



MEMORANDUM

Office of the City Attorney

000120
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: June 26, 2000

FROM: City Attorney


CONSENT

SUBJECT: Alden J. Green and Linda Green, individually and for the use and benefit of Nationwide Insurance Company v. City of Gainesville;
Case No.: 01-00-CA-1729


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 Alden J. Green and Linda Green, individually and for the use and benefit of Nationwide Insurance Company v. City of Gainesville.

On or about June 12, 2000, the City was served with a complaint by Alden and Linda Green. They allege Gainesville Regional Utilities failed to use due care in providing electric service to their residence, which resulted in a fire. The Greens and their insurance company request \$29,215.70 in settlement for the damages caused by the fire.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Approved and
submitted by:


Marion J. Radson,
City Attorney

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

ALDEN J. GREEN and LINDA GREEN,
individually and for the use and benefit of
NATIONWIDE INSURANCE COMPANY,

Plaintiffs,

-vs-

CITY OF GAINESVILLE, a Municipal
Corporation of the State of Florida,

Defendant.

_____ /

CASE NO.: 01-00-CA-1729
DIVISION: J

A TRUE COPY
STEPHEN M. OELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 5:33 p.m., on the 12th day
of June, 2000
By J.P. Debra-Hall
As Deputy Sheriff

COPY

SUMMONS

THE STATE OF FLORIDA:

TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the
Complaint in the above-styled cause upon the Registered Agent for the Defendant:

CITY OF GAINESVILLE, a Municipal
Corporation of the State of Florida,
Mayor Paula Delany - Registered Agent
200 E. University Avenue
Gainesville, Florida 32601

The Defendant is hereby required to serve written defenses to said Complaint
on Plaintiff's attorneys, whose names and address are:

Scott S. Katz, Esquire
Florida Bar No. 0709476
Aaron Alfano, Esquire
Florida Bar No. 0029602
BUTLER BURNETTE PAPPAS
Bayport Plaza - Suite 1100
6200 Courtney Campbell Causeway
Tampa, Florida 33607-5946
PH: (813) 281-1900

30 (b,r)
within ~~20~~ days after service of this Summons upon that Defendant, exclusive of the day of service, and to file the original of said written defenses with the Clerk of said Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint.

WITNESS my hand and the seal of the Court on the 6 day of June,
2000.



J.K. "BUDDY" IRBY
Clerk of Circuit Court

By: Darbara J. Thomas
Deputy Clerk

SCOTT S. KATZ, ESQUIRE
Florida Bar No. 0709476
AARON ALFANO, ESQUIRE
Florida Bar No. 0029602
BUTLER BURNETTE PAPPAS
6200 Courtney Campbell Causeway
Bayport Plaza - Suite 1100
Tampa, Florida 33067
(813) 281-1900
Attorneys for Plaintiffs

cc: City Atty.

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

ALDEN J. GREEN and LINDA GREEN,
individually and for the use and benefit of
NATIONWIDE INSURANCE COMPANY,

Plaintiffs,

CASE NO.: 01-00-CA-1729
DIVISION: J

-vs-

CITY OF GAINESVILLE, a Municipal
Corporation of the State of Florida,

Defendant.

COMPLAINT

Plaintiffs, ALDEN J. GREEN and LINDA GREEN, individually and for the use and benefit of NATIONWIDE INSURANCE COMPANY, by and through their undersigned counsel, hereby sue Defendant, CITY OF GAINESVILLE, a Municipal Corporation of the State of Florida, and aver as follows.

1. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000), exclusive of interest, costs, and attorneys fees.
2. At all times material to this action, Plaintiffs ALDEN J. GREEN and LINDA GREEN were residents of Alachua County, Florida.
3. At all times material to this action, Plaintiff NATIONWIDE INSURANCE COMPANY (hereinafter referred to as "NATIONWIDE"), was a foreign corporation doing business in Alachua County, Florida.

4. At all times material to this action, Defendant CITY OF GAINESVILLE was a Municipal Corporation or municipality of the State of Florida and has waived its sovereign immunity by virtue of § 768.28, Florida Statutes.

5. At all times material to this action, NATIONWIDE provided homeowner's insurance to ALDEN J. GREEN and LINDA GREEN, covering real and personal property located at 2905 NW 15th Place in Gainesville, Florida.

6. Defendant CITY OF GAINESVILLE, by and through its agency, GAINESVILLE REGIONAL UTILITIES, provided electricity to the GREENS' residence at 2905 NW 15th Place in Gainesville, Florida.

7. Defendant CITY OF GAINESVILLE had a duty to provide electricity to the GREEN's residence in a reasonable and careful manner so that the GREENS' real and personal property would not be damaged by fire.

8. On or about May 30, 1996, a significant ground fault occurred in the electrical service between the GREEN residence, two adjoining houses, and the overhead transformer servicing the GREEN residence and the two adjoining houses. As a result of this fault, electrical current caused heat to build up inside the dishwasher at the GREEN residence and ignite plastic parts and insulation inside the appliance, resulting in a fire. The fire caused extensive and severe damage to the GREEN residence and the GREENS' personal property located therein.

