

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

CASE NO.

GERHON HUFF-MCKINNEY,

Plaintiff,

v.

CITY OF NEW SMYRNA BEACH,

Defendant.

COMPLAINT

Plaintiff, **GERHON HUFF-MCKINNEY**, sues Defendant, **CITY OF NEW SMYRNA BEACH**, and alleges as follows:

1. This is an action for damages that exceeds the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), exclusive of costs, interest and attorneys' fees.¹
2. Plaintiff is a natural person residing in Volusia County, Florida, and is otherwise *sui juris*.
3. At all times material to this action, Defendant, **CITY OF NEW SMYRNA BEACH**, was and is a political subdivision within the State of Florida.

¹ The estimated value of Plaintiff's claim is in excess of the minimum jurisdictional threshold required by this Court. Accordingly, Plaintiff has entered "\$50,001" in the civil cover sheet for the "estimated amount of the claim" as required in the preamble to the civil cover sheet for *jurisdictional purposes only* (the Florida Supreme Court has ordered that the estimated "amount of claim" be set forth in the civil cover sheet for data collection and clerical purposes only). The actual value of Plaintiff's claim will be determined by a fair and just jury in accordance with Article 1, Section 21, Fla. Const.

4. Plaintiff provided notice of this claim to Defendant, pursuant to the provisions of section 768.28, Florida Statutes, and the notice requirements of section 768.28, Florida Statutes have been satisfied. *See Exhibit A.*

5. Venue is proper as Defendant conducts business operations in Volusia County, Florida and the incident giving rise to this action occurred in Volusia County, Florida.

6. At all times material to this action, Defendant was the owner and in possession of that certain dock where the subject incident occurred, located at the North Causeway Boat Ramp West, 160 North Causeway, New Smyrna Beach, Florida, open to the general public, including Plaintiff herein.

7. On or around December 6, 2021, Plaintiff was lawfully upon the dock when he was injured due to a poorly maintained, broken, and unsecured dock pole.

8. All other conditions precedent have been performed or occurred prior to the filing of this action.

COUNT I – PREMISES LIABILITY

Plaintiff realleges and incorporates by reference paragraphs 1 through 8 as if fully set forth herein.

9. At all material times to this cause of action, Defendant owed Plaintiff, and the public generally, a non-delegable duty to use reasonable care to maintain the dock in a reasonably safe condition.

10. At all material times to this cause of action, Defendant owed Plaintiff, and the public generally, a non-delegable duty to warn of dangerous conditions on the dock, including poorly maintained, broken, or unsecured dock poles, that were known to Defendant, or should have been known to Defendant through the exercise of reasonable care.

11. At said time and place, Defendant breached its duties owed to Plaintiff by committing one or more of the following omissions or commissions:

- a. Negligently failing to maintain or adequately maintain the dock open to the public, which was poorly maintained with a broken or unsecured dock pole, thus creating a hazard to members of the public utilizing said dock, including Plaintiff, and creating an unreasonably dangerous condition for Plaintiff;
- b. Negligently failing to inspect or adequately inspect the dock to ascertain whether the dock open to the public was poorly maintained with broken or unsecured dock poles and constituted a hazard to the public utilizing said dock, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;
- c. Negligently failing to warn or adequately warn the Plaintiff of the danger of the dock, when Defendant knew or through the exercise of reasonable care should have known that said dock was unreasonably dangerous and that Plaintiff was unaware of same; and
- d. Negligently failing to correct and/or adequately correct the unreasonably dangerous condition of the dock, including the poorly maintained, broken, or unsecured dock pole, when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had it exercised reasonable care.

12. As a result of Defendant's negligence, while Plaintiff was attempting to utilize the dock pole to dock his boat, the broken and unsecured pole struck Plaintiff in his face causing him to sustain serious injuries.

13. As a direct and proximate result of Defendant's negligence, Plaintiff suffered bodily injury in and about his body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, **GERHON HUFF-MCKINNEY**, demands judgment against Defendant, **CITY OF NEW SMYRNA BEACH**, plus interest and costs, and demands trial by jury of all issues so triable.

