

**CITY OF GAINESVILLE**  
Office of the City Attorney

980804  
**Memorandum**

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Box No. 46

**TO:** Mayor and City Commissioners **DATE:** November 23, 1998

**FROM:** Marion J. Radson, CONSENT ITEM  
City Attorney


**SUBJECT:** Terrilyn Smith v. City of Gainesville  
Eighth Judicial Circuit Case No. 98-3590-CA; Division J

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**Recommendation:** The City Commission authorize the City Attorney and/or special counsel if insurance coverage is available to represent the City in a case styled Terrilyn Smith v. City of Gainesville, Case No. 98-3590-CA; Division J.

A summons and complaint was received on November 4, 1998. The complaint alleges that on or about November 3, 1995, the plaintiff Terrilyn Smith was involved in a two-car accident. The plaintiff alleges that the accident was caused because of a missing stop sign at the intersection of SW 2<sup>nd</sup> St. and SW 3<sup>rd</sup> Ave., thereby causing her to sustain personal bodily injuries.

Prepared by:

  
Richard R. Whidden, Jr.  
Assistant City Attorney

Approved and  
Submitted by:

  
Marion J. Radson  
City Attorney

IN THE CIRCUIT COURT OF THE 8TH  
JUDICIAL CIRCUIT OF FLORIDA, IN  
AND FOR ALACHUA COUNTY, FLORIDA

CASE NO. 98-3590-CA  
DIV. J

TERRILYN SMITH,

Plaintiff,

vs.

THE CITY OF GAINESVILLE,

Defendant. /

COMPLAINT

Plaintiff, TERRILYN SMITH, sues the Defendant, THE CITY OF GAINESVILLE (hereinafter, "THE CITY"), and alleges:

1. This is an action for damages that exceed Fifteen Thousand Dollars, (\$15,000.00).

2. On or about November 3, 1995, the Plaintiff, TERRILYN SMITH, was operating a motor vehicle in the vicinity of Southwest 3rd Avenue and Southwest 2nd Street, in Gainesville, Alachua County, Florida.

3. At that time and place, a second vehicle driven by Michael Richards, while traveling eastbound on Southwest 3rd Avenue, failed to stop at the intersection of Southwest 3rd Avenue and Southwest 2nd Street, striking Plaintiff's vehicle as it traveled north on Southwest 2nd Street, due to a missing stop sign at the Southwest corner of said intersection, previously positioned for eastbound traffic on Southwest 3rd Avenue.

4. At all times material hereto, the Defendant, THE CITY, controlled and maintained the certain public roads, commonly known as Southwest 3rd Avenue and Southwest 2nd Street, situated within the boundaries of the City of Gainesville, Florida.

5. That, all times material hereto, the Defendant, by its agents, servants and/or employees, owed a duty to the public, in general, and the Plaintiff, TERRILYN SMITH, in particular, to keep and maintain traffic control devices and stop signs in a reasonably safe and operable condition, in order to protect the health, well being, and safety of pedestrians and operators of motor vehicles within the city limits of Gainesville, Alachua County, Florida.

6. That, THE CITY allowed to exist and be maintained on said public road, the unsafe and negligent condition of the missing stop sign at the intersection of Southwest 3rd Avenue and S.W. 2nd Street in Alachua County and said dangerous condition was known to the Defendant, or existed for a sufficient length of time so that Defendant through the exercise of due care should have known of it, and Defendant failed to warn Plaintiff, TERRILYN SMITH, of the unsafe condition or timely move to correct the unsafe condition.

7. The afore-referenced dangerous condition substantially increased the risk of collisions between vehicles entering the intersection of Southwest 3rd Avenue and Southwest 2nd Street.

8. THE CITY knew or should have known said dangerous condition created a substantial risk of injury when Southwest 3rd Avenue and Southwest 2nd Street were used with ordinary care, in a foreseeable manner, by the public.

9. That, the Defendant, had a duty to take reasonable precautions to prevent injury resulting from the existence of the dangerous condition and to exercise reasonable diligence in replacing said stop sign at the intersection of Southwest 3rd Avenue and Southwest 2nd Street, in Alachua County, prior to the occurrence of the accident inter alia, but breached said duty by failing to replace said stop sign in a timely manner.

10. The tortious actions of the Defendant, through its agents, servants, or employees, involved ministerial functions and were not characterized by policy-making discretion nor planning-level judgment.

11. As a direct, foreseeable, and proximate result of the negligence and carelessness of the Defendant, in failing to take reasonable precautions and failing to warn of the dangerous condition at the intersection of Southwest 3rd Avenue and Southwest 2nd Street, the Plaintiff, TERRILYN SMITH, was done severe bodily harm in that Plaintiff's vehicle was struck by a second vehicle driven by Michael Richards, causing Plaintiff bodily injury, resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, aggravation of a pre-existing condition, expense of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money. The losses are either permanent or continuing and the Plaintiff will suffer the losses in the future.

12. On June 13, 1996, the Plaintiff gave notice of her claim to THE CITY (Exhibit "A"), Alachua County (Exhibit "B"), and the Florida Department of Insurance, pursuant to F.S. 768.28, by certified letters, copies of which are attached hereto.

13. That THE CITY did not make final disposition of the claim within six (6) months of notification by the Plaintiff, but did later file a response on September 25, 1997 denying liability, through its third party administrator of claims/servicing agent, Palmer & Cay (Exhibit "C").

WHEREFORE, the Plaintiff, TERRILYN SMITH, demands a judgment for damages, costs, and any other relief deemed appropriate against the Defendant.

DEMAND FOR TRIAL BY JURY

Plaintiff, TERRILYN SMITH, demands that all issues raised  
herein be tried by jury.

DANIEL L. HIGHTOWER, P.A.

By: 

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