

COMMISSION AGENDA:

12.20.11 # 136.

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Notice of New LawsUIT and Defense of the Same by the County Attorney
in the Case of Brett Ward v. Pinellas County
Circuit Civil Case No. 11-10935-CI-21

DISTRIBUTION: Virginia Holscher, Bureau Director, Risk Management

DATE: December 20, 2011

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: Plaintiff's Complaint alleges negligence and resulting personal injuries as a result of an incident at John Chesnut Park on November 19, 2007. While jogging on a boardwalk, Plaintiff claims that he was accidentally struck in the stomach with a landscape tool held by a County maintenance worker.

A copy of the Complaint is attached hereto.

JLB:JES:slr

Attachment

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

BRETT WARD

Plaintiff,

Case Number: 11-109350 I
Div.: 21

vs.

PINELLAS COUNTY, FLORIDA

Defendant.

COMPLAINT

Plaintiff, BRETT WARD, sues defendant, PINELLAS COUNTY, FLORIDA, and alleges the following:

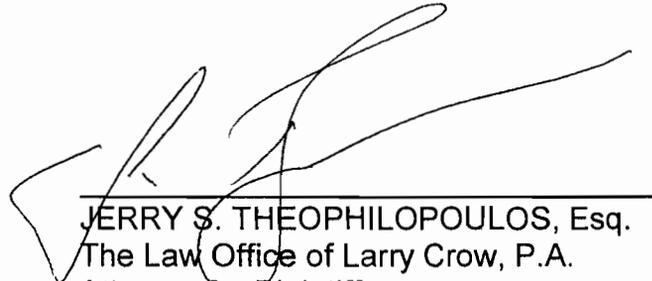
1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00).
2. At all times material hereto, Defendant, PINELLAS COUNTY, FLORIDA, was a political subdivision of the State of Florida and was located in Pinellas County, Florida.
3. This is an action in negligence, which occurred in Palm Harbor, Pinellas County, Florida, on November 19, 2007.
4. Plaintiff, BRETT WARD, has complied with all conditions precedent to the filing of this action.
5. The Notice of Tort Claim requirement of §768.28, Florida Statutes, as to Defendant, PINELLAS COUNTY, FLORIDA, was satisfied through U.S. Postal Service certified letters to the Florida Department of Insurance, Chief Financial Officer, delivered on August 27, 2008, to Pinellas County, Florida, Risk Management, delivered on August 27, 2008 and to Pinellas County Board of County Commissioners on August 27, 2008.

6. On or about November 19, 2007, the Defendant, PINELLAS COUNTY, FLORIDA, owned and operated John Chestnut Sr. Park in Palm Harbor, Pinellas County, Florida.
7. On the above-mentioned date and place, Charles Girard, was an employee of Defendant PINELLAS COUNTY, FLORIDA, and was working in his official capacity at John Chestnut Sr. Park in Palm Harbor, Florida on said date and place.
8. On the above-mentioned date and place, Charles Girard was working within the scope of his employment at all relevant times as he was attempting to climb out of a swamp and onto the board walk while at the same time holding a pole type landscaping tool.
9. Employee, Charles Girard, was negligent in that he failed to use due caution by failing to place a warning sign or cone on the board walk and for negligently attempting to vault himself onto the board walk before looking both ways, and for failing to observe the Plaintiff, BRETT WARD, as the Plaintiff was jogging by on the board walk.
10. As a direct and proximate cause of employee, Charles Girard's, negligent actions, he forcefully struck the Plaintiff in his stomach region with the pole as the Plaintiff was jogging by on the board walk.
11. As a result of this accident, Plaintiff, BRETT WARD, suffered bodily injury resulting in pain and suffering, disability, mental anguish, loss of capacity of the enjoyment of life, expense of medical care, and treatment from medical providers. Plaintiff's injuries are permanent or continuing in nature and he will suffer additional losses in the future.
12. This action is maintained according to the principles of law that Defendant, PINELLAS COUNTY, FLORIDA is not protected by sovereign immunity when their employee is performing such operational level functions such as the necessary and proper maintenance of John Chestnut Sr. Park.
13. Therefore, the Defendant's acts and omissions in failing to post appropriate signs and/or cones and in failing to safely maintain the park area is conduct for which Defendant, PINELLAS COUNTY, FLORIDA may not claim

sovereign immunity.

WHEREFORE, Plaintiff, BRETT WARD, requests a judgment for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest and costs against the Defendants and a jury trial on all issues so triable.

Dated: November 18, 2011

A handwritten signature in black ink, appearing to read 'Jerry S. Theophilopoulos', is written over a horizontal line. The signature is stylized and extends above and below the line.

JERRY S. THEOPHILOPOULOS, Esq.
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