

IN THE CIRCUIT COURT FOR THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

, as personal representative
of the Estate of , Deceased,
for and on behalf of the Estate and statutory survivors,
and ,

Plaintiff,

v.

MIAMI-DADE COUNTY, a political subdivision of the
State of Florida, THE CITY OF MIAMI GARDENS,
a municipality,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, , as personal representative of the Estate of , Deceased, for and on behalf of the Estate and statutory survivors, , by and through their undersigned attorneys, file this Complaint for Wrongful Death against the Defendants, MIAMI-DADE COUNTY, a political subdivision of the State of Florida and THE CITY OF MIAMI GARDENS, a municipality, and allege as follows;

NATURE OF THE ACTION

1. Plaintiff brings this action for money damages in excess of fifteen thousand dollars (\$15,000.00) exclusive of interest, costs, and attorneys' fees and is within the jurisdictional limits of this Court.
2. At all times material to this Complaint, , was the husband of
3. At all times material hereto, were the natural children of .
4. Plaintiff, brings this action individually, and as the duly appointed

personal representative of the Estate of , deceased, and on behalf of her survivors .

5. At all times material hereto, the Plaintiff, , individually and as the duly appointed personal representative of the Estate of , deceased, and on behalf of her survivors , was sui juris and a resident of Miami-Dade County, Florida.

6. The Defendant, Miami-Dade County, was and is a political subdivision of the State of Florida.

7. Defendant, The City of Miami Gardens, is a municipality and political subdivision of the State of Florida located in Miami-Dade County, Florida.

FACTUAL ALLEGATIONS

8. On or about , 2006, , deceased, was the operator of a car which entered a body of water known as Biscayne Canal (C-8) located next to the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace in The City of Miami Gardens, in Miami-Dade County, Florida. The sole passenger in the vehicle at the time was the deceased, .

9. As a result of the accident, the decedent, , drowned.

10. Plaintiff has met and complied with all statutory notice requirements of Fla.Stat. §768.28, regarding notice to all governmental agencies or subdivisions and all other conditions president.

COUNT I **NEGLIGENCE AGAINST MIAMI-DADE COUNTY**

11. Plaintiff realleges and adopts paragraphs one through ten as if fully stated herein.

12. At all times material hereto all acts of the Defendant, Miami-Dade County, as alleged herein arose out of the operational activities of the Defendant, Miami-Dade County, Florida.

13. At all times material hereto, Defendant, Miami-Dade County, had a duty to and had undertaken the responsibility to maintain, correct, and improve roadway safety and eliminate, prevent, and reduce the risks associated with dangerous roadway conditions associated with the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace, located in Miami-Dade County, Florida, which included measures relating to guardrails, culverts, traffic signage, traffic signals, nearby trees and foliage, and street lighting.

14. Based on the following stated facts, the Defendant, Miami-Dade County knew or

should have known prior to the subject accident of dangerous conditions existing in and around the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace, located in Miami-Dade County, Florida, as follows:

a) On or about October 28, 2004, a vehicle traveling southbound on NW 155th Dr. in the City of Miami Gardens, left the roadway and entered the canal. The driver of the vehicle drowned. The fatality was investigated by Det. Bret Nichols, Miami-Dade Police Department traffic homicide. Det. Nichols performed an investigation including but not limited to suggesting an extension of the guardrail, performing a traffic engineering study in order to determine what measures should be undertaken to prevent further fatalities, and filling out a Traffic Engineering/Repair Request addressed to the Chief of Highway Division, Miami-Dade Public Works. The circumstances of this fatal accident are similar and virtually identical to the circumstances in the instant action.

b) Further, on or about November 18, 2004, a representative of Miami-Dade Public Works responded to Det. Nichols' suggestion to extend the guardrail by advising as follows: "please be advised that this roadway is within the City of Miami Gardens and Miami Dade County Public Works has no jurisdiction over it other than of traffic engineering matters. A traffic engineering study will be conducted by the Miami Dade Public Works Department to establish if any traffic devise or striping is warrant in the vicinity of this location, and will forward it's findings and recommendations to the City. Should you have any question, please do not hesitate to contact me."

c) On or about October 1, 2005, another vehicle traveling southbound on NW 155th Drive in the City of Miami Gardens, left the roadway and entered the canal at the same curve where the vehicle occupied by decedent entered the canal. The circumstances of this accident are similar and virtually identical to the circumstances in the instant action.

d) Further, a reasonable investigation as suggested by the circumstances of the October 28, 2004 fatality and the October 1, 2005 accident would have revealed various witnesses, including private security guards responsible for patrolling in and around the location of the accident, largely a warehouse and industrial area, and long-time inhabitants of the residential neighborhood located on the south side of the Biscayne Canal, who would have described and reported several similar accidents occurring at the location of the subject accident prior to April 9, 2006.