9. CITY OF GAINESVILLE breached its above-described duties by:

- (a) Failing to install breakers in the secondary leads of the distribution transformer providing electric power to the GREEN residence;

- (b) Failing to trim and maintain the trees around and above the power transformer and power lines servicing the GREEN residence, so as to prevent ground faults and other dangerous conditions caused by tree limbs falling on power lines and power transmission equipment; and
- (c) Otherwise failing to use due care in providing electric power to the GREEN residence.

10. As a direct, proximate, and foreseeable result of Defendant CITY OF GAINESVILLE's failure to exercise due care in providing electrical power to the GREEN residence, a fire occurred on May 30, 1996. The GREENS incurred damages in the amount of \$29,215.70 due to the fire.

11. NATIONWIDE compensated ALDEN J. GREEN and LINDA GREEN for the damages associated with the repair of their residence and is therefore subrogated to ALDEN J. GREEN and LINDA GREEN's right of recovery to the extent of its payment of \$29,215.70. The GREENS also sustained damages in the form of a \$100.00 deductible.

12. Pursuant to § 768.28, Florida Statutes, this claim was timely presented to Defendant CITY OF GAINESVILLE, and Defendant has denied same. A copy of the statutorily required notice is attached hereto as Exhibit "A." A copy of the letter from Defendant CITY OF GAINESVILLE's third party administrator to NATIONWIDE's counsel denying the claim is attached hereto as Exhibit "B."

13. All conditions precedent to the bringing of this cause have been performed, have occurred, or have been waived.

WHEREFORE, Plaintiffs, ALDEN J. GREEN and LINDA GREEN, demand judgment against Defendant CITY OF GAINESVILLE for damages, together with prejudgment interest, costs, and such other and further relief as the Court deems just and proper.

BUTLER BURNETTE PAPPAS



SCOTT S. KATZ, ESQUIRE
Florida Bar No. 0709476
AARON D. ALFANO, ESQUIRE
Florida Bar No. 0083909
Bayport Plaza - Suite 1100
6200 Courtney Campbell Causeway
Tampa, Florida 33607
813/281-1900
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and true copy of the foregoing has been furnished by process server to said Defendant or its agent along with the Summons, First Set of Interrogatories and First Request for Production



Scott S. Katz, Esquire

HIDAY & RICKE, P.A.
ATTORNEYS AT LAW

August 31, 1998

City of Gainesville
200 East University Avenue
Gainesville, FL 32601

Bill Nelson, Ins. Commissioner
The Capital
Tallahassee, FL 32399-0300

Re: Claimant 1: Nationwide Mutual Fire Insurance Co.
FEL:31-4177100; Claim amount: \$29,215.70
Our file: 983667

Dear Sirs:

The above referenced claim in the principal amount of \$29,215.70 has been referred to this firm for collection. We now make demand upon you to pay this amount plus all applicable collection fees, accrued interest and costs, directly to this firm immediately.

This claim is the result of a fire that occurred at the home of Alden J. Green, Nationwide's insured, on May 30, 1996. The fire started when a tree limb fell on electrical service lines. There exists no prior adjudicated unpaid claim in excess of \$200.00.

If we do not hear from you within six (6) months from the date of receipt of this letter, we will take immediate remedies to protect our clients' interests and recover their claim by any legal means available. Note that you can only resolve this matter by contacting our office.

Sincerely yours,


Jeffrey R. Becker

JRB/vsb



983667



Risk Management • Employee Benefit Consultants • Claims Administrators
P.O. Box 490 • Gainesville, Florida 32602
Tel: (352) 334-3152 • Fax: (352) 334-3198

March 2, 1999

Hiday & Ricke, P.A.
8375 Dix Ellis Trail, Ste. 102
Jacksonville, FL 32256

RE: Date of Incident: 5/30/96
 Our Client: City of Gainesville/GRU
 File No: 125/GL-0222138/09
 Claimant: Green, Etal
 Your Client: Nationwide Mutual Fire Ins. Co.
 Your File No.: 983667

Dear Sir or Madam:

Please allow this letter to serve as response to previous correspondence received from Jeffrey Becker and Karen Anderson at your Firm regarding the above incident. My employer, Palmer and Cay, is the third party administrator for The City of Gainesville/GRU. I am the Claims Specialist handling this claim.

Enclosed please find a copy of GRU's investigative report dated March 9, 1998. After careful investigation and consideration of the facts involved in this case, we respectfully deny liability and your demand of \$29,215.70 as our client, GRU, is not and could not be liable for an act of nature and under today's practiced industry standards, could not have been prevented. (Please refer to report for detailed explanation).

If you need further clarification, feel free to contact me.

Sincerely,

Donna M. McGrath for Leanne Hotchkiss
Claims Specialist

EXHIBIT
B