Dated: November 6, 2025

s/ Thomas E. N. Shea
Thomas E. N. Shea, Esquire
Florida Bar No. 0084676
MORGAN & MORGAN, P.A.
570 Crown Oak Centre Drive
Longwood, FL 32750
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samantha.martinez@forthepeople.com
Counsel for Plaintiff

February 11, 2023

EXHIBIT A

NOTICE OF CLAIM-FLORIDA STATUTE §768.28(6)

CERTIFIED MAIL-RETURN RECEIPT

TO:



Department of Financial Services
State of Florida - Legal Division
200 E. Gaines Street
Tallahassee, FL 32399-0300



Volusia County
Risk Management
142 N. Florida Ave.
Deland, FL 32720



City of New Smyrna Beach
Risk Management
210 Sams Ave.
New Smyrna Beach, FL 32168



Volusia County Public Works
123 W. Indiana Ave.
DeLand, FL 32720



City of New Smyrna Beach
Attn: Mayor Ross Owen.
210 Sams Ave.
New Smyrna Beach, FL 32168



North Causeway Boat Ramp-West
210 Sams Ave.
New Smyrna Beach, FL 32168

CLAIMANT:

GeRhon Huff-Mckinney
Address: 534 Hillside AveDaytona BeachFL32118
Date of Birth: 03/03/1995

CONSORTIUM CLAIMANT: NONE

PRIOR ADJUDICATED UNPAID CLAIMS: (if none, so state)

Claimant: none

DATE AND TIME OF INCIDENT: December 6, 2021

PLACE OF INCIDENT: North Causeway Boat Ramp – West 160 North Causeway, New Smyrna Beach, Volusia County, FL 32169

DESCRIPTION OF INCIDENT: While attempting to dock his boat, Mr. HuffMckinney attempted to grab ahold of a pole at the end of the dock. The pole broke free from the dock striking Mr. Huff-McKinney in the face.

DESCRIPTION OF INJURIES: Right Occipital Fracture

KNOWN CITY AGENTS OR EMPLOYEES: Unknown

RELIEF SOUGHT:

Compensation for injuries sustained.

IF ADDITIONAL INFORMATION IS NEEDED, PLEASE CONTACT THE UNDERSIGNED.
PLEASE ACKNOWLEDGE RECEIPT HEREOF.

**I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
certified mail to the above agencies, this 20th day of December, 2021.**



Lina M. Lopez, Esquire
Morgan and Morgan, P.A.
444 Seabreeze Blvd Ste 100
Daytona Beach, FL 32118
(386) 281-6794
Attorneys for Plaintiff

USPS TRACKING#

Batch # 87080937 Seq # 9 Tracking # 9590940263410296695991



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9590 9402 6341 0296 6959 91

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Postal Service**

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MORGAN & MORGAN, P.A.
444 Seabreeze BLVD STE 100
Daytona Beach, FL 32118

Huff-McInnes / OS / StatNet

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- ### A. Signature

Agent

□ Addressee

C. Date of Delivery

122521

D. Is delivery address different from item 12

If YES, enter delivery address below:



**Volusia County Public Works
123 W. Indiana Ave.
DeLand, FL 32720**



7021 0950 0001 9201 8386

Domestic Return Receipt

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
 (over \$500)

☐ Priority Mail Express®

Registered Mail™

☐ Registered Mail Restricted Delivery

Glaxo-Wellcome

☐ Signature Confirmation

Restricted Delivery

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MORGAN & MORGAN®

ATTORNEYS AT LAW

444 SEABREEZE BOULEVARD, SUITE 100

DAYTONA BEACH, FLORIDA 32118



DS/Huff-n-Kinner/Sted

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Joe Duden ☒ Agent
☒ Addressee
- B. Received by Garth Blocker ☐ Agent
 Received by (Printed Name) ☐ Addressee
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:



State of Florida - Legal Division

Tallahassee, FL 32399



7020 2450 0000 4706 6142

Domestic Return Receipt

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☐ Adult Signature Restricted Delivery
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NEW SMYRNA BEACH, FL 32168

December 22, 2021, 1:24 pm

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DELAND, FL 32720

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