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

CASE NO.:

PAUL KEMP AND
DEBORAH KEMP,

Plaintiff,

v.

CITY OF EDGEWATER,
VOLUSIA COUNTY, FLORIDA
And FLORIDA DEPARTMENT
OF TRANSPORTAION,

Defendants.
_____/

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, the Plaintiff, PAUL KEMP and DEBORAH KEMP, by and through the undersigned attorney, Jonathan I. Rotstein, Esquire, and hereby sues the Defendants, CITY OF EDGEWATER, VOLUSIA COUNTY, FLORIDA and FLORIDA DEPARTMENT OF TRANSPORTAION (FDOT), and in support thereof states and alleges as follows:

FACTS

1. This is an action for damages that exceed Fifty Thousand Dollars ($50,000.00).

2. Plaintiff, PAUL KEMP, resides in Edgewater, Volusia County, Florida, and is over the age of twenty-one (21).

3. Plaintiff, DEBRA KEMP, resides in Edgewater, Volusia County, Florida, and is over the age of twenty-one (21).

4. Defendant, CITY OF EDGEWATER, is a governmental entity located in the State of Florida, with business premises in Volusia County, Florida.

5. Defendant, VOLUSIA COUNTY, FLORIDA, is a governmental entity located in the State of Florida, with business premises in Volusia County, Florida.

6. Defendant, FDOT, is a governmental entity located in the State of Florida, which does business in Edgewater, Volusia County, Florida.

7. 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").

8. There are no prior adjudicated unpaid claims in excess of $200.00.

9. The Department of Insurance has been notified of this claim.

10. The accident which is the subject matter of this litigation occurred in Edgewater, Volusia County, Florida.

11. This Honorable Court has jurisdiction over this lawsuit in that the accident, which is the basis of this lawsuit took place in Volusia County, Florida, and that this action for money damages for the Plaintiff, PAUL KEMP, exceeds Fifty Thousand Dollars ($50,000.00) against Defendants, CITY OF EDGEWATER, VOLUSIA COUNTY, FLORIDA and FLORIDA DEPARTMENT OF TRANSPORTAION (FDOT).

COUNT ONE
NEGLIGENCE AGAINST
DEFENDANT CITY OF EDGEWATER
REGARDING PLAINTIFF PAUL KEMP

12. Plaintiff, PAUL KEMP is entitled to relief against Defendant, CITY OF EDGEWATER, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

13. On or about November 13, 2023, Plaintiff, PAUL KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida.

14. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure his right shoulder.

15. At all times material herein, Defendant CITY OF EDGEWATER, owned and maintained the roadway on which the manhole was placed.

16. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

17. The dangerous condition of the manhole was known to Defendant, CITY OF EDGEWATER, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

18. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

19. As a direct and proximate result of the negligent conduct of Defendant, CITY OF EDGEWATER, Plaintiff PAUL KEMP has been permanently and seriously injured his right

shoulder, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, PAUL KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, CITY OF EDGEWATER, plus the costs of the court, and trial by jury.

COUNT TWO
NEGLIGENCE AGAINST
DEFENDANT CITY OF EDGEWATER
REGARDING PLAINTIFF DEBORAH KEMP

20. Plaintiff, DEBORAH KEMP is entitled to relief against Defendant, CITY OF EDGEWATER, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

21. On or about November 13, 2023, Plaintiff, DEBORAH KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida.

22. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure her neck and back.

23. At all times material herein, Defendant CITY OF EDGEWATER, owned and maintained the roadway on which the manhole was placed.

24. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

25. The dangerous condition of the manhole was known to Defendant, CITY OF EDGEWATER, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

26. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

27. As a direct and proximate result of the negligent conduct of Defendant, CITY OF EDGEWATER, Plaintiff DEBORAH KEMP has been permanently and seriously injured in and about her back and neck, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, DEBORAH KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, CITY OF EDGEWATER, plus the costs of the court, and trial by jury.

COUNT THREE
NEGLIGENCE AGAINST
DEFENDANT VOLUSIA COUNTY, FLORIDA
REGARDING PLAINTIFF PAUL KEMP

28. Plaintiff, PAUL KEMP is entitled to relief against Defendant, VOLUSIA COUNTY, FLORIDA, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

29. On or about November 13, 2023, Plaintiff, PAUL KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida.

30. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure his right shoulder.

