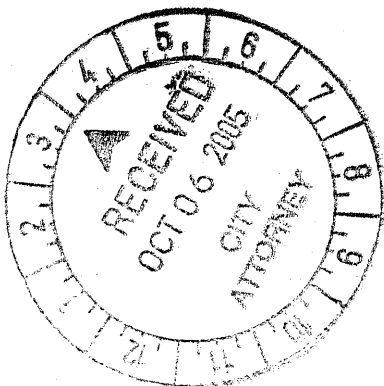
DIRECT GENERAL INSURANCE COMPANY  
AS SUBROGEE OF ERIN U. JAMES  
750 OLD HICKORY BLVD  
BRENTWOOD TN 37027-4528

SARAH CLARK HOLLOWAY  
ATTORNEY AT LAW  
1133 16TH STREET NORTH  
ST. PETERSBURG FL 33705

You are hereby notified that you are required to appear in person or by attorney at the Alachua County Courthouse Courtroom 2-C on: **Friday, 10/14/2005, at 9:00 am** for a Pre-trial Conference before a Judge of this Court and for hearing as to reasonable attorney fees in the event of default.

You must advise the Clerk, in writing, of any change in your mailing address.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Alachua County Court Administrator at (352) 374-3648, within 2 working days of your receipt of this summons. If you are hearing or voice impaired, call 1-800-955-8771.



PLEASE BE ADVISED THAT THE  
COURT WILL ADDRESS THE ISSUE  
OF ATTORNEY'S FEES

*10/6/05 at 3:05 pm by  
Shuleh*

*PRR*

**IMPORTANT READ CAREFULLY**  
**THE CASE WILL NOT BE TRIED AT THIS TIME**  
**DO NOT BRING WITNESSES - APPEAR IN PERSON OR BY ATTORNEY**

The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written motion or answer to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney at the pre-trial conference. The date and time of the pre-trial conference cannot be rescheduled without good cause and prior court approval.

A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation. Written authorization must be brought to the Pretrial Conference

The purpose of the pre-trial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute; state what efforts have been made to settle the dispute; exhibit any documents necessary to prove the case; state the names and addresses of your witnesses; stipulate to the facts that will require no proof and will expedite the trial; and estimate how long it will take to try the case.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances to the court. The court may or may not approve a payment plan and withhold judgment or execution or levy.

If you desire to file any counterclaim or set-off to plaintiff's claim it must be filed in this court by you or your attorney in writing at least (5) days prior to the above date. Filing a counterclaim, set-off, motion or answer will not relieve you or your obligation to appear in court on the above date.

**RIGHT TO VENUE.** The law gives the person or company who has sued you the right to file suit in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, as the defendant(s) have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following:

1) Where the contract was entered into; 2) If the suit is on an unsecured promissory note, where the note is signed or where the maker resides; 3) If the suit is to Foreclose a lien, where the property is located; 4) where the event giving rise to the suit occurred; 5) Where any one or more of the defendant(s) sued resides; 6) Any location agreed to in a contract; 7) In an action for money due, if there is no agreement as to where the suit may be filed, where payment is to be made; 8) In an action to recover property, where the property is located, where the contract was signed, where the defendant resides, or where the event giving rise to the suit occurred.

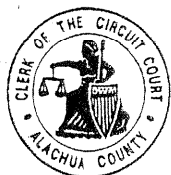
If you as the defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer or you must file a written request for transfer, in affidavit form (sworn to under oath) with the court seven (7) days prior to your first court date and send a copy to the plaintiff(s) or plaintiff(s) attorney, if any.

A copy of the Statement of Claim shall be served with this summons.

Dated at Gainesville, Florida on this 14<sup>th</sup> day of SEPTEMBER, 2005.

J.K. "BUDDY" IRBY  
CLERK OF COURT

By: Mary Kaye Carras  
Deputy Clerk



The County Judges  
of Alachua County Introduce  
*Small Claims Mediation*



At mediation, the parties meet with a neutral, certified mediator, who listens to both sides and helps the parties find their own solution. The mediator does not make any decision for the parties nor will the mediator give advice.

All contested small claims cases must be mediated, so if the defendant disagrees with any part of the claim, the mediation will take place at the scheduled "pretrial" hearing. Attorneys or others appearing for parties must have full authority to mediate at the pretrial hearing without further consultation. Full authority means having the authority to either pay any amount demanded or accept any payment, including nothing. Otherwise, a party must be prepared to personally appear and mediate at the scheduled pretrial hearing. If the representative does not have authority to mediate, the case will be rescheduled at a later date so the party or a person who does have authority to mediate can be present.

Cases settled at mediation will have a signed, written agreement that gets filed with the court. Unresolved cases will be set for trial.

County Court Judges of Alachua County,  
Civil Division

Hon. Mary Day Coker  
Hon. Walter M. Green

Rev. 01/04/2005

IN THE COUNTY COURT FOR ALACHUA COUNTY, FLORIDA  
SMALL CLAIMS DIVISION CASE NO. \_\_\_\_\_

DIRECT GENERAL INSURANCE  
COMPANY as Subrogee of  
ERIN U. JAMES,

750 Old Hickory Boulevard  
Brentwood, TN 37027-4528

Plaintiff,

vs.

