

**COMMISSION AGENDA:**

10-8-13 #16

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 Theresa Kanaszka and Charles Kanaszka v. Kloote Contracting,  
Inc. and Pinellas County Board of County Commissioners, et al.  
Circuit Civil Case No. 13-008486-CI-11

DISTRIBUTION: Virginia Holscher, Bureau Director, Risk Management

DATE: October 8, 2013

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: Plaintiffs allege that on or about October 20, 2010, while on the premises of the St. Petersburg-Clearwater Airport, Mrs. Kanaszka tripped on a charged water line allegedly put in place by Kloote Contracting. Plaintiffs allege the County hired Kloote to perform construction services at the Airport and that both the County and Kloote were negligent, which resulted in her fall and injuries. In essence, Plaintiffs assert the County was responsible for the negligence of its contractor, and that the County otherwise failed to maintain the premises in a safe manner. Mr. Kanaszka sues for loss of consortium.

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

JLB:NSM:ck

Attachment

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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY  
GENERAL CIVIL DIVISION**

**THERESA KANASZKA and  
CHARLES KANASZKA,**

Plaintiffs,

vs.

Case No: 13-008486-CI

**KLOOTE CONTRACTING, INC. and  
PINELLAS COUNTY BOARD OF  
COUNTY COMMISSIONERS  
as owner and operator of  
ST. PETERSBURG-CLEARWATER  
INTERNATIONAL AIRPORT,**

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

**COME NOW**, Plaintiffs, Theresa Kanaszka and Charles Kanaszka, by and through their undersigned counsel, and as and for their Complaint against Defendants, Kloote Contracting, Inc. and Pinellas County Board of County Commissioners as owner and operator of St. Petersburg-Clearwater International Airport, aver the following:

**JURISDICTIONAL AND GENERAL ALLEGATIONS**

1. This is an action at law wherein the amount in controversy exceeds fifteen thousand dollars (\$15,000.00) exclusive of attorneys' fees, costs, and interest.
2. Plaintiff, Theresa Kanaska (hereinafter "Mrs. Kanaszka" when the context so permits), is and was at all times material a citizen and resident of Hillsborough County, Florida.
3. Plaintiff, Charles Kanaska (hereinafter "Mr. Kanaszka" when the context so permits), is and was at all times material a citizen and resident of Hillsborough County, Florida

and the husband of Mrs. Kanaszka.

4. Defendant, Kloote Contracting, Inc. (hereinafter "KCI" when the context so permits), is and was at all times material a domestic corporation for profit, authorized to conduct business in the State of Florida, and, in fact, conducts substantial and not isolated business in the State of Florida, including, at all times material, Pinellas County, Florida.

5. Defendant, Pinellas County Board of County Commissioners (hereinafter the "PCBOCC" when the context so permits), is and was at all times material the governmental body of Pinellas County Florida (hereinafter the "County"), a political subdivision of the State of Florida and owner and operator of St. Petersburg-Clearwater International Airport (hereinafter the "Airport" when the context so permits).

6. All conditions precedent to the institution and maintenance of this action have occurred, have been performed, or have been waived, and this includes timely compliance with the sovereign immunity notice requirements of Florida Statute Chapter 768. Specifically, Mrs. Kanaszka and Mr. Kanaszka provided notice of their claims to the PCBOCC, the Airport, and the Florida Department of Financial Services (hereinafter the "FDFS" when the context so permits) as required by Florida Statute section 768.28(6) on September 26, 2012. Neither the PCBOCC, the Airport, or the FDFS made final disposition of the claims within six months and so they are deemed to have been finally denied.

7. This Complaint has been filed prior to the expiration of the statute of limitations as specified by Florida Statute section 95.11(3)(a) and (f).

#### **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

8. On October 20, 2010, Mrs. Kanaszka and Mr. Kanaszka were business invitees on

the premises of the Airport as returning passengers.

9. Prior to October 20, 20110, KCI had contracted with the County and/or the Airport to perform a construction project on the Airport premises such that on October 20, 2010, KCI was on the premises of the Airport conducting construction operations.

10. KCI's construction operations included the use of a charged water line running from a fire hydrant located within the area traversed by arriving or returning passengers.

11. The charged water line was of the same or similar color as the concrete sidewalk over which it ran; was not marked with signs, cones, tape, or other forms of warning; and was not blockaded. Further, there were no KCI or Airport personnel present to warn persons of the presence of the charged water line.

12. As Mrs. Kanaszka and Mr. Kanaszka were walking from the baggage claim area of the terminal to their vehicle parked in the long-term parking lot, Mrs. Kanaska unknowingly encountered the charged water line, tripped over it, and fell face down on the concrete, sustaining serious injuries.

**COUNT I  
NEGLIGENCE  
PCBOCC**

13. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

14. The Airport is owned, managed, and operated by the County.

15. The County had a duty, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal

responsibility, to use reasonable care in maintaining the Airport premises in a safe manner and condition.