31. At all times material herein, Defendant VOLUSIA COUNTY, FLORIDA, owned and maintained the roadway on which the manhole was placed.

32. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

33. The dangerous condition of the manhole was known to Defendant, VOLUSIA COUNTY, FLORIDA, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

34. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

35. As a direct and proximate result of the negligent conduct of Defendant, VOLUSIA COUNTY, FLORIDA, Plaintiff PAUL KEMP has been permanently and seriously injured his right shoulder, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, PAUL KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, VOLUSIA COUNTY, FLORIDA, plus the costs of the court, and trial by jury.

COUNT FOUR
NEGLIGENCE AGAINST
DEFENDANT VOLUSIA COUNTY, FLORIDA
REGARDING PLAINTIFF DEBORAH KEMP

36. Plaintiff, DEBORAH KEMP is entitled to relief against Defendant, VOLUSIA COUNTY, FLORIDA, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

37. On or about November 13, 2023, Plaintiff, DEBORAH KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida.

38. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure her neck and back.

39. At all times material herein, Defendant VOLUSIA COUNTY, FLORIDA, owned and maintained the roadway on which the manhole was placed.

40. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

41. The dangerous condition of the manhole was known to Defendant, VOLUSIA COUNTY, FLORIDA, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

42. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

43. As a direct and proximate result of the negligent conduct of Defendant, VOLUSIA COUNTY, FLORIDA, Plaintiff DEBORAH KEMP has been permanently and seriously injured in and about her back and neck, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, DEBORAH KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, VOLUSIA COUNTY, FLORIDA, plus the costs of the court, and trial by jury.

COUNT FIVE
NEGLIGENCE AGAINST
DEFENDANT FDOT
REGARDING PLAINTIFF PAUL KEMP

44. Plaintiff, PAUL KEMP is entitled to relief against Defendant, FDOT, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

45. On or about November 13, 2023, Plaintiff, PAUL KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida

46. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure his right shoulder.

47. At all times material herein, Defendant FDOT, owned and maintained the roadway on which the manhole was placed.

48. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

49. The dangerous condition of the manhole was known to Defendant, FDOT, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

50. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

51. As a direct and proximate result of the negligent conduct of Defendant, FDOT, Plaintiff PAUL KEMP has been permanently and seriously injured his right shoulder, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, PAUL KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, FDOT, plus the costs of the court, and trial by jury.

COUNT SIX
NEGLIGENCE AGAINST
DEFENDANT FDOT
REGARDING PLAINTIFF DEBORAH KEMP

52. Plaintiff, DEBORAH KEMP is entitled to relief against Defendant, FDOT, based upon the following facts:

(a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 11 above as though stated herein.

53. On or about November 13, 2023, Plaintiff, DEBORAH KEMP operated a 2006 Chevy Cobalt which was traveling on Cocoa Palm Drive, approaching its intersection with Mariner's Gate Drive, in Edgewater, Volusia County, Florida.

54. At the aforementioned time and place, Plaintiff was traveling on Cocoa Palm Drive when he hit a manhole that was sunk into the asphalt, causing him to be flung around inside of his vehicle and injure her neck and back.

55. At all times material herein, Defendant FDOT, owned and maintained the roadway on which the manhole was placed.

56. Defendant owed a duty to the general public, including the Plaintiff, to exercise reasonable care in maintaining its roadways in a reasonably safe condition and to warn of any dangerous conditions on its roadways.

57. The dangerous condition of the manhole was known to Defendant, FDOT, or said condition had existed for a sufficient length of time so that Defendant should have known of it.

58. Defendant breached its duties to Plaintiff by:

a. Failing to warn the general public of the presence of the sunken speed bump;

b. Failing to properly maintain the roadway on a safe reasonably safe condition; and

c. Failing to otherwise prevent said incident from occurring.

59. As a direct and proximate result of the negligent conduct of Defendant, FDOT, Plaintiff DEBORAH KEMP has been permanently and seriously injured in and about her back and neck, joints and limbs, suffering physical pain and suffering in the past and indefinitely into the future, suffering mental pain in the past and indefinitely into the future, losing the capacity for the enjoyment of life in the past and indefinitely into the future, incurring medical and hospital bills for her care and

treatment in the past and into the indefinite future; all in an amount exceeding Fifty Thousand Dollars ($50,000.00), against the Defendant.

