

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

GENERAL JURISDICTION DIVISION

CASE NO.:

CYNTHIA FLEISCHMANN

Plaintiff,

vs.

DBI SERVICES, LLC, a foreign limited liability
company, STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION, FELIX LUIS OTERO ORTIZ
and YVONNE GONZALEZ.

Defendants,

COMPLAINT AND JURY DEMAND

The Plaintiff, CYNTHIA FLEISCHMANN ("FLEISCHMANN"), through counsel, sues the Defendants DBI SERVICES, LLC, a Foreign Limited Liability Company, ("DBI"), STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT"); FELIX LUIS ORTERO ORTIZ ("ORTIZ"); and YVONNE GONZALEZ ("GONZALEZ") and states:

1. This is an action for damages in excess of the sum of Fifteen Thousand Dollars (\$15,000), and in excess of the minimal jurisdictional amounts of this Court.
2. At all times material, Plaintiff CYNTHIA FLEISCHMAN was a resident of Miami-Dade County, Florida.
3. At all times material, Defendant DBI SERVICES, LLC, ("DBI") was and is a foreign limited liability company duly organized, created and existing under and by virtue of the laws of Delaware, which was and is in the business of providing infrastructure maintenance,

including, but not limited to maintenance of the plastic delineator poles used to separate the general purpose lanes from the express lanes on SR-9, also known as Interstate 95 (I-95) and did regularly perform work throughout the State of Florida, including but not limited to in Miami-Dade County, Florida. Additionally, DBI at all times material, had or has offices, agents and representatives in Miami-Dade County, Florida, and has worked on projects in Miami-Dade County, Florida.

4. At all times material, Defendant STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (“FDOT”) was and is a department of the State of Florida which is in the business of implementing safety criteria for road construction, maintenance and travel, including SR-9, also known as Interstate 95 (I-95) and did regularly perform that work in the State of Florida. Additionally, said Defendant has an office, agents or representatives in Miami-Dade County, Florida.

5. At all times material, YVONNE GONZALEZ, owned, possessed and maintained a 1994 Toyota Corolla, with vehicle identification number 2T1AE09B8RC055910 and Florida tag number DQNC50.

6. The Defendant YVONNE GONZALEZ (“GONZALEZ”) at all times material was a resident of Miami-Dade County, Florida.

7. At all times material, FELIX LUIS OTERO ORTIZ operated the subject Toyota Corolla, vehicle identification number 2T1AE09B8RC055910, which he drove from the general-purpose lanes on I-95 north, approximately 500 feet south of the NW 103 Street exit, into the express lanes, hitting CYNTHIA FLEISCHMANN.

8. Plaintiff FLEISCHMANN, at the time of the crash was driving her 2012 Harley Davidson motorcycle, vehicle identification number 1HD4LE211CC422579, Florida tag number

6501LQ, north bound on I-95 with traffic in the express lanes when Defendant ORTIZ drove his car into the express lane from the general purpose lane, hitting her.

9. Defendants DBI and FDOT failed to properly maintain, repair and replace the delineator poles which separated the general-purpose lanes from the express lanes, creating large gaps which invited drivers to “lane dive” or change into the express lanes through the large gaps, injuring users of the express lanes, including Plaintiff, CYNTHIA FLEISCHMANN.

10. The gaps in the delineator poles along I-95 in the area of the subject incident were there for a sufficient length of time that Defendant DBI and FDOT knew or should have known of the hazardous condition.

11. Plaintiff CYNTHIA FLEISCHMANN was taken from the scene by ambulance to Ryder Trauma at Jackson Memorial Hospital.

12. As a direct and proximate result of the negligence the Defendants, Plaintiff CYNTHIA FLEISCHMANN was significantly and permanently injured, including having to undergo the surgical amputation of her right leg above the knee and additional surgery to repair a right acetabulum fracture.

13. Plaintiff’s motorcycle was damaged causing her to incur expenses and loss of use.

14. Venue is proper in Miami-Dade County, Florida because the acts and omissions giving rise to this lawsuit occurred in Miami-Dade County, Florida and pursuant to F.S. §47.051.

