



# MEMORANDUM

Office of the City Attorney

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

TO: Mayor and City Commissioners

DATE: August 28, 2000

FROM: City Attorney

CITY ATTORNEY

SUBJECT: Mary Fiallo and Antonio Fiallo v. City of Gainesville.  
Alachua County Circuit Court; Case No.: 99-CA-3850

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Recommendation: The City Commission 1) approve the terms of the settlement; and 2) authorize the City Manager and the City Attorney's Office to settle the case.

This case involves a park patron who fell in the parking lot at Westside Park on September 13, 1996. Plaintiff, Mary Fiallo, was walking toward a car parked immediately adjacent to a curb inlet, which is designed to drain water from the parking lot. She stepped off the curb and did not realize she was stepping into the sloped inlet. She fell and suffered a bi-malleolar fracture of her left ankle and sprained her right ankle. The City has since installed warning signs and other remedial measures to avoid future occurrences. The City has a 65-70% risk of being found liable by a jury for creating and maintaining a dangerous condition.

Over the past four years, Mrs. Fiallo's fracture has not healed properly and she still suffers pain and ankle lock-ups. To date, Mrs. Fiallo's medical expenses exceed \$10,600.00, but her condition has not fully stabilized. She is currently being treated by an orthopedic surgeon in Tampa who has not yet completely assessed her future condition. She can be expected to incur additional medical expenses in the future of an undetermined amount.

In addition to past and future medical expenses, Mrs. Fiallo would be entitled to compensation for related out-of-pocket expenses, past and future pain and suffering, and past and future wage loss. Further, the total costs the City could reasonably anticipate expending on expert costs, depositions, and preparation of trial exhibits would likely have reached between \$10,000 to \$15,000.

The City's attorney and Risk Manager voluntarily negotiated a settlement agreement with Mary Fiallo and Antonio Fiallo and their attorney during a settlement conference held on August 14, 2000. The amount of the settlement is \$32,000.00, which represents full and complete payment of Mrs. Fiallo's personal injury claim and Antonio Fiallo's loss of consortium claim. This amount includes all past and future medical expenses, out-of-pocket expenses, past and future pain and suffering, and past and future wage loss. The Fiallos will execute and deliver to the City of Gainesville a release of all claims and file a notice of voluntary dismissal with the Circuit Court.

It is the recommendation of the Risk Management Department and the City Attorney's Office that the case be settled for \$32,000.00.

Prepared by:



Debra S. Babb,  
Assistant City Attorney

Approved and  
submitted by:



Marion J. Radson,  
City Attorney