

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Erie

ArcelorMittal Lackawanna LLC and
Tecumseh Redevelopment Inc.

Plaintiff/Petitioner,

- against -

Index No. 203174/2014

County of Erie and
Erie County Sewer District No. 6

Defendant/Respondent.

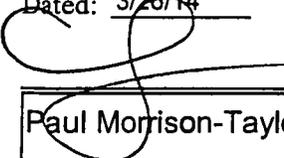
**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: 3/26/14


Paul Morrison-Taylor

(Signature)

(Name)

Phillips Lytle LLP

(Firm Name)

One Canalside - 125 Main Street (Address)

Buffalo, New York 14203

716 847-5406

(Phone)

pmorrisontaylor@phillipslytle.com

(E-Mail)

To: Daniel A. Spitzer

140 Pearl Street

Buffalo, NY 14202

REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

For Court Clerk Use Only: 03/26/2014

IAS Entry Date

Judge Assigned

RJI Date

Supreme COURT, COUNTY OF Erie

Index No: 803174/2014 Date Index Issued: 3/26/14

CAPTION: Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

ARCELORMITTAL LACKAWANNA LLC and TECUMSEH REDEVELOPMENT INC.

Plaintiff(s)/Petitioner(s)

-against-

COUNTY OF ERIE and ERIE COUNTY SEWER DISTRICT NO. 6

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING: Check ONE box only and specify where indicated.

MATRIMONIAL

- Contested
NOTE: For all Matrimonial actions where the parties have children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum. For Uncontested Matrimonial actions, use RJI form UD-13.

COMMERCIAL

- Business Entity (including corporations, partnerships, LLCs, etc.)
Contract
Insurance (where Insurer is a party, except arbitration)
UCC (including sales, negotiable instruments)
Other Commercial: (specify)

TORTS

- Asbestos
Breast Implant
Environmental: (specify)
Medical, Dental, or Podiatric Malpractice
Motor Vehicle
Products Liability: (specify)
Other Negligence: (specify)
Other Professional Malpractice: (specify)
Other Tort: (specify)

NOTE: For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the COMMERCIAL DIV RJI Addendum.

REAL PROPERTY: How many properties does the application include?

- Condemnation
Mortgage Foreclosure (specify): Residential Commercial
Property Address: Street Address City State Zip
NOTE: For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the FORECLOSURE RJI Addendum.
Tax Certiorari - Section: Block: Lot:
Tax Foreclosure
Other Real Property: (specify)

OTHER MATTERS

- Certificate of Incorporation/Dissolution [see NOTE under Commercial]
Emergency Medical Treatment
Habeas Corpus
Local Court Appeal
Mechanic's Lien
Name Change
Pistol Permit Revocation Hearing
Sale or Finance of Religious/Not-for-Profit Property
Other: (specify)

SPECIAL PROCEEDINGS

- CPLR Article 75 (Arbitration) [see NOTE under Commercial]
CPLR Article 78 (Body or Officer)
Election Law
MHL Article 9.60 (Kendra's Law)
MHL Article 10 (Sex Offender Confinement-Initial)
MHL Article 10 (Sex Offender Confinement-Review)
MHL Article 81 (Guardianship)
Other Mental Hygiene: (specify)
Other Special Proceeding: sewer charge challenge (specify)

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for EVERY question AND enter additional information where indicated.

YES NO

- Has a summons and complaint or summons w/notice been filed?
Has a summons and complaint or summons w/notice been served?
Is this action/proceeding being filed post-judgment?

NATURE OF JUDICIAL INTERVENTION:

Check ONE box only AND enter additional information where indicated.

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice
- Notice of Motion
- Notice of Petition
- Order to Show Cause
- Other Ex Parte Application
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify): _____

Date issue Joined: _____
 Relief Sought: _____ Return Date: _____
 Relief Sought: Article 78 (against body or officer) Return Date: 05/15/2014
 Relief Sought: _____ Return Date: _____
 Relief Sought: _____ Return Date: _____

RELATED CASES:

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the RJ1 Addendum. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case
ArcelorMittal Lackawanna LLC and Tecumseh Redevelopment	2011-1403	Erie County - NY State Supreme Court	Hon. Timothy Walker	subsequent year's sewer tax charges
Inc. v. County of Erie and Erie County Sewer District No. 6	2012-0108	Erie County - NY State Supreme Court	Hon. Timothy Walker	subsequent year's sewer tax charges
	2013-0969	Erie County - NY State Supreme Court	Hon. Timothy Walker	subsequent year's sewer tax charges

PARTIES:

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the RJ1 Addendum.

