



# MEMORANDUM

Office of the City Attorney

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**TO:** Mayor and City Commissioners

**DATE:** February 14, 2005

**FROM:** City Attorney

**CONSENT**


**SUBJECT:** Erika Zimmerman v. City of Gainesville and Florida Creative Paving Unlimited, Inc.; Alachua County Circuit Court; Case No.: 01-05-CA-75

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Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Erika Zimmerman v. City of Gainesville and Florida Creative Paving Unlimited, Inc.; Alachua County Circuit Court; Case No.: 01-05-CA-75.

On January 24, 2005, the City of Gainesville was served with a summons and complaint. Ms. Erika Zimmerman alleges that on or about October 2, 2001, she was walking on the sidewalk located in the 1600 Block of West University where she tripped and fell on an uneven portion of the sidewalk. Ms. Zimmerman alleges that Florida Creative Paving was the subcontractor installing the sidewalk and was responsible for the uneven condition. Plaintiff Erika Zimmerman seeks damages for her injuries.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

EAW/cgow

IN THE CIRCUIT COURT IN AND  
FOR ALACHUA COUNTY, FLORIDA

CASE NO.:  
DIVISION:

ERIKA ZIMMERMAN,

Plaintiff,

v.

CITY OF GAINESVILLE, and  
FLORIDA CREATIVE PAVING  
UNLIMITED, INC.,

Defendant.

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**COMPLAINT – Count I**

ERIKA ZIMMERMAN, files this Complaint against CITY OF GAINESVILLE as follows:

1. This is an action for damages of more than \$15,000, and the action is therefore within the jurisdiction of this Court.
2. At all times material hereto, CITY OF GAINESVILLE owned, leased or possessed real property located in 1600 Block of West University, Gainesville, Florida, that was used as a sidewalk.
3. On or about October 2, 2001, ERIKA ZIMMERMAN went onto the said property for the purpose of walking and thereby became an invitee of Defendant. While upon the said property of Defendant, ERIKA ZIMMERMAN was caused to fall because of un-level concrete and was injured as set forth below.

4. At the time of the incident described above, CITY OF GAINESVILLE had a duty to maintain a reasonably safe premises. Defendant negligently violated that duty in the following respects:

- ◆ in maintaining the sidewalk of the said premises so that it became un-level to a hazardous degree;
- ◆ in failing to inspect the premises on a reasonably routine basis so as to learn of the hazard which injured ERIKA ZIMMERMAN;
- ◆ in failing to properly barricade the premises;
- ◆ in failing to warn ERIKA ZIMMERMAN of the said hazardous conditions;

5. The said hazardous conditions were either known to Defendant, were created by Defendant, or had existed for a sufficient length of time so that Defendant should have known of them.

6. As a result of the negligence set forth above, ERIKA ZIMMERMAN 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 injuries suffered by ERIKA ZIMMERMAN are permanent within a reasonable degree of medical probability, other than scarring and disfigurement

WHEREFORE, ERIKA ZIMMERMAN demands a judgment for compensatory damages against CITY OF GAINESVILLE, together with costs, and prejudgment interest, if applicable. Further, a trial by jury is demanded.

#### Count- II

ERIKA ZIMMERMAN, files this Complaint against FLORIDA CREATIVE PAVING UNLIMITED, INC. as follows:

7. This is an action for damages of more than \$15,000, and the action is therefore within the jurisdiction of this Court.

8. At all times material hereto, FLORIDA CREATIVE PAVING UNLIMITED, INC. was sub-contracted to install a new sidewalk located in 1600 Block of West University, Gainesville, Florida.

9. On or about October 2, 2001, ERIKA ZIMMERMAN went onto the said property for the purpose of walking and thereby became an invitee of Defendant. While upon the said property ERIKA ZIMMERMAN was caused to fall because of un-level concrete and was injured as set forth below.

10. At the time of the incident described above, FLORIDA CREATIVE PAVING UNLIMITED, INC., had a duty to maintain a reasonably safe premises. Defendant negligently violated that duty in the following respects:

- ◆ in maintaining the sidewalk of the said premises so that it became un-level to a hazardous degree;
- ◆ in failing to inspect the premises on a reasonably routine basis so as to learn of the hazard which injured ERIKA ZIMMERMAN;
- ◆ in failing to properly barricade the premises;
- ◆ in failing to warn ERIKA ZIMMERMAN of the said hazardous conditions;

11. The said hazardous conditions were either known to Defendant, were created by Defendant, or had existed for a sufficient length of time so that Defendant should have known of them.

12. As a result of the negligence set forth above, ERIKA ZIMMERMAN 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 injuries suffered by ERIKA ZIMMERMAN are permanent within a reasonable degree of medical probability, other than scarring and disfigurement

WHEREFORE, ERIKA ZIMMERMAN demands a judgment for compensatory damages against FLORIDA CREATIVE PAVING UNLIMITED, INC., together with costs, and prejudgment interest, if applicable. Further, a trial by jury is demanded.

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