WHEREFORE, Plaintiff, DEBORAH KEMP, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars ($50,000.00) against Defendant, FDOT, plus the costs of the court, and trial by jury.

Dated this 12th day of December, 2024.

Jonathan I. Rotstein, Esquire
Rotstein, Shiffman & Broderick, LLP
309 Oakridge Blvd., Suite B
Edgewater, FL 32118
Florida Bar No. 909580
(386) 252-5560 / (386) 238-6999 fax (lmb)
Primary: L.bonner@rotstein-shiffman.com
Secondary: M.otto@rotstein-shiffman.com
Scheduling: A.lynn@rotstein-shiffman.com
Attorney for Plaintiff

NOTICE OF CLAIM – FLORIDA STATUTES 768.28(6)
VIA CERTIFIED MAIL/RRR

TO:

Randy Coslow, P.E., Director/City Engineer
City of Edgewater Environmental Services
409 Mango Tree Drive
Edgewater, FL 32132-2008
9489 0090 0027 6296 9870 14

Diezel Depew, Mayor
City of Edgewater
P.O. Box 100
Edgewater, FL 32132-0100
9489 0090 0027 6296 9870 21

Glenn A. Irby, City Manager
City of Edgewater
Edgewater City Hall
104 N. Riverside Drive
Edgewater, FL 32132-1716
9489 0090 0027 6296 9870 38

Aaron R. Wolfe, Esquire
City Attorney
City of Edgewater
Edgewater City Hall
104 N. Riverside Drive
Edgewater, FL 32132-1716
9489 0090 0027 6296 9870 45

Jeff Brower, Chairman
Volusia County Board of County Commissioners
County of Volusia
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
DeLand, FL 32720-4612
9489 0090 0027 6296 9870 52

George Recktenwald, County Manager
County of Volusia
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
Suite P
Deland, FL 32720-4612
9489 0090 0027 6296 9870 69

Michael Dyer, Esquire
County of Volusia County Attorney
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
3rd Floor
Deland, FL 32720-4615
9489 0090 0027 6296 9870 76

Jared W. Perdue, P.E., Secretary
Florida Department of Transportation
605 Suwannee St.
Tallahassee, FL 32399-0450
9489 0090 0027 6296 9870 83

Department of Financial Services
200 E. Gaines St.
Tallahassee, FL 32399-6502
9489 0090 0027 6296 9870 90

Paul Kemp makes a claim against The Florida Department of Transportation, City of Edgewater and Volusia County, FL pursuant to Florida Statutes Section 768.28(6), and makes the following statements in support of the claim:

1. Claimant's address is: 3030 Vista Palm Drive, Edgewater, Volusia County, FL 32141.

2. Notices concerning this claim should be sent to Jonathan I. Rotstein, Esquire, 309 Oakridge Blvd., Suite B, Daytona Beach, FL 32118.

3. The date and place of the negligence giving rise to this claim is November 13, 2023, at Coco Palm Drive and Mariners Gate Drive, Edgewater, Volusia County, Florida 32141.

4. The circumstances giving rise to this claim is as follows: Claimant and wife were driving on roadway when claimant's vehicle drove over a sunken manhole that was uneven with the asphalt on roadway causing injury to claimant.

5. Claimant's injuries/damages are right shoulder infection @ incision area where client had shoulder surgery.

6. The names of the public employees causing the Claimant's injuries/damages is unknown.

7. Claimant requests that The Florida Department of Transportation, City of Edgewater and Volusia County, FL pay this claim in the amount of $200,000.00 This figure is based on the following _____

Medical Expenses incurred to date:	$ 25,000.00
Estimated Future medical expenses:	$ 75,000.00
Loss of Wages:	$ 0
General Damages:	$ 100,000.00
TOTAL	$ 200,000.00

8. The Claimant's date and place of birth is [redacted] in Fairfield, Alabama. The Claimant's Social Security Number is [redacted] There is no unpaid prior adjudicated claim in excess of $200 owed by Claimant to the State of Florida or any of its agencies, officers or subdivisions.

