

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO: 2014 CA 001973

CHARLES W. PIKE,

Plaintiff,

vs.

FLORIDA DEPARTMENT OF TRANSPORTATION,
a governmental entity,

Defendant.

_____ /

COMPLAINT

COMES NOW, the Plaintiff, CHARLES PIKE, by and through his undersigned counsel, and sues Defendant FLORIDA DEPARTMENT OF TRANSPORTATION, a governmental entity and states the following:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00).
2. Plaintiff Charles Pike is a resident of Lake County, Florida, over eighteen years of age, and is otherwise *sui juris*.
3. At all material times hereto, Defendant Florida Department of Transportation (“FDOT”), was and is the state agency with the authority and duty to plan, build, repair, and maintain the state highway system pursuant to section 334.035, Florida Statutes, including the roadway construction project identified as FPN: 417164-1-52-01, in Lake County, Florida.
4. Defendant FDOT waived its sovereign immunity as provided in section 768.28, Florida Statutes, for its negligence in failing to keep, operate, repair, and maintain in a safe condition

State Road 33 (“SR33”) in the area near the intersection of SR33 and Groveland Airport Road in Lake County, Florida.

5. More than six months have expired prior to the filing of this Complaint since FDOT and the Florida Department of Financial Services were placed on notice in accordance with section 768.28, Florida Statutes.

6. Venue is appropriate in Leon County, Florida, where Defendant FDOT maintains its principal headquarters, pursuant to the home venue privilege. *See Florida Pub. Serv. Comm'n v. Triple A Enterprises, Inc.*, 387 So. 2d 940, 942 (Fla. 1980) (“Absent waiver or exception in civil actions brought against the state, its agencies or subdivisions, venue properly lies in the county of its principal headquarters.”)

7. All conditions precedent to the filing of the action have been met or waived.

FACTUAL ALLEGATIONS

8. In 2007, FDOT and its agents, subcontractors, and/or employees, were involved in a construction project (FPN: 417164-1-52-01) on SR33 in the area near the intersection of SR33 and Groveland Airport Road in Lake County, Florida.

9. FPN: 417164-1-52-01 included the installation of an ET-Plus end terminal system and guardrail system manufactured by Trinity Highway Products, LLC, which was comprised of over fifty component parts.

10. Guardrails and end terminal systems are comprised of many separate and distinct parts that need to be assembled and installed pursuant to detailed design drawings provided by the manufacturer. Failure to assemble and install a guardrail and end treatment exactly pursuant to the design drawings can lead to the devices failing to perform as designed and, thus, failing to provide the intended protection to the motoring public.

11. A key feature of the Trinity ET-Plus end terminal system is that, upon impact, the end piece (or extruded head) is pushed by the vehicle along the first section of guardrail until it hits a self-releasing cable, which then causes the guardrail to feed through the extruder head, flattening and deflecting away from the vehicle. The ET-Plus assembly includes a rail with specially designed slots into which the ET-Plus cable anchor bracket fits. Other (non-ET-Plus) cable anchor brackets do not fit into these specially designed slots and, therefore, cannot properly be installed on the ET-Plus rail.

12. In 2009, there was an accident at the State Road 33 and Groveland Airport Road intersection that caused impact to the ET-Plus guardrail and required its repair.

13. FDOT employee Richard Houle repaired the guardrail with an FDOT field crew and prison inmates by using a random collection of parts from the FDOT warehouse, rather than with ET-Plus replacement parts, including an obsolete piece of guardrail built in 1965 that had not been approved for use on U.S. highways since 1994.

14. FDOT used only a single ET-Plus piece—the extruder head—when repairing the guardrail system. But, instead of using an ET-Plus breakaway cable anchor bracket with the ET-Plus slotted rail that goes with it, FDOT fastened the ET-Plus extruder head to a parallel end treatment rail using a cable anchor system that bolts onto such a rail. Connecting the ET-Plus extruder head in this fashion rendered the end terminal completely nonfunctional in that it could no longer slide along the guardrail, feeding, flattening, and deflecting the guardrail away from the vehicle as the ET-Plus system was designed. Instead, the end terminal essentially became part of an immovable battering ram awaiting impact.

