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Title: Richard Jensen v. City of Gainesville, Florida, d/b/a Gainesville Regional Utilities; Case No. 2020-CA-3379; Eighth Judicial Circuit, in and for Alachua County, Florida. (NB)

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Richard Jensen v. City of Gainesville, Florida, d/b/a Gainesville Regional Utilities; Case No. 2020-CA-3379; Eighth Judicial Circuit, in and for Alachua County, Florida. (NB)

The City Commission authorize the City Attorney to: (1) enter into a settlement in lieu of judgment, to resolve all post-trial motions and appeals of the claim of Richard Jensen arising from a trip and fall that occurred on or about January 8, 2019; and (2) pursue a lawsuit against the insurer of Admiral Security for bad faith insurance practices and breach of contract.

On the morning of January 8, 2019, Mr. Jensen, a former employee of Admiral Security Services, Inc., a security contractor for the City, reported for his second day at the jobsite, the front gate of the Deerhaven power plant. He found a semi-truck waiting at the gate at 5:45 am. Despite his training, that no truck deliveries are allowed prior to opening at 6:00 am, Mr. Jensen attempted to let the truck through. However, the traffic arm at the front gate was locked in the down position because Deerhaven staff had not yet unlocked it. Mr. Jensen then accessed the electronic circuitry of the traffic arm, to manually override it. To do so, Mr. Jensen left the guard shack, crossing the traffic lane to reach the electronic console for the traffic arm, located next to the raised scale between the in-bound and out-bound lanes. Mr. Jensen removed the console cap, exposing the electronic circuitry, and proceeded to manipulate the circuitry manually. As he was so doing, a Deerhaven staff person approached the facility entrance. Mr. Jensen replaced the console cap and hurried over to meet the staff member. As he was hurrying, Mr. Jensen tripped over a conduit pipe located behind an intercom pole, between the traffic lanes. Mr. Jensen sustained injuries to his left knee and left arm.

Mr. Jensen settled his workers compensation claim with Admiral Security (and insurer Continental Casualty Company) and then proceeded to file suit against the City for premises liability, claiming the raised conduit created a dangerous work site condition. The City demanded contractual indemnity from Admiral Security and Continental Casualty Co. The City is named as an "Additional Insured" on Admiral Security's General Liability insurance policy, meaning the City is also covered by the same insurance policy for work performed by the Named Insured. The policy provides Commercial General Liability coverage up to \$2 Million per occurrence, which includes premises liability protection. Continental Casualty Co. has refused, without excuse or explanation, to defend and indemnify the City in this matter.

The matter proceeded to trial and Plaintiff presented testimony from an ergonomics/occupational safety expert that the raised pipe was not conspicuous under early morning lighting conditions, that the City failed to adequately warn of the hazard, and that both the City and Admiral Security failed to adequately train the Plaintiff. Plaintiff himself testified that he did not review any training materials received from Deerhaven or Admiral Security before showing up at the work site. Plaintiff further testified that a former co-worker at Admiral Security trained him on how to override the front gate traffic arm by exposing the electronic circuitry. The City presented testimony from a lighting expert establishing that overhead lighting was more than adequate for Plaintiff to observe the conduit pipe. The City also presented testimony from an industrial site occupational safety expert that designated work site conditions were safe; the area around the guard house at the front gate contained a painted footpath for Plaintiff's use. Plaintiff did not need to venture from the designated work space, across the traffic lanes to the raised truck scale, some 25 feet away. Plaintiff was in an unauthorized area, not designated for walking, and was acting outside the scope of his assigned duties. The City's expert further testified that Admiral Security was negligent for training Plaintiff wrongly, by having him access the electronic console for the traffic arm, in an effort to admit trucks into the facility prior to opening, and for failure to supervise Plaintiff on his second day at the site.

Plaintiff further presented testimony of his treating physician establishing that Plaintiff underwent months of physical therapy and several procedures to address persistent pain in his left knee. Evidence was presented that Plaintiff has a complex medical history that was aggravated by his knee injury, preventing Plaintiff from working, performing routine activities, or caring for disabled family members. The jury deliberated several hours before returning a verdict for Plaintiff, against the City, in the amount of \$525,000. Per the application of Florida's limited waiver of sovereign immunity contained in section 768.28, Florida Statutes, the City's liability is limited to \$200,000, and the judgment together with attorneys' fees and costs, will be reduced to that amount in total. Plaintiff has the right to pursue a claims bill with the Florida Legislature and the Governor, to try to collect the excess from the City. However, Plaintiff has proposed to waive that right, and give up any post-trial motions for attorneys' fees and cost, as well as rights of appeal, in exchange for swift receipt of settlement funds in the amount of \$200,000, and the City's waiver of any appeal.

It is the recommendation of the City Attorney's Office that the City: (1) accept Plaintiff's offer to finally resolve this matter, including post-trial motions and appeals; and (2) engage insurance coverage counsel to pursue a lawsuit against Continental Casualty Co. for bad faith insurance practices and breach of contract, to fully recover the City's losses at trial, as well as attorneys' fees and costs.

Fiscal Impact: Funds are available in the City's General Insurance Fund.