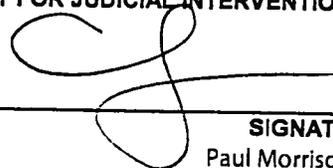
Un-Rep	Parties: List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff).	Attorneys and/or Unrepresented Litigants: Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	ArcelorMittal Lackawanna LLC Last Name First Name Primary Role: Petitioner Secondary Role (if any):	Morrison-Taylor Paul Last Name First Name Phillips Lytle LLP Firm Name One Canalside - 125 Main Street Street Address Buffalo City New York State 14203 Zip +1 (716) 847-8400 Phone +1 (716) 852-6100 Fax ptaylor@phillipslytle.com e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Tecumseh Redevelopment Inc. Last Name First Name Primary Role: Petitioner Secondary Role (if any):	Morrison-Taylor Paul Last Name First Name Phillips Lytle LLP Firm Name One Canalside - 125 Main Street Street Address Buffalo City New York State 14203 Zip +1 (716) 847-8400 Phone +1 (716) 852-6100 Fax ptaylor@phillipslytle.com e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	County of Erie Last Name First Name Primary Role: Respondent Secondary Role (if any):	Spitzer Daniel Last Name First Name Hodgson Russ LLP Firm Name 140 Pearl Street Street Address Buffalo City New York State 14202 Zip Phone Fax e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Erie County Sewer District No. 6 Last Name First Name Primary Role: Respondent Secondary Role (if any):	Spitzer Daniel Last Name First Name Hodgson Russ LLP Firm Name 140 Pearl Street Street Address Buffalo City New York State 14202 Zip Phone Fax e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 03/26/2014

1708585

ATTORNEY REGISTRATION NUMBER



SIGNATURE

Paul Morrison-Taylor

PRINT OR TYPE NAME

Print Form

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
ARCELORMITTAL LACKAWANNA LLC
and TECUMSEH REDEVELOPMENT INC.,

Petitioners,

vs.

COUNTY OF ERIE and
ERIE COUNTY SEWER DISTRICT NO. 6,

Respondents.

NOTICE OF PETITION

Index No.: 803174/2014

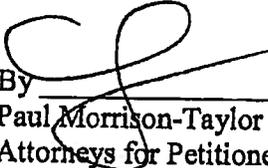
Assigned Justice:
Hon.

PLEASE TAKE NOTICE that upon the annexed petition of ArcelorMittal Lackawanna LLC and Tecumseh Redevelopment Inc., verified on the 21st day of March, 2014, an application will be made to a Special Term of this Court, to be held at Supreme Court, Erie County, on the 15th day of May, 2014, at 9:30 a.m. of that day, or as soon thereafter as counsel may be heard, for a judgment pursuant to CPLR Article 78, granting petitioners a correction and reduction of the sewer charges imposed by respondents upon petitioners in January, 2014, in connection with the real property of petitioners located in the City of Lackawanna, New York, together with such other and further relief as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that an answer and any supporting affidavits shall be served at least seven days before the return date of this petition. Petitioners designate Erie County as the place of trial. The basis of venue is CPLR 506(b).

Dated: Buffalo, New York
March 26, 2014

PHILLIPS LYTTLE LLP

By 
Paul Morrison-Taylor
Attorneys for Petitioners
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Telephone No.: (716) 847-8400

TO: COUNTY CLERK
County of Erie
25 Delaware Avenue
Buffalo, New York 14202

Maria R. Whyte
Commissioner of Environment and Planning
Edward A. Rath County Office Building
95 Franklin Street, 10th Floor
Buffalo, New York 14202

Erie County Attorney's Office
95 Franklin Street, Room 1634
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
ARCELORMITTAL LACKAWANNA LLC
and TECUMSEH REDEVELOPMENT INC.,

Petitioners,

vs.

COUNTY OF ERIE and
ERIE COUNTY SEWER DISTRICT NO. 6,

Respondents.

VERIFIED PETITION

Index No.: 803174/2014

Assigned Justice:
Hon.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners, ArcelorMittal Lackawanna LLC and Tecumseh Redevelopment Inc.,
by their attorneys, Phillips Lytle, LLP, in support of their petition, allege upon information and
belief:

A. Parties

1. ArcelorMittal Lackawanna LLC is a limited liability company, and Tecumseh Redevelopment Inc. is a corporation, both organized and existing under the laws of the State of Delaware, and both duly authorized to transact business in the State of New York.
2. Respondent County of Erie (the "County") is a duly constituted municipal county in the State of New York which, through the Erie County Department of Environment and Planning, manages respondent Erie County Sewer District No. 6 (the "District").

3. The District, which operates within Erie County, is a special district which collects and treats waste from various properties within its boundaries.

B. Background

4. The District maintains a sanitary and storm sewer collection system through which it collects sanitary sewage and storm water from various properties located in the City of Lackawanna, New York, including the subject property owned by petitioners.

5. The District imposes sanitary sewer charges on its users, allegedly using three factors to determine the charges: (i) the quantity of sewage sent to the District from the taxpayer's property; (ii) the size and type of the property from which the sewage flows; and (iii) the assessed value of the property from which the sewage flows.

6. The District also imposes storm sewer charges based upon the assessed value of the property.

7. The calculation of sanitary and storm sewer charges is made by the District, and billed by the District to petitioners and other taxpayers, through the annual real property tax bills processed and sent by the County.

