



MEMORANDUM

Office of the City Attorney

070020

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

TO: Mayor and City Commissioners

DATE: May 14, 2007

FROM: City Attorney

CONSENT

SUBJECT: Progressive Express Insurance Company, a/s/o Victor Delgado vs. City of Gainesville; Alachua County Court; Case No.: 01-07-SC-1135

Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City in the case styled Progressive Express Insurance Company, a/s/o Victor Delgado vs. City of Gainesville; Alachua County Court; Case No.: 01-07-SC-1135.

On April 23, 2007, the City was served with a Summons and Complaint filed by Attorney Richard L. Rothman on behalf of Progressive Express Insurance Company a/s/o Victor Delgado in the County Court. The Plaintiff alleges that they paid out damages to their insured due to a motor vehicle accident involving the Gainesville Police Department. The Plaintiff is seeking money damages in the amount of \$4,899.25 together with costs and pre-judgment interest.

Prepared by:

Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:

Marion J. Radson,
City Attorney

DMN/klm

IN COUNTY COURT, IN AND 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

PROGRESSIVE EXPRESS INSURANCE COMPANY
ASO VICTOR DELGADO
PLAINTIFF

Case Number: 01 2007 SC 001135
Division: WALTER M GREEN - DIV IV

VS
CITY OF GAINESVILLE, A POLITICAL SUBDIVISION OF
THE STATE OF FLORIDA
DEFENDANT

SUMMONS SENT TO ATTORNEY
TO EFFECT SERVICE
ALIAS

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

Y

CITY OF GAINESVILLE, A POLITICAL SUBDIVISION OF
THE STATE OF FLORIDA
C/O MAYOR, CITY OF GAINESVILLE
200 E UNIVERSITY AVE
GAINESVILLE FL 32601

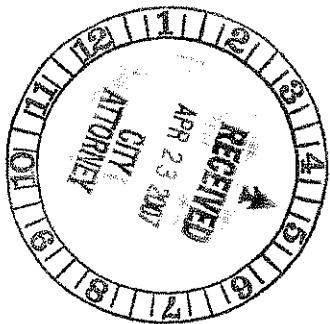
PROGRESSIVE EXPRESS INSURANCE COMPAN
ASO VICTOR DELGADO

RICHARD L. ROTHMAN
ATTORNEY AT LAW
8181 W BROWARD BLVD STE 300
PLANTATION FL 33324

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, 05/18/2007**, 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.



A TRUE COPY
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 3:25 PM on the 23 Day
of April 2007
BY [Signature]
As Deputy Sheriff

cc: City

IN THE COUNTY COURT OF THE 8TH JUDICIAL
CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

CASE NO.: 01-07-SC-1135
IV

PROGRESSIVE EXPRESS INSURANCE
COMPANY, a/s/o VICTOR DELGADO,

Plaintiff,

vs.

CITY OF GAINESVILLE,
A political subdivision of the State of
Florida,

COMPLAINT

Defendant.

COMES NOW the Plaintiff, PROGRESSIVE EXPRESS INSURANCE COMPANY (hereinafter referred to as "PROGRESSIVE"), as subrogee of VICTOR DELGADO (hereinafter referred to as "insured") by and through the undersigned attorneys, and sues the Defendant, CITY OF GAINESVILLE, a political subdivision of the State of Florida, and alleges as follows:

1. This is an action for damages in the amount of \$4899.25 exclusive of costs and pre-judgment interest.
2. At all times material to this cause, the Plaintiff, PROGRESSIVE, was and is a foreign corporation, licensed to do business in the State of Florida, and, in fact, doing business in Alachua County, Florida and is otherwise sui juris.
3. At all times material, the CITY OF GAINESVILLE was and is a political subdivision of the State of Florida.
4. The Plaintiff has sent the appropriate notice pursuant to Florida Statute §768.28, to the CITY OF GAINESVILLE, by letter dated March 19, 2004. A copy of the notice letter is attached hereto as Exhibit "A."

5. The Plaintiff has complied with all requirements of Florida Statute §768.28 and hereby pleads said compliance. The Defendant, CITY OF GAINESVILLE, has waived sovereign immunity to the extent set forth in said statute.

6. On or about the 2nd day of March, 2003, the CITY OF GAINESVILLE, was the owner of a motor vehicle bearing license number 114021.

7. On or about March 2, 2003, at or near State Road 26 and West 2nd Street, in the City of Gainesville, Alachua County, Florida, the Defendant's employee or agent, Rodney J. Wright, negligently operated and/or maintained the Defendant's motor vehicle so as to cause a collision with the insured's motor vehicle.

8. At all times material, the Defendant's employee or agent, Rodney J. Wright was acting in the course and scope of his employment with the CITY OF GAINESVILLE.

9. Due to said negligence, the Plaintiff's insured sustained damage to his motor vehicle.

10. At all times material, the insured had in full force and effect a policy of insurance issued by PROGRESSIVE, which covered the damages occasioned by the above negligence.

11. Pursuant to said policy of insurance, PROGRESSIVE paid to or on behalf of the insured, the sum of \$5920.50 for property damage.

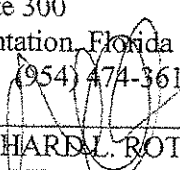
12. PROGRESSIVE recovered \$1271.25 for salvage.

13. Insured had a \$250.00 deductible for which the Defendant is liable. Plaintiff has an executed Release and Trust Agreement or sues by virtue of constructive trust for the benefit of the insured.

WHEREFORE, the Plaintiff demands Judgment for damages against the Defendant, CITY OF GAINESVILLE, for the sum of \$4899.25, together with costs and pre-judgment interest

(calculated from the date Plaintiff PROGRESSIVE made payment to or on behalf of the insured),
and any other relief this Honorable Court may deem just and equitable.

