

Legistar #

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

CASE NO.: 2014-CA-1040

**PATSY LEGETTE,**

**Plaintiff,**

**vs.**

**CITY OF GAINESVILLE,**

**Defendant.**

**COMPLAINT AND DEMAND FOR JURY TRIAL**

**COMES NOW**, the **Plaintiff**, PATSY LEGETTE, by and through the undersigned counsel and hereby files this Complaint for damages against the above-named **Defendant**, CITY OF GAINESVILLE, and as grounds therefore would allege:

**JURISDICTION AND PARTIES**

1. This is an action for damages in excess of \$15,000.00 exclusive of interest and costs.
2. Jurisdiction over said claims arising under Florida law is concurrent. This Court has jurisdiction to hear this action.
3. **Plaintiff**, PATSY LEGETTE, is a resident of Gainesville, Florida, is over the age of eighteen (18), and is otherwise sui juris.
4. **Defendant**, CITY OF GAINESVILLE (hereinafter referred to as "CITY"), at all times material hereto is or was a governmental entity charged with the

responsibility of operating, administering, and overseeing municipal property, located in Alachua County, Florida.

5. At all times material hereto, **Defendant**, CITY OF GAINESVILLE, had full authority to control, supervise and managed all city-owned buildings, land, and properties, including all trees and vegetation, located on municipal properties, in Alachua County, Florida.
6. Pursuant to Florida Statutes §768.28, all conditions precedent to instituting this action have occurred or have been performed. **Plaintiff's** Notice of Claim to **Defendant** is attached hereto as Composite Exhibit "A" and **Defendant's** denial of said claim is attached hereto as Composite Exhibit "B".
7. This cause of action accrued on property controlled by **Defendant**, CITY OF GAINESVILLE, in Alachua County, Florida.

**COUNT I**  
**NEGLIGENCE**

8. **Plaintiff**, PATSY LEGETTE adopts and re-alleges each and every allegation as set forth in paragraph one (1) through seven (7) above as though fully rewritten herein.
9. On or about, May 31, 2011, **Plaintiff**, PATSY LEGETTE, was walking by or near Passage Family Church, located at 2020 NE 15<sup>th</sup> Street, Gainesville, Florida 32609, picking up trash and other debris to help beautify the area.
10. As **Plaintiff**, PATSY LEGETTE, walked near a large tree located between the sidewalk and roadway, she tripped on at least one large tree root that was protruding from underneath the ground at the base of the tree, thereby causing her to fall into the roadway and causing her to suffer serious injuries.

11. The large tree roots protruding from underneath the ground were allowed by **Defendant's** employees, agents, or servants to remain growing in this condition for several years on the **Defendant's** municipal property thereby causing an unsafe condition, which resulted in **Plaintiff**, PATSY LEGETTE, falling and thereby sustaining serious injuries.
12. **Plaintiff's** contact with the protruding, overgrown tree roots and the resulting injuries were caused by the negligence of **Defendant**, CITY OF GAINESVILLE, its employees, agents, and/or servants without any negligence on the part of **Plaintiff**, PATSY LEGETTE, contributing thereto.
13. The negligence of **Defendant**, CITY OF GAINESVILLE, its employees, agents, and/or servants consisted of the following:
  - a. carelessly and negligently permitting and allowing said large tree roots to grow and protrude from underground;
  - b. carelessly and negligently failing to remove said large tree roots on municipal property;
  - c. failing to maintain said area or walkway in the area of **Plaintiff's** accident in a clear and safe condition for persons traveling between the walkway and the roadway near the address listed above;
  - d. failing to properly and adequately supervise and/or oversee the maintenance, service and/or care of the large tree roots protruding from underground to prevent the public from tripping and falling;
  - e. failing to properly warn persons of the condition of the large tree roots protruding from underground that presented a safety hazard, which

should have included warning cones, warning tape, warning signage, verbal warning, or other reasonable warning; and

