



MEMORANDUM

Office of the City Attorney

06/202

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

TO: Mayor and City Commissioners

DATE: May 14, 2007

FROM: City Attorney

CONSENT

SUBJECT: Kimberly Ewell vs. City of Gainesville; Eighth Judicial Circuit, Court Case No. 2007-CA-369

Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City of Gainesville in the case Kimberly Ewell vs. City of Gainesville; Eighth Judicial Circuit, Court Case No. 2007-CA-369

On April 17, 2007, the City was served with a Summons and Complaint filed by Attorney Jonathan Rotstein on behalf of Kimberley Ewell in the Circuit Court. Ms. Ewell alleges that she was a passenger in a vehicle involved in an automobile accident with a City vehicle. She claims to have sustained bodily injury, loss of capacity for the enjoyment of life, expenses for hospitalization, medical and nursing care, loss of earnings and ability to earn money. Ms. Ewell seeks money damages and attorney's fees.

Prepared by:

Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:

Marion J. Radson,
City Attorney

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

CASE NO.: 2007 CA 369

*ANSWER OK
5/17/07*

KIMBERLY EWELL,

Plaintiff,

SUMMONS IN A CIVIL CASE

CITY OF GAINESVILLE,

Defendant.

TO EACH SHERIFF OF THE STATE OF FLORIDA AND OTHER DULY AUTHORIZED OFFICERS

GREETINGS: YOU ARE COMMANDED to serve this summons and a copy of the complaint in this lawsuit on the following named Defendant:

**TO: CITY OF GAINESVILLE
C/O MAYOR PEGEEN HANRAHAN
200 E. UNIVERSITY AVENUE
GAINESVILLE, FL 32601**

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY:

JONATHAN I. ROTSTEIN, ESQUIRE
309 OAKRIDGE BLVD., STE. B
DAYTONA BEACH, FLORIDA 32118

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

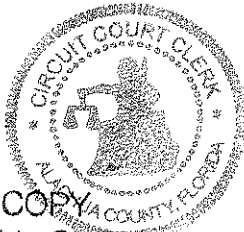
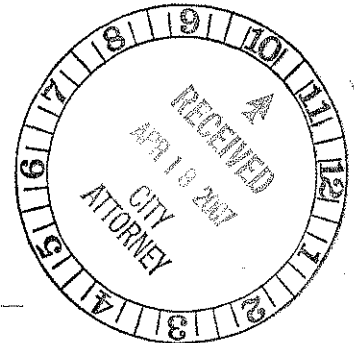
YOU MUST FILE AN ORIGINAL RESPONSE WITH THE CLERK OF THE CIRCUIT COURT AT:

ALACHUA COUNTY COURTHOUSE
201 E. UNIVERSITY AVENUE -OR-
P.O. BOX 600
GAINESVILLE, FLORIDA 32602

April 4, 2007

J.K. "BUDDY" IRBY
CLERK OF THE CIRCUIT COURT

By: D. Thomas
Deputy Clerk



COPY

if you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770.

A TRUE COPY
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA

Served at 4:30 PM on the 17 Day
of April, 2007
BY [Signature]
As Deputy Sheriff

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

CASE NO.: 2007 CA 369

KIMBERLY EWELL,

Plaintiff,

v.

CITY OF GAINESVILLE,

Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, the Plaintiff, KIMBERLY EWELL, by and through the undersigned attorney, Jonathan I. Rotstein, Esquire, and hereby sues Defendant, CITY OF GAINESVILLE, and in support thereof states and alleges as follows:

FACTS

1. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000.00).
2. Plaintiff, KIMBERLY EWELL, resides in Gainesville, Alachua County, Florida, and is over the age of twenty-one (21).
3. Defendant, CITY OF GAINESVILLE, is a governmental entity located in the State of Florida, with business premises in Alachua County, Florida.
4. All conditions precedent, to wit, the six-month notice requirement pursuant to Florida Statute 768.28(6) have been complied with by the Plaintiff, prior to instituting this

"sovereign immunity" lawsuit against the Defendant, (a copy is attached hereto and marked as Exhibit "A").

5. There are no prior adjudicated unpaid claims in excess of \$200.00.
6. The Department of Insurance has been notified of this claim.
7. The accident which is the subject matter of this litigation occurred in GAINESVILLE, Volusia County, Florida.
8. This Honorable Court has jurisdiction over this lawsuit in that it is an action for money damages exceeding Fifteen Thousand Dollars (\$15,000.00), and the accident which is the subject of this lawsuit occurred in Alachua County, Florida.

COUNT ONE

NEGLIGENCE AGAINST DEFENDANT, CITY OF GAINESVILLE

9. On or about November 4, 2004, Plaintiff, KIMBERLY EWELL, was a passenger in a 1996 International School Bus, Florida license number COUN09671, owned by the Alachua County School Board and operated by Shirley M. Parrish, which was northbound in the left turn lane of SR24, stopped at the intersection of CR172, in Gainesville, Alachua County, Florida.

10. That on the aforementioned date, Brian D. Hendrix operated a 1998 Chevrolet Truck, Florida license number CITY12311, owned by Defendant, CITY OF GAINESVILLE, which was northbound in the left turn lane of SR24, approaching the intersection of CR172, in Gainesville, Alachua County, Florida, directly behind Plaintiff.

11. At the aforementioned time and place, Brian D. Hendrix, negligently operated or maintained the motor vehicle he was operating, so that he rear-ended the vehicle in which Plaintiff, KIMBERLY EWELL, was a passenger, resulting in severe and permanent injuries to Plaintiff.

12. That at all times material hereto, Defendant, CITY OF GAINESVILLE, acted by and through its employees, servants, and/or agents, who at all times material hereto, acted within the course and scope of their employment with Defendant.