DATED this 1st day of March, 2007.

MARKCITY, ROTHMAN
& CANTWELL, P.A.
8181 West Broward Boulevard
Suite 300
Plantation, Florida 33324
Tel: (954) 474-3616
By: 

RICHARD L. ROTHMAN
FLORIDA BAR NO.: 467560

LAW OFFICES

MARKCITY, ROTHMAN & CANTWELL, P.A.

Telephone: (954) 474-3616
Facsimile: (954) 474-0977


MICHAEL R. MARKCITY*
RICHARD L. ROTHMAN*
MARY M. CANTWELL*

AMTRUST BANK PLAZA
PENTHOUSE III
8211 WEST BROWARD BOULEVARD
PLANTATION, FL 33324

*ALSO ADMITTED GEORGIA BAR

VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED

March 19, 2004

Honorable Thomas D. Bussing 
Mayor, City of Gainesville
290 East University Avenue
Gainesville, Florida 32601

RE: OUR CLIENT : PROGRESSIVE a/s/o VICTOR DELGADO
DATE OF LOSS : 3/2/03

Dear Mayor Bussing:

Please be advised that this firm represents Progressive Express Insurance Company for damages incurred on March 2, 2003.

On the above date, at or near the intersection of State Road 26 and West 2nd Street in Gainesville, Florida, Progressive's insured was proceeding northbound on West 2nd Street through the intersection with State Road 26 in Gainesville, Florida.

A city of Gainesville employee, Officer Rodney J. Wright, initiated an unsafe traffic chase and ran a red light for eastbound traffic on State Road 26. The employee/agent of the City, Rodney J. Wright, thereby failed to exercise due care in the operation of the City's motor vehicle while in the course and scope of employment with the City.

Progressive Express Insurance Company hereby demands damages of \$4,899.25, which include the insured's deductible of \$250.00.

This letter is written to notify you of this claim pursuant to Florida Statute §768.28. Progressive's Tax I.D. Number is 346513736. Reasonable inquiry has been made, and there are no adjudicated penalties, fees, or fines, or other judgments in excess of \$200.00 as referred to Florida Statute §768.28(6).

Very truly yours,


MARY M. CANTWELL

MMC/jr

EXHIBIT "A"

PLACE STICKER AT TOP OF MAILPIECE TO THE RIGHT OF RETURN ADDRESS

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 <input checked="" type="checkbox"/> Addressee <input type="checkbox"/> Agent</p>	
	B. Received by (Printed Name) <i>Justin Thomas Dussing</i>	C. Date of Delivery <i>3-22-04</i>
1. Article Addressed to: <i>HONORABLE THOMAS D. DUSSING, Mayor City OF GAINESVILLE, 000 EAST UNIVERSITY AVENUE, GAINESVILLE, FLA. 32601</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" 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	
	7000 1670 0008 6401 7298	

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

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

Sent To: *Honorable Thomas D. Dussing*
 Street, Apt. No., or PO Box No.: *Mayor City of Gainesville, 000*
 City, State, ZIP+4: *E. Univ. Ave, Gainesville 32601*

PS Form 3807 (July 2001) See Reverse for Instructions

7298 6401 1670 0008

IMPORTANT READ CAREFULLY

**THE CASE WILL NOT BE TRIED AT THE PRETRIAL
CONFERENCE, BUT MAY BE MEDIATED AT THAT TIME
DO NOT BRING WITNESSES. YOU MUST APPEAR IN PERSON OR BY ATTORNEY.**

WHOEVER APPEARS FOR A PARTY MUST HAVE FULL AUTHORITY TO SETTLE FOR ALL AMOUNTS FROM ZERO TO THE AMOUNT OF THE CLAIM WITHOUT FURTHER CONSULTATION. FAILURE TO COMPLY MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING COSTS, ATTORNEY FEES, ENTRY OF JUDGMENT, OR DISMISSAL.

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/MEDIATION. 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/Mediation.

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.

Mediation

Mediation may take place during the time scheduled for the pretrial conference. Mediation is a process whereby an impartial and neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties, without prescribing what the resolution should be. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.

In mediation, decision making rests with the parties. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required. If a full agreement is not reached at mediation, the remaining issues of the case will be set for trial. Mediation communications are confidential and privileged except where disclosures are required or permitted by law.

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

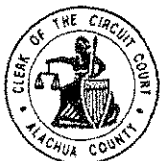
If you desire to file any counterclaim or set-off to plaintiff's claim it must be filed in this court by you or your attorney in writing at least 5 days prior to the above date. Filing a counterclaim, set-off, motion or answer will not relieve you of your obligation to appear in court on the above date.

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 to recover property or 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; and (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.

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 7 days prior to your first court date and send a copy to the plaintiff(s) or plaintiff's(s') attorney, if any.

A copy of the statement of claim shall be served with this summons.

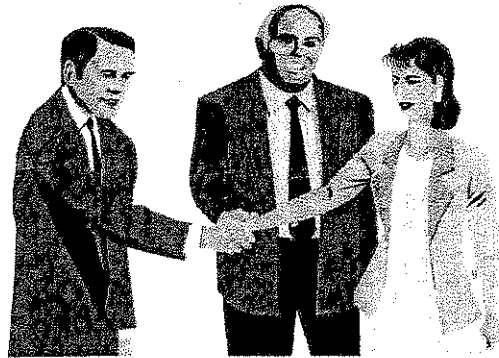
Dated at Gainesville, Florida on this 3rd day of April, 2007.



J.K. "BUDDY" IRBY
CLERK OF COURT

By: Mary Kaye Caruso
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. Walter M. Green
Hon. Thomas M. Jaworski