- f. destroying evidence.
14. **Defendant**, CITY OF GAINESVILLE, had actual knowledge that the subject area was in a residential neighborhood, in front of a church, and frequented by pedestrians.
  15. **Defendant**, CITY OF GAINESVILLE, had actual knowledge that large tree roots protruding from underground were allowed to remain growing in this condition for several years on City property by its employees, agents, and/or servants thereby rendering the area dangerous to persons passing over the same and further that no warnings regarding the same were given.
  16. If **Defendant**, CITY OF GAINESVILLE, lacked such actual knowledge, said condition of the area and lack of appropriate warning existed for a sufficient time period prior to **Plaintiff's** accident, such that **Defendant**, in the exercise of reasonable due care, could and should have had such knowledge and notice.
  17. **Defendant**, CITY OF GAINESVILLE, was further negligent in the operation of its cleaning/maintenance business activities in that it failed to properly supervise, train, and instruct its employees, agents, and/or servants in regards to the maintenance and upkeep of the City's trees and/or their overgrown or protruding roots, and further failed to provide its employees, agents, and/or servants with proper safety equipment and warning devices for them to use, which would have prevented the subject incident from occurring.

18. As a direct and proximate result of the negligence of **Defendant**, CITY OF GAINESVILLE, **Plaintiff**, PATSY LEGETTE, has suffered severe bodily injury resulting in pain and suffering, disfigurement and/or permanent scarring, inconvenience, disability, physical impairment, mental impairment, mental anguish, expensive medical treatment, loss of diminished earning capacity, loss for the enjoyment of life, and aggravation of any previously existing condition. The injuries to **Plaintiff**, PATSY LEGETTE, are permanent within a reasonable degree of medical probability and she will continue to suffer these losses and expenses into the future.

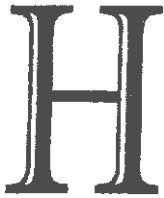
**WHEREFORE**, **Plaintiff**, PATSY LEGETTE, respectfully prays for judgment in excess of \$15,000.00 (Fifteen Thousand Dollars) against the **Defendant**, CITY OF GAINESVILLE, with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court deems just and proper.

**DATED** this 24<sup>th</sup> day of March 2014.

**HARPER GAINES, PLLC**

/s/ Kamaria Harper Williams  
**Kamaria Harper Williams, Esquire**  
Florida Bar No.: 0083537  
**Arnold S. Gaines, Esquire**  
Florida Bar No.: 0670928  
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Counsel for the Plaintiff



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Jacksonville / Orlando / Tallahassee

ATTORNEYS AT LAW  
Kamaria (Kay) Harper  
Charles E. Hobbs, II\*  
Arnold S. Gaines\*  
Nicole Benjamin\*

September 21, 2011

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Marion Radson, City Attorney  
City of Gainesville  
200 E. University Ave., Rm. 425  
Gainesville, Florida 32601

Teresa Scott, P.E.  
Public Works Director  
405 NW 39th Avenue  
Gainesville, Florida 32609

Re: Claimant: Patsy Legette  
Agency: City of Gainesville Public Works Department  
D/I: 5/31/11

Dear Mr. Radson:

Pursuant to Florida Statutes § 768.28, the above referenced claimant hereby provides notice of the intent to pursue a claim for damages against the City of Gainesville. Our law firm represents Patsy Legette. Any correspondence relating to this claim should be directed to my attention. The following is the specific information requested by the aforementioned statute:

Name and address of claimant:	Patsy Legette 1203 SE 18 <sup>th</sup> Terrace Gainesville, Florida 32641 SSN: [REDACTED] DOB: 03/28/53 POB: Gainesville, Florida
Date/time/place of accident:	On May 31, 2011, at or about 8:45 a.m., at or about 2020 NE 15 <sup>th</sup> Street, Gainesville, Alachua County, Florida, 32609.
Description of the accident:	Ms. Legette was cleaning the grounds of the Passage



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Family Church, a job for which she was contracted by the church to perform. As she traversed the grassy area between the sidewalk and NE 15<sup>th</sup> Street in an attempt to pick up trash, she tripped and fell from the grassy area into the roadway as a result of one or more tree roots protruding from the ground.