Dated: February 2, 2024

Jonathan I. Rotstein, Esquire o/b/a
Law Offices of Rotstein, Shiffman & Broderick, LLP
309 Oakridge Boulevard, Suite B
Daytona Beach, Florida 32118
(386) 252-5560 (wg)
(386) 257-7776 Fax
l.bonner@rotsetin-shiffman.com
m.otto@rotstein-shiffman.com
t.dallarosa@rotstein-shiffman.com
Florida Bar No. 0909580
Attorney For Plaintiff

NOTICE OF CLAIM – FLORIDA STATUTES 768.28(6)
VIA CERTIFIED MAIL/RRR

TO:

Randy Coslow, P.E., Director/City Engineer
City of Edgewater Environmental Services
409 Mango Tree Drive
Edgewater, FL 32132-2008
9489 0090 0027 6312 3917 95

Diezel Depew, Mayor
City of Edgewater
P.O. Box 100
Edgewater, FL 32132-0100
9489 0090 0027 6312 3918 01

Glenn A. Irby, City Manager
City of Edgewater
Edgewater City Hall
104 N. Riverside Drive
Edgewater, FL 32132-1716
9489 0090 0027 6312 3918 18

Aaron R. Wolfe, Esquire
City Attorney
City of Edgewater
Edgewater City Hall
104 N. Riverside Drive
Edgewater, FL 32132-1716
9489 0090 0027 6312 3918 25

Jeff Brower, Chairman
Volusia County Board of County Commissioners
County of Volusia
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
DeLand, FL 32720-4612
9489 0090 0027 6312 3918 32

George Recktenwald, County Manager
County of Volusia
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
Suite P
Deland, FL 32720-4612
9489 0090 0027 6312 3918 49

Michael Dyer, Esquire
County of Volusia County Attorney
Thomas C. Kelly Administration Center
123 W. Indiana Ave.
3rd Floor
Deland, FL 32720-4615
9489 0090 0027 6312 3918 56

Jared W. Perdue, P.E., Secretary
Florida Department of Transportation
605 Suwannee St.
Tallahassee, FL 32399-0450
9489 0090 0027 6312 3918 63

Department of Financial Services
200 E. Gaines St.
Tallahassee, FL 32399-6502
9489 0090 0027 6312 3918 70

Deborah Kemp makes a claim against The Florida Department of Transportation, City of Edgewater and Volusia County, FL pursuant to Florida Statutes Section 768.28(6), and makes the following statements in support of the claim:

1. Claimant's address is: 3030 Vista Palm Drive, Edgewater, Volusia County, FL 32141.

2. Notices concerning this claim should be sent to Jonathan I. Rotstein, Esquire, 309 Oakridge Blvd., Suite B, Daytona Beach, FL 32118.

3. The date and place of the negligence giving rise to this claim is November 13, 2023, at Coco Palm Drive and Mariners Gate Drive, Edgewater, Volusia County, Florida 32141.

4. The circumstances giving rise to this claim is as follows: Claimant and husband were driving on roadway when claimant's vehicle drove over a sunken manhole that was uneven with the asphalt on roadway causing injury to claimant.

5. Claimant's injuries/damages are neck and back pain.

6. The names of the public employees causing the Claimant's injuries/damages is unknown.

7. Claimant requests that The Florida Department of Transportation, City of Edgewater and Volusia County, FL pay this claim in the amount of $200,000.00 This figure is based on the following _____

Medical Expenses incurred to date:	$ 25,000.00
Estimated Future medical expenses:	$ 75,000.00
Loss of Wages:	$ 0
General Damages:	$ 100,000.00
TOTAL	$ 200,000.00

8. The Claimant's date and place of birth is [redacted] in Daytona Beach, Florida. The Claimant's Social Security Number is [redacted] There is no unpaid prior adjudicated claim in excess of $200 owed by Claimant to the State of Florida or any of its agencies, officers or subdivisions.

Dated: December 28, 2023

Jonathan I. Rotstein, Esquire o/b/a
Law Offices of Rotstein, Shiffman & Broderick, LLP
309 Oakridge Boulevard, Suite B
Daytona Beach, Florida 32118
(386) 252-5560 (wg)
(386) 257-7776 Fax
l.bonner@rotsetin-shiffman.com
m.otto@rotstein-shiffman.com
t.dallarosa@rotstein-shiffman.com
Florida Bar No. 0909580
Attorney For Plaintiff