15. All conditions precedent to the filing of this lawsuit have been met or waived.

COUNT I
CYNTHIA FLEISCHMANN’S NEGLIGENCE CLAIM AGAINST DBI SERVICES, LLC

16. Plaintiff CYNTHIA FLEISCHMANN realleges and adopts the allegations contained in paragraphs 1 through 15 above as if fully incorporated in this Count.

17. At all times material, Defendant DBI owed a duty to Plaintiff CYNTHIA FLEISCHMANN and to the public to use reasonable care in the maintenance of that portion of I-95 described herein and to assure that all safety standards and good and safe engineering practices, including but not limited to properly maintaining, repairing and replacing the delineators that separated the general-purpose lanes from the express lanes.

18. Defendant DBI breached its duties to CYNTHIA FLEISCHMANN and to the public and was negligent and violated the applicable roadway safety standards and/or did otherwise violate good and safe engineering practices by creating a hazardous trap for drivers, resulting in Plaintiff's injuries by, including, but not limited to the following:

- a. By failing to properly maintain, repair and replace the delineator poles between the general-purposelanes and the express lanes, creating an unreasonable risk to users of the express lanes and creating an emergency situation which increased the risk of harm to users;
- b. By failing to discover after a reasonable time that large numbers of delineator poles were missing and not being properly maintained, repaired and replaced creating large gaps causing unreasonable risk to users of the express lanes;
- c. By creating a hazardous condition not readily apparent to drivers in the express lanes;
- d. By failing to warn the public generally and Plaintiff CYNTHIA FLEISCHMANN of the hazardous conditions posed by use of the express lanes which it knew or should have known through the exercise of reasonable care;
- e. By failing to provide proper warnings and signage; and
- f. By otherwise failing to use reasonable care.

19. As a direct and proximate result of Defendant DBI's negligence, Plaintiff CYNTHIA FLEISCHMANN suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn

money, and aggravation of a previously existing condition. The losses are either permanent or continuing, and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff CYNTHIA FLEISCHMANN demands judgment against Defendant DBI SERVICES, LLC for damages, including attorneys' fees pursuant to law, costs of suit and post-judgment interest at the highest legal rate, together with any other relief that the Court deems just and proper.

COUNT II
CYNTHIA FLEISCHMANN'S NEGLIGENCE CLAIM AGAINST STATE
OF FLORIDA DEPARTMENT OF TRANSPORTATION

20. Plaintiff realleges and adopts the allegations contained in paragraphs 1 through 15 above as if fully incorporated in this Count.

21. At all times material, Defendant FDOT, owed a duty to Plaintiff CYNTHIA FLEISCHMANN and to the public to maintain state roadways, including I-95, in a reasonably safe condition and to discover any conditions of the roadway which are or should be discoverable through the exercise of reasonable care, and to avoid creating a hazardous trap.

22. Notwithstanding those duties, Defendant FDOT breached its duties to Plaintiff, CYNTHIA FLEISCHMANN and was negligent and violated the applicable roadway safety standards and/or did otherwise violate good and safe engineering practices by allowing others to create the hazardous traps for drivers, resulting in Plaintiff's injuries by, including, but not limited to the following:

- a. By failing to ensure that the roadways and delineator poles separating the general-purpose lanes from the express lanes were properly maintained, repaired and replaced;
- b. By failing to supervise those hired to maintain, repair and replace the delineator poles separating the general-purpose lanes from the express lanes;

- c. By creating a hazardous condition not readily apparent to drivers in the express lanes;
- d. By failing to discover after a reasonable time that large numbers of delineator poles were missing and not being properly maintained, repaired and replaced creating large gaps causing unreasonable risk to users of the express lanes;
- e. By failing to discover after a reasonable time that the delineator poles were not being properly maintained, repaired and replaced;
- f. By failing to warn the public generally and Plaintiff CYNTHIA FLEISCHMANN of the hazardous conditions posed by use of the express lanes which it knew or should have known about through the exercise of reasonable care;
- g. By failing to provide proper warnings and signage; and
- h. By otherwise failing to use reasonable care.

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

WHEREFORE, Plaintiff CYNTHIA FLEISCHMANN demands judgment against Defendant STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION for damages, including costs of suit and post-judgment interest at the highest legal rate, together with any other relief that the Court deems just and proper.