Agency/agents involved:

City of Gainesville, Public Works Department.

Relief sought:

Ms. Legette seeks compensation for past, present, and future medical expenses, permanent impairment and damages, mental anguish, pain and suffering, loss wages, loss of earning capacity, and loss of enjoyment of life.

Pursuant to Florida Statutes § 768.28(6)(d), further information required by Florida Statutes § 768.28(6)(c) regarding prior adjudicated unpaid claims in excess of two hundred dollars (\$200.00), will be provided prior to settlement payment, close of discovery or commencement of trial, whichever is sooner.

If additional information is necessary, or if this notice is legally defective in any manner, please contact me immediately.

Respectfully,

  
Kamaria (Kay) Harper, Esq.

**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:

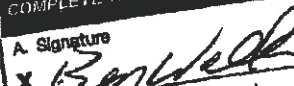
Marion Radson, City Attorney  
City of Gainesville  
200 E. University Ave., Rm. 425  
Gainesville, Florida 32601

2. Article Number  
(Transfer from service label)

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee

X   
B. Received by (Printed Name)  
BEN WALKER

C. Date of Delivery  
9/22/11

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

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  G.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7007 1490 0003 5051 0714

Domestic Return Receipt

102095-02-04-11





July 7, 2013

The Harper Law Firm  
Attn: Kamaria Harper Williams, Esq.  
10752 Deerwood Park Blvd. South, Suite 100  
Jacksonville, FL 32256

RE: Our Client: City of Gainesville  
Our Claim #: GC2011824181  
Date of Loss: May 31, 2011  
Your Client: Patsy Legette

Dear Ms. Williams:

As you are aware, Underwriters Safety & Claims is the third party claims administrator of the self-insured fund in which the City of Gainesville participates pursuant to Florida Statue 768.28. We have been asked to assist our client in their investigation of your client's claim for injuries arising out of the above captioned incident. This letter also serves as our client's response to your demand letter and package dated May 9, 2013, as well as your June 14, 2013 correspondence.

We have completed our investigation of a tripped and fall incident that occurred in front of the Passage Family Church located at 2020 NE 15<sup>th</sup> Street, Gainesville, FL. It is our contention that our client is not responsible and will defend this claim should it enter into litigation. We based our decision to deny your client's injury claim based our findings listed below:

**\*Facts/Liability:** You have stated in your demand letter that on May 31, 2011 your client, Ms. Patsy Legette was at the Passage Family Church and had walked toward a large tree located between the sidewalk and the street that runs in front of the church. While picking up trash in this area your client tripped and fell on a large root protruding above ground from the base of the tree.

You have asserted that it was our client's failure to maintain the roadway and its right of way in a reasonable and safe condition that contributed to your client accidental fall and subsequent injuries. 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. Our investigation

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

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**EXHIBIT**  
**B**

# UNDERWRITERS



reveals that prior to the above date of loss; our client had no actual notice regarding tree roots protruding above ground inside the area that is consider our client's right of way. Furthermore, there is no indication that residents in the area, or members of the church attempted to contact our client's Public Works Dept. to alert them of this potential hazard.

It also must be noted that your client had first hand knowledge of the area in question and she still elected to enter the area at her own risk. Our client is not an insurer of your client's safety, rather, our client duty is to protect against those risks which are reasonable foreseeable.

We fail to see where you have established that our client had actual notice of these defects prior to the incident, and failed to take steps to repair it or warn the plaintiff- invitee.

In your demand you are asking our client to pay your client the amount of \$65,000.00 without the benefit of any discovery and cross examination. This was a regrettable accident but it does not give rise to an inference of negligence.

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. If you have questions regarding our client's position on this matter you can contact our office at (352) 334-3152.

Sincerely,

Curtis Luster  
Sr. Claims Adjuster

CC: City Attorney Office  
Department of Risk Management  
Department of Public Works

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