



MEMORANDUM

Office of the City Attorney

050469

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

TO: Mayor and City Commissioners

DATE: October 10, 2005

FROM: City Attorney


CONSENT

SUBJECT: Elayne G. Walden v. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-3722

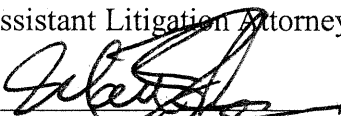
Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Elayne G. Walden v. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-3722.

On September 21, 2005, the City of Gainesville was served with a summons and complaint. Ms. Elayne Walden alleges that on or about December 22, 2002, she was walking on the sidewalk located at or around the corner of Northwest 8th Avenue and Northwest 20th Street where she fell on broken asphalt resulting from a new water line being installed. Plaintiff Elayne Walden seeks damages for her injuries.

Prepared by:


Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

DMN/cgow

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

ELAYNE G. WALDEN

Plaintiff,

CASE NO.:

vs.

DIVISION:

CITY OF GAINESVILLE, a municipal
corporation,

Defendant.

COMPLAINT

Plaintiff, ELAYNE G. WALDEN (hereinafter "Plaintiff"), by and through her undersigned attorneys, sues Defendant, CITY OF GAINESVILLE, a municipal corporation (hereinafter "Defendant"), and alleges:

1. This is an action for damages in excess of \$15,000, exclusive of interest and costs.
2. All statutory and common law conditions precedent to the filing of this Complaint have been complied with by Plaintiff, including the pre-suit notice of claim requirements contained in Florida Statute §768.28(6). (See Exhibit A)
3. Plaintiff is a citizen of the State of Florida and resident of Alachua County.
4. Defendant is a municipal corporation under the laws of the State of Florida.
5. The acts or omissions complained of in this action occurred in Alachua County, Florida.
6. On December 22, 2002, Defendant was the owner and in possession of an area of real property located at or around the corner of Northwest 8th Avenue and Northwest 20th Street in Gainesville, Alachua County, Florida, said property being used as a public sidewalk.
7. At that time and place Plaintiff went on the property while using the sidewalk.

8. Defendant knew that said sidewalk was open to and used by the public and, therefore, had a duty to maintain that sidewalk in a safe and operable condition, as well as a duty to warn of and cordon off any potentially unsafe areas or conditions.

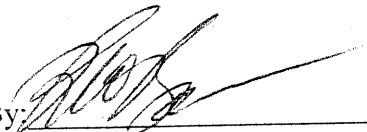
9. Defendant breached its duty by negligently maintaining the sidewalk and permitting an area of the sidewalk to remain broken up during and following the installation of a new water line so that Plaintiff fell and suffered injury while walking along that area of the sidewalk.

10. Said negligent condition was known to Defendant or existed for a sufficient length of time so that Defendant should have known of it.

11. As a direct and proximate result of the negligence of Defendant, Plaintiff has suffered bodily injury and resulting pain and suffering, disability, mental anguish, aggravation of existing condition, loss of capacity for the enjoyment of life, loss of income, loss of earning capacity, additional expense of hospitalization, medical care and treatment, medical rehabilitation, nursing care and treatment. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ELAYNE G. WALDEN sues Defendant CITY OF GAINESVILLE for damages in excess of \$15,000, exclusive of interest, prejudgment interest and costs, and demands a trial by jury of all issues so triable.

CLAYTON - JOHNSTON, P.A.

By: 
Robert W. Bauer, Esq.
Florida Bar No.
111 Southeast First Avenue
Gainesville, Florida 32601
Post Office Box 23939 (Zip 32602)
Telephone: (352) 376-4694
Facsimile: (352) 371-7366
Attorney for Plaintiff

4050

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**Certified Circuit Civil Mediator

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(1897 - 1986)
E. GOVINGTON JOHNSTON
(1916 - 2002)
CHARLES G. FELDER
(Retired)
THOMAS G. CHRISTMAN
(Of Counsel)

Internet address:
jriley@Clayton-johnston.com

27 May 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
And First Class, U.S. Mail

CERTIFIED MAIL
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Gainesville Mayor & City Commission
c/o Pegeen Hanrahan, Mayor
P.O. Box 490
Gainesville, Florida 32602- 0490

Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-0300

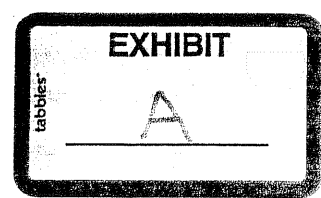
Re: Elayne Walden v. City of Gainesville

Dear Sir/Madame:

Please consider this letter as Elayne Walden's notice of claim against the City of Gainesville for the negligent maintenance of sidewalks in Gainesville, Florida. On December 22, 2002 at about 1:30 in the afternoon, Ms. Walden was walking along Northwest 8th Avenue in Gainesville, Florida. The City of Gainesville had been installing a new water line at or around 2010 NW 8th Avenue and left an area of the sidewalk broken up. As Ms. Walden was walking by this area, she stepped into a recessed area and fell injuring her right hand and both knees.

Ms. Walden was born in Archer, Florida on September 24, 1927. Her social security number is 267-34-2196. She has no prior adjudicated unpaid claims in excess of \$200.00 owed to the state, its agencies, officers or subdivisions.

MAY 27 2004
A 10:30

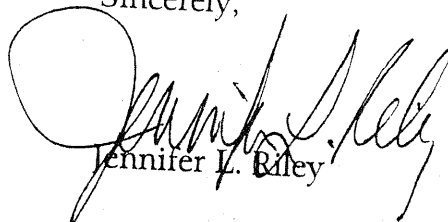


27 May 2004

Page 2

I believe this letter is sufficient to put you on notice of Ms. Walden's claim. If there is any additional information you need to understand the nature of Ms. Walden's claim, please advise me and I will provide you whatever additional information you need.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer L. Riley". The signature is written in black ink and is positioned above the printed name.

Jennifer L. Riley

cc: Elayne Walden

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 Department of Financial Services
 Street, Apt. No.,
 or PO Box No. 200 East Gaines St
 City, State, ZIP+4
 Tallahassee, FL 32399

PS Form 3800, June 2002 See Reverse for Instructions

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:
 Department of
 Financial Services
 200 East Gaines Street
 Tallahassee, FL 32399-
 0300

2. Article Number
7003 1010 0000 3623 3472

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DEPARTMENT OF FINANCIAL SERVICES
 SINEATH, MAIL CENTER SUPERVISOR Agent
 X Addressee

B. Received by (Printed Name) C. Date of Delivery
 MAY 28 2004

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

3. Service Type
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 Registered Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) Yes

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Sent to
 City Mayor's City Commission
 Street, Apt. No. 10
 or PO Box No. 10
 City, State, Zip
 P.O. Box 990 Gule E 32602

PS Form 3800, June 2002 See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
- B. Received by (Printed Name) Date of Delivery
- C. Is delivery address different from item 1? Yes No
- D. Is delivery address different from item 1? Yes No

3. Service Type
- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.
- Restricted Delivery? (Extra Fee) Yes No

Article Number 7003 1010 0000 3523

Form 3811, August 2001 Domestic Return Receipt

102595-02-M-1036

ainesville Mayor +
 City Commission
 P.O. Box 990
 Gainesville, FL 32602-0990