15. The Defendant, Miami-Dade County was negligent in causing to exist and/or

maintaining a dangerous condition at the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace., which involved an unreasonable risk of death or serious bodily injury to unsuspecting motorists traveling around the curve. The Defendant, Miami-Dade County knew or should have known from prior incidents and would have known had due care been properly exercised, that additional precautions, upgrades, changes, modifications, and improvements were necessary to prevent death or serious bodily injury.

16. Alternatively, the Defendant, Miami-Dade County, was negligent in its ownership, operation, and/or maintenance of the roadways, guardrails, culvert, traffic signage, traffic signals, trees and foliage, and street lighting, with knowledge of a dangerous condition, including, but not limited to as follows:

- a) By failing to properly locate the guardrail and/or maintain, upgrade, or extend the guardrail as to prevent drivers traveling at the roadway curve formed by the merger NW 155th Drive and NW 155th Terrace from entering into the Biscayne Canal (C-8); and/or
- b) By failing to maintain and/or install adequate traffic warning and advisement signs before and at the roadway curve located at NW 155th Drive and 155th Terrace so as to warn drivers of the end of the roadway and/or sharp curve of the roadway, the proper speed to maintain upon approaching and entering the curve, and the dangerous proximity of the Biscayne Canal (C-8); and/or
- c) By failing to have and maintain sufficient street lighting in and around where NW 155th Drive and NW 155th Terrace merge to reduce and or eliminate the existing dangerous trap conditions in that area; and/or
- d) By failing to properly maintain and control tree growth in and around the roadway curve located at NW 155th Drive and NW 155th Terrace, thus allowing said tree(s) to engulf the street light nearest the curve and markedly reduce and inhibit its effectiveness at illuminating the area in and around the roadway; and/or
- e) By failing to properly implement its decision to construct a roadway at the subject location, through the creation of and or acceptance of faulty design plans, through the acceptance of improperly performed work, namely the placement of the guardrail and or the acceptance of a guardrail too short in length, and having inadequate roadway warning, advisement, and or speed limit signs; and/or
- f) By failing to perform, maintain, or update inspections of the area in and around the curve at 155th Drive and NW 155th Terrace with the knowledge of

prior incidents causing death or serious injuries; and/or

- g) By failing to perform roadway and/or engineering studies of the area in and around the curve at 155th Drive and NW 155th Terrace with the knowledge of prior incidents causing death or serious injuries and/or failing to take appropriate actions based on said studies, to prevent death or serious injuries; and/or
- h) By failing to perform successful safety improvements, such as extending and or moving the guardrail at the roadway curve formed by the merger of 155th Terrace and NW 155th Drive with the knowledge of prior incidents causing death or serious injuries; and/or
- i) By failing to take proper action to prevent death or serious bodily injury after gaining actual knowledge of dangerous roadway conditions in and around the area of the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace; and/or
- j) By failing to take proper action to prevent death or serious bodily injury after gaining actual knowledge of prior similar accidents in and around the area of the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace.

17. As a direct and proximate result of the negligence of the Defendant, Miami-Dade County, , as a passenger in the vehicle operated by , entered the Biscayne Canal (C-8) and drowned.

WHEREFORE, the Plaintiff, , as personal representative of the Estate of , Deceased, for an on behalf of the Estate and statutory survivors, , demands damages as a result of the wrongful death of the wife and mother, respectively.

COUNT II
NEGLIGENCE AGAINST THE CITY OF MIAMI GARDENS

18. Plaintiff realleges and adopts paragraphs one through ten as if fully stated herein.

19. At all times material hereto, all acts of the Defendant, The City of Miami Gardens, as alleged herein arose out of the operational activities of the Defendant, The City of Miami Gardens.

20. At all times material hereto, Defendant, The City of Miami Gardens, had a duty to and had undertaken the responsibility to maintain, correct, and improve roadway safety and eliminate, prevent, and reduce the risks associated with known dangerous conditions associated with

the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace, located in Miami-Dade County, Florida, which included measures relating to guardrails, culverts, traffic signage, traffic signals, nearby trees and foliage, and street lighting.

21. Based on the following stated facts, Defendant, The City of Miami Gardens knew or should have known prior to the subject accident of dangerous conditions existing in and around the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace, located in Miami-Dade County, Florida, as follows:

a) On or about October 28, 2004, a vehicle traveling southbound on NW 155th Drive in the City of Miami Gardens, left the roadway and entered the canal. The driver of the vehicle drowned. The fatality was investigated by Detective Bret Nichols, Miami-Dade Police Department traffic homicide. Det. Nichols performed an investigation including but not limited to suggesting an extension of the guardrail, performing a traffic engineering study in order to determine what measures should be undertaken to prevent further fatalities, and filling out a Traffic Engineering/Repair Request addressed to the Chief of Highway Division, Miami-Dade Public Works. The circumstances of this fatal accident are similar and virtually identical to the circumstances in the instant action.

