

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA.

CASE NO.:

THOMAS KIMMETH,

Plaintiff,

vs.

FLORIDA DRAWBRIDGES, INC,

Defendant.

COMPLAINT

Plaintiff, THOMAS KIMMETH, by and through the undersigned counsel, hereby sues the Defendant, FLORIDA DRAWBRIDGES, INC, ("FDI") and alleges:

FACTS COMMON TO ALL COUNTS

1. This is an action for damages that exceed Fifty Thousand Dollars (\$50,000.00) irrespective of interest and costs.
2. At all times material hereto, the Plaintiff was and is a resident of Palm Beach County, Florida.
3. At all times material hereto, the Defendant, FDI was and is a Florida for Profit Corporation with its primary place of business in Broward County, Florida.
4. Venue is proper in Palm Beach County Circuit Court as the Defendant, FDI's tortious conduct where this cause of action accrued occurred in Palm Beach County, Florida.
5. At all material times hereto, Defendant, FDI was responsible for inspection, maintenance, observation, service and repair of the Ocean Ave / Boynton Beach Drawbridge located at 739 East Ocean Ave, Boynton Beach, FL 33435.

6. At all times material hereto Defendant, FDI owed a duty to the Plaintiff and the public at large to inspect, maintain, observe, service, and repair the Ocean Ave / Boynton Beach Drawbridge located at 739 East Ocean Ave, Boynton Beach, FL 33435 in a reasonably safe condition.

7. At all times material hereto, the Defendant, FDI, breached its duty to the Plaintiff and public at large by failing to inspect, observe, maintain, service, and repair the subject drawbridge to ensure it was in a reasonably safe condition.

8. On November 11, 2023, Plaintiff was riding his bicycle eastbound on the southern designated bicycle lane of the Ocean Ave / Boynton Beach drawbridge. As he was riding his bicycle it suddenly, unexpectedly, and, for no ascertainable reason, abruptly stopped in the bicycle lane. As a result, the Plaintiff was thrown over the bicycle's handlebars and onto the roadway. The Plaintiff was permanently injured as a result.

9. Body camera footage from the Boynton Beach Police Department, inspection of the subject drawbridge and inspection of the Plaintiff's bicycle revealed the cause of the bicycle's sudden and unexpected stop. There is an expansion joint (oriented in a east to west manner) between the curb pour and roadway deck of the drawbridge in the direction of travel that is required to prevent damage to the road surface and bridge. This expansion joint creates a "gap" on the drawbridge's surface. This "gap" is required to be filled with expandable material and/or joint sealant to the height of the drawbridge's surface.

10. The expandable material and/or joint sealant will wither away with time as the drawbridge is constantly exposed to the South Florida sun, wind, and rain. As a result, the expandable material and/or joint sealant must be periodically inspected, maintained, observed, serviced, and repaired.

11. At the time of this incident, the subject expansion joint was in a hazardous state of disrepair as the expandable material/joint sealant was worn out and/or missing entirely.

12. While automobile tires are too wide to be affected, the gap created by this neglected expansion joint was a dangerous concealed hazard for bicyclists as the crevice is slightly wider than a bicycle's wheel. Bicycle tires are able to fall into the hazardous gap such that it will trap the tire and cause the bicycle to come to a sudden and complete stop as a result.



Photographs of the fall location and the "gap" in its state of disrepair

13. A very basic, periodic visual inspection of the drawbridge would have revealed the dangerous hazard. Moreover, the Defendant's bridgetenders had to walk by this safety hazard multiple times per day as they walked to/from their parked vehicles to the bridgetender's tower. The bridgetenders' tower also had a clear, direct and unobstructed view of the subject safety hazard at all times.

COUNT I - NEGLIGENCE AGAINST THE DEFENDANT, FDI

14. Paragraphs 1-13 are incorporated and adopted as though specifically set forth herein.

15. At all times material hereto, Defendant, FDI, owed a duty to the Plaintiff and the public at large inspect, observe, maintain, service, and repair the subject drawbridge in a reasonably safe condition to ensure that it was safe for bicycle travel.

16. At all times material hereto, Defendant, FDI, breached said duty by not properly inspecting, observing, maintaining, servicing, and/or repairing Ocean Ave / Boynton Beach drawbridge.

17. Specifically, FDI failed to inspect and/or otherwise observe the expansion joint of the drawbridge located in the bicycle lane of the subject drawbridge. FDI further failed to maintain, service, or repair the expansion joint of the drawbridge. Last, FDI failed to warn the Plaintiff and the public at large that the expansion joint was in a state of disrepair such that the hazardous “gap” was a danger to bicyclists using on the drawbridge.

18. As a result, the expandable material/joint sealant was in a state of disrepair, as it had withered away and/or its integrity had become compromised creating a hazardous “gap”.

19. As such, when the Plaintiff was riding his bicycle on the bicycle lane of the draw bridge, Plaintiff’s front bicycle wheel became wedged in the hazardous “gap”, causing him to be thrown over the handlebars of his bicycle onto the drawbridge and sustain permanent injuries.

20. As a result of the negligence of FLORIDA DRAWBRIDGES, INC, Plaintiff suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money into the future, and aggravation/activation of a previously existing condition. These losses are permanent or continuing and Plaintiff will suffer these losses in the future.

WHEREFORE, Plaintiff, THOMAS KIMMETH demands judgment for damages against Defendant, FLORIDA DRAWBRIDGES, INC in excess of \$50,000.00, demands taxable costs, and further demands trial by jury.

DATED this 14th day of June, 2024.

/s/ Matthew K. Schwencke

Matthew K. Schwencke

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