16. The County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things:

a. failing to maintain the Airport premises open to the public in a reasonably safe condition;

b. failing to have adequate and appropriate systems in place to regularly inspect the Airport premises open to the public for dangerous, hazardous, and unsafe conditions;

c. failing to have adequate and appropriate procedures in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

d. failing to have adequate and appropriate monitoring in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

e. failing to have adequate and appropriate controls in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition; and

f. failing to have adequate and appropriate management in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition.

17. As a direct and proximate result of these breaches of duty owed by the County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury,

disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT II  
PREMISES LIABILITY  
NEGLIGENT FAILURE TO CORRECT  
PCBOCC**

18. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

19. The Airport is owned, managed, and operated by the County.

20. The County had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, to exercise reasonable care for the security, safety, and protection of persons including Mrs. Kanaszka on Airport premises open to the public.

21. The duty owed by the County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, was to maintain the premises in a reasonably safe condition, free from dangerous, hazardous, unsafe, or defective conditions.

22. The County either knew or upon reasonable inspection should have known that the charged water line created a dangerous, hazardous, and unsafe condition that could cause harm to persons including Mrs. Kanaszka moving about the Airport premises open to the public.

23. The County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things, failing to correct this dangerous, hazardous, and unsafe condition on the Airport premises open to the public.

24. As a direct and proximate result of this breach of duty owed by the County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT III  
PREMISES LIABILITY  
NEGLIGENT FAILURE TO WARN  
PCBOCC**

25. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

26. The Airport is owned, managed, and operated by the County.

27. The County had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal

responsibility, to exercise reasonable care for the security, safety, and protection of persons including Mrs. Kanaszka on Airport premises open to the public.

28. The duty owed by the County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, was to warn of dangerous, hazardous, unsafe, or defective conditions on the Airport premises open to the public.

29. The County either knew or upon reasonable inspection should have known that the charged water line created a dangerous, hazardous, and unsafe condition that could cause harm to persons including Mrs. Kanaszka moving about the Airport premises open to the public.

30. The County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things, failing to warn of this dangerous, hazardous, and unsafe condition.

31. As a direct and proximate result of this breach of duty owed by the County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all



accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT IV  
PREMISES LIABILITY  
NEGLIGENT MODE OF OPERATION  
PCBOCC**

32. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

33. The Airport is owned, managed, and operated by the County.

34. The County had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, to use reasonable care in its mode of operation on Airport premises open to the public.

35. The County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things

a. failing to maintain the Airport premises open to the public in a reasonably safe manner and condition;

b. failing to correct dangerous, hazardous, and unsafe conditions on the Airport premises open to the public;

c. failing to warn of dangerous, hazardous, and unsafe conditions on the Airport premises open to the public;

d. failing to have adequate and appropriate systems in place to regularly inspect the Airport premises open to the public for dangerous, hazardous, and unsafe conditions;

e. failing to have adequate and appropriate procedures in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

f. failing to have adequate and appropriate monitoring in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

g. failing to have adequate and appropriate controls in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition; and

h. failing to have adequate and appropriate management in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition.

36. As a direct and proximate result of these breaches of duty owed by the County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT V  
PREMISES LIABILITY  
NEGLIGENT HIRING, RETENTION, AND SUPERVISION  
PCBOCC**

37. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

38. The Airport is owned, managed, and operated by the County.

34. The County had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, to inquire about and investigate the fitness, suitability, experience, and training of KCI and its employees to safely and properly perform construction operations prior to contracting with KCI and prior to allowing KCI to commence construction operations on the Airport premises.

35. The County, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty by failing to adequately inquire about and investigate the fitness, suitability, experience, and training of KCI and its employees to safely and properly perform construction operations prior to contracting with KCI and prior to allowing KCI to commence construction operations on the Airport premises.

36. An adequate investigation would have revealed that KCI and its employees were unfit, unsuitable, inexperienced, and untrained such that they could not safely and properly perform construction operations on the Airport premises.

37. The County knew or upon reasonable investigation should have known that KCI and its employees were unfit, unsuitable, inexperienced, and untrained such that they could not safely and properly perform construction operations on the Airport premises.

38. Subsequent to contracting with KCI and allowing KCI to commence construction operations on the Airport premises, with proper supervision the County knew or should have

known that KCI and its employees were unfit, unsuitable, inexperienced, and untrained such that they could not safely and properly perform construction operations on the Airport premises.

39. The County failed to adequately supervise KCI and its employees, breaching its duty of supervision, and, as a result, retained KCI and its employees, allowing them to continue performing construction operations on the Airport premises including the operations of October 20, 2010.

40. As a direct and proximate result of these breaches of duty owed by the County, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT VI  
LOSS OF CONSORTIUM  
PCBOCC**

41. Mr. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve, Fourteen through Seventeen, Nineteen through Twenty-Four, Twenty-Six through Thirty-One, Thirty-Three through Thirty-Six, and Thirty-Eight through Forty above as if fully set forth herein.

42. Mr. Kanaszka is and was at all times material hereto lawfully married to Mrs. Kanaszka, residing together with her, and enjoying a familial and spousal relationship with her.

43. As a direct and proximate result of the negligence of the County as above described, Mr. Kanaszka has suffered the loss of services, companionship, society, affections, and consortium of Mrs. Kanaszka, and he has in the past and will continue in the future to be deprived of her services, companionship, society, affections, and consortium.

