

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

CASE NO.:

MICHELLE CLOUETTE,

Plaintiff,

v.

CITY OF DAYTONA BEACH and
VOLUSIA COUNTY, FLORIDA,

Defendants.

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, the Plaintiff, MICHELLE CLOUETTE, by and through the undersigned attorney, Jonathan Rotstein, Esquire, and hereby files Plaintiff's Original Complaint against Defendants, CITY OF DAYTONA BEACH and VOLUSIA COUNTY, FLORIDA, 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, MICHELLE CLOUETTE, resides in Daytona Beach, Volusia County, Florida and is over the age of twenty-one (21).
3. Defendant, CITY OF DAYTONA BEACH, is a governmental entity located in the State of Florida, with business premises in Volusia County, Florida.

4. Defendant, VOLUSIA COUNTY, FLORIDA is a governmental entity located in the State of Florida, which does business in Volusia County, Florida.

5. 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").

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

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

8. The accident which is the subject matter of this litigation occurred in Daytona Beach, Volusia County, Florida.

9. 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, MICHELLE CLOUETTE, exceeds Fifty Thousand Dollars (\$50,000.00) against Defendants, CITY OF DAYTONA BEACH, and VOLUSIA COUNTY, FLORIDA.

COUNT ONE
NEGLIGENCE AGAINST DEFENDANT
CITY OF DAYTONA BEACH

10. Plaintiff is entitled to relief against Defendant, CITY OF DAYTONA BEACH, based upon the following facts:

- (a) Plaintiff realleges and reavers each and every allegation contained in paragraphs 1 through 9 above as though stated herein.

11. On or about June 13, 2023, Plaintiff, MICHELLE CLOUETTE, was lawfully on the Beach Access located at 616 Harvey Avenue in Daytona Beach, Volusia County, Florida, as she was walking toward the beach.

12. At the aforesaid time and place, as the Plaintiff was walking, she heard a kitten on the beach and climbed onto a seawall to look for it. The seawall gave way and she fell, fracturing her right tibia.

13. Defendant, CITY OF DAYTONA BEACH, had a duty to use reasonable care to maintain the beach access and its seawall in a reasonably safe condition.

14. That at the aforesaid time and place, Defendant breached its duty of care by:

- a) failing to repair the seawall that it knew was unstable;
- b) failing to repair a seawall that was instable for so long that it could have been discovered by the exercise of reasonable care;

15. That as a direct and proximate result of the aforescribed careless, wrongful and negligent acts of the Defendant, CITY OF DAYTONA BEACH, the Plaintiff, MICHELLE CLOUETTE, has been permanently and seriously injured and bruised in and about her extremities, 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, MICHELLE CLOUETTE, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars (\$50,000.00), against Defendant, CITY OF DAYTONA BEACH, plus costs of the court and trial by jury.

COUNT TWO
NEGLIGENCE AGAINST DEFENDANT,
VOLUSIA COUNTY, FLORIDA

16. Plaintiff 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 9 above as though stated herein.

11. On or about June 13, 2023, Plaintiff, MICHELLE CLOUETTE, was lawfully on the Beach Access located at 616 Harvey Avenue in Daytona Beach, Volusia County, Florida, as she was walking toward the beach.

12. At the aforesaid time and place, as the Plaintiff was walking, she heard a kitten on the beach and climbed onto a seawall to look for it. The seawall gave way, and she fell, fracturing her right tibia.

13. Defendant, VOLUSIA COUNTY, FLORIDA, had a duty to use reasonable care to maintain the beach access and its seawall in a reasonably safe condition.

14. That at the aforesaid time and place, Defendant breached its duty of care by:

- a) failing to repair the seawall that it knew was unstable;

- b) failing to repair a seawall that was instable for so long that it could have been discovered by the exercise of reasonable care;

21. That as a direct and proximate result of the aforescribed careless, wrongful and negligent acts of the Defendant, VOLUSIA COUNTY, FLORIDA, the Plaintiff, MICHELLE CLOUETTE, has been permanently and seriously injured and bruised in and about her extremities, 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, MICHELLE CLOUETTE, demands judgment for damages and costs in an amount exceeding Fifty Thousand Dollars (\$50,000.00), against Defendant, VOLUSIA COUNTY, FLORIDA, plus costs of the court and trial by jury.

Dated this 24th day of December, 2024.


Jonathan I. Rotstein, Esquire
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Daytona Beach, FL 32118
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Primary: L.bonner@rotstein-shiffman.com
Alternate: 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:

Derrick Henry, Mayor
City of Daytona Beach
301 S. Ridgewood Ave.
Daytona Beach, FL 32114-4933

9489 0090 0027 6598 6589 71

Deric C. Feacher, City Manager
City of Daytona Beach
301 S. Ridgewood Ave.
Room #200
Daytona Beach, FL 32114-4933

9489 0090 0027 6598 6589 88

Benjamin Gross, Esquire
City Attorney
City of Daytona Beach
301 S. Ridgewood Ave.
Daytona Beach, FL 32114-4933

9489 0090 0027 6598 6589 95

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

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George Recktenwald, County Manager
County of Volusia
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Michael Dyer, Esquire
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Jared W. Perdue, P.E., Secretary
Florida Department of Transportation
605 Suwannee St.
Tallahassee, FL 32399-0450

9489 0090 0027 6598 6820 37

Department of Financial Services
200 E. Gaines St.
Tallahassee, FL 32399-6502

9489 0090 0027 6598 6820 44

EXHIBIT

"A"

tabbies

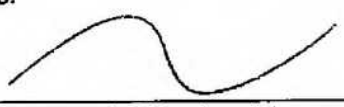
Michele Clouette makes a claim against The Florida Department of Transportation, City of Daytona Beach and Volusia County, FL pursuant to Florida Statutes Section 768.28(6), and makes the following statements in support of the claim:

1. Claimant's address is: 616 Harvey Ave., Daytona Beach, Volusia County, FL 32118.
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 June 13, 2023, at/near Harvey Ave. (DB-57) Beach Access, Daytona Beach, Volusia County, Florida 32118.
4. The circumstances giving rise to this claim is as follows: Claimant was taking a walk on the beach when claimant heard a kitten meow and went to go find the kitten when claimant fell onto concrete slab after a beach seawall claimant was standing on collapsed. Claimant transported to hospital for treatment via EVAC.
5. Claimant's injuries/damages are rib injury, fractured tibia and plate in right leg.
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 Daytona Beach 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:	\$ <u>100,000.00</u>
TOTAL	\$ 200,000.00

8. The Claimant's date and place of birth is [REDACTED] Connecticut. 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: July 8, 2024


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