COUNT III
CYNTHIA FLEISCHMANN'S NEGLIGENCE CLAIM AGAINST
FELIX LUIS OTERO ORTIZ

24. Plaintiffs adopt and re-allege paragraphs one through 15 as if fully set forth herein.

25. At all times material, Defendant, FELIX LUIS OTERO ORTIZ had a duty to operate the vehicle she was driving in the parking lot in a reasonably safe manner.

26. Defendant, FELIX LUIS OTERO ORTIZ, negligently operated and maintained the Toyota Corolla he was driving in the following ways:

- a. By failing to exercise reasonable care in the operation of the vehicle under the circumstances;
- b. By driving into the express lanes from the general-purpose lane;
- c. By failing to observe CYNTHIA FLEISCHMANN and the motorcycle she was driving in the express lanes;
- d. By failing to yield to CYNTHIA FLEISCHMANN;
- e. By driving in a careless manner; and
- f. By other negligence and fault as discovery may reveal.

27. As a direct and proximate result of the negligence of the Defendant, FELIX LUIS OTERO ORTIZ, Plaintiff, CYNTHIA FLEISCHMANN was struck by the vehicle driven by Defendant FELIX LUIS OTERO ORTIZ and has suffered bodily injury, resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, loss of the expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition. These losses are either permanent and/or continuing in their nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff CYNTHIA FLEISCHMANN demands judgment against Defendant FELIX LUIS OTERO ORTIZ for compensatory damages, costs of this action, post-judgment interest, reasonable attorneys' fees, and such further relief as this Court deems just and proper.

COUNT IV
CYNTHIA FLEISCHMANN'S NEGLIGENCE CLAIM AGAINST
YVONNE GONZALEZ

28. Plaintiffs adopt and re-allege paragraphs one through 15 as if fully set forth herein.

29. At all times material YVONNE GONZALEZ was the owner of the Toyota Corolla driven by FELIX LUIS OTERO ORTIZ with her permission, authority and consent.

30. Defendant YVONNE GONZALEZ owed a duty to sufficiently train FELIX LUIS OTERO ORTIZ in the safe operation of her vehicle.

31. Defendant YVONNE GONZALEZ negligently entrusted her Toyota Corolla to Defendant FELIX LUIS OTERO ORTIZ.

32. Defendant, YVONNE GONZALEZ is vicariously liable for the negligence of Defendant FELIX LUIS OTERO ORTIZ.

33. Defendant FELIX LUIS OTERO ORTIZ operated the vehicle owned by YVONNE GONZALEZ negligently and/or carelessly so that the motor vehicle struck the Plaintiff, CYNTHIA FLEISCHMANN, seriously and permanently injuring her.

34. Defendant YVONNE GONZALEZ is liable for the actions of FELIX LUIS OTERO ORTIZ.

35. As a direct and proximate result of the negligence of the Defendant, FELIX LUIS OTERO ORTIZ for which Defendant YVONNE GONZALEZ is responsible, Plaintiff, CYNTHIA FLEISCHMANN was struck by a vehicle and has suffered bodily injury, resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, loss of the expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition.

These losses are either permanent and/or continuing in their nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff CYNTHIA FLEISCHMANN demands judgment against Defendant YVONNE GONZALEZ for compensatory damages, costs of this action, post-judgment interest, reasonable attorneys' fees, and such further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff CYNTHIA FLEISCHMANN demands a trial by a jury on all issues so triable as a matter of right.

Dated 3rd day of February, 2017.

Respectfully submitted,
COLSON HICKS EIDSON
Attorneys for Plaintiff, CYNTHIA
FLEISCHMANN
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Telephone (305) 476-7451
Facsimile (305) 476-7444

By: /s/ Susan S. Carlson
ERVIN GONZALEZ, ESQ.
Florida Bar No. 500720
Ervin@colson.com
LEWIS S. EIDSON, ESQ.
Fla. Bar No. 151088
mike@colson.com
SUSAN S. CARLSON, ESQ.
Florida Bar No. 957453
susan@colson.com
eservice@colson.com