IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA
CIVIL DIVISION

MARRISA SPEARMON,

Plaintiff,

Case No.:

vs.

CITY OF DAYTONA BEACH,

Defendant.
_____/

COMPLAINT

The Plaintiff MARRISA SPEARMON sues the Defendant CITY OF DAYTONA BEACH and alleges:

1. This is an action for damages in excess of Fifty Thousand Dollars ($50,000.00) arising in Volusia County, Florida.

2. At all times material to this action, the Plaintiff MARRISA SPEARMON was a resident of Daytona Beach, Florida.

3. At all times material to this action, the Defendant CITY OF DAYTONA BEACH. was and is a municipality in Volusia County, Florida.

4. Venue is proper in Volusia County, Florida, as the facts which give rise to this action occurred on Brentwood Drive in Daytona Beach, FL 32117.

5. The Plaintiff has complied with the statutory requirements of Florida Statute § 768.28(6). *See Exhibit A.*

COUNT I – NEGLIGENCE AGAINST CITY OF DAYTONA BEACH

The Plaintiff MARRISA SPEARMON re-alleges and re-incorporates each and every allegation contained in paragraphs 1 through 5 above as if fully set forth herein.

6. On or about August 28, 2023, the Defendant CITY OF DAYTONA BEACH. possessed, operated, managed, leased, and/or controlled the roadway on Brentwood Avenue, between N Nova Road and Vine St., in Daytona Beach, Florida.

7. At said time and place, the Plaintiff MARRISA SPEARMON, was walking across Brentwood Ave, when she stepped onto a section of broken, depressed roadway, causing her to fall and become injured.

8. At the time of Plaintiff, MARISSA SPEARMON's fall, she was crossing Brentwood Ave. in order to avoid significant flooding on the sidewalk, caused by a recent tropical storm which had passed through the area.

8. At all times material hereto, the Defendant CITY OF DAYTONA BEACH. owed the Plaintiff MARRISA SPEARMON a continuing duty to maintain the aforesaid premises in a reasonably safe condition, and Defendant negligently breached its duty through the following acts and omissions:

(a) Negligently failing to maintain or adequately maintain the roadway, thus creating an unreasonably dangerous condition;

(b) Negligently failing to inspect or adequately inspect the roadway thus creating an unreasonably dangerous condition;

(c) Negligently failing warn the Plaintiff of the unreasonably dangerous condition of the roadway, when the Defendants knew or through the exercise of reasonable care should have known that said roadway was unreasonably dangerous and that the Plaintiff was unaware of same;

(d) Negligently failing to correct, maintain, repair, the unreasonably dangerous condition of the roadway when the unreasonably dangerous condition was either known to

the Defendants or had existed for a sufficient length of time such that the Defendants should have known of same had they exercised reasonable care.

9. The Defendant CITY OF DAYTONA BEACH. had actual and constructive notice of the dangerous condition of the roadway and failed to repair the condition.

10. The Defendant CITY OF DAYTONA BEACH is vicariously liable for the acts of its employees, agents, and/or servants.

11. As a direct and proximate result of the negligence of the Defendant, the Plaintiff suffered bodily injury, resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization and medical treatment, and the aggravation of a previously existing condition, if any. These losses are either permanent or continuing within a reasonable degree of medical probability and Plaintiff suffer these losses in the future.

WHEREFORE, the Plaintiff MARRISA SPEARMON demands judgment against the Defendant CITY OF DAYTONA BEACH, for damages, costs, and any other relief to which the Plaintiff may be entitled.

DEMAND FOR JURY TRIAL

The Plaintiff MARRISA SPEARMON demands a trial by jury of all issues so triable.

Dated this 6th day of November, 2024.

/s/ *Matthew McGovern, Esq.*
FOR THE FIRM
JOSHUA J. WAGNER, ESQUIRE
Florida Bar Number: 12209
JEREMIAH B. GREATHOUSE, ESQUIRE
Florida Bar Number: 1027997
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Attorneys for Plaintiff

EXHIBIT A

December 12, 2023

CERTIFIED MAIL RETURN RECEIPT REQUESTED
& US MAIL

Florida Department of Transportation
c/o Jared Perdue, Secretary
605 Suwannee Street
Tallahassee, FL 32399-0450

Florida Department of Financial Services
Division of Risk Management/Liability
200 East Gaines Street
Tallahassee, FL 32399

City of Daytona Beach
c/o Derrick Henry, Mayor
301 S Ridgewood Ave
Daytona Beach, FL 32114

Volusia County
c/o George Recktenwald, County Manager
123 W Indiana Ave.
DeLand, FL 32720

County of Volusia
c/o Charles Spencer, Risk Manager
125 W New York Ave., Suite 141
DeLand, FL 32720

RE: MY CLIENT: Marrisa Spearmon
DOA: 08/28/2023

NOTICE OF INTENT TO INITIATE LITIGATION
PURSUANT TO FLORIDA STATUTE 768.28

Dear Sir or Madam:

Kindly be advised that the undersigned attorney has the pleasure of representing Marrisa Spearmon, vis-à-vis an accident occurring the above date. This letter is being written to you pursuant to Florida Statute 768.28(6) and should be construed as the "six-month notice." The basis of my client's claim against the Defendant is as follows:

On August 28, 2023, Ms. Marrisa Spearmon was crossing Brentwood Drive in Daytona Beach, FL near the intersection of Nova Road and Brentwood Drive when she stepped in a pothole that caused her to fall and break her left ankle.

In the event that our client has a spouse, parents or dependents who may be entitled to damages or in the event our client is in a state where survivors of independent claims, this notice referencing the claimant's name also applies to the claims of the parents, spouse, dependents, state of survivors or such other related claims.

My client's settlement demand at this point is the greater of the $200,000.00 statutory limit or the limits of any liability insurance that the defendant may have in effect for this type of accident.

Pursuant to Florida Statute 768.28, please be advised of the following information for Ms. Spearmon:

a. My client's date of birth is 0[redacted];

b. My client's place of birth is Ormond Beach, FL;

c. My client's social security number is [redacted];

d. My client knows of no adjudicated penalties, fines, fees, victim restitution fund, or other judgment in excess of $200.00 imposed either by civil, criminal, or administrative tribunal owed to the state, any agency, office or subdivision of the state.

Within the next six months, pursuant to Florida Statute 768.28, please advise as to whether the Defendant wishes to (a) honor the claim and enter into meaningful negotiations or, (b) deny the claim. Kindly note that pursuant to Florida Statute 768.28, if no response is heard within said six-month period, then, of course, suit will be instituted immediately.

Thanking you in advance for your kind cooperation in this matter, I remain, as always,

Very truly yours,

Joshua Wagner

JJW:kh