15. On or about October 29, 2010, at or about 9:05 p.m., in the area near the intersection of SR33 and Groveland Airport Road in Lake County, Florida, Plaintiff PIKE was a front seated

passenger in a 2007 Ford truck, Vehicle Identification Number (“VIN”) 1FTRX12W77NA54645, Florida License Number K014RQ.

16. At that time and place, the 2007 Ford, driven by Leighton Kish, was traveling southbound on SR 33 when an animal ran out into the road and Leighton Kish swerved the truck to miss the animal. As a result, he lost control of the truck and it left the roadway. Immediately thereafter, the right front passenger side of the truck collided straight on with the ET-Plus guardrail that bordered SR33.

17. During the collision, the ET-Plus guardrail failed to perform as designed because it was improperly installed. Because the end terminal used a cable anchor system that was bolted to the guardrail instead of being fastened by self-releasing hooks, the guardrail could not feed through the extruder head and flatten and slide away from the impact. Thus, when the guardrail was impacted by the Ford truck, the end terminal and guardrail pierced through the Ford truck’s passenger side front fender, cowl, and floor board, and entered its passenger compartment.

18. During the collision, the ET-Plus guardrail penetrated the passenger compartment of the truck and sliced Plaintiff PIKE’s left leg, below the knee, all the way to the bone.

19. Upon arrival at the hospital, PIKE’S leg could not be saved and had to be surgically amputated.

20. As a result of the improperly repaired guardrail and end terminal, Plaintiff PIKE suffered injuries, including a below-the-knee amputation of his left leg.

NEGLIGENCE OF FLORIDA DEPARTMENT OF TRANSPORTATION

21. Plaintiff re-alleges paragraphs 1 - 20 as if fully set forth herein.
22. Pursuant to Florida law, Defendant FDOT is responsible for authorizing and regulating the construction of the state highway system as part of its FDOT projects, specifically FPN: 417164-1-52-01.
23. As part of this responsibility, FDOT had a duty to properly install, inspect, maintain, repair, and oversee FPN: 417164-1-52-01 to ensure compliance with FDOT'S duty to protect individuals such as PIKE from unnecessary and unreasonable risks.
24. FDOT also had a duty to ensure its agents, subcontractors, and/or employees were properly trained to install, repair, maintain, and inspect the subject guardrail so as to avoid exposing individuals such as PIKE to unnecessary and unreasonable risk.
25. FDOT also had a duty to ensure its agents, subcontractors, and/or employees properly installed, repaired, maintained, and inspected the subject guardrail so as to avoid exposing individuals such as PIKE to unnecessary and unreasonable risk.
26. FDOT breached its duty in one or more of the following ways:
 - a. Failing to properly install, construct, maintain, repair, and/or inspect the subject guardrail;
 - b. Failing to discover the hazardous and unsafe condition of the subject guardrail;
 - c. Failing to correct the hazardous and unsafe condition of the subject guardrail;
 - d. Failing to ensure its agents, subcontractors, and/or employees were properly trained to install, construct, maintain, repair, and/or inspect the subject guardrail;
 - e. Failing to ensure its agents, subcontractors, and/or employees properly installed, constructed, maintained, repaired, and/or inspected the subject guardrail.

27. FDOT'S acts and/or omissions created an unreasonable risk of injuries to vehicle occupants and the motoring public, including Plaintiff PIKE.

28. As a direct and proximate result of the Defendant FDOT'S aforementioned breach of duty, Plaintiff suffered permanent, catastrophic bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, 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, if any. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, CHARLES PIKE, demands judgment for compensatory damages and all other relief this Court deems proper against Defendant FLORIDA DEPARTMENT OF TRANSPORTATION.

REQUEST FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable as a matter of right.

Dated: July 28, 2014

Respectfully submitted,

s/Theodore J. Leopold
THEODORE J. LEOPOLD, ESQ.
Florida Bar No.: 705608
tleopold@cohenmilstein.com
ADAM J. LANGINO, ESQ.
Florida Bar No.: 0031368
Email: alangino@cohenmilstein.com
Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400