b) Further, on or about November 18, 2004, a representative of Miami-Dade Public Works responded to Det. Nichols' suggestion to extend the guardrail by advising as follows: "please be advised that this roadway is within the City of Miami Gardens and Miami Dade County Public Works has no jurisdiction over it other than of traffic engineering matters. A traffic engineering study will be conducted by the Miami Dade Public Works Department to establish if any traffic devise or striping is warrant in the vicinity of this location, and will forward it's findings and recommendations to the City. Should you have any question, please do not hesitate to contact me."

c) On or about October 1, 2005, another vehicle traveling southbound on NW 155th Drive in the City of Miami Gardens, left the roadway and entered the canal at the same curve where the vehicle occupied by decedent entered the canal. The circumstances of this accident are similar and virtually identical to the circumstances in the instant action.

d) Further, a reasonable investigation as suggested by the circumstances of the October 28, 2004 fatality and the October 1, 2005 accident would have revealed various witnesses,

including private security guards responsible for patrolling in and around the location of the accident, largely a warehouse and industrial area, and long-time inhabitants of the residential neighborhood located on the south side of the Biscayne Canal, who would have described and reported several similar accidents occurring at the location of the subject accident prior to April 9, 2006.

22. The Defendant, The City of Miami Gardens was negligent in causing to exist and/or maintaining a dangerous condition at the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace., which involved an unreasonable risk of death or serious bodily injury to unsuspecting motorists traveling around the curve. Defendant, The City of Miami Gardens knew or should have known from prior incidents and would have known had due care been properly exercised, that additional precautions, upgrades, changes, modifications, and improvements were necessary to prevent death or serious bodily injury.

23. Alternatively, the Defendant, The City of Miami Gardens, was negligent in its ownership, operation, and/or maintenance of the roadways, guardrails, culvert, traffic signage, traffic signals, trees and foliage, and street lighting, with knowledge of a dangerous condition, including, but not limited to as follows:

- a) By failing to properly locate the guardrail and/or maintain, upgrade, or extend the guardrail as to prevent drivers traveling at the roadway curve formed by the merger NW 155th Drive and NW 155th Terrace from entering into the Biscayne Canal (C-8); and/or
- b) By failing to maintain and/or install adequate traffic warning and advisement signs before and at the roadway curve located at NW 155th Drive and 155th Terrace so as to warn drivers of the end of the roadway and/or sharp curve of the roadway, the proper speed to maintain upon approaching and entering the curve, and the dangerous proximity of the Biscayne Canal (C-8); and/or
- c) By failing to have and maintain sufficient street lighting in and around where NW 155th Drive and NW 155th Terrace merge to reduce and or eliminate the existing dangerous trap conditions in that area; and/or
- d) By failing to properly maintain and control tree growth in and around the roadway curve located at NW 155th Drive and NW 155th Terrace, thus allowing said tree(s) to engulf the street light nearest the curve and markedly reduce and inhibit its effectiveness at illuminating the area in and around the roadway; and/or

- e) By failing to properly implement its decision to construct a roadway at the subject location, through the creation of and or acceptance of faulty design plans, through the acceptance of improperly performed work, namely the placement of the guardrail and or the acceptance of a guardrail too short in length, and having inadequate roadway warning, advisement, and or speed limit signs; and/or
- f) By failing to perform, maintain, or update inspections of the area in and around the curve at 155th Drive and NW 155th Terrace with the knowledge of prior incidents causing death or serious injuries; and/or
- g) By failing to perform roadway and/or engineering studies of the area in and around the curve at 155th Drive and NW 155th Terrace with the knowledge of prior incidents causing death or serious injuries and/or failing to take appropriate actions based on said studies, to prevent death or serious injuries; and/or
- h) By failing to perform successful safety improvements, such as extending and or moving the guardrail at the roadway curve formed by the merger of 155th Terrace and NW 155th Drive with the knowledge of prior incidents causing death or serious injuries; and/or
- i) By failing to take proper action to prevent death or serious bodily injury after gaining actual knowledge of dangerous roadway conditions in and around the area of the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace; and/or
- j) By failing to take proper action to prevent death or serious bodily injury after gaining actual knowledge of prior similar accidents in and around the area of the roadway curve formed by the merger of NW 155th Drive and NW 155th Terrace.

24. As a direct and proximate result of the negligence of the Defendant, The City of Miami Gardens, , as a passenger in the vehicle operated by , entered the Biscayne Canal (C-8) and drowned.

WHEREFORE, the Plaintiff, , as personal representative of the Estate of , Deceased, for an on behalf of the Estate and statutory survivors, , demands damages as a result of the wrongful death of the wife and mother, respectively.

DEMAND FOR JURY TRIAL

25. Plaintiff respectfully requests a jury trial of all issues so triable.

Respectfully Submitted,

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By _____
Jeffrey P. Gale
Fla. Bar #: 471992

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed and mailed to

Jeffrey P. Gale.