

1.14.14 # 176.

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 Andrew W. Carpenter v. Pinellas County
Circuit Civil Case No. 13-010480-CI-21

DISTRIBUTION: Virginia Holscher, Bureau Director, Risk Management

DATE: January 14, 2014

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 alleges that on January 26, 2011, he fell into a deep hole filled with rainwater which was located on the street shoulder at 3275 East Bay Drive, Largo, Florida. He maintains that the County owned, operated, controlled, managed and/or occupied the property at the time. He claims bodily and emotional injury due to the fall. The County Attorney's Office will defend these claims.

A copy of the Complaint (without attachments) is attached hereto.

JLB:NSM:cjk

Attachment

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

ANDREW W. CARPENTER,

Plaintiff,

vs.

Case No.: 13-010480-CI-21

PINELLAS COUNTY,

Defendant.

COMPLAINT

COMES NOW Plaintiff, ANDREW W. CARPENTER, by and through his undersigned attorneys, and sues the Defendant, PINELLAS COUNTY, and alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for damages which exceeds Fifteen Thousand (\$15,000.00) Dollars, exclusive of costs and interest.
2. Plaintiff, ANDREW W. CARPENTER, is now, and was at the time of the subject incident, a resident of Pinellas County, Florida.
3. The Sixth Judicial Circuit Court has venue pursuant to Section 47.011, *Florida Statutes*, because the cause of action accrued in Pinellas County, Florida.
4. At all times material herein, the Defendant, PINELLAS COUNTY, owned, operated, controlled, managed, and/or occupied the property located at 3275 East Bay Drive, Largo, Pinellas County, Florida.
5. On or about January 26, 2011, Plaintiff, ANDREW W. CARPENTER, was a pedestrian walking on the premises of the subject location.

6. While walking on the above premises Plaintiff, ANDREW W. CARPENTER, fell into a large deep hole which was on the Defendant's property and was filled with what is believed to rainwater. This constituted a dangerous condition.

7. Plaintiff has satisfied all conditions precedent to bringing this action under the Florida Tort Claims Act; specifically, pursuant to *Florida Statutes*, 768.28(6)(a), notice of the event and the injuries described in this complaint were provided to Defendant, PINELLAS COUNTY, Offices of Pinellas County Risk Management, Board of Pinellas County Commissioners and Florida Department of Financial Services. *Copies of the notices are attached to this complaint as composite "Exhibit A."*

8. The dangerous condition was allowed to remain on the Defendant's property in an area where pedestrians would foreseeably be walking and thus constituted a dangerous condition to pedestrians such as Plaintiff under these circumstances.

9. This aforesaid dangerous condition was defective, hazardous or otherwise in a state of negligent repair prior to Plaintiff, ANDREW W. CARPENTER, entering the subject area.

10. The dangerous condition was not readily apparent to those pedestrians walking upon the street shoulder, such as the Plaintiff, ANDREW W. CARPENTER, herein.

11. The aforesaid dangerous condition was a hazardous condition.

COUNT I

12. Plaintiff, ANDREW W. CARPENTER, incorporates and realleges paragraphs one (1) through ten (11) above, as if set out in full hereinafter.

13. Defendant, PINELLAS COUNTY, as owner, operator, controller, manager, and/or occupier of the subject location, owed a duty to pedestrians, including Plaintiff, ANDREW W. CARPENTER, to maintain the subject street shoulder in a safe condition.

14. Defendant, PINELLAS COUNTY, breached said duty when they failed to safely maintain the subject street shoulder.

15. Defendant, PINELLAS COUNTY, knew or, in the exercise of reasonable care, should have known, of the existence of the dangerous condition and the resulting dangers foreseeable therefrom.

16. Defendant, PINELLAS COUNTY, had a duty to correct this defective, dangerous condition or, in the exercise of reasonable care, had a duty to warn pedestrians of its existence and danger.

17. As a direct and proximate result of the aforementioned negligent conduct or omissions of the Defendant, PINELLAS COUNTY, the Plaintiff, ANDREW W. CARPENTER, has sustained the following past and future damages:

- a. Bodily injury;
- b. Great physical pain and suffering;
- c. Disability and inability and loss of capacity to lead and enjoy a normal life;
- d. Inconvenience;
- e. Physical impairment;
- f. Disfigurement and scarring;
- g. Mental anguish;
- h. Loss of or diminution of earnings or earning capacity;
- i. Aggravation of an existing disease or physical defect;
- j. Permanent injury within a reasonable degree of medical probability; and
- k. Medical and related expenses, past and future, incurred in seeking a cure for his injuries.

WHEREFORE, Plaintiff, ANDREW W. CARPENTER, demands a trial by jury and a judgment against the Defendant, PINELLAS COUNTY, in an amount within the jurisdictional limits of this Court,

to-wit: More than Fifteen Thousand (\$15,000.00) Dollars, plus costs and for such other relief to which the Plaintiff may be justly entitled.

DATED this 7 day of November, 2013 in Palm Harbor, Pinellas County, Florida.

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