CITY OF GAINESVILLE,

C/O Mayor Pegeen Hanrahan  
200 University Avenue  
Gainesville, Florida 32601

Defendant.  
\_\_\_\_\_ /

**STATEMENT OF CLAIM  
(MOTOR VEHICLE COLLISION)**

Plaintiff, Direct General Insurance Company, as Subrogee of Erin U. James, sues the Defendant, City of Gainesville, and says:

1. This is an action for damages which exceeds two-thousand, five hundred dollars (\$2,500.00) but does not exceed five thousand dollars (\$5,000.00) exclusive of costs.
2. Alachua County is the proper venue for this action because the incident which is the subject of the action occurred in Alachua County, Florida.
3. The Defendant, City of Gainesville, is a political subdivision of the State of Florida.
4. At all times material hereto, Erin U. James was insured by Plaintiff, Direct General Insurance Company, a corporation duly licensed to transact the business of insurance in and about the State of Florida and whose Federal Identification Number is 621695059.
5. Pursuant to Section 768.28(6)(a), Florida Statutes, the Plaintiffs have

provided Notice of Claim to the appropriate agency within three (3) years after the claim accrued, a copy of said Notice being attached hereto as Exhibit "A".

6. On or about May 2, 2002, Defendant, City of Gainesville, owned a motor vehicle that was operated by Defendant's employee, Shameka Lashawn Bannister, with Defendant's, City of Gainesville's consent at 2659 North West 13th (US 441), Gainesville, Alachua County, Florida.

7. At that time and place, the Defendant's employee negligently and carelessly maintained and operated the motor vehicle so as to cause it to collide with the motor vehicle owned by the Insured, damaging and depreciating it in value.

8. As a result of these damages, Plaintiff paid the sum of \$2,808.33 to or on behalf of its Insured, and is entitled to subrogation.

WHEREFORE, Plaintiff, Direct General Insurance Company, as Subrogee of Erin U. James, demands Judgment against the Defendant, City of Gainesville, in the total amount of \$2,808.33, together with the costs of this action.

DATED this 9 day of August, 2005.

DIRECT GENERAL INSURANCE COMPANY

By: [Signature]

Title: att in fact

STATE OF Tennessee

COUNTY OF Darwin

BEFORE ME, the undersigned authority, personally appeared [Signature], as Attorney, of Direct General

Insurance Company , who is personally known to me, and who, after being duly sworn, deposes and says that the above matters contained in the Complaint are true and correct to the best of his/her knowledge, information and belief.

SWORN TO and subscribed before me, in said County and State, this 9 day of Aug, 2005.

Mary Gosnell  
NOTARY PUBLIC

My Commission Expires: 9/20/08

[Signature]  
SARAH CLARK HOLLOWAY, ESQUIRE  
1133 - 16th Street North  
St. Petersburg, FL 33705  
(727) 896-4499 Phone  
(727) 551-0468 Fax (kg)  
SPN: 94742; FBN: 284211  
ATTORNEY FOR PLAINTIFF  
FILE #A9385



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

7004 0250 0000 5074 2025 4000

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	

Postmark Here

Sent To PEGEN HARRAHAN Mayor  
 Street, Apt. No. 200 University Avenue  
 or PO Box No. 200  
 City, State, ZIP+4 Gainesville FL 32601

# 93357A

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Pegen Harrahan, Mayor  
City of Gainesville  
200 University Avenue  
Gainesville, FL 32601

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Stephen D Miller

Agent  Addressee

B. Received by (Printed Name)

Stephen D Miller

C. Date of Delivery

2/20/04

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes  No

2. Article Number (Transfer from service label) 7004 0750 0000 5074 0034

PS Form 3811, February 2004

Domestic Return Receipt

102595-02

EXHIBIT A



SARAH CLARK HOLLOWAY, A.

ATTORNEY AT LAW

1133 SIXTEENTH STREET NORTH  
ST. PETERSBURG, FLORIDA 33705-1104

A STATEWIDE SUBROGATION  
LAW FIRM

NATIONAL ASSOCIATION of  
SUBROGATION PROFESSIONALS  
CHARTER MEMBER

December 16, 2004

Pegeen Hanrahan, Mayor  
City of Gainesville  
200 University Avenue  
Gainesville, FL 32601

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

RE: Your Driver: Shameka Lashawn Bannister  
Date of Loss: 05/02/02  
Our Insured: Erin U. James  
Our File No.: A9385

Mayor Hanrahan:

This law firm represents Direct General Insurance Company in this property subrogation claim. Pursuant to the provisions of Florida Statute 768.28, be advised that Direct General Insurance Company, whose Federal Identification Number is 621695059 claims subrogation against the City of Gainesville arising out of the motor vehicle collision which occurred on May 2, 2002 at 2659 NW 13th Street, Gainesville, Alachua County, Florida. The persons involved in this collision were our insured, Erin U. James, and your employee, Shameka Lashawn Bannister, who was driving a City of Gainesville vehicle.

As a result of the collision damages, Direct General Insurance Company paid \$2,808.33 to or on behalf of its Insured, Erin U. James, and the insured had a deductible of \$250.00. Direct General Insurance Company is entitled to subrogation recovery from the at fault party.

Pursuant to the provisions of Florida Statute §768.28(6)(c), there is no case style or tribunal for prior adjudicated claims as no prior adjudicated unpaid claims in excess of \$200.00 exist.

Sincerely,



SARAH CLARK HOLLOWAY, ESQUIRE

SCH/kg

cc: Claim # 510019  
Attn: Anne Holland

**EXHIBIT A**