**WHEREFORE**, Plaintiff, Charles Kanaszka, demands judgment against Defendant, Pinellas County Board of County Commissioners, an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT VII  
NEGLIGENCE  
KCI**

44. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

45. KCI had a duty, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, to use reasonable care in conducting its construction operations on the Airport premises in a safe manner.

46. KCI, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things:

a. failing to maintain the area where it was conducting construction operations on the Airport premises open to the public in a reasonably safe condition;

b. failing to have adequate and appropriate systems in place to regularly inspect the area where it was conducting construction operations on the Airport premises open to the public for dangerous, hazardous, and unsafe conditions;

c. failing to have adequate and appropriate procedures in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

d. failing to have adequate and appropriate monitoring in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

e. failing to have adequate and appropriate controls in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition;

f. failing to have adequate and appropriate management in place to provide to the public and to Mrs. Kanaszka a premises in a reasonably safe condition; and

g. creating a dangerous, hazardous, unsafe, or defective condition, i.e., the charged water line.

47. As a direct and proximate result of these breaches of duty owed by the KCI, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Kloote Construction, Inc., an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT VIII  
NEGLIGENT FAILURE TO CORRECT  
KCI**

48. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

49. KCI had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, to exercise reasonable care for the security, safety, and protection of persons including Mrs. Kanaszka in the area where it was conducting construction operations on Airport premises open to the public.

50. The duty owed by KCI, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, was to maintain the premises in a reasonably safe condition, free from dangerous, hazardous, unsafe, or defective conditions.

51. KCI either knew or upon reasonable inspection should have known that the charged water line created a dangerous, hazardous, and unsafe condition that could cause harm to persons including Mrs. Kanaszka moving about the area where it was conducting construction operations Airport premises open to the public.

52. KCI, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things, creating a dangerous, hazardous, unsafe, or defective condition, i.e., the charged water line, and failing to correct this dangerous, hazardous, and unsafe condition in the area where it was conducting construction operations on the Airport premises open to the public.

53. As a direct and proximate result of this breach of duty owed by the KCI, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Kloote Construction, Inc., an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT IX  
NEGLIGENT FAILURE TO WARN  
KCI**

54. Mrs. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve above as if fully set forth herein.

55. KCI had a duty, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, to



exercise reasonable care for the security, safety, and protection of persons including Mrs. Kanaszka in the area where it was conducting construction operations on Airport premises open to the public.

56. The duty owed by KCI, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, was to warn of dangerous, hazardous, unsafe, or defective conditions in the area where it was conducting construction operations on the Airport premises open to the public.

57. KCI either knew or upon reasonable inspection should have known that the charged water line created a dangerous, hazardous, and unsafe condition that could cause harm to persons including Mrs. Kanaszka moving about the area where it was conducting construction operations Airport premises open to the public.

58. KCI, by and through its agents, servants, employees, contractors and other persons or entities for whom it bears common law or statutory legal responsibility, breached its duty to Mrs. Kanaszka by, among other things, creating a dangerous, hazardous, unsafe, or defective condition, i.e., the charged water line, and failing to warn of this dangerous, hazardous, and unsafe condition.

59. As a direct and proximate result of this breach of duty owed by KCI, by and through its agents, servants, employees, contractors, and other persons or entities for whom it bears common law or statutory legal responsibility, Mrs. Kanaszka was injured and has experienced in the past and will continue to experience in the future permanent injury, disfigurement, severe physical and mental pain, anguish, trauma, and past and future monetary damages including but not limited to past and future medical and rehabilitation expenses.

**WHEREFORE**, Plaintiff, Theresa Kanaszka, demands judgment against Defendant, Kloote Construction, Inc., an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**COUNT X  
LOSS OF CONSORTIUM  
KCI**

60. Mr. Kanaszka realleges and incorporates by reference the allegations contained in Paragraphs One through Twelve, Forty-Five through Forty-Seven, Forty-Nine through Fifty-Three, and Fifty-Five through Fifty-Nine above as if fully set forth herein.

61. Mr. Kanaszka is and was at all times material hereto lawfully married to Mrs. Kanaszka, residing together with her, and enjoying a familial and spousal relationship with her.

62. As a direct and proximate result of the negligence of the KCI as above described, Mr. Kanaszka has suffered the loss of services, companionship, society, affections, and consortium of Mrs. Kanaszka, and he has in the past and will continue in the future to be deprived of her services, companionship, society, affections, and consortium.

**WHEREFORE**, Plaintiff, Charles Kanaszka, demands judgment against Defendant, Kloote Construction, Inc., an award of monetary damages, costs, all accruing post-judgment interest thereafter, and for such other and further relief as this Court deems just and proper at law and in equity.

**DEMAND FOR JURY TRIAL**

**BE IT KNOWN THAT** Plaintiffs, Theresa Kanaszka and Charles Kanaszka, demand trial by jury on all issues so triable as a matter of right.

**DATED** this, the 30th day of August, 2013.

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Counsel for Plaintiff

**GREGORY J. BLACKBURN**

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GJB/dim