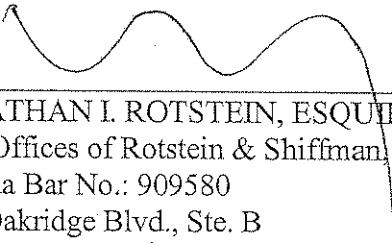
13. That at the aforesaid time and place, the Defendant, CITY OF GAINESVILLE, was careless, wrongful and negligent in that their employee failed to use due care, that he drove said vehicle in a careless fashion, that he failed to keep a proper lookout for the vehicle and other vehicles on the roadway, that he failed to maintain a safe speed, all of the aforescribed acts of carelessness, wrongfulness and negligence being independent and proximate causes of the great and severe impact which occurred as aforescribed.

14. As a direct and proximate result of the aforescribed careless, wrongful and negligent acts of the Defendant, CITY OF GAINESVILLE, Plaintiff, KIMBERLY EWELL, 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 and ability to earn money, and aggravation of a pre-existing injury. The losses are either permanent or continuing, and Plaintiff will continue to suffer the losses in the future.

WHEREFORE, Plaintiff, KIMBERLY EWELL, demands judgment for damages and costs in an amount exceeding Fifteen Thousand Dollars (\$15,000.00) against Defendant, CITY OF GAINESVILLE, plus the costs of the court, and trial by jury.

DATED this 24th day of January, 2007.

Respectfully submitted,



JONATHAN I. ROTSTEIN, ESQUIRE
Law Offices of Rotstein & Shiffman, LLP
Florida Bar No.: 909580
309 Oakridge Blvd., Ste. B
Daytona Beach, Fl 32118
(386) 252-5560 (bw)
Attorney for Plaintiff

LAW OFFICE OF
ROTSTEIN & SHIFFMAN, LLP

JONATHAN I. ROTSTEIN
MICHAEL A. SHIFFMAN

JURISDICTION ADMITTED
FLORIDA

NOTICE OF CLAIM – FLORIDA STATUTES 768.28(6)

VIA CERTIFIED MAIL/RRR

Mayor Pegeen Hanrahan
City of Gainesville
Post Office Box 490, Station 19
Gainesville, Florida 32602-0490

Marion Radson, Esquire
Gainesville City Attorney
Post Office Box 490, Station 46
Gainesville, Florida 32602-0490

Insurance Commissioner
The Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-0338

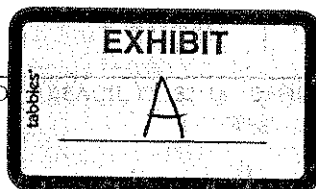
CLAIMANT:

KIMBERLY EWELL
Date of Birth: 02-20-67
Place of Birth: Gainesville, Alachua County, Florida
Social Security No.: 594-28-1615

CONSORTIUM CLAIMANT: None

PRIOR ADJUDICATED UNPAID CLAIMS: None

DATE OF INCIDENT: November 4, 2004



PLACE OF INCIDENT:

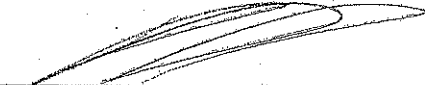
NE Waldo Road and 16th Avenue
Gainesville, Alachua County, Florida

DESCRIPTION OF INCIDENT:

Ms. Ewell was a passenger on an Alachua County School bus, when it was rear-ended by a City of Gainesville employee, driving a truck owned by the City of Gainesville, resulting in severe injuries to Ms. Ewell.

IF ADDITIONAL INFORMATION IS NEEDED, PLEASE CONTACT THE UNDERSIGNED. PLEASE ACKNOWLEDGE RECEIPT HEREOF.

I hereby certify that a true and correct copy of the foregoing has been provided via certified U.S. Mail to the above agencies, this 21st day of June, 2006.


JONATHAN I. ROTSTEIN, ESQUIRE
Law Offices of Rotstein & Shiffman, LLP
309 Oakridge Blvd., Ste. B
Daytona Beach, Florida 32118
(386) 252-5560 (bw)
Florida Bar No.: 909580
Attorney for Claimant

7006 0810 0003 5361 5809
7006 0810 0003 5361 5793
7006 0810 0003 5361 5786
PS Form 3800, June 2002
Sec. 1002, Post
Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$
Sent to Insurance Commissioner
Street, Apt. No., or PO Box No.
City, State, ZIP+4
Postmark Here K. Ewell 6-21-06
OFFICIAL USE
U.S. Postal Service TM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

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:
 Marion Radson, Esquire
 Gainesville City, Atty
 Post ofc Box 490, Station
 46
 Gainesville, FL 32602-0490

2. Article Number
 (Transfer from service label)
 PS Form 3811, February 2004
 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name)
 MRS SCHMIDT
 C. Date of Delivery
 6/22/06
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

7006 0810 0003 5361 5809
 102595-02-M-1540

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:
 Mayor Peggy Herrahan
 City of Gainesville
 Post Office Box 496 Station
 Gainesville, FL 32602-
 0490

2. Article Number
 (Transfer from service label)
 PS Form 3811, February 2004
 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name)
 MRS SCHMIDT
 C. Date of Delivery
 6/22/06
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

7006 0810 0003 5361 5793
 102595-02-M-1540

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:
 Insurance Commissioner
 The Dept. of Financial Svcs
 200 E. Gaines Street
 Tallahassee, FL 32399-
 0238

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name)
 L. SINEATH, MAIL CENTER SUPERVISOR
 C. Date of Delivery
 JUN 23 2006
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 Yes

5786
 102595-02-M-1540