CLAIM

8. Paragraphs 1 through 7 are realleged.

9. On or about January 1, 2014, respondents billed petitioners the total amount of \$525,883.62 for storm and sanitary sewer charges on their property in the City of Lackawanna (SBL # 141.11-1-48, 141.11-1-50, and 150.08-2-1 – which comprises approximately 957.18 acres - hereinafter referred to as the "Property") for the 2014 calendar year.

10. Respondents billed petitioners the total amount of \$488,257.81 for sanitary sewage charges in connection with the Property.

11. The total amount for each of the three components of the sanitary sewer bill for the Property is as follows:

(i) quantity of flow	-	\$ 58,065.55
(ii) size/type of property	-	\$ 421,256.00
(iii) assessed value of property	-	\$ 8,936.26
Total:		<u>\$ 488,257.81</u>

12. Respondents do not calculate the size/type component of the sanitary sewer charge the same for all taxpayers in the District.

13. All residential property taxpayers within the District are charged one unit for the size component of their sanitary sewer charge, no matter how large their property is or how many living units are located on it.

14. All agricultural property taxpayers within the District are charged one unit per acre as the size component of their sanitary sewer charge.

15. Commercial/industrial property taxpayers within the District, however, are charged by multiplying the taxpayer's total acreage by five, to arrive at the number of unit or parcel charges used to calculate this component of their sanitary sewer charges.

16. Petitioners' property consists of about 957 acres.

17. The size component charge for the Property was determined by multiplying 957 acres by 5 for a total of 4,787 unit or parcel charges.

18. Each unit or parcel charge was then multiplied by \$88.00 to arrive at a total of \$421,256.00 for the size/type component of petitioners' sanitary sewer charges for the Property.

19. Most of the Property is vacant land, not serviced by sewers, or land with defunct/idle structures and operations which do not produce sewage.

20. Moreover, because petitioners are the largest property owners in the District, the five multiplier increases this portion of their sanitary sewer charge exponentially and disproportionately compared to other taxpayers in the District.

21. Respondents' use of the five multiplier in calculating petitioners' sanitary sewer charges on the Property is erroneous, arbitrary, capricious and illegal.

22. Respondents' use of the five multiplier in calculating petitioners' sanitary sewer charges singles them out and treats them differently from every other taxpayer in the District, and is unconstitutional.

23. Respondents' use of the five multiplier in calculating petitioners' sanitary sewage charges forces them to pay an unfair and disproportionately higher amount for sanitary sewer charges compared to other taxpayers in the District.

24. Respondents' use of the five multiplier in calculating petitioners' sanitary sewage charges is without any rational basis and unfairly overcharges them.

25. Respondents enhanced the prejudice to petitioners, and compounded the problem created by use of the five multiplier, by raising a disproportionate amount of the sanitary sewer levy for the District based on the size/type component of the formula.

26. Respondents' methodology for determining the sanitary sewer charges for the Property is arbitrary, capricious, erroneous, discriminatory, illegal and unconstitutional.

27. As a result of the foregoing, petitioners have overpaid their sanitary sewer charges and are entitled to a refund of those overpaid charges, with interest from the date of payment, and recalculation of the sanitary sewer charges based on a methodology which is fair, correct, legal, rational, non-discriminatory and constitutional.

28. Petitioners have been damaged by respondents' actions.

29. Petitioners have not previously sought the relief requested herein.

WHEREFORE, ArcelorMittal Lackawanna LLC and Tecumseh Redevelopment Inc., respectfully request that a judgment be entered as follows: (a) nullifying the 2014 sanitary sewer charges on the Property, and the methodology used to determine those storm and sanitary sewer charges, and requiring respondents to recalculate the sanitary sewer charges on the Property in a fair, correct, legal, rational, non-discriminatory and constitutionally valid manner, which does not require petitioners to pay an improper, unfair and disproportionate share of the sanitary sewer charges of the District; (b) directing that respondents refund to petitioners the sanitary sewer charges they overpaid by virtue of the erroneous billing and procedures noted above, with interest; (c) granting a judgment in favor of petitioners and against respondents in the total amount of the sanitary sewer charges overpaid by petitioners, as determined by the Court, together with interest thereon from the date of payment of the sewer charges by petitioners; and (d) granting such other and further relief as the Court may determine is just and proper.

Dated: Buffalo, New York
March 24, 2014

PHILLIPS LYTTLE LLP

By 

Paul Morrison-Taylor
Attorneys for Petitioners
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Telephone No.: (716) 847-8400

STATE OF INDIANA)
) ss.:
COUNTY OF LAKE)

K.E. Walker, being duly sworn, deposes and says that (s)he is the Assistant Treasurer for ArcelorMittal Lackawanna LLC and Tecumseh Redevelopment Inc., both duly organized and existing under and by virtue of the laws of the State of Delaware, and the petitioners in the foregoing proceeding; that he has read the foregoing petition and knows the contents thereof; that he has personal knowledge of the material allegations of this Petition and same is true to the knowledge of deponent, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.



K.E. Walker

Sworn to before me this
24 day of March, 2014.


Notary Public

