



MEMORANDUM

Office of the City Attorney

002445
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners **DATE:** March 11, 2002


FROM: City Attorney **CONSENT**

SUBJECT: Mary Martin v. Jamie Michelle Womack and City of Gainesville,
Alachua County Circuit Court; Case No.: 01-02-CA-619

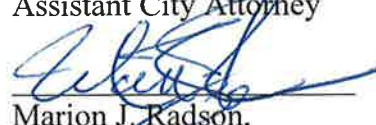
Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Mary Martin v. Michelle Womack and City of Gainesville, Case No. 01-02-CA-619

On February 18, 2002, the City was served with a summons and complaint by Mary Martin. Ms. Martin alleges she was injured as a result of an automobile collision with Defendant Womack. The Plaintiff alleges Defendant Womack's view of a stop sign was obstructed by a tree (allegedly on City property) at the intersection where the collision occurred. The complaint seeks monetary damages in excess of \$15,000.

Prepared by:


Walter Mathews, IV
Assistant City Attorney

Submitted by:


Marion J. Kadson,
City Attorney

EAW/bdp



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

MARY MARTIN

Plaintiff,

vs.

JAMIE MICHELLE WOMACK and
CITY OF GAINESVILLE,

Defendants.

CASE NO.: 01-02-CA-619
DIVISION: J

COMPLAINT

The Plaintiff, MARY MARTIN ("MARTIN"), by and through her undersigned attorney, sues Defendants, JAMIE MICHELLE WOMACK ("WOMACK") and CITY OF GAINESVILLE ("CITY"), and states:

1. This action is for damages in excess of \$15,000.00.
2. At all times material to this cause, Plaintiff MARTIN was a resident of the County of Alachua, State of Florida.
3. At all times material to this cause, Defendant WOMACK owned and operated a vehicle in and about Alachua County, State of Florida.
4. At all times material to this cause, Defendant CITY was and remains a political subdivision of the State of Florida and was a municipal corporation organized and existing under the laws of the State of Florida.
5. At all times material to this cause, Defendant CITY owned and maintained an easement (road shoulder) adjacent to Northwest 12th Street and Northwest 4th Avenue, in Gainesville, Florida.
6. Plaintiff has complied with all conditions precedent to this action as required under

§768.28, Florida Statutes and any and all other notice provisions required by law. Said letter is attached as exhibit 1 and is incorporated herein by reference.

7. All issues relevant to this cause of action accrued in Alachua County Florida.

COUNT I
NEGLIGENCE AS TO DEFENDANT WOMACK

8. Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 7.

9. On or about May 12, 2000, Defendant WOMACK owned and operated a motor vehicle at the intersection of NW 12th Street and NW 4th Avenue in the City of Gainesville, which is in Alachua County, in the state of Florida.

10. At that time and place Defendant WOMACK negligently operated or maintained the motor vehicle by running through a stop sign at the intersection of NW 12th Street and NW 4th Avenue so that Defendant WOMACK's vehicle collided with Plaintiff's motor vehicle.

11. As a direct and proximate result of the actions of WOMACK, Plaintiff MARTIN suffered bodily injury and resulting pain and suffering, disability, disfigurement and physical handicap, wage loss, loss of earning capacity, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care, and treatment and aggravation of a previously existing condition. These losses are either permanent or continuing, and Plaintiff MARTIN will suffer the losses in the future, including suffering future medical damages, including but not limited to potential surgery, hospitalization, medical and nursing care and treatment.

WHEREFORE, Plaintiff MARTIN demands judgment against Defendant WOMACK in excess of Fifteen Thousand Dollars (\$15,000.00), plus interests, costs incurred in this action and

such other relief as this Court may deem just and proper under the circumstances, and a trial by jury of all issues so triable.

COUNT II
NEGLIGENCE AGAINST THE CITY OF GAINESVILLE

12. Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 11.

13. On May 12, 2000 Defendant WOMACK was traveling west on NW 4th Avenue and NW 12th Street in Gainesville, Florida.

14. As Defendant WOMACK approached the intersection of NW 4th Avenue and NW 12th Street, a tree obscured a stop sign which was at the intersection of NW 4th Avenue and NW 12th Street. The tree either fully or partially rendered Defendant WOMACK unable to see the stop sign.

15. Defendant WOMACK proceeded through the stop sign without either stopping or slowing, and entered into the intersection whereupon she struck Plaintiff MARTIN.

16. The tree described above was on property owned or maintained by Defendant CITY and thus the CITY had a duty to maintain the tree in a safe condition.

17. The tree obscured the stop sign, creating an unsafe and dangerous condition. This dangerous condition existed for a sufficient length of time so that Defendant CITY knew or should by the exercise of reasonable care have known of its existence and the Defendant CITY took no precautionary measures to either correct the condition or warn the Plaintiff about the unsafe condition.

18. The CITY had a duty to maintain the intersection in a reasonably safe condition by removing all items obscuring vision of the stop sign, or in the alternative, warning individuals of

the dangerous condition.

19. Defendant CITY made a planning decision to erect a stop sign at the above-stated intersection, thus the CITY had a duty to maintain the intersection in a reasonably safe condition and/or warn individuals of the dangerous condition.

20. By failing to maintain the stop sign in a reasonably safe condition free of items obscuring it from view, and/or warning individuals of the dangerous condition, Defendant CITY breached its duty to Plaintiff MARTIN.

21. As a result of the defendant's negligence, Plaintiff MARTIN suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a pre-existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future. Plaintiff's automobile was damaged and she lost the use of it during the period required for its repair or replacement.

WHEREFORE, Plaintiff respectfully demands judgment for damages against defendant CITY, and other relief as the Court deems proper, and a trial by jury of all issues so triable.

LAW OFFICE OF RUSH & GLASSMAN



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