



MEMORANDUM

Office of the City Attorney

070405
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Box 46

TO: Mayor and City Commissioners

DATE: September 10, 2007

FROM: City Attorney


CONSENT

SUBJECT: Allstate Insurance Company a/s/o Linda S. Luetjen vs. City of Gainesville, a political subdivision of the State of Florida and Misty Thomas, jointly and severally; Eighth Judicial Circuit, Court Case No. 2007-SC-4072


Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City of Gainesville and former City employee, Misty Thomas, in the case Allstate Insurance Company a/s/o Linda S. Luetjen vs. City of Gainesville, a political subdivision of the State of Florida and Misty Thomas, jointly and severally; Eighth Judicial Circuit, Court Case No. 2007-SC-4072

On August 22, 2007, a Notice to Appear for Pre-Trial Conference/Mediation and Complaint was delivered to the City's Risk Management Department. Allstate Insurance Company alleges that on September 25, 2004, a vehicle owned by Plaintiff's insured and a RTS vehicle driven by then City employee Misty Thomas collided. Allstate Insurance Company seeks money damages. (There was a previous lawsuit involving the same parties and facts in Case No. 01-06-SC464 which was dismissed by the Court due to Plaintiff's failure to appear for Pre-Trial Conference.)

Prepared by:


Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

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

ALLSTATE INSURANCE COMPANY
A/S/O LINDA S LUETJEN
PLAINTIFF

Case Number: 01 2007 SC 004072
Division: WALTER M GREEN - DIV IV

VS
CITY OF GAINESVILLE
A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
AND MISTY THOMAS, JOINTLY AND SEVERALLY
DEFENDANT

PROCESS SERVER

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

CITY OF GAINESVILLE
A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA
RISK MANAGEMENT DEPARTMENT
222 E UNIVERSITY AVE
GAINESVILLE FL 32601

ALLSTATE INSURANCE COMPANY
A/S/O LINDA S LUETJEN

JOSHUA PARKS, ESQUIRE
3111 UNIVERSITY DR, STE 608
CORAL SPRINGS FL 33065

[Handwritten signature]
8/22/07
3:00

YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at the Alachua County Family/Civil Justice Center, Courtroom 2-C, 201 East University Avenue, Gainesville, Florida, on: **Friday, 08/31/2007**, at **9:00 am** for a Pre-trial Conference/Mediation 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. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770.

[Handwritten initials]

IN THE COUNTY COURT IN AND FOR ALACHUA COUNTY, FLORIDA

CIVIL DIVISION

CASE NUMBER: 07-3C-4072

ALLSTATE INSURANCE COMPANY
a/s/o Linda S. Luetjen,

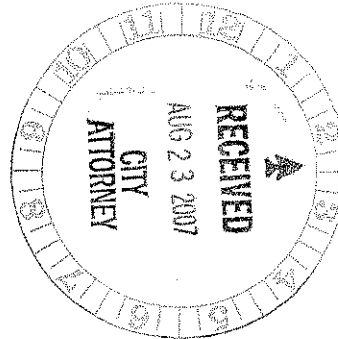
Plaintiff,

vs.

CITY OF GAINESVILLE a political
subdivision of the State of Florida,
and MISTY THOMAS, jointly and severally,

Defendants.

COMPLAINT



2007 AUG 22 PM 3:20

Comes now the Plaintiff, by and through its undersigned Counsel, and sues Defendants, and states as follows:

GENERAL ALLEGATIONS

- 1) This is an action for damages in the sum of \$4,767.21 which is within the jurisdictional limits of this court.
- 2) Plaintiff is an Insurance Company, registered with the Florida Department of State to do business in State of Florida and doing business in the State of Florida.
- 3) Defendants are residents and/or conducting business in Alachua County, Florida or, alternatively, Defendants are concealing themselves within the State of Florida or are nonresidents of the State of Florida who accepted the privilege extended by Florida law to nonresidents of operating a motor vehicle or of having it operated, or permitting any motor vehicle owned or leased or controlled by Defendants to be operated with Defendants' knowledge or permission, acquiescence or consent within Florida and by operation of the motor vehicle either in person, or by or through Defendants' servants, agents or employees, or by persons with Defendants' knowledge, acquiescence or consent and thereby constituted the Secretary of State of Florida as Defendants' agent for the service of process in a civil action in Florida arising out of or by reason of any accident or collision occurring within Florida in which the motor vehicle is involved.* Defendant City of Gainesville is a political subdivision organized and existing under the laws of the State of Florida..
- 4) Plaintiff has met all conditions precedent to the filing of this action.
- 5) On or about September 25, 2004, at or near the intersection of State Road 121 and S.W. 20th Avenue, Gainesville, Florida, Defendant, **CITY OF GAINESVILLE**, owned and Individual Defendant, **MISTY THOMAS**, operated a 1989 motor vehicle, Florida license plate number CITY80191.
- 6) At all times material hereto, Individual Defendant, **MISTY THOMAS**, operated said vehicle with the express knowledge and consent of Defendant, **CITY OF GAINESVILLE**.

- 7) At the above date, time and place, the motor vehicle owned by Plaintiff's insured was being operated by Plaintiff's insured.
- 8) This is an attempt to collect a debt, and any information obtained will be used for that purpose.

COUNT I- NEGLIGENCE

Plaintiff realleges 1 through 8 above and further states that:

- 9) At the above time and place, Individual Defendant, **MISTY THOMAS**, negligently operated or maintained or Defendant, **CITY OF GAINESVILLE**, negligently maintained the said vehicle so that it collided with the vehicle owned by Plaintiff's insured.
- 10) As a result of the negligence of Defendants, Plaintiff's insured suffered personal injuries and/or property damages.
- 11) By reason of the incident alleged, Plaintiff became liable under a policy of insurance issued to its insured to pay and at diverse times did pay to or for the benefit of its insured, the losses resulting in a total sum as claimed below
- 12) By reason of the above payments Plaintiff became subrogated to the rights of its insured against the Defendants.
- 13) Despite numerous demands by Plaintiff upon Defendants for payment of the damages, Defendants have failed and refused to pay for same.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment in its favor and against Defendants in the principal sum of \$4,767.21, together with Court costs, pre-judgment interest if applicable, and any further relief that this Honorable Court may deem just and proper.



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